

PAPER
4

**FINAL COURSE
STUDY MATERIAL
GROUP-II**

**DIRECT TAX LAWS &
INTERNATIONAL TAXATION
MODULE 1 OF 4**

[Direct Tax Laws as amended by the Finance Act, 2023]
Assessment Year 2024-25
Relevant for May, 2024 and November, 2024 Examinations



Board of Studies (Academic)
**The Institute of Chartered
Accountants of India**

(Set up by an Act of Parliament)

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BEFORE WE BEGIN ...

Direct Tax Laws and International Taxation: Dynamic Subject Area

Direct Tax Laws and International Taxation is one of the dynamic subjects of the chartered accountancy course. The direct tax laws of the country undergo significant changes every year with the passing of the annual Finance Act. Apart from these significant amendments ushered in every year through the Finance Act, notifications and circulars are also issued from time to time by the Central Board of Direct Taxes (CBDT), the statutory authority in charge with the administration of direct taxes, to implement the provisions of the Act and clarify issues regarding the meaning and scope of certain provisions. Further, decisions are pronounced by various Courts interpreting the provisions of tax laws.

With increased cross border transactions and the whole world virtually becoming one market, there is a need for chartered accountants to enhance their knowledge base in international taxation. Countries across the globe are entering into tax treaties to avoid double taxation of a single transaction. In a highly advanced IT enabled business scenario where an entity operates from many establishments spread throughout the globe, chartered accountants have to be well versed with the nuances of international taxation to be able to give an informed and correct advice and ensure compliance with tax laws. Accordingly, international taxation has been included as an integral part of this paper.

The contents of the syllabi of this paper is divided into three parts –

1. Chapters based on substantive law of direct taxes including tax planning and tax avoidance;
2. Chapters based on the compliance and procedural law of direct taxes; and
3. Chapters based on international taxation.

The relevant Finance Act and Assessment Year

This Study Material is based on the provisions of direct tax laws, as amended by the Finance Act, 2023 and the significant notifications, circulars issued and other legislative amendments made upto 31st July, 2023. The computational problems have been solved on the basis of the provisions of direct tax laws applicable for A.Y.2024-25. The Study Material is, therefore, relevant for May 2024 and November, 2024 examinations. In this Study Material, the amendments made by the Finance Act, 2023 and latest notifications and circulars issued have been indicated in *italics/bold italics*.

The significant circulars and notifications issued and other legislative amendments, if any, made thereafter upto 31st October, 2023, relevant for May, 2024 Examination, would be webhosted as Statutory Update for May, 2024 examination in the BoS Knowledge Portal. Likewise, the significant circulars and notifications issued and other legislative amendments, if any, made thereafter upto 30th April, 2024, relevant for November, 2024 Examination, would be webhosted as Statutory Update for November, 2024 examination. The Judicial Update containing latest significant court rulings relevant for May, 2024 and November, 2024 examination, not covered in this Study Material, would also be webhosted at the BOS Knowledge Portal.

Read the Bare Act & Rules along with Study Material

At the Final level, along with the Study Material, students are also advised to read the Income-tax Act, 1961 and Income-tax Rules, 1962, available at the website of the income-tax department www.incometaxindia.gov.in. This will help understand the language of law and sequence of sections and rules. The circulars and notifications issued by CBDT, the income-tax return forms, important provisions relating to firms, companies, trusts, FAQs etc. are also available at this website. Students are advised to visit the income-tax department's website and enhance their knowledge.

Framework of Chapters: Uniform Structure comprising of specific components

Efforts have been made to present the complex direct tax laws in a lucid manner. Care has been taken to present the chapters in a logical sequence to facilitate easy understanding by the students. The Study Material has been divided into four modules for ease of handling by students. The first three modules are on direct tax laws and the fourth module is on international taxation.

Use of gamification will make learning more interesting. In order to make learning of direct tax laws more engaging and enjoyable, Crossword puzzles have been included at the end of each Module, which you have to solve after reading the Chapters in the Module. Answers to the Crossword puzzles are webhosted at the BoS Knowledge Portal.

Each chapter of the Study Material has been structured uniformly and comprises of the following components:

Components of each Chapter		About the component
1	Learning Outcomes	Learning outcomes which you need to demonstrate after learning each topic have been detailed in the first page of each chapter. Demonstration of these learning outcomes would help you achieve the desired level of technical competence
2	Content	The concepts and provisions of direct tax laws and international taxation are explained in a student-friendly manner with the aid of

		examples/illustrations/diagrams/flow charts. Diagrams and Flow charts would help you understand and retain the concept/ provision learnt in a better manner. Examples and illustrations would help you understand the application of concepts/provisions. These value additions would, thus, help you develop conceptual clarity and get a good grasp of the topic.
3	Significant Select Cases	The summary of recent significant select Supreme Court and High Court rulings have been tabulated at the end of each chapter capturing the gist of the Court decisions interpreting the provisions of tax laws. In addition, case laws (including recent case laws) also form part of the discussion of topics in the content as well as in the questions and answers in “Test Your Knowledge” component. Questions on “Significant Select Cases” in direct tax laws have been given at the end of Module 3 to enable you to apply the rationale of court rulings in addressing issues.
4	Test Your Knowledge	The questions and answers at the end of each chapter would help you to analyse the provisions of direct tax laws and international taxation and apply the same in problem solving, thus, sharpening your application skills. In effect, these questions would test your ability to analyse and apply the concepts/provisions learnt in solving problems and addressing issues.

We hope that these student-friendly features in the Study Material improves your learning curve and sharpens your analytical and interpretational skills.

Happy Reading and Best Wishes!

PAPER – 4 : DIRECT TAX LAWS AND INTERNATIONAL TAXATION

(One paper — Three hours –100 Marks)

Objective:

- (a) To acquire the ability to analyse and interpret the provisions of direct tax laws and recommend optimal solutions to practical problems in a tax efficient manner; and
- (b) To apply the provisions of direct tax laws and the concepts, principles and provisions of international taxation to recommend solutions to issues involved in cross border transactions.

Contents:

1. (i) Comprehensive computation of income-tax liabilities of companies and other entities under the alternative tax regimes under the Income-tax Act, 1961 to optimise tax liability
 - General provisions under the Act for computation of total income and tax liability for companies and other entities
 - Special tax regimes under the Act for companies and other entities
 - Optimisation of tax liability of companies and other entities through tax planning
- (ii) Special Provisions relating to charitable and religious trust and institutions, political parties and electoral trusts, business trusts, securitisation trusts, investment funds and other funds/trusts
- (iii) Anti-avoidance provisions under the Act
- (iv) Provisions to address tax challenges on digitalization
2. **Tax Administration and Appellate Mechanism**
 - Deduction, Collection and Recovery of Tax
 - Income-tax Authorities
 - Assessment Procedures
 - Appeals and Revision; and Dispute Resolution
 - Provisions to counteract unethical tax practices
 - Taxation of undisclosed income under the Income-tax Act, 1961

- Taxation of undisclosed foreign income and assets
- Penalties and offences and prosecution

Miscellaneous Provisions

Tax Audit

3. International Taxation

- (i) Taxation of cross border transactions and Non-resident taxation under the Income-tax Act, 1961, including
 - Transfer Pricing
 - Non-resident Taxation
 - Double Taxation Relief
 - Advance Ruling
- (ii) Other Aspects of International Taxation, namely,
 - Significant articles of OECD and UN Model Tax Conventions
 - Fundamentals of BEPS
 - Application and Interpretation of Tax Treaties
 - Latest developments in international taxation

Note: If any new legislation(s) are enacted in place of an existing legislation(s), the syllabus will accordingly include the corresponding provisions of such new legislation(s) in the place of the existing legislation(s) with effect from the date to be notified by the Institute. Similarly, if any existing legislation(s) on direct tax laws ceases to be in force, the syllabus will accordingly exclude such legislation(s) with effect from the date to be notified by the Institute.

Further, the specific inclusions/exclusions in any topic covered in the syllabus will be effected by way of Study Guidelines every year, if required. Specific inclusions/exclusions in a topic may also arise due to additions/deletions made every year by the Annual Finance Act.

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BASIC CONCEPTS



LEARNING OUTCOMES

After studying this chapter, you would be able to -

- ❑ **recap** the basic concepts of income-tax law, its components and the meaning of important terms used;
- ❑ **interpret** the provisions of income-tax law by applying the rules of interpretation;
- ❑ **examine** whether a receipt is capital or revenue in nature, in the context of the provisions of income-tax law;
- ❑ **appreciate** the difference between application of income and diversion of income by overriding title;
- ❑ **examine** the circumstances when income of the previous year would be assessed to tax in the previous year itself;
- ❑ **appreciate** the differences in the rates of tax and surcharge applicable to different categories of persons;
- ❑ **apply** the rates of tax applicable to different components of the total income of a person and the rates of surcharge, wherever applicable, and health and education cess for the purpose of determining the tax liability of such person.

CHAPTER OVERVIEW**Components of Income-tax Law****Rules of Interpretation****Important Definitions****Charge of Income-tax****Rates of Tax & Surcharge****1.1 OVERVIEW OF INCOME TAX LAW IN INDIA**

The Constitution of India, in Article 265 lays down that “No tax shall be levied or collected except by authority of law.” Accordingly, both the levy of tax as well as its collection shall be made under a law framed by the government.

Constitution of India gives the power to levy and collect taxes, whether direct or indirect, to the Central and State Government. The Parliament and State Legislatures are empowered to make laws on the matters enumerated in the Seventh Schedule by virtue of Article 246 of the Constitution of India.

The Seventh Schedule to Article 246 contains three lists which enumerate the matters under which the Parliament and the State Legislatures have the authority to make laws for the purpose of levy of taxes.

The following are the lists:

- (i) **Union List or List I:** Parliament has the exclusive power to make laws on the matters contained in Union List.
- (ii) **State List or List II:** The Legislatures of any State has the exclusive power to make laws on the matters contained in the State List.
- (iii) **Concurrent List or List III:** Both Parliament and State Legislatures have the power to make laws on the matters contained in the Concurrent List.

*Income-tax is the most significant direct tax. **Entry 82 of the Union List** i.e., List I in the Seventh Schedule to Article 246 of the Constitution of India has given the power to the Parliament to make laws on taxes on income other than agricultural income.*

Income-tax is a tax levied on the total income of the previous year of every person. A person includes an individual, Hindu Undivided Family (HUF), Association of Persons (AOP), Body of Individuals (BOI), a firm, a company etc. The income-tax law in India consists of the following components –



The various instruments of law containing the law relating to income-tax are explained below:

Income-tax Act, 1961

The levy of income-tax in India is governed by the Income-tax Act, 1961. In this book we shall briefly refer to this as the Act.

- It extends to the whole of India.
- It came into force on 1st April, 1962.
- It contains sections 1 to 298 and schedules I to XIV.
- It undergoes a change every year by the Annual Finance Act passed by Parliament, and other legislations like the Taxation Laws (Amendment) Act.

The Finance Act

Every year the Finance Minister of the Government of India introduces the Finance Bill in the Parliament's Budget Session. When the Finance Bill is passed by both the houses of the Parliament and gets the assent of the President, it becomes the Finance Act. New provisions are inserted; existing provisions are substituted or amended every year in the Income-tax Act, 1961 and other tax laws by the Finance Act.

The First Schedule to the Finance Act contains four parts which specify the rates of tax -

- **Part I** of the First Schedule to the Finance Act specifies the rates of tax applicable to the current Assessment Year. Accordingly, Part I of the First Schedule to the Finance Act, 2023 specifies the rates of tax for A.Y. 2023-24.

- **Part II** specifies the rates at which tax is deductible at source for the current Financial Year. Accordingly, Part II of the First Schedule to the Finance Act, 2023 specifies the rates at which tax is deductible at source for F.Y. 2023-24.
- **Part III** gives the rates for calculating income-tax for deducting tax from income chargeable under the head “Salaries” and computation of advance tax for F.Y. 2023-24 where the assessee exercises the option to shift out of the default tax regime provided under section 115BAC(1A).
- **Part IV** contains the rules for computing net agricultural income.

Income-tax Rules, 1962

The administration of direct taxes is looked after by the Central Board of Direct Taxes (CBDT).

- The CBDT is empowered to make rules for carrying out the purposes of the Act.
- For the proper administration of the Income-tax Act, 1961, the CBDT frames rules from time to time. These rules are collectively called **Income-tax Rules, 1962**.
- It is important to keep in mind that along with the Income-tax Act, 1961, these rules should also be studied.

Circulars and Notifications

Circulars

- Circulars are issued by the CBDT from time to time to deal with certain specific problems and to clarify doubts regarding the scope and meaning of certain provisions of the Act.
- Circulars are issued for the guidance of the officers and/or assesseees. However, it cannot override the provisions of the Act.
- The department is bound by the circulars. While such circulars are not binding on the assesseees, they can take advantage of beneficial circulars.

Notifications

- Notifications are issued by the Central Government to give effect to the provisions of the Act.

Example: Under section 10(15)(iv)(h), interest payable by any public sector company in respect of such bonds or debentures and subject to such conditions as the Central Government may, by notification in the Official Gazette, specify in this behalf would be exempt. Therefore, the bonds and debentures, interest on which would qualify for exemption under this section are specified by the Central Government through Notifications.

- The CBDT is also empowered to make and amend rules for the purposes of the Act by issuing notifications which are binding on both department and assesseees.

Example: Under section 35CCD, the CBDT is empowered to prescribe guidelines for notification of skill development project. Accordingly, the CBDT has, *vide Notification No. 54/2013 dated 15.7.2013*, prescribed Rule 6AAF laying down the guidelines and conditions for approval of skill development project under section 35CCD.

Case Laws

The study of case laws is an important and unavoidable part of the study of Income-tax law. It is not possible for Parliament to conceive and provide for all possible issues that may arise in the implementation of any Act. Hence the judiciary will hear the disputes between the assesseees and the department and give decisions on various issues.

The Supreme Court is the Apex Court of the Country and the law laid down by the Supreme Court is the law of the land. The decisions given by various High Courts will apply in the respective states in which such High Courts have jurisdiction.

Rules of Interpretation

Rules of Interpretation are principles that have evolved over the years, on account of interpretation of provisions of law by various Courts. These rules help in interpretation of law. The object behind use of these rules is to ascertain the intention of the lawmakers. These rules are not static and keep on evolving. At times, there may be more than one rule of interpretation which appear to be applicable to a given situation. The Courts then decide the most appropriate one in the given situation considering the facts of the case.

In the ensuing paragraphs, we have made an attempt to discuss the Rules of Interpretation, largely in the context of income-tax law, citing appropriate instances.

I. Significant rules of interpretation used by Courts:

- **Rule of literal interpretation** - This rule is based on the age-old doctrine that "*judges do not legislate, they only interpret law*". It stipulates that the intention of the legislation must be found in the words used by the legislature itself. Attention must be given to what has been said and also what has not been said. Nothing should be added or subtracted. If the provision is unambiguous and if from that provision the legislative intent is clear, the other rules of construction of statutes need not be called into aid.

Example: The Supreme Court in *CIT v. Rajendra Prasad Moody* [1978] 115 ITR 519, noted that the plain natural construction of the language of section 57(iii) of the Income-tax Act, 1961, irresistibly leads to the conclusion that to bring a case within that section it is not necessary that any income should in fact have been earned as a result of the expenditure. Section 57(iii) requires that the expenditure must be laid out or expended wholly and exclusively for the purpose of making or earning income. The section does not require that this purpose must be fulfilled in order to qualify the expenditure for deduction: it does not say that the expenditure shall be deductible only if any income is made or earned.

Where the assessee borrowed monies for the purpose of making investment in certain shares and paid interest thereon during the accounting period relevant to the assessment year but did not receive any dividend on the shares purchased with those monies: Held, accordingly, that the interest on monies borrowed for investment in shares which had not yielded any dividend was admissible as a deduction under section 57(iii) of the Income-tax Act, 1961, in computing its income from dividend under the head "Income from other sources".

- **Mischief rule** - The mischief rule originated in 16th century in the Heydon's case in the United Kingdom. It is commonly known as the Heydon's Rule or Purposive construction. Under this rule, the position before an amendment or enactment of an Act is examined to find out the mischief sought to be remedied to determine the rationale for the remedy. In order to do so, the following aspects are looked at:
 - What was law before the provision was introduced or amended?
 - What was the mischief or the defect for which the earlier provision of law did not provide a remedy?
 - What remedy has the Parliament effected in the provisions of law to cure the mischief or defect?
 - What is the intended effect of such remedy?

Courts then have to make a construction that suppresses the mischief and advances the remedy.
- **The Golden rule** – It allows a judge to depart from a word's normal meaning in order to avoid an absurd result. It is a compromise between the literal rule and the mischief rule. Like the literal rule, it gives the words of a statute their plain, ordinary meaning. However, if this leads to an irrational result which is unlikely to be the legislature's intention, the court can depart from this meaning.

In such a case, the Court would also look at the context in which a provision appears. The same words may mean one thing in one context and another in a different context. While ascertaining the true intention of the Legislature, the court must not only look at the words used by the Legislature but also have regard to the context and the setting in which they occur. The meaning of words in an enactment is not to be ascertained by reading them in isolation.

- **Rule of Harmonious construction** - The entire statute must be read as a whole. Further, all parts of a section should be read harmoniously. Construction should be such that it provides meaning to all parts of a statute. A construction which creates inconsistency or repugnancy between the various sections or parts of the statute should be avoided.
- **Principle of beneficial construction** - If the court finds that two views are possible construction which is most beneficial to the taxpayer should be adopted. This principle is also widely used in case of interpretation of fiscal laws.

Apart from these rules, there are several other rules such as *ejusdem generis*, *notitur a sociis* and *stare decisis* which are often used by Courts.

- **Rule of *ejusdem generis*** is used when particular words pertaining to a class, category or genus are followed by general words. In that case general words are construed as limited to things of the same kind.
- The principle of ***notitur a sociis*** implies that meaning of a word may be ascertained by reference to words associated with it. Words derive colour from the surrounding words.
- The principle of ***stare decisis*** stipulates that a view which is operating for long and is accepted and acted upon should not be easily departed from.

II. Interpretation of different provisions of the Income-tax Act, 1961

In context of the Income-tax Act, 1961, the ensuing table summarizes how different types of provisions are typically construed by Courts.

Type of provision	Interpretation
Charging provisions	Tax is levied by a charging section i.e., it imposes a charge or liability to pay tax. If a person has been brought to tax within the ambit of the charging section by clear words, he has to be taxed, subject to specific exemption/ deduction, if any, available under the provisions of the Act. Charging sections should be strictly construed.
Machinery provisions	Machinery provisions provide machinery for assessment and collection of charge created by the charging section. Machinery and

	charging provisions constitute an integrated code. The machinery provisions should be construed in a way that makes the machinery workable.
Penal provisions	Penal provisions are required to be construed in a strict manner. In case of ambiguity, the taxpayer should be entitled to the benefit of doubt.
Deeming provisions	Deeming provision is intended to enlarge the scope of chargeability of income under a particular head or scope of coverage of a certain provision. It includes matters which otherwise may or may not fall within the provision. Deeming provision should be strictly construed. It should be given its full effect and carried to its logical conclusion.
Appeal and refund provisions	The taxpayer has a right to appeal only if there is a statutory provision for the same. It cannot be implied. Appeal provision should be liberally construed in a reasonable and practical manner. Similarly, provisions granting refund must also be read liberally, in favor of the taxpayer.
Provisions giving exemptions and reliefs	Provisions giving deduction, exemption or relief should be interpreted liberally and in favor of taxpayers. They should be construed to effectuate the object of legislature and not to defeat it.

III. Aids to interpretation

An aid is a device that helps or assists Courts in interpretation of statutes. They can be broadly classified as:

- **Internal Aids**
- **External Aids**

Internal aids to construction

Internal aids of construction refer to aids present within the statute itself, such as the long title, the preamble, heading, marginal notes, punctuations, definition sections, provisos and explanations. Let us now examine some of these:

- **Explanations** – Explanation is generally meant to explain or clarify the meaning of certain words and expressions contained in the main provision. Explanation appended to a section is an integral part of the section. It does not have independent existence apart from the section. In exceptional cases an explanation may widen the scope of the main section by introducing a legal fiction.
- **Provisos** – Generally the function of a proviso is to carve out an exception/ condition to qualify a provision. A proviso cannot control the enactment. A proviso is not applicable

unless the main provision is applicable to the facts of the case. It must be construed harmoniously with the main provision.

Example: Sections 80GGB and 80GGC provides for deduction from gross total income in respect of contributions made by companies and other persons, respectively, to political parties or an electoral trust.

The proviso to sections 80GGB and 80GGC provide that no deduction shall be allowed under those sections in respect of any sum contributed by cash to political parties or an electoral trust. Thus, the provisos to these sections spell out the circumstance when deduction would not be available thereunder in respect of contributions made.

The Explanation below section 80GGC provides that for the purposes of sections 80GGB and 80GGC, “political party” means a political party registered under section 29A of the Representation of the People Act, 1951. Thus, the Explanation clarifies that the political party has to be a registered political party.

- **Non-obstante clause** – Non-obstante clause is a clause which begins with the phrase “notwithstanding anything contained in any other provision of the Act” or “notwithstanding anything contained in a particular provision(s) of the Act”. Use of this phrase shows that the intent of lawmakers is to give it an overriding effect, in case of a conflict, over the other provisions of the statute mentioned in the provision.

Example: Section 43B provides deduction of certain specified sums for computing of income under the head “Profits and gains from business or profession” on actual payment basis. It begins with the phrase “notwithstanding anything contrary in any other provision of this Act”. Thus, it overrides the other provisions of the Act and provides deduction of payments or expenditures specified therein **only on the basis of actual payment**.

- **Marginal notes and headings** - Headings may be prefixed to a section or a group of sections. Marginal notes are the notes which are inserted at the side of the sections in a statute and express the effect of the sections stated. Headings and marginal notes cannot control the plain words of the provisions. Only in the case of ambiguity they may be referred to throw light on intention of legislature.
- **Definition clauses and undefined words** –The object of a definition clause is to avoid the necessity of frequent repetitions in describing the subject matter in the statute. When the statute defines a particular word, the same should be used, unless the context otherwise requires. A word occurring more than once in a statute should be generally given the same meaning, unless the context requires otherwise. Words not specifically defined must be taken in their legal sense, dictionary meaning, commercial or common meaning. Definition

from any other statute cannot be borrowed and used ignoring the definition contained in the statute itself.

In the Income-tax Act, 1961, definitions contained in section 2 are for the purposes of the Income-tax Act. However, definitions contained in a particular Chapter of the Income-tax Act, 1961 are generally relevant only in the context of the provisions relating to that Chapter, unless reference to such definition(s) has been made in any other provision(s)/ Chapter of the Act.

External aids to construction

External aids refer to aids which are external to the statute such as legislative history, dictionaries, foreign decisions, reference to other statutes. Let us examine some of them:

- **Legislative history** - Historical setting cannot be used as an aid if the words are plain and clear. If the wordings are ambiguous, one can look at the historical facts and circumstances that prevailed at the time when the law was passed for determining the object and purpose. Reports of Commissions including Law Commission or Committees including Parliamentary Committees preceding the introduction of a bill can also be referred to as evidence of historical facts, surrounding circumstances or mischief intended to be remedied.
- **Circulars** - CBDT Circulars issued under section 119 of the Income-tax Act, 1961 are binding on the tax officers and persons employed in the execution of the Income-tax Act 1961. They express the views of CBDT on any issue. They are, however, not binding on the Appellate Authorities, Tribunal, Courts or the taxpayer. Taxpayers can however take benefit of the beneficial circulars.
- **Speech** - The speech made by the mover of the Bill can also be used to ascertain the mischief sought to be remedied, the object and purpose of the legislation. However, speeches made by the Members of the Parliament at the time of consideration of a Bill, are not admissible as an aid.
- **Explanatory Memorandum** - Notes on clauses and memorandum explaining the provisions of the Finance Bill can also aid in construction, in case of ambiguity.
- **Dictionary meaning** - The dictionary meaning of a word should not be looked at where the word has been statutorily defined or judicially interpreted. However, when there is no such interpretation or definition, the Court may take aid of dictionaries to ascertain a meaning of the word.



1.2 IMPORTANT DEFINITIONS

In order to understand the provisions of the Act, one must have a thorough knowledge of the meanings of certain key terms like 'assessment year', 'person', 'assessee', 'income', etc. To understand the meanings of these terms we have to first check whether they are defined in the Act.

Terms defined in the Act: Section 2 gives definitions of the various terms and expressions used therein. If a particular definition is given in the Act itself, we have to be guided by that definition. For e.g. the term 'perquisite' has been defined under section 17(2) for the purpose of taxation of salaries.

Terms not defined under the Act: If a particular definition is not given in the Act, reference can be made to the General Clauses Act or dictionaries.

Students should note this point carefully because certain terms like "dividend", "transfer", etc. have been given a wider meaning in the Income-tax Act, 1961 than they are commonly understood.

Some of the important terms defined under section 2 are given below:

Assessee [Section 2(7)]

"Assessee" means a person by whom any tax or any other sum of money is payable under this Act. In addition, it includes –

- Every person in respect of whom any proceeding under this Act has been taken for the assessment of -
 - his income; or
 - the income of any other person in respect of which he is assessable; or
 - the loss sustained by him or by such other person; or
 - the amount of refund due to him or to such other person.
- Every person who is deemed to be an assessee under any provision of this Act;
- Every person who is deemed to be an assessee-in-default under any provision of this Act.

Assessment [Section 2(8)]

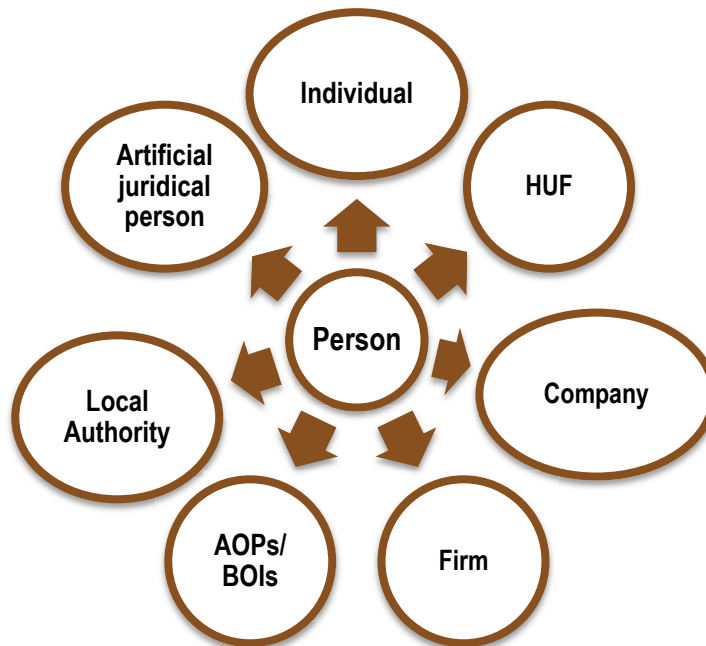
This is the procedure by which the income of an assessee is determined by the Assessing Officer. It may be by way of a normal assessment or by way of reassessment of an income previously assessed.

Types of income-tax assessment:

1. Self-assessment under section 140A
2. Summary assessment under section 143(1)
3. Scrutiny assessment under section 143(3)
4. Best judgment assessment under section 144
5. Re-assessment or income escaping assessment under section 147

Person [Section 2(31)]

The definition of 'assessee' leads us to the definition of 'person' as the former is closely connected with the latter. The term 'person' is important from another point of view also viz., the charge of income-tax is on every 'person'. The definition of the term 'person' is inclusive and not exhaustive. The different types of persons recognized under the Act are provided in the diagram below:



We may briefly consider some of the above seven categories of assessee each of which constitute a separate unit of assessment or a separate tax entity.

(i) Individual

The term 'individual' means only a natural person, *i.e.*, a human being.

- It includes both males and females.
- It also includes a minor or a person of unsound mind. But the assessment in such a case may be made under section 161(1) on the guardian or manager of the minor or lunatic who is entitled to receive his income. In the case of deceased person, assessment would be made on the legal representative.

(ii) HUF

Under the Income-tax Act, 1961, a Hindu undivided family (HUF) is treated as a separate entity for the purpose of assessment. It is included in the definition of the term "person" under section 2(31). The levy of income-tax is on "every person". Therefore, income-tax is payable by a HUF.

"Hindu undivided family" has not been defined under the Income-tax Act, 1961. The expression is, however, defined under the Hindu Law as a family, which consists of all males lineally descended from a common ancestor and includes their wives and daughters.

[Refer Chapter 9: Assessment of various entities in Module 2 for detail discussion of HUF]

(iii) Company [Section 2(17)]

For all purposes of the Act, the term 'Company', has a much wider connotation than that under the Companies Act. Under the Act, the expression 'Company' means:

- (a) any Indian company as defined in section 2(26); or
- (b) any body corporate incorporated by or under the laws of a country outside India, i.e., any foreign company; or
- (c) any institution, association or body which is assessable or was assessed as a company for any assessment year under the Indian Income-tax Act, 1922 or for any assessment year commencing on or before 1.4.1970 under the present Act; or
- (d) any institution, association or body, whether incorporated or not and whether Indian or non-Indian, which is declared by a general or special order of the CBDT to be a company for such assessment years as may be specified in the CBDT's order.

[Refer Chapter 9: Assessment of various entities in Module 2 for detail discussion of companies]

(iv) Firm [Section 2(23)]

The terms 'firm', 'partner' and 'partnership' have the same meanings as assigned to them in the Indian Partnership Act, 1932. In addition, the definitions also include the terms limited

liability partnership, a partner of limited liability partnership as they have been defined in the Limited Liability Partnership Act, 2008.

However, for income-tax purposes a minor admitted to the benefits of an existing partnership would also be treated as partner.

A partnership is the relation between persons who have agreed to share the profits of business carried on by all or any of them acting for all. The persons who have entered into partnership with one another are called individually 'partners' and collectively a 'firm'.

(v) Association of Persons (AOP)

When persons combine together for promotion of joint enterprise they are assessable as an AOP, when they do not in law constitute a partnership. In order to constitute an association, persons must join for a **common purpose or action** and their object must be to produce income; it is not enough that the persons receive the income jointly. Co-heirs, co-legatees or co-donees joining together for a common purpose or action would be chargeable as an AOP. For e.g., Mr. Yash, AB & Co. (Firm) and X (P) Ltd. Join together to carry on construction activity otherwise than as a partnership firm, such an association will be recognized as an association of persons.

(vi) Body of Individuals (BOI)

Body of individuals refers to a conglomeration of individuals who carry on some activity with or without the object of producing income. It denotes the status of persons like executors or trustees who merely receive the income jointly and who may be assessable in like manner and to the same extent as the beneficiaries individually. Thus, co-executors or co-trustees are assessable as a BOI as their title and interest are indivisible. Income-tax shall not be payable by an assessee in respect of the receipt of share of income by him from BOI and on which the tax has already been paid by such BOI. For e.g., mutual trade associations, members club, etc.

Section 2(31) further explains that an association of persons/body of individuals or a local authority or an artificial juridical person shall be treated as a person, whether or not it is formed with the object of deriving income, profits or gains. Accordingly, even if such entities have been formed not for earning any income/ profit still they are "person" for the purpose of the Act and are covered by the provisions of the Act.

Difference between AOP and BOI: In case of a BOI, only individuals can be the members, whereas in case of AOP, any person can be its member i.e., entities like company, firm etc. can be the member of AOP but not of BOI. In case of an AOP, members voluntarily come

together with a common will for a common intention or purpose, whereas in case of BOI, such common will may or may not be present.

(vii) Local Authority

The term means a municipal committee, district board, body of port commissioners or other authority legally entitled to or entrusted by the Government with the control or management of a municipal or local fund.

Note: A local authority is taxable in respect of that part of its income which arises from any business carried on by it in so far as that income does not arise from the supply of a commodity or service within its own jurisdictional area. However, income arising from the supply of water and electricity even outside the local authority's own jurisdictional areas is exempt from tax.

(viii) Artificial Juridical Persons

Artificial Juridical Persons are the entities which are not natural persons but are separate entities in the eyes of law. This is a residual category could cover all artificial persons with a juristic personality not falling under any other category of persons. Deities, Bar Council, Universities are some important examples of Artificial Juridical Persons.

Income [Section 2(24)]

(i) Definition of Income

The definition of income as per the Income-tax Act, 1961 begins with the words "Income includes". Therefore, it is an inclusive definition and not an exhaustive one. Such a definition does not confine the scope of income but leaves room for more inclusions within the ambit of the term.

Section 2(24) of the Act gives a statutory definition of income. At present, the following items of receipts are specifically included in income:—

- (1) Profits and gains;
- (2) Dividends;
- (3) Voluntary contributions received by a trust/ institution created wholly or partly for charitable or religious purposes or by an association or institution referred to in section 10(21) or by a fund or institution referred to in section 10(23C) (iiia) / (iiib) / (iiic) / (iiid) / (iie) / (iif) / (iig) / (iih) / (iia) or an electoral trust;

Research association approved under section 35(1)(ii)/(iii)	10(21)
Universities and other educational institutions	10(23C)(iiia)/(vi)
Hospitals and other institutions	10(23C)(iiiae)/(via)
Notified funds or institutions established for charitable purposes	10(23C)(iv)
Notified trusts or institutions established wholly for public religious purposes or wholly for public religious and charitable purposes	10(23C)(v)
Electoral trust	13B

- (4) The value of any **perquisite or profit in lieu of salary** taxable under section 17(2) and (3), respectively;
- (5) Any **special allowance or benefit**, other than the perquisite included above, specifically granted to the assessee to meet expenses wholly, necessarily and exclusively for the performance of the duties of an office or employment of profit;
- (6) Any **allowance granted to the assessee** to meet his personal expenses at the place where the duties of his office or employment of profit are ordinarily performed by him or at a place where he ordinarily resides or to compensate him for the increased cost of living;
- (7) The value of **any benefit or perquisite**, whether convertible into money or not, obtained from a company either by a director or by a person who has a substantial interest in the company, or by a relative of the director or such person, and any sum paid by any such company in respect of any obligation which, but for such payment, would have been payable by the director or other person aforesaid;
- (8) The value of **any benefit or perquisite**, whether convertible into money or not, which is obtained by any representative assessee mentioned under section 160(1)(iii) and (iv), or by any beneficiary or any amount paid by the representative assessee for the benefit of the beneficiary which the beneficiary would have ordinarily been required to pay;
- (9) **Deemed profits** chargeable to tax under **section 41 or section 59**;
- (10) **Profits and gains** of business or profession chargeable to tax under section 28;
- (11) Any **capital gains** chargeable under section 45;

- (12) The **profits and gains of any insurance business carried on by Mutual Insurance Company or by a cooperative society**, computed in accordance with section 44 or any surplus taken to be such profits and gains by virtue of the provisions contained in the first Schedule to the Act;
- (13) The **profits and gains of any business of banking** (including providing credit facilities) carried on by a co-operative society with its members;
- (14) Any **winnings from lotteries, cross-word puzzles, races including horse races, card games and other games of any sort or from gambling, or betting** of any form or nature whatsoever. For this purpose,
- i. "Lottery" includes winnings from prizes awarded to any person by draw of lots or by chance or in any other manner whatsoever, under any scheme or arrangement by whatever name called;
 - ii. "Card game and other game of any sort" includes any game show, an entertainment programme on television or electronic mode, in which people compete to win prizes or any other similar game.
- (15) Any sum received by the assessee from his employees as **contributions to any provident fund (PF) or superannuation fund or Employees State Insurance Fund (ESI) or any other fund for the welfare of such employees**;
- (16) Any sum received under a **Keyman insurance policy** including the sum allocated by way of bonus on such policy will constitute income;
- "Keyman insurance policy" means a life insurance policy taken by a person on the life of another person where the latter is or was an employee or is or was connected in any manner whatsoever with the former's business. It also includes such policy which has been assigned to a person with or without any consideration, at any time during the term of the policy.
- (17) **Any sum referred to in section 28(va)**. Thus, any sum, whether received or receivable in cash or kind, under an agreement for not carrying out any activity in relation to any business or profession; or not sharing any know-how, patent, copy right, trade-mark, licence, franchise, or any other business or commercial right of a similar nature, or information or technique likely to assist in the manufacture or processing of goods or provision of services, shall be chargeable to income tax under the head "profits and gains of business or profession";

- (18) **Fair market value of inventory** as on the date on which it is **converted into, or treated as, a capital asset**, determined in the prescribed manner [Section 28(iva)];
- (19) Any consideration received for **issue of shares as exceeds the fair market value** of the shares [Section 56(2)(viib)];
- (20) Any **sum of money received as advance**, if such sum is forfeited consequent to failure of negotiation for transfer of a capital asset [Section 56(2)(ix)];
- (21) Any **sum of money or value of property received without consideration or for inadequate consideration** by any person [Section 56(2)(x)];
- (22) Any **compensation or other payment**, due to or received by any person, by whatever named called, in **connection with termination of his employment** or the modification of the term and conditions relating thereto [Section 56(2)(xi)]; *[For details, refer to Chapter 5 "Income from Other Sources"]*
- (23) Assistance in the form of a **subsidy or grant or cash incentive or duty drawback or waiver or concession or reimbursement**, by whatever name called, by the Central Government or a State Government or any authority or body or agency in cash or kind to the assessee is included in the definition of income.

Subsidy or Grant which are not included in the definition of income u/s 2(24)

Subsidy or grant or reimbursement taken into account for determination of actual cost of depreciable asset in accordance with *Explanation 10* to section 43(1)

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

- (24) **Any specified sum received by a unit holder from a business trust during the previous year, with respect to a unit held by him at any time during the previous year** [Section 56(2)(xii)] *[For details, refer to Chapter 5 "Income from Other Sources"]*.

(25) *Sum received, including the amount allocated by way of bonus, under a LIP other than under a ULIP and keyman insurance policy, which is not exempt u/s 10(10D), to the extent the same exceeds the aggregate of the premium paid during the term of the policy, and not claimed as deduction under any other provision of the Act [Section 56(2)(xiii)] [For details, refer to Chapter 5 “Income from Other Sources”].*

(ii) **Concept of Income under the Income-tax Act, 1961**

- **Regular receipt vis-à-vis casual receipt:** Income, in general, means a periodic monetary return which accrues or is expected to accrue regularly from definite sources. However, under the Income-tax Act, 1961, even certain casual receipts which do not arise regularly are treated as income for tax purposes e.g., Winnings from lotteries, crossword puzzles.
- **Revenue receipt vis-a-vis Capital receipt:** Income normally refers to revenue receipts. Capital receipts are generally not included within the scope of income in general parlance. However, the Income-tax Act, 1961 has specifically included certain capital receipts within the definition of income e.g., Capital gains i.e., gains on sale of a capital assets like land.
- **Net receipt vis-a-vis Gross receipt:** Income means net receipts and not gross receipts. Net receipts are arrived at after deducting the expenditure incurred in connection with earning such receipts. The expenditure which can be deducted while computing income under each head is prescribed under the Income-tax Act, 1961. Income from certain eligible businesses/ professions is also determined on presumptive basis i.e., as a certain percentage of gross receipts.
- **Due basis vis-a-vis receipt basis:** Income is taxable either on due basis or receipt basis. For computing income under the heads “Profits and gains of business or profession” and “Income from other sources”, the method of accounting regularly employed by the assessee should be considered, which can be either cash system or mercantile system. Some receipts are taxable only on receipt basis, like, income by way of interest received on compensation or enhanced compensation.

(iii) **Concept of revenue and capital receipts**

Students should carefully study the various items of receipts included in the definition of income. Some of them like capital gains are not revenue receipts. However, since they have been included in the definition, they are chargeable as income under the Act. The concept of revenue and capital receipts is discussed hereunder –

The Act contemplates a levy of tax on income and not on capital and hence it is very essential to distinguish between capital and revenue receipts. Capital receipts cannot be taxed, unless they fall within the scope of the definition of “income” and so the distinction between capital and revenue receipts is material for tax purposes.

Certain capital receipts which have been specifically included in the definition of income are compensation for modification or termination of services, income by way of capital gains etc.

It is not possible to lay down any single test as infallible or any single criterion as decisive, final and universal in application to determine whether a particular receipt is capital or revenue in nature. Hence, the capital or revenue nature of the receipt must be determined with reference to the facts and circumstances of each case.

Criteria for determining whether a receipt is capital or revenue in nature

The following are some of the important criteria which may be applied to distinguish between capital and revenue receipts.

Fixed capital or Circulating capital: A receipt referable to fixed capital would be a capital receipt whereas a receipt referable to circulating capital would be a revenue receipt. The former is not taxable while the latter is taxable. Tangible and intangible assets which the owner keeps in his possession for making profits are in the nature of fixed capital. The circulating capital is one which is turned over and yields income or loss in the process.

Income from transfer of capital asset or trading asset: Profits arising from the sale of a capital asset are chargeable to tax as capital gains under section 45 whereas profits arising from the sale of a trading asset being of revenue nature are taxable as income from business under section 28 provided that the sale is in the regular course of assessee's business or the transaction constitutes an adventure in the nature of trade.

Capital Receipts vis-a-vis Revenue Receipts: Tests to be applied

- (a) **Transaction entered into the course of business:** Profits arising from transactions which are entered into in the course of the business regularly carried on by the assessee, or are incidental to, or associated with the business of the assessee would be revenue receipts chargeable to tax.

Example: A banker's or financier's dealings in foreign exchange or sale of shares and securities, a shipbroker's purchases of ship in his own name, a share broker's purchase of shares on his own account would constitute transactions entered and

yielding income in the ordinary course of their business. Whereas building and land would constitute capital assets in the hands of a trader in shares, the same would constitute stock-in-trade in the hands of a property dealer.

- (b) **Profit arising from sale of shares and securities:** In the case of profit arising from the sale of shares and securities the nature of the profit has to be ascertained from the motive, intention or purpose with which they were bought. If the shares were acquired as an investor or with a view to acquiring a controlling interest or for obtaining a managing or selling agency or a directorship the profit or loss on their sale would be of a capital nature; but if the shares were acquired in the ordinary course of business as a dealer in shares, it would constitute his stock-in-trade. If the shares were acquired with speculative motive the profit or loss (although of a revenue nature) would have to be dealt with separately from other business.

***Note:** However, securities held by Foreign Institutional Investor which has invested in such securities in accordance with the regulations made under the SEBI Act, 1992 would be treated as a capital asset. Even if the nature of such security in the hands of the Foreign Portfolio Investor is stock in trade, the same would be treated as a capital asset and the profit on transfer would be taxable as capital gains.*

- (c) **A single transaction - Can it constitute business?** Even a single transaction may constitute a business or an adventure in the nature of trade even if it is outside the normal course of the assessee's business. Repetition of such transactions is not necessary. Thus, a bulk purchase followed by a bulk sale or a series of retail sales or bulk sale followed by a series of retail purchases would constitute an adventure in the nature of trade and consequently the income arising therefrom would be taxable. Purchase of any article with no intention to resell it, but resold under changed circumstances would be a transaction of a capital nature and capital gains arise. However, where an asset is purchased with the intention to resell it, the question whether the profit on sale is capital or revenue in nature depends upon (i) the conduct of the assessee, (ii) the nature and quantity of the article purchased, (iii) the nature of the operations involved, (iv) whether the venture is on capital or revenue account, and (v) other related circumstances of the case.
- (d) **Liquidated damages:** Receipt of liquidated damages directly and intimately linked with the procurement of a capital asset, which lead to delay in coming into existence of the profit-making apparatus, is a capital receipt. The amount received by the assessee towards compensation for sterilization of the profit earning source is not in the ordinary course of business. Hence, it is a capital receipt in the hands of the assessee.

- (e) **Compensation on termination of agency/ service contract:** Where an assessee receives compensation on termination of the agency business being the only source of income, the receipt is a capital nature, but taxable under section 28(ii)(c). However, where the assessee has a number of agencies and one of them is terminated and compensation is received therefor, the receipt would be of a revenue nature since taking agencies and exploiting the same for earning income is the ordinary course of business. The loss of one agency would be made good profit from another agency. Compensation received from the employer or from any person for premature termination of the service contract is a capital receipt, but is taxable as profit in lieu of salary under section 17(3) or as income from other sources under section 56(2)(xi), respectively. Compensation received or receivable in connection with the termination or the modification of the terms and conditions of any contract relating to its business shall be taxable as business income.
- (f) **Gifts:** Normally, gifts constitute capital receipts in the hands of the recipient. However, certain gifts are brought within the purview of income-tax.

For example, any sum of money or value of property received without consideration or for inadequate consideration by any person, other than a relative, is chargeable under the head "Income from Other Sources" [*For details, refer to Chapter 5 on "Income from Other Sources"*].

(iv) Diversion of income by overriding title and application of income:

The concept of 'diversion of income by overriding title' signifies diversion of income at source by an overriding title before it reaches an assessee. Such a diversion can take place either under a legal compulsion or under a contractual obligation or otherwise. An obligation to apply the income in a particular way before it has accrued or arisen to the assessee results in the diversion of the income. On the other hand, an obligation to apply income which has accrued or arisen or has been received amounts merely to the apportionment or application of the income and not to its diversion. Sometimes the dividing line between diversion by overriding title and the application of income after it has accrued is somewhat thin.

When income or a portion of income is diverted at the source by an overriding title before it started flowing into the channel which was to reach the assessee concerned it could be excluded from his assessable income. Wherever there is such diversion of income, such diverted income, cannot be included in the total income of the assessee who claims that there has been a diversion. On the other hand, where income has accrued or arisen in the hands of the assessee, its subsequent application in any way will not affect the tax liability.

In order to decide whether a particular disbursement amounts to diversion or application of income, the true test is to probe into and decide whether the amount sought to be deducted, in truth, did not reach the assessee as his own income. It is the nature of the obligation that is the decisive fact. There is a difference between an amount which a person is obliged to apply out of his income and an amount which by the nature of the obligation cannot be said to be a part of his income. It is the nature of the obligation that is the decisive fact. Where, by obligation, income is diverted before it reaches the assessee, it is deductible; but where the income is required to be applied to discharge an obligation after such income reaches the assessee, the same consequence, in law, does not follow. In order that there is diversion at source of the income, the obligation is to attach to the source which yields income and not to the income only. This was so held in *CIT vs. Sitaldas Tirathdas* [1961] 41 ITR 367 (SC), *M.K. Brothers Pvt. Ltd. vs. CIT* [1972] 86 ITR 38 (SC). In many cases, it would really be a matter of proper drafting of the document creating the obligation, though, in substance, the result in both the situations may appear similar.

For the purpose of tax planning, the concept of 'diversion by overriding title' would have better scope for exploitation than the concept of 'application of income'. This is because, as pointed out above, where income is diverted by overriding title such diverted income is not taxed in the hands of the person who claims such diversion. On the other hand, the concept of application of income envisages first the accruing or arising of income and when once it has come within the grasp of the Income-tax Act, 1961 it is liable to income-tax whatever may be its destination or whomever it may be applied for. Therefore, if an overriding charge is created by the assessee either voluntarily or in pursuance of an obligation, whether pre-existing or not, the assessee may be able to invoke the principle of diversion of income by overriding charge. This is, of course, subject to the clubbing provisions contained in sections 60 to 64 (dealt with in Chapter 6: Income of other persons included in assessee's total income), which have the effect of getting over this principle in some situations.

Example on Application of Income

Mr. A is liable to pay ₹ 10,000 per month to Ms. B (his ex-wife) as alimony. Mr. A, being an employee of ABC Pvt. Ltd., instructs the HR department to pay ₹ 10,000 per month out of his salary to Ms. B directly and remit the remaining salary in his account.

In this case, the amount of ₹ 10,000 per month is an obligation of Mr. A to pay to Ms. B out of his income and not an income in which Ms. B had overriding entitlement.

In other words, this is the income of Mr. A, which is applied by him to fulfill an obligation and hence, includible in his total income and a mere arrangement to pay a sum directly to Ms. B would not make it a case of diversion of income.

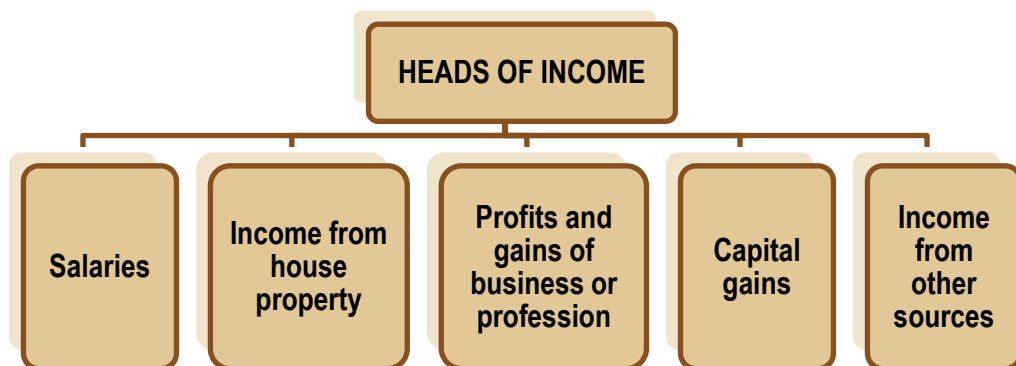
Example on Diversion of Income

M/s ABC is a partnership firm in which Mr. A and his two sons, Mr. B & Mr. C are partners. The partnership deed provides that after the death of Mr. A, Mr. B & Mr. C shall continue the business of the firm subject to a condition that 20% of profit of the firm shall be given to Mrs. D (wife of Mr. A).

In the instant case, after the death of Mr. A, 20% of profits of the firm payable to Mrs. D gets diverted at source by the charge created in her favour as per the terms of the partnership deed. Such income does not reach the assessee-firm. Rather, such income stands diverted to the other person as such other person has a better title on such income than the title of the assessee. The firm might have received the said amount, but it so received for and on behalf of Mrs. D, who possesses the overriding title. Therefore, the amount payable to Mrs. D after the death of Mr. A would be excluded from the income of M/s ABC

(v) Classification of income under five heads of income:

Under the Income-tax Act, 1961, for computation of total income, all income of a taxpayer are classified into five different heads of income. These are shown below –



The provisions relating to “Profits and gains of business or profession”, “Capital Gains” and “Income from other sources” are discussed in Chapter 3: Profits and gains of business or profession, Chapter 4: Capital Gains and Chapter 5: Income from Other Sources, respectively in this Module. The provisions relating to “Salaries” and “Income from house property” had been dealt with in detail at Intermediate level itself. The ensuing paragraphs contain an overview of Income under the head “Salaries” and “Income from house property”.

Income under the head “Salaries”

Section 15 deals with the basis of charge. Salary is chargeable to tax either on ‘due’ basis or on ‘receipt’ basis, whichever is earlier. However, where any salary, paid in advance, is assessed in the year of payment, it cannot be subsequently brought to tax in the year in which it becomes due. If the salary paid in arrears has already been assessed on due basis, the same cannot be taxed again when it is paid.

The terms “Salary”, “Perquisite” and “Profit in lieu of salary” are defined under section 17(1). Salary includes monetary as well as non-monetary items. The following deductions are allowable to an individual from the gross salary:

Deductions allowable from Gross Salary	
(i)	Standard deduction u/s 16(ia) A standard deduction of ₹ 50,000 or the amount of salary, whichever is lower, is to be provided to the employees <i>[Standard deduction of upto ₹ 50,000 is available to an assessee irrespective of the regime under which he pays tax].</i>
(ii)	Entertainment allowance u/s 16(ii) (only for Govt. employees) Least of the following is allowable as deduction: (a) ₹ 5,000 (b) 1/5 th of basic salary (c) Actual entertainment allowance received <i>[Deduction in respect of entertainment allowance would be available to an assessee only if he exercises the option of shifting out of the default tax regime provided under section 115BAC(1A). The deduction would not be available under the default tax regime i.e., under section 115BAC]</i>
(iii)	Professional Tax/Tax on employment (paid by employer/ employee) u/s 16(iii): <i>If professional tax is reimbursed or directly paid by the employer on behalf of the employee, the amount so paid is first included as salary income and then allowed as a deduction u/s 16.</i> <i>Deduction in respect of professional tax would be available to an assessee only if he exercises the option of shifting out of the default tax regime provided under section 115BAC(1A). The deduction would not be available under the default tax regime i.e., under section 115BAC.</i>

Income from house property

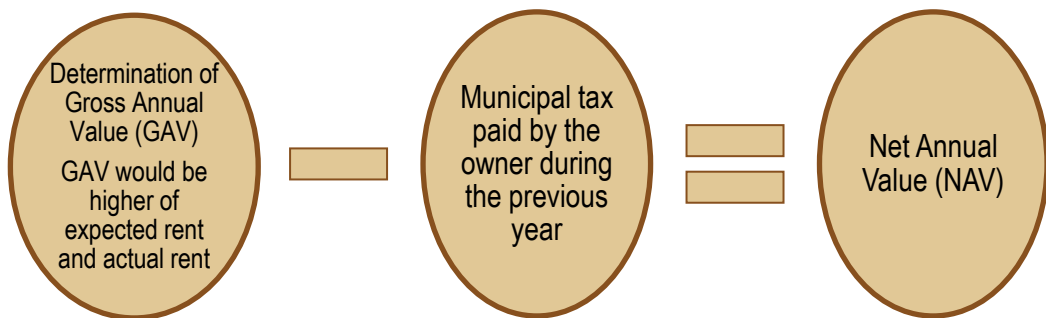
- (I) Annual Value -** The process of computation of income under the head “Income from house property” starts with the determination of annual value of the property. The concept of annual value and the method of determination is laid down in section 23.

The annual value of any property comprising of buildings or lands appurtenant thereto of which the assessee is the owner is chargeable to tax under the head “Income from house property”.

Exceptions: Annual value of the following properties are chargeable under the head “Profits and gains of business or profession” -

- (i) Portions of property occupied by the assessee for the purpose of any business or profession carried on by him.
- (ii) Properties of an assessee engaged in the business of letting out of properties.

Determination of Annual Value



GAV would be higher of expected rent and actual rent received or receivable during the previous year. The Expected Rent (ER) is the higher of fair rent (FR) and municipal value (MV) but restricted to standard rent (SR). In the absence of any information relating to Municipal value, fair rent and standard rent, actual rent would be considered as GAV.

- (II) **Annual value of self-occupied property:** Where the property is self-occupied for **own residence** or **unoccupied** throughout the previous year, its Annual Value will be Nil, provided no other benefit is derived by the owner from such property.

The expression “Unoccupied property” refers to a property which cannot be occupied by the owner by reason of his employment, business or profession at a different place and he resides at such other place in a building not belonging to him.

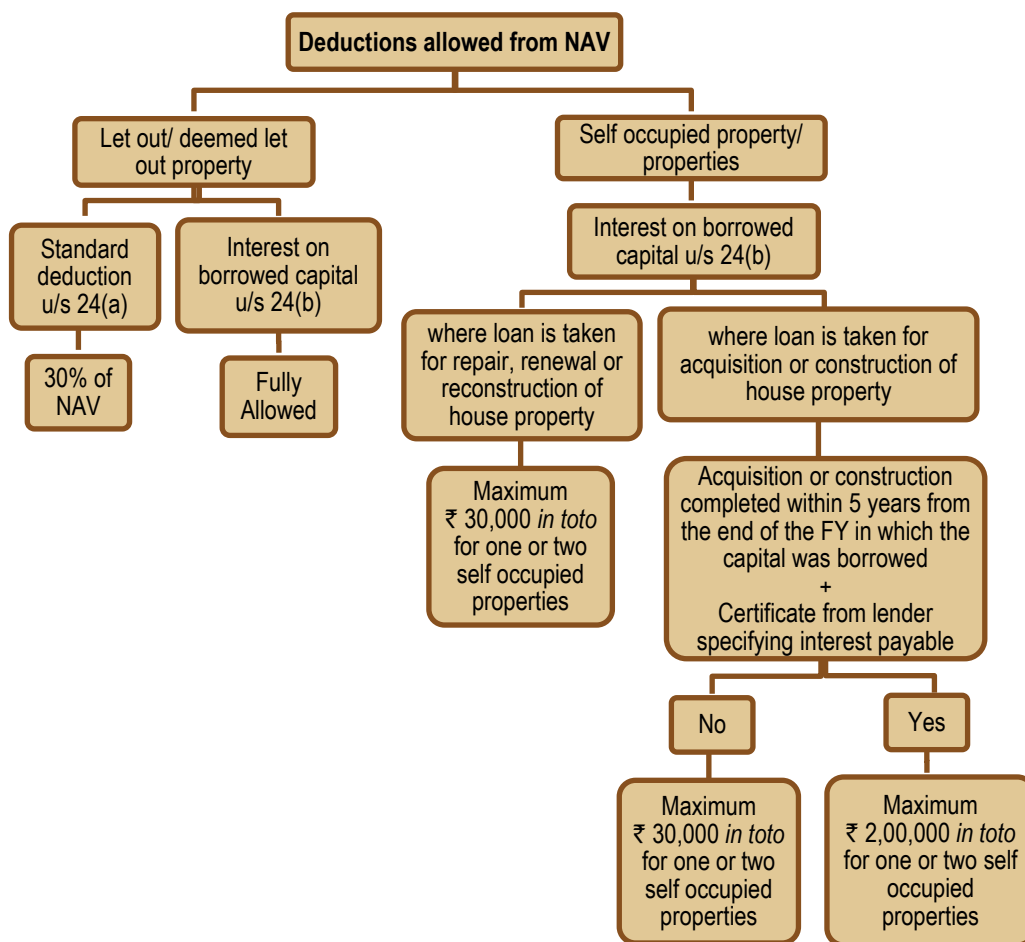
The benefit of “Nil” Annual Value is available only for upto two self-occupied or unoccupied house properties i.e. for either one house property or two house properties owned by the assessee. The benefit of “Nil” Annual Value in respect of upto **two** self-occupied house properties is available only to an individual/ HUF.

No deduction for municipal taxes is allowed in respect of such property/properties as annual value means value determined after deduction of municipal taxes.

- (III) **Annual value of property held as stock-in-trade:** In some cases, property consisting of any building or land appurtenant thereto may be held as stock-in-trade, and the whole or any part of the property may not be let out during the whole or any part of the previous year. In such cases, the annual value of such property or part of the property shall be NIL.

This benefit would be available for the period upto **two** years from the end of the financial year in which certificate of completion of construction of the property is obtained from the competent authority.

- (IV) **Deductions from Net Annual Value under optional tax regime (normal provisions of the Act)**



(V) **Taxability of arrears of rent & unrealised rent:** As per section 25A(1), the amount of rent received in arrears from a tenant or the amount of unrealised rent realised subsequently from a tenant by an assessee shall be deemed to be income from house property in the financial year in which such rent is received or realised, and shall be included in the total income of the assessee under the head "Income from house property", whether the assessee is the owner of the property or not in that financial year. Section 25A(2) provides a deduction of 30% of arrears of rent or unrealised rent realised subsequently by the assessee.

(VI) **Annual value of co-owned property:** Where the house property owned by co-owners is self occupied by each of the co-owners, the annual value of the property of each co-owner will be Nil and each co-owner shall be entitled to a deduction of ₹ 30,000 / ₹ 2,00,000, as the case may be, under section 24(b) on account of interest on borrowed capital.

However, the aggregate deduction of interest to each co-owner in respect of interest payable on loan taken for co-owned house property and interest, if any, payable on loan taken for another self-occupied property owned by him cannot exceed ₹ 30,000/ ₹ 2,00,000, as the case may be.

Where the house property owned by co-owners is let out, the income from such property shall be computed as if the property is owned by one owner and thereafter the income so computed shall be apportioned amongst each co-owner as per their specific share.

(VII) **Deemed ownership:** As per section 27, the following persons, though not legal owners of a property, are deemed to be the owners for the purposes of sections 22 to 26.

- In case of transfer of house property by an individual to his or her spouse otherwise than for adequate consideration or in connection with an agreement to live apart, the transferor is deemed to be the owner of the transferred property.
- In case of transfer of house property by an individual to his or her minor child (other than a minor married daughter) otherwise than for adequate consideration, the transferor would be deemed to be owner of the house property transferred.

Note – Where cash is transferred to spouse/minor child and the transferee acquires property out of such cash, then the transferor shall not be treated as deemed owner of the house property. However, clubbing provisions will be attracted.

- The holder of an impartible estate shall be deemed to be the individual owner of all properties comprised in the estate.

- A member of a co-operative society, company or other association of persons to whom a building or part thereof is allotted or leased under a House Building Scheme of a society/ company/ association, shall be deemed to be owner of that building or part thereof allotted to him although the co-operative society/company/ association is the legal owner of that building.
- A person who is allowed to take or retain the possession of any building or part thereof in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act shall be the deemed owner of that house property.
- A person who acquires any rights in or with respect to any building or part thereof, by virtue of any transaction as is referred to in section 269UA(f) i.e. transfer by way of lease for not less than 12 years, shall be deemed to be the owner of that building or part thereof.

Exception – *In case the person acquiring any rights by way of lease from month to month or for a period not exceeding one year, such person will not be deemed to be the owner.*

India [Section 2(25A)]

The term 'India' means –

- (i) the territory of India as per article 1 of the Constitution,
- (ii) its territorial waters, seabed and subsoil underlying such waters,
- (iii) continental shelf,
- (iv) exclusive economic zone or
- (v) any other specified maritime zone and the air space above its territory and territorial waters.

Specified maritime zone means the maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976.

Maximum marginal rate and Average Rate of tax

As per section 2(10), "**Average Rate of tax**" means the rate arrived at by dividing the amount of income-tax calculated on the total income, by such total income.

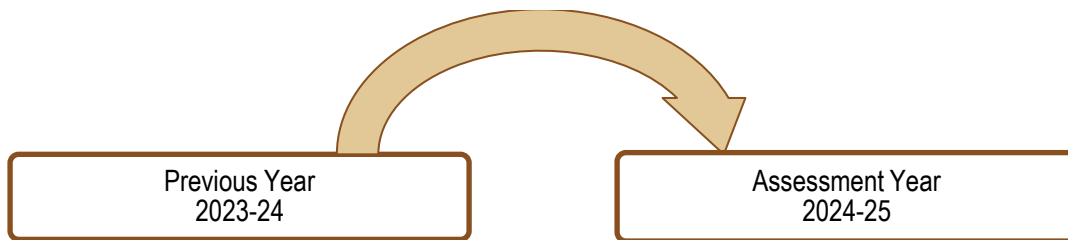
Example: Total Income of Mr. A, who has exercised option of shifting out of default regime under section 115BAC, is ₹ 6,00,000 and tax payable on it including cess is ₹ 33,800, the average rate of tax works out to be **5.63%**.

Section 2(29C) defines “**Maximum marginal rate**” to mean the rate of income-tax (including surcharge on the income-tax, if any) applicable in relation to the highest slab of income in the case of an individual, AOP or BOI, as the case may be, as specified in Finance Act of the relevant year.



1.3 PREVIOUS YEAR AND ASSESSMENT YEAR

The concepts have been dealt with at the Intermediate level. Let us have a quick recap of these concepts -



Assessment year [Section 2(9)]

The term has been defined under section 2(9). This means a period of 12 months commencing on 1st April every year. The year in which income is earned is the previous year and such income is taxable in the immediately following year which is the assessment year. Income earned in the previous year 2023-24 is taxable in the assessment year 2024-25.

Assessment year always starts from 1st April and it is always a period of 12 months.

Previous year [Section 3]

It means the financial year immediately preceding the assessment year. As mentioned earlier, the income earned during the previous year is taxable in the assessment year.

Business or profession newly set up during the financial year - In such a case, the previous year shall be the period beginning on the date of setting up of the business or profession and ending with 31st March of the said financial year.

If a source of income comes into existence in the said financial year, then the previous year will commence from the date on which the source of income newly comes into existence and will end with 31st March of the financial year.

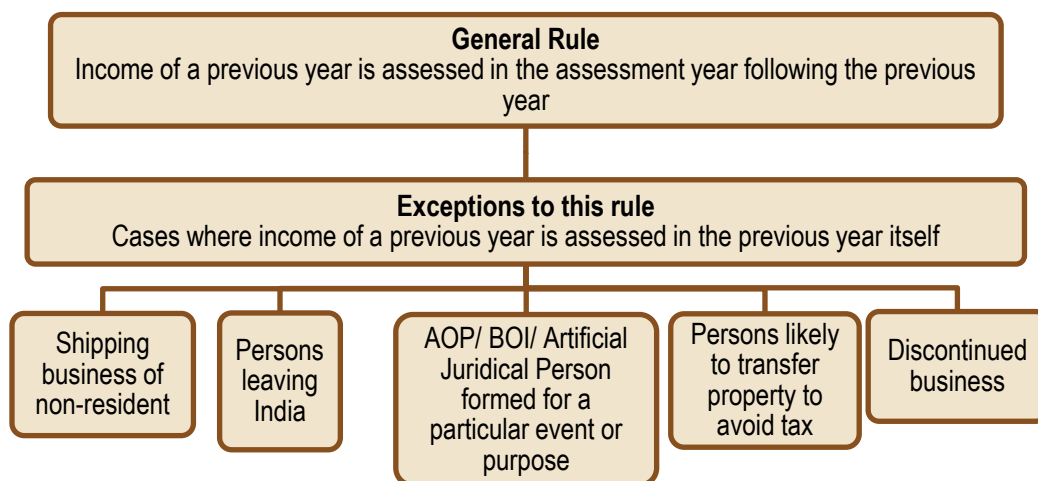
Examples: A is running a business from 1993 onwards. Determine the previous year for the assessment year 2024-25.

Ans. The previous year will be 1.4.2023 to 31.3.2024.

A chartered accountant sets up his profession on 1st July, 2023. Determine the previous year for the assessment year 2024-25.

Ans. The previous year will be from 1.7.2023 to 31.3.2024.

Certain cases when income of a previous year will be assessed in the previous year itself



The income of an assessee for a previous year is charged to income-tax in the assessment year following the previous year. For instance, income of previous year 2023-24 is assessed during 2024-25. Therefore, 2024-25 is the assessment year for assessment of income of the previous year 2023-24.

However, in a few cases, this rule does not apply and the income is taxed in the previous year in which it is earned. These exceptions have been made to protect the interests of revenue. The exceptions are as follows:

(a) Shipping business of non-resident [Section 172]

Where a ship, belonging to or chartered by a non-resident, carries passengers, livestock, mail or goods shipped at a port in India, the ship is allowed to leave the port only when the tax has been paid or satisfactory arrangement has been made for payment thereof. 7.5% of the freight paid or payable to the owner or the charterer or to any person on his behalf, whether in India or outside India on account of such carriage is deemed to be his income which is charged to tax in the same year in which it is earned.

(b) Persons leaving India [Section 174]

Where it appears to the Assessing Officer that any individual may leave India during the current assessment year or shortly after its expiry and he has no present intention of returning to India, the total income of such individual for the period from the expiry of the respective previous year up to the probable date of his departure from India is chargeable to tax in that assessment year.

Example: Suppose Mr. X is leaving India for USA on 10.6.2023 and it appears to the Assessing Officer that he has no intention to return. Before leaving India, Mr. X may be asked to pay income-tax on the income earned during the P.Y. 2022-23 as well as the total income earned during the period 1.4.2023 to 10.06.2023.

(c) AOP/ BOI/ Artificial Juridical Person formed for a particular event or purpose [Section 174A]

If an AOP/ BOI etc. is formed or established for a particular event or purpose and the Assessing Officer apprehends that the AOP/ BOI is likely to be dissolved in the same year or in the next year, he can make assessment of the income of such previous years up to the date of dissolution as income of the relevant assessment year.

Example: Red Flakes is an AOP formed on 14.11.2023 by X and Y for a limited purpose of organizing a musical concert of a British band "Music Zone" on 14.06.2024. The AOP is likely to be dissolved after the concert. In such a case, the Assessing Officer can make the assessment for the income earned from 14.11.2023 to 31.03.2024 and 01.04.2024 to 14.06.2024 during the A.Y. 2024-25 itself.

(d) Persons likely to transfer property to avoid tax [Section 175]

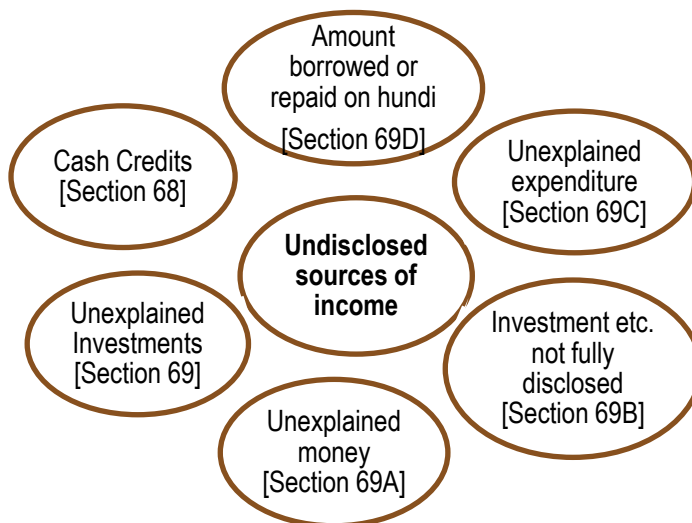
During the current assessment year, if it appears to the Assessing Officer that a person is likely to charge, sell, transfer, dispose of or otherwise part with any of his assets to avoid payment of any liability under this Act, the total income of such person for the period from the expiry of the previous year to the date, when the Assessing Officer commences proceedings under this section is chargeable to tax in that assessment year.

Example: The Assessing Officer is informed that Mr. X, a defaulter of a leading bank, is likely to sell all his luxury cars on 02.10.2023 with a view to avoid payment of Income-tax. In such case, the Assessing Officer can commence proceedings to tax the income of the year commencing from 01.04.2023 to 02.10.2023 during A.Y. 2023-24 itself.

(e) Discontinued business [Section 176]

Where any business or profession is discontinued in any assessment year, the income of the period from the expiry of the previous year up to the date of such discontinuance may, at the discretion of the Assessing Officer, be charged to tax in that assessment year.

Example: The Assessing Officer is informed during the course of assessment by X Pvt. Ltd. that they have discontinued their business from 31.05.2023. In such a case, the Assessing Officer may exercise his discretion and tax the income of the company from 01.04.2023 to 31.05.2023 during the A.Y. 2023-24. It may be noted that the income of the P.Y. 2023-24 will also be taxed in A.Y. 2023-24. However, as the Assessing Officer has discretion under section 176, he could alternatively wait till the completion of the assessment year and tax the income of the period commencing from 01.04.2023 to 31.05.2023 in the A.Y. 2024-25.

Undisclosed sources of income

There are many occasions when the Assessing Officer detects cash credits, unexplained investments, unexplained expenditure etc, the source for which is not satisfactorily explained by the assessee to the Assessing Officer. The Act contains a series of provisions to provide for these contingencies:

(a) Cash Credits [Section 68]

Where any sum is found credited in the books of the assessee and the assessee offers no explanation about the nature and source or the explanation offered is not satisfactory in the

opinion of the Assessing Officer, the sum so credited may be charged as income of the assessee of that previous year.

Unexplained loan or borrowing - Where the sum so credited consists of loan or borrowing or any such amount, by whatever name called, any explanation offered by the assessee in whose books such sum is credited would not be deemed to be satisfactory, unless

- the person in whose name such credit is recorded in the books of such assessee also offers an explanation about the nature and source of such sum so credited and
- in the opinion of the Assessing Officer, such explanation has been found to be satisfactory.

Unexplained Share Capital/ Premium - Any explanation offered by a closely held company in respect of any sum credited as share application money, share capital, share premium or any such amount, by whatever name called, in the accounts of such company would not be deemed to be satisfactory, unless

- the person, being a resident, in whose name such credit is recorded in the books of such company also explains about the nature and the source of such sum so credited and
- in the opinion of the Assessing Officer, such explanation has been found to be satisfactory.

Non-applicability to Venture Capital Fund or Venture Capital Company¹ – The abovementioned additional conditions would not apply if the person, in whose name the sum is recorded, is a Venture Capital Fund or Venture Capital Company registered with SEBI.

(b) Unexplained Investments [Section 69]

Where in the financial year immediately preceding the assessment year, the assessee has made investments which are not recorded in the books of account and the assessee offers no explanation about the nature and the source of investments or the explanation offered is not satisfactory in the opinion of the Assessing Officer, the value of the investments are taxed as deemed income of the assessee of such financial year.

(c) Unexplained money etc. [Section 69A]

Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and the same is not recorded in the books of account and

¹ defined under section 10(23FB)

the assessee offers no explanation about the nature and source of acquisition of such money, bullion etc. or the explanation offered is not satisfactory in the opinion of the Assessing Officer, the money and the value of bullion etc. may be deemed to be the income of the assessee for such financial year. Ownership is important and mere possession is not enough.

(d) Amount of investments etc., not fully disclosed in the books of account [Section 69B]

Where in any financial 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 spent on making such investments or in acquiring such articles exceeds the amount recorded in the books of account maintained by the assessee and he offers no explanation for the difference or the explanation offered is unsatisfactory in the opinion of the Assessing Officer, such excess may be deemed to be the income of the assessee for such financial year.

Example: If the assessee is found to be the owner of say 300 gms of gold (market value of which is ₹ 25,000) during the financial year ending 31.3.2024 but he has recorded having spent ₹ 15,000 in acquiring it, the Assessing Officer can add ₹ 10,000 (i.e., the difference of the market value of such gold and ₹ 15,000) as the income of the assessee, if the assessee offers no satisfactory explanation thereof.

(e) Unexplained expenditure [Section 69C]

Where in any financial year an assessee has incurred any expenditure and he offers no explanation about the source of such expenditure or the explanation is unsatisfactory in the opinion of the Assessing Officer, Assessing Officer can treat such unexplained expenditure as the income of the assessee for such financial year. Such unexplained expenditure which is deemed to be the income of the assessee shall not be allowed as deduction under any head of income.

(f) Amount borrowed or repaid on *hundi* [Section 69D]

Where any amount is borrowed on a *hundi* or any amount due thereon is repaid other 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 for the previous year in which the amount was borrowed or repaid, as the case may be.

However, where any amount borrowed on a *hundi* has been deemed to be the income of any person, he will not be again liable to be assessed in respect of such amount on

repayment of such amount. The amount repaid shall include interest paid on the amount borrowed.

Section 115BBE provides the rate at which such cash credits, undisclosed income, undisclosed expenditure etc. deemed as income under section 68 or section 69 or section 69A or section 69B or section 69C or section 69D would be subject to tax. See Special rates of tax in page 1.41 of this Chapter.



1.4 CHARGE OF INCOME TAX

Section 4 of the Income-tax Act, 1961 is the charging section which provides that:

- (1) Tax shall be charged at the rates prescribed for the year by the annual Finance Act.
- (2) The charge is on every person specified under section 2(31);
- (3) Tax is chargeable on the total income earned during the previous year and not the assessment year. (There are certain exceptions provided by sections 172, 174, 174A, 175 and 176 discussed above);
- (4) Tax shall be levied in accordance with and subject to the various provisions contained in the Act.

This section is the backbone of the law of income-tax in so far as it serves as the most operative provision of the Act. The tax liability of a person springs from this section.



1.5 RATES OF TAX, SURCHARGE & CESS

Income-tax

Income-tax is to be charged on every person at the rates prescribed for the year by the Annual Finance Act or the Income-tax Act, 1961 or both.

Section 2 of the Finance Act, 2023 read with Part I of the First Schedule to the Finance Act, 2023, seeks to specify the rates at which income-tax is to be levied on income chargeable to tax for the assessment year 2023-24.

Part II lays down the rate at which tax is to be deducted at source during the financial year 2023-24 from income subject to such deduction under the Income-tax Act, 1961;

Part III lays down the rates for charging income-tax in certain cases, rates for deducting income-

tax from income chargeable under the head "Salaries" and the rates for computing advance tax for the financial year 2023-24.

Part III of the First Schedule to the Finance Act, 2023 will become Part I of the First Schedule to the Finance Act, 2024 and so on.

Surcharge

Surcharge is an additional tax payable over and above the income-tax. Surcharge is levied as a percentage of income-tax. Under the normal provisions of the Act, surcharge is presently being levied beyond a particular threshold of income for different persons. Also, higher rates of surcharge are prescribed for higher thresholds of income. Under the special tax regimes for domestic companies and co-operative societies, a uniform surcharge is prescribed irrespective of the level of total income.

"Health and Education cess" on Income-tax

The amount of income-tax as increased by the union surcharge, if applicable, should be further increased by an additional surcharge called the "Health and Education cess on income-tax", calculated at the rate of 4% of such income-tax and surcharge, if applicable. Health and education cess is leviable in the case of all assesseees i.e. individuals, HUF, AOPs/BOIs, Artificial Juridical Persons, firms, local authorities, co-operative societies and companies.

It is leviable to fulfill the commitment of the Government to provide and finance quality health services and universalised quality basic education and secondary and higher education.

Individual/ Hindu Undivided Family (HUF)/ Association of Persons (AOP)/ Body of Individuals (BOI)/ Artificial Juridical Person

(i) Income-tax:

Individuals/HUF/AOPs/BOIs and Artificial Juridical Persons can pay tax at concessional rates under the default tax regime under section 115BAC. However, such persons have to forego certain exemptions and deductions under this regime. Alternatively, they can exercise the option to shift out of the default tax regime and pay tax under the optional tax regime as per the regular provisions of the Act at the tax rates prescribed by the Annual Finance Act of that year.

I. Concessional tax rates under the default tax regime under section 115BAC(1A)

Individuals/ HUF/ AOPs/ BOIs or artificial judicial persons, other than those who exercise the option to opt out this regime under section 115BAC(6), have to pay tax in respect of their total income (other than income chargeable to tax at special rates under Chapter XII such as section 111A, 112, 112A, 115BB, 115BBJ etc.) at the following concessional rates, subject to certain conditions

specified under section 115BAC(2) like non-availability of deduction in respect of Leave Travel Concession, interest on housing loan on self-occupied property, deductions under Chapter VI-A [other than section 80CCD(2), 80CCH(2) or section 80JJAA] etc. –

(i)	Upto ₹ 3,00,000	NIL
(ii)	From ₹ 3,00,001 to ₹ 6,00,000	5%
(iii)	From ₹ 6,00,001 to ₹ 9,00,000	10%
(iv)	From ₹ 9,00,001 to ₹ 12,00,000	15%
(v)	From ₹ 12,00,001 to ₹ 15,00,000	20%
(vii)	Above ₹ 15,00,000	30%

For detailed discussion on section 115BAC, refer to Chapter 9 in Module 2 of the Study Material.

Tax rates prescribed by the Annual Finance Act for optional tax regime

The slab rates for A.Y. 2024-25 applicable to an Individual/HUF/AOP/BOI/ Artificial Juridical Person, which has exercised the option of shifting out of the default tax regime, are as follows:

(i)	where the total income does not exceed ₹ 2,50,000	NIL
(ii)	where the total income exceeds ₹ 2,50,000 but does not exceed ₹ 5,00,000	5% of the amount by which the total income exceeds ₹ 2,50,000
(iii)	where the total income exceeds ₹ 5,00,000 but does not exceed ₹ 10,00,000;	₹ 12,500 plus 20% of the amount by which the total income exceeds ₹ 5,00,000
(iv)	where the total income exceeds ₹ 10,00,000	₹ 1,12,500 plus 30% of the amount by which the total income exceeds ₹ 10,00,000

For a senior citizen (being a resident individual who is of the age of 60 years but not more than 80 years at any time during the previous year), the basic exemption limit is ₹ 3,00,000. Further, resident individuals of the age of 80 years or more at any time during the previous year, being very senior citizens, would be eligible for a higher basic exemption limit of ₹ 5,00,000. Therefore, the tax slabs for these assesseees would be as follows –

For senior citizens (being resident individuals of the age of 60 years or more but less than 80 years)

(i)	where the total income does not exceed ₹ 3,00,000	NIL
(ii)	where the total income exceeds	5% of the amount by which the total income

	₹ 3,00,000 but does not exceed ₹ 5,00,000	exceeds ₹ 3,00,000
(iii)	where the total income exceeds ₹ 5,00,000 but does not exceed ₹ 10,00,000;	₹ 10,000 <i>plus</i> 20% of the amount by which the total income exceeds ₹ 5,00,000
(iv)	where the total income exceeds ₹ 10,00,000	₹ 1,10,000 <i>plus</i> 30% of the amount by which the total income exceeds ₹ 10,00,000

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

(i)	where the total income does not exceed ₹ 5,00,000	NIL
(ii)	where the total income exceeds ₹ 5,00,000 but does not exceed ₹ 10,00,000;	20% of the amount by which the total income exceeds ₹ 5,00,000
(iii)	where the total income exceeds ₹ 10,00,000	₹ 1,00,000 <i>plus</i> 30% of the amount by which the total income exceeds ₹ 10,00,000

Clarification regarding attaining prescribed age of 60 years/ 80 years on 31st March itself, in case of senior/very senior citizens whose date of birth falls on 1st April [Circular No. 28/2016, dated 27.07.2016]

An individual who is resident in India and of the age of 60 years or more (senior citizen) and 80 years or more (very senior citizen) is eligible for a higher basic exemption limit of ₹ 3,00,000 and ₹ 5,00,000, respectively.

The contentious issue is regarding the attainment of the aforesaid qualifying ages for availing higher basic exemption limit in cases of the persons whose date of birth falls on 1st April of calendar year. In other words, the broader question under consideration is whether a person born on 1st April of a particular year can be said to have completed a particular age on 31st March, on the preceding day of his/her birthday, or on 1st April itself of that year.

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

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

Therefore, a resident individual whose 60th birthday falls on 1st April, 2024, would be treated as having attained the age of 60 years in the P.Y.2023-24, and would be eligible for higher basic exemption limit of ₹ 3 lakh in computing his tax liability for A.Y.2024-25 under the optional tax regime as per normal provisions of the Act. Likewise, a resident individual whose 80th birthday falls on 1st April, 2024, would be treated as having attained the age of 80 years in the P.Y.2023-24, and would be eligible for higher basic exemption limit of ₹ 5 lakh in computing his tax liability for A.Y.2024-25 under the optional tax regime as per normal provisions of the Act.

In respect of certain types of income, as mentioned below, the Income-tax Act, 1961 has prescribed specific rates. The special rates of tax have to be applied on the respective component of total income irrespective of the tax regime and the slab rates have to be applied on the balance of total income after adjusting the basic exemption limit.

S. No.	Section	Income	Rate of Tax						
(a)	112	Long term capital gains (other than LTCG taxable as per section 112A)	20%						
(b)	112A	Long term capital gains on transfer of – - Equity share in a company - Unit of an equity oriented fund - Unit of business trust Condition for availing the benefit of this concessional rate is that securities transaction tax should have been paid –<table><tr><th>In case of (Capital Asset)</th><th>Time of payment of STT</th></tr><tr><td>Equity shares in a company</td><td>both at the time of acquisition and transfer</td></tr><tr><td>Unit of equity oriented fund or unit of business trust</td><td>at the time of transfer</td></tr></table>Note: LTCG upto ₹ 1 lakh is exempt. LTCG exceeding ₹ 1 lakh is taxable @10%.	In case of (Capital Asset)	Time of payment of STT	Equity shares in a company	both at the time of acquisition and transfer	Unit of equity oriented fund or unit of business trust	at the time of transfer	10% [On LTCG > ₹ 1 lakh]
In case of (Capital Asset)	Time of payment of STT								
Equity shares in a company	both at the time of acquisition and transfer								
Unit of equity oriented fund or unit of business trust	at the time of transfer								
(c)	111A	Short-term capital gains on transfer of – - Equity shares in a company - Unit of an equity oriented fund - Unit of business trust The conditions for availing the benefit of this concessional rate are –	15%						

		(i) the transaction of sale of such equity share or unit should be entered into on or after 1.10.2004; and (ii) such transaction should be chargeable to securities transaction tax.	
(d)	115BB	Winnings from • Lotteries; • Crossword puzzles; • Races including horse races; • Card games and other games of any sort; • Gambling or betting of any form or nature (other than winning from any online game)	30%
(e)	115BBJ	Net winnings from online games	30%
(f)	115BBE	Unexplained money, investment, expenditure, etc. deemed as income under section 68 or section 69 or section 69A or section 69B or section 69C or section 69D [See discussion below]	60%

Unexplained money, investments etc. to attract tax@60% [Section 115BBE]

- (i) In order to control laundering of unaccounted money by availing the benefit of basic exemption limit, the unexplained money, investment, expenditure, etc. deemed as income under section 68 or section 69 or section 69A or section 69B or section 69C or section 69D would be taxed at the rate of 60% *plus* surcharge @25% of tax. Thus, the effective rate of tax (including surcharge@25% of tax and cess@4% of tax and surcharge) is 78%.
- (ii) No basic exemption or allowance or expenditure shall be allowed to the assessee under any provision of the Income-tax Act, 1961 in computing such deemed income.
- (iii) Further, no set off of any loss shall be allowable against income brought to tax under sections 68 or section 69 or section 69A or section 69B or section 69C or section 69D.

ILLUSTRATION 1

Mr. Arjun has a total income of ₹ 16,00,000 for P.Y.2023-24, comprising of income from house property and interest on fixed deposits. Compute his tax liability for A.Y.2024-25 assuming his age is –

- (a) 52 years
- (b) 64 years
- (c) 83 years

Assume that Mr. Arjun has exercised the option to shift out/ opt out of the default tax regime.

SOLUTION**(a) Computation of Tax liability of Mr. Arjun (aged 52 years)**

Tax liability:

First ₹ 2,50,000 - Nil	-
Next ₹ 2,50,001 – ₹ 5,00,000- @5% of ₹ 2,50,000	₹ 12,500
Next ₹ 5,00,001 – ₹ 10,00,000- @20% of ₹ 5,00,000	₹ 1,00,000
Balance i.e., ₹ 16,00,000 minus ₹ 10,00,000 - @30% of ₹ 6,00,000	<u>₹ 1,80,000</u>
	₹ 2,92,500
Add: Health and Education cess@4%	<u>₹ 11,700</u>
	<u>₹ 3,04,200</u>

(b) Computation of Tax liability of Mr. Arjun (aged 64 years)

Tax liability:

First ₹ 3,00,000 - Nil	
Next ₹ 3,00,001 – ₹ 5,00,000 - @5% of ₹ 2,00,000	₹ 10,000
Next ₹ 5,00,001 – ₹ 10,00,000- @20% of ₹ 5,00,000	₹ 1,00,000
Balance i.e., ₹ 16,00,000 minus ₹ 10,00,000- @30% of ₹ 6,00,000	<u>₹ 1,80,000</u>
	₹ 2,90,000
Add: Health and Education cess@4%	<u>₹ 11,600</u>
	<u>₹ 3,01,600</u>

(c) Computation of Tax liability of Mr. Arjun (aged 83 years)

Tax liability:

First ₹ 5,00,000 - Nil	
Next ₹ 5,00,001 – ₹ 10,00,000 - @ 20% of ₹ 5,00,000	₹ 1,00,000
Balance i.e., ₹ 16,00,000 minus ₹ 10,00,000 - @ 30% of ₹ 6,00,000	<u>₹ 1,80,000</u>
	₹ 2,80,000
Add: Health and Education cess@4%	<u>₹ 11,200</u>
	<u>₹ 2,91,200</u>

Surcharge

In case the Individual/HUF/AoP²/BoI and Artificial Juridical Person pays tax under default tax regime under section 115BAC

Income-tax computed in accordance with the provisions of section 115BAC and/ or section 111A or section 112 or section 112A or 115BBE or section 115BBJ would be increased by surcharge given under the following table:

	Particulars	Rate of surcharge on income-tax	Examples	
			Components of total income	Applicable rate of surcharge
(i)	Where the total income (including dividend income and capital gains chargeable to tax u/s 111A, 112 and 112A) > ₹ 50 lakhs but ≤ ₹ 1 crore	10%	Example	
			- Dividend ₹ 15 lakhs; - STCG u/s 111A ₹ 15 lakhs; - LTCG u/s 112 ₹ 25 lakhs; - LTCG u/s 112A ₹ 20 lakhs; and - Other income ₹ 25 lakhs	Surcharge would be levied @10% on income-tax computed on total income of ₹ 1 crore.
(ii)	Where total income (including dividend income and capital gains chargeable to tax u/s 111A, 112 and 112A) > ₹ 1 crore but ≤ ₹ 2 crore	15%	Example	
			- Dividend income ₹ 10 lakhs; - STCG u/s 111A ₹ 35 lakhs; - LTCG u/s 112 ₹ 50 lakhs; - LTCG u/s 112A ₹ 35 lakhs; and - Other income ₹ 55 lakhs	Surcharge would be levied @15% on income-tax computed on total income of ₹ 1.85 crores.

² (other than an AOP consisting of only companies as members)

(iii)	Where total income (excluding dividend income and capital gains chargeable to tax u/s 111A, 112 and 112A) > ₹ 2 crore	25%	Example	
	The rate of surcharge on the income-tax payable on the portion of dividend income and capital gains chargeable to tax u/s 111A, 112 and 112A	Not exceeding 15%	• Dividend income ₹ 51 lakhs; • STCG u/s 111A ₹ 44 lakh; • LTCG u/s 112 ₹ 42 lakhs; • LTCG u/s 112A ₹ 55 lakh; and • Other income ₹ 6 crores	Surcharge@15% would be levied on income-tax on: • Dividend income of ₹ 51 lakhs; • STCG of ₹ 44 lakhs chargeable to tax u/s 111A; • LTCG of ₹ 42 lakhs chargeable to tax u/s 112; and • LTCG of ₹ 55 lakhs chargeable to tax u/s 112A. Surcharge@25% would be leviable on income-tax computed on other income of ₹ 6 crores included in total income
(iv)	Where total income (including dividend income and capital gains chargeable to tax u/s 111A, 112 and 112A) > ₹ 2 crore in cases not covered under (iii) above	15%	Example	
			• Dividend income ₹ 40 lakhs; • STCG u/s 111A ₹ 35 lakhs; • LTCG u/s 112 ₹ 42 lakhs; • LTCG u/s 112A ₹ 50 lakhs; and • Other income ₹ 1.10 crore	Surcharge would be levied@15% on income-tax computed on total income of ₹ 2.77 crore.

Marginal relief

The purpose of marginal relief is to ensure that the increase in amount of tax payable (including surcharge) due to increase in total income of an assessee beyond the prescribed limit should not exceed the amount of increase in total income.

Marginal relief is available in case of such persons paying tax under default tax regime u/s 115BAC referred to in above i.e., -

	Particulars	Marginal relief
(i)	Where the total income > ₹ 50 lakhs but ≤ ₹ 1 crore	Step 1 - Compute income-tax on total income; and add surcharge@10% on such income-tax (A) Step 2 - Compute income-tax on ₹ 50 lakhs Step 3 - Total income (-) ₹ 50 lakhs Step 4 - Add the amount computed in Step 2 and Step 3 (B) Step 5 - Income-tax liability on total income (along with surcharge) would be the lower of the amount arrived at in Step 1 (i.e., A) or Step 4 (i.e., B). Consequently, if A > B, the marginal relief would be A – B.
(ii)	Where the total income > ₹ 1 crore but ≤ ₹ 2 crores	Step 1 - Compute income-tax on total income; and add surcharge@15% on income-tax (C) Step 2 - Compute income-tax on total income of ₹ 1 crore + surcharge on such income-tax@10% Step 3 - Total income (-) ₹ 1 crore Step 4 - Add the amount computed in Step 2 and Step 3 (D) Step 5 - Income-tax liability on total income (along with surcharge) would be the lower of the amount arrived at in Step 1 (i.e., C) or Step 4 (i.e., D). Consequently, if C > D, the marginal relief would be C – D.
(iii)	Where the total income > ₹ 2 crores	Step 1 - Compute income-tax on total income; and add surcharge@25% on income-tax (E) Step 2 - Compute income-tax on total income of ₹ 2 crore + surcharge on such income-tax@15% Step 3 - Total income (-) ₹ 2 crore Step 4 - Add the amount computed in Step 2 and Step 3 (F) Step 5 - Income-tax liability on total income (along with surcharge) would be the lower of the amount arrived at in Step 1 (i.e., E) or Step 4 (i.e., F). Consequently, if E > F, the marginal relief would be E – F.

Note – It is presumed that the total income referred to above does not include dividend income, long term capital gains taxable under section 112/ 112A and short-term capital gains taxable under section 111A.

In case the total income includes dividend income, long term capital gains taxable under section 112/112A or short term capital gains taxable under section 111A, surcharge on income-tax computed on such dividend income and capital gains cannot exceed 15%. This must be kept in mind while computing marginal relief in cases referred to in (iii) above.

In case the Individual/HUF/AoP³/BoI and Artificial Juridical Person exercises the option to shift out of the default tax regime

Income-tax computed in accordance with normal provisions of the Act or section 111A or section 112 or section 112A or 115BBE or section 115BBJ would be increased by surcharge given under the following table:

	Particulars	Rate of surcharge on income-tax	Example	
			Components of total income	Applicable rate of surcharge
(i)	Where the total income (including dividend income and capital gains chargeable to tax u/s 111A, 112 and 112A) > ₹ 50 lakhs but ≤ ₹ 1 crore	10%	Example - Dividend ₹ 10 lakhs; - STCG u/s 111A ₹ 20 lakhs; - LTCG u/s 112 ₹ 15 lakhs; - LTCG u/s 112A ₹ 20 lakhs; and - Other income ₹ 25 lakhs	
(ii)	Where total income (including dividend income and capital gains chargeable to tax u/s 111A, 112 and 112A) > ₹ 1 crore but ≤ ₹ 2 crore	15%	Example - Dividend income ₹ 10 lakhs; - STCG u/s 111A ₹ 40 lakhs; - LTCG u/s 112 ₹ 55 lakhs; - LTCG u/s 112A	

³ (other than an AOP consisting of only companies as members)

			₹ 35 lakhs; and	
			• Other income ₹ 50 lakhs	
(iii)	Where total income (excluding dividend income and capital gains chargeable to tax u/s 111A, 112 and 112A) > ₹ 2 crore but ≤ ₹ 5 crore	25%	Example	
	The rate of surcharge on the income-tax payable on the portion of dividend income and capital gains chargeable to tax u/s 111A, 112 and 112A	Not exceeding 15%	• Dividend income ₹ 51 lakhs; • STCG u/s 111A ₹ 44 lakh; • LTCG u/s 112 ₹ 42 lakhs; • LTCG u/s 112A ₹ 55 lakh; and • Other income ₹ 3 crores	Surcharge@15% would be levied on income-tax on: • Dividend income of ₹ 51 lakhs; • STCG of ₹ 44 lakhs chargeable to tax u/s 111A; • LTCG of ₹ 42 lakhs chargeable to tax u/s 112; and • LTCG of ₹ 55 lakhs chargeable to tax u/s 112A. Surcharge@25% would be leviable on income-tax computed on other income of ₹ 3 crores included in total income
(iv)	Where total income (excluding dividend income and capital gains chargeable to tax u/s 111A, 112 and 112A) > ₹ 5 crore	37%	Example	
	Rate of surcharge on the income-tax payable on the portion of dividend income and capital gains chargeable to tax u/s 111A, 112 and 112A	Not exceeding 15%	• Dividend income ₹ 60 lakhs; • STCG u/s 111A ₹ 50 lakhs; • LTCG u/s 112 ₹ 42 lakhs; • LTCG u/s 112A ₹ 25 lakhs; and • Other income ₹ 6 crore	Surcharge@15% would be levied on income-tax on: • Dividend income of ₹ 60 lakhs; • STCG of ₹ 50 lakhs chargeable to tax u/s 111A; • LTCG of ₹ 42 lakhs chargeable to tax u/s 112; and • LTCG of ₹ 25 lakhs chargeable to tax u/s 112A.

				Surcharge@37% would be leviable on the income-tax computed on other income of ₹ 6 crores included in total income.
(v)	Where total income (including dividend income and capital gains chargeable to tax u/s 111A, 112 and 112A) > ₹ 2 crore in cases not covered under (iii) and (iv) above	15%	Example - Dividend income ₹ 55 lakhs; - STCG u/s 111A ₹ 60 lakhs; - LTCG u/s 112 ₹ 42 lakhs; - LTCG u/s 112A ₹ 35 lakhs; and - Other income ₹ 1.10 crore	Surcharge would be levied@15% on income-tax computed on total income of ₹ 3.02 crore.

Marginal relief

Marginal relief in case of such persons referred to in above under the optional tax regime (as per the normal provisions of the Act).

	Particulars	Marginal relief
(i)	Where the total income > ₹ 50 lakhs but ≤ ₹ 1 crore	Step 1 - Compute income-tax on total income; and add surcharge@10% on such income-tax (A) Step 2 - Compute income-tax on ₹ 50 lakhs Step 3 - Total income (-) ₹ 50 lakhs Step 4 - Add the amount computed in Step 2 and Step 3 (B) Step 5 - Income-tax liability on total income (along with surcharge) would be the lower of the amount arrived at in Step 1 (i.e., A) or Step 4 (i.e., B). Consequently, if A > B , the marginal relief would be A – B .
(ii)	Where the total income > ₹ 1 crore but ≤ ₹ 2 crores	Step 1 - Compute income-tax on total income; and add surcharge@15% on income-tax (C) Step 2 - Compute income-tax on total income of ₹ 1 crore + surcharge on such income-tax@10% Step 3 - Total income (-) ₹ 1 crore Step 4 - Add the amount computed in Step 2 and Step 3 (D) Step 5 - Income-tax liability on total income (along with

		surcharge) would be the lower of the amount arrived at in Step 1 (i.e., C) or Step 4 (i.e., D). Consequently, if C>D , the marginal relief would be C – D .
(iii)	Where the total income > ₹ 2 crores but ≤ ₹ 5 crores	Step 1 - Compute income-tax on total income; and add surcharge@25% on income-tax (E) Step 2 - Compute income-tax on total income of ₹ 2 crore + surcharge on such income-tax@15% Step 3 - Total income (-) ₹ 2 crore Step 4 - Add the amount computed in Step 2 and Step 3 (F) Step 5 – Income-tax liability on total income (along with surcharge) would be the lower of the amount arrived at in Step 1 (i.e., E) or Step 4 (i.e., F). Consequently, if E>F, the marginal relief would be E – F.
(iv)	Where the total income > ₹ 5 crores	Step 1 - Compute income-tax on total income; and add surcharge@37% on income-tax (G) Step 2 - Compute income-tax on total income of ₹ 5 crore + surcharge on such income-tax@25% Step 3 - Total income (-) ₹ 5 crore Step 4 - Add the amount computed in Step 2 and Step 3 (H) Step 5 – Income-tax liability on total income (along with surcharge) would be the lower of the amount arrived at in Step 1 (i.e., G) or Step 4 (i.e., H). Consequently, if G>H, the marginal relief would be G – H.

Note – It is presumed that the total income referred to above does not include dividend income, long term capital gains taxable under section 112/ 112A and short-term capital gains taxable under section 111A.

In case the total income includes dividend income, long term capital gains taxable under section 112/ 112A or short term capital gains taxable under section 111A, surcharge on income-tax computed on such dividend income and capital gains cannot exceed 15%. This must be kept in mind while computing marginal relief in cases referred to in (iii) and (iv) above.

ILLUSTRATION 2

Compute the tax liability of Mr. Arpit (aged 42), having total income of ₹ 51 lakhs for the Assessment Year 2024-25. Assume that his total income comprises of salary income, Income from house property and interest on fixed deposit. Assume that Mr. Arpit has exercised the option to shift out of section 115BAC.

SOLUTION

Computation of tax liability of Mr. Arpit for the A.Y.2024-25

(A) Income-tax (including surcharge) computed on total income of ₹ 51,00,000		
₹ 2,50,000 – ₹ 5,00,000 @5%	₹ 12,500	
₹ 5,00,001 – ₹ 10,00,000 @20%	₹ 1,00,000	
₹ 10,00,001 – ₹ 51,00,000 @30%	<u>₹ 12,30,000</u>	
Total	₹ 13,42,500	
Add: Surcharge @ 10%	<u>₹ 1,34,250</u>	₹ 14,76,750
(B) Income-tax computed on total income of ₹ 50 lakhs		
(₹ 12,500 plus ₹ 1,00,000 plus ₹ 12,00,000)		₹ 13,12,500
(C) Total Income Less ₹ 50 lakhs		
		₹ 1,00,000
(D) Income-tax computed on total income of ₹ 50 lakhs plus the excess of total income over ₹ 50 lakhs (B +C)		
		₹ 14,12,500
(E) Tax liability: lower of (A) and (D)		
		₹ 14,12,500
Add: Health and education cess @4%		<u>₹ 56,500</u>
Tax liability (including cess)		<u>₹ 14,69,000</u>
(F) Marginal Relief (A – D)		
		₹ 64,250

Alternative method -

(A) Income-tax (including surcharge) computed on total income of ₹ 51,00,000		
₹ 2,50,000 – ₹ 5,00,000@5%	₹ 12,500	
₹ 5,00,001 – ₹ 10,00,000@20%	₹ 1,00,000	
₹ 10,00,001 – ₹ 51,00,000@30%	<u>₹ 12,30,000</u>	
Total	₹ 13,42,500	
Add: Surcharge@10%	<u>₹ 1,34,250</u>	₹ 14,76,750
(B) Income-tax computed on total income of ₹ 50 lakhs		
(₹ 12,500 plus ₹ 1,00,000 plus ₹ 12,00,000)		<u>₹ 13,12,500</u>
(C) Excess tax payable (A)-(B)		
		₹ 1,64,250

(D) Marginal Relief (₹ 1,64,250 – ₹ 1,00,000, being the amount of income in excess of ₹ 50,00,000)	₹ 64,250
(E) Tax liability (A)-(D)	₹ 14,12,500
Add: Health and education cess @4%	<u>₹ 56,500</u>
Tax liability (including cess)	<u>₹ 14,69,000</u>

ILLUSTRATION 3

Compute the tax liability of Mr. Veer (aged 51) under the default tax regime, having total income of ₹ 1,01,00,000 for the Assessment Year 2024-25. Assume that his total income comprises of salary income, Income from house property and interest on fixed deposit.

SOLUTION**Computation of tax liability of Mr. Veer for the A.Y. 2024-25**

(A) Income-tax (including surcharge) computed on total income of ₹ 1,01,00,000	
₹ 3,00,000 – ₹ 6,00,000@5%	₹ 15,000
₹ 6,00,001 – ₹ 9,00,000@10%	₹ 30,000
₹ 9,00,001 – ₹ 12,00,000@15%	₹ 45,000
₹ 12,00,001 – ₹ 15,00,000@20%	₹ 60,000
₹ 15,00,001 – ₹ 1,01,00,000@30%	<u>₹ 25,80,000</u>
Total	₹ 27,30,000
Add: Surcharge@15%	<u>₹ 4,09,500</u>
Tax liability without marginal relief	₹ 31,39,500
(B) Income-tax computed on total income of ₹ 1 crore	
(₹ 1,50,000 plus ₹ 25,50,000)	₹ 27,00,000
Add: Surcharge@10%	<u>₹ 2,70,000</u>
	₹ 29,70,000
(C) Total Income Less ₹ 1 crore	₹ 1,00,000
(D) Income-tax computed on total income of ₹ 1 crore plus the excess of total income over ₹ 1 crore (B +C)	₹ 30,70,000

(E) Tax liability: lower of (A) & (D)	₹ 30,70,000
Add: Health and education cess @4%	<u>₹ 1,22,800</u>
Tax liability (including cess)	<u>₹ 31,92,800</u>
(F) Marginal relief (A-D)	₹ 69,500

Alternative method:

(A) Income-tax (including surcharge) computed on total income of ₹ 1,01,00,000	
₹ 3,00,000 – ₹ 6,00,000@5%	₹ 15,000
₹ 6,00,001 – ₹ 9,00,000@10%	₹ 30,000
₹ 9,00,001 – ₹ 12,00,000@15%	₹ 45,000
₹ 12,00,001 – ₹ 15,00,000@20%	₹ 60,000
₹ 15,00,001 – ₹ 1,01,00,000@30%	<u>₹ 25,80,000</u>
Total	₹ 27,30,000
Add: Surcharge @ 15%	<u>₹ 4,09,500</u>
	₹ 31,39,500
(B) Income-tax computed on total income of ₹ 1 crore	
[(₹ 1,50,000 plus ₹ 25,50,000) plus surcharge@10%]	<u>₹ 29,70,000</u>
(C) Excess tax payable (A)-(B)	₹ 1,69,500
(D) Marginal Relief (₹ 1,69,500 – ₹ 1,00,000, being the amount of income in excess of ₹ 1,00,00,000)	₹ 69,500
(E) Tax liability (A) - (D)	₹ 30,70,000
Add: Health and education cess @4%	<u>₹ 1,22,800</u>
Tax liability (including cess)	<u>₹ 31,92,800</u>

ILLUSTRATION 4

Compute the tax liability of Mr. Varun (aged 58), having total income of ₹ 2,01,00,000 for the Assessment Year 2024-25. Assume that his total income comprises of salary income, Income from house property and interest on fixed deposit. Assume that Mr. Varun has exercised the option to shift out of section 115BAC.

SOLUTION**Computation of tax liability of Mr. Varun for the A.Y. 2024-25**

(A) Income-tax (including surcharge) computed on total income of ₹ 2,01,00,000		
₹ 2,50,000 – ₹ 5,00,000 @ 5%	₹ 12,500	
₹ 5,00,001 – ₹ 10,00,000 @ 20%	₹ 1,00,000	
₹ 10,00,001 – ₹ 2,01,00,000 @ 30%	<u>₹ 57,30,000</u>	
Total	₹ 58,42,500	
Add: Surcharge @ 25%	<u>₹ 14,60,625</u>	₹ 73,03,125
(B) Income-tax computed on total income of ₹ 2 crore		
(₹ 12,500 plus ₹ 1,00,000 plus ₹ 57,00,000)		₹ 58,12,500
Add: Surcharge @ 15%		<u>₹ 8,71,875</u>
		₹ 66,84,375
(C) Total Income Less ₹ 2 crore		₹ 1,00,000
(D) Income-tax computed on total income of ₹ 2 crore <i>plus</i> the		
excess of total income over ₹ 2 crore (B + C)		₹ 67,84,375
(E) Tax liability (A) or (D), whichever is lower		₹ 67,84,375
Add: Health and education cess @ 4%		<u>₹ 2,71,375</u>
Tax liability (including cess)		<u>₹ 70,55,750</u>
(F) Marginal relief (A-D)		₹ 5,18,750

Alternative method

(A) Income-tax (including surcharge) computed on total income of ₹ 2,01,00,000		
₹ 2,50,000 – ₹ 5,00,000 @ 5%	₹ 12,500	
₹ 5,00,001 – ₹ 10,00,000 @ 20%	₹ 1,00,000	
₹ 10,00,001 – ₹ 2,01,00,000 @ 30%	<u>₹ 57,30,000</u>	
Total	₹ 58,42,500	
Add: Surcharge @ 25%	<u>₹ 14,60,625</u>	₹ 73,03,125

(B)	Income-tax computed on total income of ₹ 2 crore [(₹ 12,500 plus ₹ 1,00,000 plus ₹ 57,00,000) plus surcharge@15%]	<u>₹ 66,84,375</u>
(C)	Excess tax payable (A)-(B)	₹ 6,18,750
(D)	Marginal Relief (₹ 6,18,750 – ₹ 1,00,000, being the amount of income in excess of ₹ 2,00,00,000)	<u>₹ 5,18,750</u>
(E)	Tax liability (A) - (D)	₹ 67,84,375
	Add: Health and education cess@4%	<u>₹ 2,71,375</u>
	Tax liability (including cess)	<u>₹ 70,55,750</u>

ILLUSTRATION 5

Compute the tax liability of Mr. Akhil (aged 65) in a most beneficial manner. He is having total income of ₹ 5,01,00,000 for the Assessment Year 2024-25. Assume that his total income comprises of salary income, Income from house property and interest on fixed deposit and is the same under both tax regimes.

SOLUTION

Computation of tax liability of Mr. Akhil under default tax regime for the A.Y. 2024-25

Income-tax (including surcharge) computed on total income of ₹ 5,01,00,000		
₹ 3,00,000 – ₹ 6,00,000@5%	₹ 15,000	
₹ 6,00,001 – ₹ 9,00,000@10%	₹ 30,000	
₹ 9,00,001 – ₹ 12,00,000@15%	₹ 45,000	
₹ 12,00,001 – ₹ 15,00,000@20%	₹ 60,000	
₹ 15,00,001 – ₹ 5,01,00,000@30%	<u>₹ 1,45,80,000</u>	
Total	₹ 1,47,30,000	
Add: Surcharge@25%	<u>₹ 36,82,500</u>	₹ 1,84,12,500
Add: Health and education cess @4%		<u>₹ 7,36,500</u>
Tax liability		<u>₹ 1,91,49,000</u>

**Computation of tax liability of Mr. Akhil under optional tax regime
for the A.Y. 2024-25**

(A) Income-tax (including surcharge) computed on total income of ₹ 5,01,00,000		
₹ 3,00,000 – ₹ 5,00,000 @ 5%	₹ 10,000	
₹ 5,00,001 – ₹ 10,00,000 @ 20%	₹ 1,00,000	
₹ 10,00,001 – ₹ 5,01,00,000 @ 30%	<u>₹ 1,47,30,000</u>	
Total	₹ 1,48,40,000	
Add: Surcharge @ 37%	<u>₹ 54,90,800</u>	₹ 2,03,30,800
(B) Income-tax computed on total income of ₹ 5 crore		
(₹ 10,000 plus ₹ 1,00,000 plus ₹ 1,47,00,000)		₹ 1,48,10,000
Add: Surcharge @ 25%		<u>₹ 37,02,500</u>
		₹ 1,85,12,500
(C) Total Income Less ₹ 5 crore		₹ 1,00,000
(D) Income-tax computed on total income of ₹ 5 crore <i>plus</i> the		
excess of total income over ₹ 5 crore (B + C)		₹ 1,86,12,500
(E) Tax liability (A) or (D), whichever is lower		₹ 1,86,12,500
Add: Health and education cess @ 4%		<u>₹ 7,44,500</u>
Tax liability (including cess)		<u>₹ 1,93,57,000</u>
(F) Marginal Relief (A – D)		₹ 17,18,300

Alternative method

(A) Income-tax (including surcharge) computed on total income of ₹ 5,01,00,000		
₹ 3,00,000 – ₹ 5,00,000 @ 5%	₹ 10,000	
₹ 5,00,001 – ₹ 10,00,000 @ 20%	₹ 1,00,000	
₹ 10,00,001 – ₹ 5,01,00,000 @ 30%	<u>₹ 1,47,30,000</u>	
Total	₹ 1,48,40,000	
Add: Surcharge @ 37%	<u>₹ 54,90,800</u>	₹ 2,03,30,800

(B) Income-tax computed on total income of ₹ 5 crore [(₹ 10,000 plus ₹ 1,00,000 plus ₹ 1,47,00,000) plus surcharge@25%]	<u>₹ 1,85,12,500</u>
(C) Excess tax payable (A)-(B)	₹ 18,18,300
(D) Marginal Relief (₹ 18,18,300 – ₹ 1,00,000, being the amount of income in excess of ₹ 5,00,00,000)	₹ 17,18,300
(E) Tax liability (A) - (D)	₹ 1,86,12,500
Add: Health and education cess @4%	<u>₹ 7,44,500</u>
Tax liability (including cess)	<u>₹ 1,93,57,000</u>

It is beneficial for Mr. Akhil to pay tax under default tax regime under section 115BAC, since his tax liability would be lower by ₹ 2,08,000 (₹ 1,93,57,000 - ₹ 1,91,49,000).

Firm/ LLP/ Local Authority

Income-tax

On the whole of the total income 30%

Special rates for capital gains under sections 112, 112A and 111A would be applicable to Firm/ LLP/ local authority also.

Surcharge

Where the total income exceeds ₹ 1 crore, surcharge is payable at the rate of 12% of income-tax computed as above.

Marginal Relief

Marginal relief is available in case of such persons having a total income exceeding ₹ 1 crore i.e., the total amount of income-tax (together with surcharge) computed on such income should not exceed the amount of income-tax computed on total income of ₹ 1 crore by more than the amount of income that exceeds ₹ 1 crore.

Co-operative Society

Income-tax rates as per the normal provisions of the Act

(i)	Where the total income does not exceed ₹ 10,000	10% of the total income
(ii)	Where the total income exceeds ₹ 10,000 but does not exceed ₹ 20,000	₹ 1,000 plus 20% of the amount by which the total income exceeds ₹ 10,000

(iii)	Where the total income exceeds ₹ 20,000	3,000 plus 30% of the amount by which the total income exceeds ₹ 20,000

Note – A manufacturing co-operative society, resident in India, can opt for concessional rates of tax under section 115BAE and other co-operative societies, resident in India, can opt for concessional rates of tax under section 115BAD.

Tax rate in case of a manufacturing co-operative society, resident in India (set up and registered on or after 1.4.2023 and commences manufacture of article or thing before 31.3.2024) opting for concessional tax regime u/s 115BAE

15% of income derived from or incidental to manufacturing or production of an article or thing

Tax rate in case of other resident co-operative society opting for concessional tax regime u/s 115BAD: 22% of total income

Note - Co-operative society, resident in India, can opt for concessional rate of tax u/s 115BAD or 115BAE, as the case may be, subject to certain conditions. The total income of such co-operative societies would be computed without giving effect to deduction under section 10AA, 33AB, 33ABA, 35(1)(ii)/(iia)/(iii), 35(2AA), 35AD, 35CCC, additional depreciation under section 32(1)(iia), deductions under Chapter VI-A (other than section 80JJAA) etc. and set off of loss and depreciation brought forward from earlier years relating to the above deductions. The provisions of alternate minimum tax under section 115JC would not be applicable to a co-operative society opting for section 115BAD or 115BAE.

For detailed discussion on sections 115BAD and 115BAE, please refer Chapter 9 in Module 2 of the Study Material.

Special rates for capital gains under sections 112, 112A and 111A would be applicable to Co-operative society also.

Surcharge

(a) In case of a co-operative society (other than a co-operative society opting for section 115BAD or section 115BAE), whose total income > ₹ 1 crore but is ≤ ₹ 10 crore

Where the total income exceeds ₹ 1 crore but does not exceed ₹ 10 crore, surcharge is payable at the rate of 7% of income-tax computed in accordance with the slab rates given above and/ or section 111A or section 112 or section 112A.

Marginal Relief

Marginal relief is available in case of such co-operative societies i.e., the total amount of income-tax (together with surcharge) computed on such income should not exceed the amount of income-tax computed on total income of ₹ 1 crore by more than the amount of income that exceeds ₹ 1 crore.

(b) In case of a co-operative society (other than a co-operative society opting for section 115BAD or section 115BAE), whose total income is > ₹ 10 crore

Where the total income exceeds ₹ 10 crore, surcharge is payable at the rate of **12%** of income-tax computed in accordance with the slab rates given above and/ or section 111A or section 112 or section 112A.

Marginal Relief

Marginal relief is available in case of such co-operative societies i. e., the total amount of income-tax (together with surcharge) computed on such income should not exceed the amount of income-tax and surcharge computed on total income of ₹ 10 crore by more than the amount of income that exceeds ₹ 10 crore.

(c) In case of a co-operative society opting for section 115BAD or section 115BAE

Surcharge @10% of income-tax computed under section 115BAD **or section 115BAE** would be leviable. Since there is no threshold limit for applicability of surcharge, consequently, there would be no marginal relief.

Domestic Company

Income-tax

<i>If the total turnover or gross receipt in the P.Y.2021-22 ≤ ₹ 400 crore</i>	<i>25% of the total income</i>
<i>In any other case</i>	<i>30% of the total income</i>
Notes – <u>In case of a domestic manufacturing company (set up and registered on or after 1.10.2019 and commences manufacture of article or thing⁴ before 31.3.2024) exercising option u/s 115BAB:</u> 15% of income derived from or incidental to manufacturing or production of an article or thing <u>In case of a domestic company exercising option u/s 115BAA:</u> 22% of total income	

⁴Including business of generation of electricity

Domestic company can opt for section 115BAA or section 115BAB, as the case may be, subject to certain conditions. The total income of such companies would be computed without giving effect to deductions under section 10AA, 33AB, 33ABA, 35(1)(ii)/(iia)/(iii), 35(2AA), 35(2AB), 35AD, 35CCC, 35CCD, Chapter VI-A (except section 80JJAA or section 80M), additional depreciation under section 32(1)(iia) etc. and without set-off of brought forward loss and unabsorbed depreciation attributable to such deductions.

For detailed discussion on sections 115BAA and 115BAB, please refer Chapter 9 in Module 2 of the Study Material.

Special rates for capital gains under sections 112, 112A and 111A would be applicable to domestic company also.

Surcharge

- (a) **In case of a domestic company (other than a domestic company opting for section 115BAA or section 115BAB), whose total income > ₹ 1 crore but is ≤ ₹ 10 crore**

Where the total income exceeds ₹ 1 crore but does not exceed ₹ 10 crore, surcharge is payable at the rate of 7% of income-tax computed in accordance with the rates given above.

Marginal Relief

Marginal relief is available in case of such companies i.e., the total amount of income-tax (together with surcharge) computed on such income should not exceed the amount of income-tax computed on total income of ₹ 1 crore by more than the amount of income that exceeds ₹ 1 crore.

ILLUSTRATION 6

Compute the marginal relief available to X Ltd., a domestic company, assuming that the total income of X Ltd. is ₹ 1,01,00,000 for A.Y.2024-25 and the total income does not include any income in the nature of capital gains. Assume that the company has not exercised option under section 115BAA or 115BAB.

[Note - The gross receipts of X Ltd. for the P.Y.2021-22 is ₹ 402 crore]

SOLUTION

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

Therefore, the tax payable on ₹ 1,01,00,000 would be ₹ 32,24,000 (₹ 31,00,000 plus health and education cess @4% of ₹ 1,24,000).

(b) In case of a domestic company (other than a domestic company opting for section 115BAA or section 115BAB), whose total income is > ₹ 10 crore

Where the total income exceeds ₹ 10 crore, surcharge is payable at the rate of 12% of income-tax computed in accordance with the rates given above.

Marginal Relief

Marginal relief is available in case of such companies i.e., the total amount of income-tax (together with surcharge) computed on such income should not exceed the amount of income-tax and surcharge computed on total income of ₹ 10 crore by more than the amount of income that exceeds ₹ 10 crore.

ILLUSTRATION 7

Compute the marginal relief available to Y Ltd., a domestic company, assuming that the total income of Y Ltd. for A.Y.2024-25 is ₹ 10,01,00,000 and the total income does not include any income in the nature of capital gains. Assume that the company has not exercised option under section 115BAA or 115BAB.

[Note - The gross receipts of Y Ltd. for the P.Y.2021-22 is ₹ 410 crore]

SOLUTION

The tax payable on total income of ₹ 10,01,00,000 of Y Ltd. computed@ 33.6% (including surcharge@12%) is ₹ 3,36,33,600. However, the tax cannot exceed ₹ 3,22,00,000 [i.e., the tax of ₹ 3,21,00,000 (32.1% of ₹ 10 crore) payable on total income of ₹ 10 crore plus ₹ 1,00,000, being the amount of total income exceeding ₹ 10 crore]. The marginal relief is ₹ 14,33,600 (i.e., ₹ 3,36,33,600 - ₹ 3,22,00,000). Therefore, the tax payable on ₹ 10,01,00,000 would be ₹ 3,34,88,000 (i.e., ₹ 3,22,00,000 plus health and education cess @4% of ₹ 12,88,000).

(c) In case of a domestic company opting for section 115BAA or section 115BAB

Surcharge @10% of income-tax computed under section 115BAA or section 115BAB would be leviable. Since there is no threshold limit for applicability of surcharge, consequently, there would be no marginal relief.

Foreign Company

Income-tax

Royalties and fees for rendering technical services (FTS) received from Government or an Indian concern in pursuance of an agreement, approved by the Central Government, made by the company with the Government or Indian	50%

concern between 1.4.1961 and 31.3.1976 (in case of royalties) and between 1.3.1964 and 31.3.1976 (in case of FTS)	
Other income	40%

Special rates for capital gains under sections 112, 112A and 111A would be applicable to foreign company also.

Surcharge

(a) **In case of a foreign company, whose total income > ₹ 1 crore but is ≤ ₹ 10 crore**

Where the total income exceeds ₹ 1 crore but does not exceed ₹ 10 crore, surcharge is payable at the rate of **2%** of income-tax computed in accordance with the rates given above.

Marginal Relief

Marginal relief is available in case of such companies i.e., the total amount of income-tax (together with surcharge) computed on such income should not exceed the amount of income-tax computed on total income of ₹ 1 crore by more than the amount of income that exceeds ₹ 1 crore.

(b) **In case of a foreign company, whose total income is > ₹ 10 crore**

Where the total income exceeds ₹ 10 crore, surcharge is payable at the rate of **5%** of income-tax computed in accordance with the rates given above.

Marginal Relief

Marginal relief is available in case of such companies i.e., the total amount of income-tax (together with surcharge) computed on such income should not exceed the amount of income-tax and surcharge computed on total income of ₹ 10 crore by more than the amount of income that exceeds ₹ 10 crore.

1.6 REBATE FOR RESIDENT INDIVIDUALS [SECTION 87A]

In order to provide tax relief to the individual tax payers, section 87A provides a rebate from the tax payable by an assessee, being an **individual resident in India**.

Rebate to resident individual paying tax under default tax regime u/s 115BAC

- (1) *If total income of such individual **does not exceed ₹ 7,00,000**, the rebate shall be equal to the amount of income-tax payable on his total income for any assessment year or an amount of **₹ 25,000**, whichever is less.*

The amount of rebate under section 87A shall not exceed the amount of income-tax (as computed before allowing such rebate) on the total income of the assessee with which he is chargeable for any assessment year.

ILLUSTRATION 8

Mr. Mahesh aged 32 years and a resident in India, has a total income of ₹ 6,50,000, comprising his salary income and interest on bank fixed deposit. Compute his tax liability for A.Y.2024-25 under default tax regime under section 115BAC.

SOLUTION

Computation of tax liability of Mr. Mahesh for A.Y. 2024-25

Particulars	₹
Tax on total income of ₹ 6,50,000	
Tax @10% of ₹ 50,000 + ₹ 15,000	20,000
Less: Rebate u/s 87A (Lower of tax payable or ₹ 25,000)	<u>20,000</u>
Tax Liability	Nil

- (2) If total income of such individual **exceeds ₹ 7,00,000** and income-tax payable on such total income exceeds the amount by which the total income is in excess of ₹ 7,00,000, the rebate would be as follows.

Step 1 – Total income (-) ₹ 7 lakhs (A)

Step 2 - Compute income-tax liability on total income (B)

Step 3 - If $B > A$, rebate under section 87A would be a $B - A$.

The amount of rebate under section 87A shall not exceed the amount of income-tax (as computed before allowing such rebate) on the total income of the assessee.

ILLUSTRATION 9

Mr. Nitin aged 42 years and a resident in India, has a total income of ₹ 7,15,000, comprising his salary income and interest on bank fixed deposit. Compute his tax liability for A.Y.2024-25 under default tax regime under section 115BAC.

SOLUTION

Computation of tax liability of Mr. Nitin for A.Y. 2024-25

Particulars	₹	
Step 1: Total Income of ₹ 7,15,000 - ₹ 7,00,000	15,000	(A)

Step 2: Tax on total income of ₹ 7,15,000		
Tax @10% of ₹ 1,15,000 + ₹ 15,000	26,500	(B)
Step 3: Since B > A, rebate u/s 87A would be B-A [₹ 26,500 - ₹ 15,000]	11,500	
	15,000	
Add: HEC@4%	600	
Tax Liability	15,600	

Rebate to a resident individual paying tax under optional tax regime (normal provisions of the Act)

If total income of such individual **does not exceed ₹ 5,00,000**, the rebate shall be equal to the amount of income-tax payable on his total income for any assessment year or an amount of **₹ 12,500**, whichever is less.

The amount of rebate under section 87A shall not exceed the amount of income-tax (as computed before allowing such rebate) on the total income of the assessee with which he is chargeable for any assessment year.

ILLUSTRATION 10

Mr. Manish, aged 47 years and a resident in India, has a total income of ₹ 4,15,000, comprising his salary income and interest on bank fixed deposit. Compute his tax liability for A.Y. 2024-25 if he exercises the option to shift out of the default tax regime.

SOLUTION

Computation of tax liability of Mr. Manish for A.Y. 2024-25

Particulars	₹
Tax on total income of ₹ 4,15,000	
Tax@5% of ₹ 1,65,000	8,250
Less: Rebate u/s 87A (Lower of tax payable or ₹ 12,500)	8,250
Tax Liability	Nil

- Rebate under section 87A is allowed from income-tax computed before adding Health and education cess on income-tax.
- Rebate under section 87A is, however, not available in respect of tax payable @10% on long-term capital gains taxable u/s 112A.

SIGNIFICANT SELECT CASES

Sl. No.	Case Law	
1.	<i>CIT v. Saurashtra Cement Ltd. (2010) 325 ITR 422 (SC)</i>	
	Issue	Analysis & Decision
	What is the nature of liquidated damages received by a company from the supplier of plant for failure to supply machinery to the company within the stipulated time – a capital receipt or a revenue receipt?	The damages are directly and intimately linked with the procurement of a capital asset i.e., the cement plant, which lead to delay in coming into existence of the profit-making apparatus. It was not a receipt in the course of profit earning process. Therefore, the amount received by the assessee towards compensation for sterilization of the profit earning source, is not in the ordinary course of business, hence it is a capital receipt in the hands of the assessee.
2.	<i>Honda Siel Cars India Ltd. v. CIT(2017) 395 ITR 713(SC)</i>	
	Issue	Analysis & Decision
	Whether technical fee paid under a technical collaboration agreement for setting up a joint venture company in India is to be treated as revenue or capital expenditure, where, upon termination of the agreement, the joint venture would come to an end?	If a limited right to use technical know-how is obtained for a limited period for improvising existing business, the expenditure is revenue in nature. However, if technical know-how is obtained for setting up a new business, the position may be different. The very purpose of the technical collaboration agreement, in this case, was to set up the Joint Venture. The collaboration included not only transfer of technical information, but, complete assistance, actual, factual and on the spot, for establishment of plant, machinery, etc. so as to set up a manufacturing unit. Upon termination of technical collaboration agreement, the joint venture itself would come to an end. Therefore, in this case, technical fee is capital in nature since upon termination of technical collaboration agreement, the joint venture itself would come to an end.

TEST YOUR KNOWLEDGE**Questions**

1. *Mr. Bhargava, a leading advocate on corporate law, decided to reduce his practice and to accept briefs only for paying his taxes and making charities with the fees received on such briefs. In a particular case, he agreed to appear to defend one company in the Supreme Court on the condition that he would be provided with ₹ 5 lakhs for a public charitable trust that he would create. He defended the company and was paid the sum by the company. He created a trust of that sum by executing a trust deed. Decide whether the amount received by Mr. Bhargava is assessable in his hands as income from profession.*
2. *XYZ Ltd. took over the running business of a sole-proprietor by a sale deed. As per the sale deed, XYZ Ltd. undertook to pay overriding charges of ₹ 15,000 p.a. to the wife of the sole-proprietor in addition to the sale consideration. The sale deed also specifically mentioned that the amount was charged on the net profits of XYZ Ltd., who had accepted that obligation as a condition of purchase of the going concern. Is the payment of overriding charges by XYZ Ltd. to the wife of the sole-proprietor in the nature of diversion of income or application of income? Discuss.*
3. *MKG Agency is a partnership firm consisting of Mr. Mohan and his three major sons. The partnership deed provided that after the death of Mr. Mohan, the business shall be continued by the sons, subject to the condition that the firm shall pay 20% of the profits to their mother, Lakshmi. Mr. Mohan died in March, 2023. In the previous year 2023-24, the reconstituted firm paid ₹ 1 lakh (equivalent to 20% of the profits) to Lakshmi and claimed the amount as deduction from its income. Examine the correctness of the claim of the firm.*
4. *Anand was the Karta of HUF. He died leaving behind his major son Prem, his widow, his grandmother and brother's wife. Can the HUF retain its status as such or the surviving persons would become co-owners?*
5. *Mr. C borrowed on Hundi, a sum of ₹ 25,000 by way of bearer cheque on 11-09-2023 and repaid the same with interest amounting to ₹ 30,000 by account payee cheque on 12-10-2023.*

The Assessing Officer (AO) wants to treat the amount borrowed as income during the previous year. Is the action of the Assessing Officer valid?

6. *The Assessing Officer found, during the course of assessment of a firm, that it had paid rent in respect of its business premises amounting to ₹ 60,000, which was not debited in the books of account for the year ending 31.3.2024. The firm did not explain the source for payment of rent. The Assessing Officer proposes to make an addition of ₹ 60,000 in the hands of the firm for the assessment year 2024-25. The firm claims that even if the addition is made, the sum of ₹ 60,000 should be allowed as deduction while computing its business income since it has been expended for purposes of its business. Examine the claim of the firm.*

Answers

1. In the instant case, the trust was created by Mr. Bhargava himself out of his professional income. The client did not create the trust. The client did not impose any obligation in the nature of a trust binding on Mr. Bhargava. Thus, there is no diversion of the money to the trust before it became professional income in the hands of Mr. Bhargava. This case is one of application of professional income and not of diversion of income by overriding title. Therefore, the amount received by Mr. Bhargava is chargeable to tax under the head "Profits and gains of business or profession".
2. This issue came up for consideration before the Allahabad High Court in *Jit & Pal X-Rays (P.) Ltd. v. CIT (2004) 267 ITR 370 (All)*. The Allahabad High Court observed that the overriding charge which had been created in favour of the wife of the sole-proprietor was an integral part of the sale deed by which the going concern was transferred to the assessee. The obligation, therefore, was attached to the very source of income i.e., the going concern transferred to the assessee by the sale deed. The sale deed also specifically mentioned that the amount in question was charged on the net profits of the assessee-company and the assessee-company had accepted that obligation as a condition of purchase of the going concern. Hence, it is clearly a case of diversion of income by an overriding charge and not a mere application of income.
3. The issue raised in the problem is based on the concept of diversion of income by overriding title, which is well recognised in the income-tax law. In the instant case, the amount of ₹ 1 lakh, being 20% of profits of the firm, paid to Lakshmi gets diverted at source by the charge created in her favour as per the terms of the partnership deed. Such income does not reach the assessee-firm.

Rather, such income stands diverted to the other person as such other person has a better title on such income than the title of the assessee. The firm might have received the said

amount but it so received for and on behalf of Lakshmi, who possesses the overriding title. Therefore, the amount paid to Lakshmi should be excluded from the income of the firm. This view has been confirmed in *CIT vs. Nariman B. Bharucha & Sons (1981) 130 ITR 863 (Bom)*.

4. In the case of *Gowli Buddanna v. CIT (1966) 60 ITR 293*, the Supreme Court has made it clear that there need not be more than one male member to form a HUF as a taxable entity under the Income-tax Act, 1961. The expression “Hindu Undivided Family” in the Act is used in the sense in which it is understood under the personal law of the Hindus.

Under the Hindu system of law, a joint family may consist of a single male member and the widows of the deceased male members and the Income-tax Act, 1961 does not mandate that it should consist of at least two male members. Therefore, the property of a joint Hindu family does not cease to belong to the family merely because the family is represented by a single co-parcener who possesses the right which an owner of property may possess.

Therefore, the HUF would retain its status as such.

5. Section 69D provides that where any amount is borrowed on a hundi or any amount due thereon is repaid otherwise than by way of 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 for the previous year in which the amount was so borrowed or repaid, as the case may be.

In this case, Mr. C has borrowed ₹ 25,000 on Hundi by way of bearer cheque. Therefore, it shall be deemed to be income of Mr. C for the previous year 2023-24. Since the repayment of the same along with interest was made by way of account payee cheque, the same would not be hit by the provisions of section 69D. Therefore, the action of the Assessing Officer treating the amount borrowed as income during the previous year is valid in law.

6. The claim of the firm for deduction of the sum of ₹ 60,000 in computing its business income is not tenable. The action of the Assessing Officer in making the addition of ₹ 60,000, being the payment of rent not debited in the books of account (for which the firm failed to explain the source of payment) is correct in law since the same is an unexplained expenditure under section 69C. The proviso to section 69C states that 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. Therefore, the claim of the firm is not tenable.

[illegible]

INCOMES WHICH DO NOT FORM PART OF TOTAL INCOME



LEARNING OUTCOMES

After studying this chapter, you would be able to -

- ❑ **appreciate** whether a particular income would constitute agricultural income or non-agricultural income;
- ❑ **compute** the tax on non-agricultural income by applying the concept of partial integration of agricultural income with non-agricultural income;
- ❑ **examine** the provisions of different clauses of section 10;
- ❑ **analyse and apply** such provisions to determine whether a particular income would form/ would not form part of total income;
- ❑ **analyse and apply** the provisions of section 14A to determine the expenditure incurred in relation to income not includible in total income.

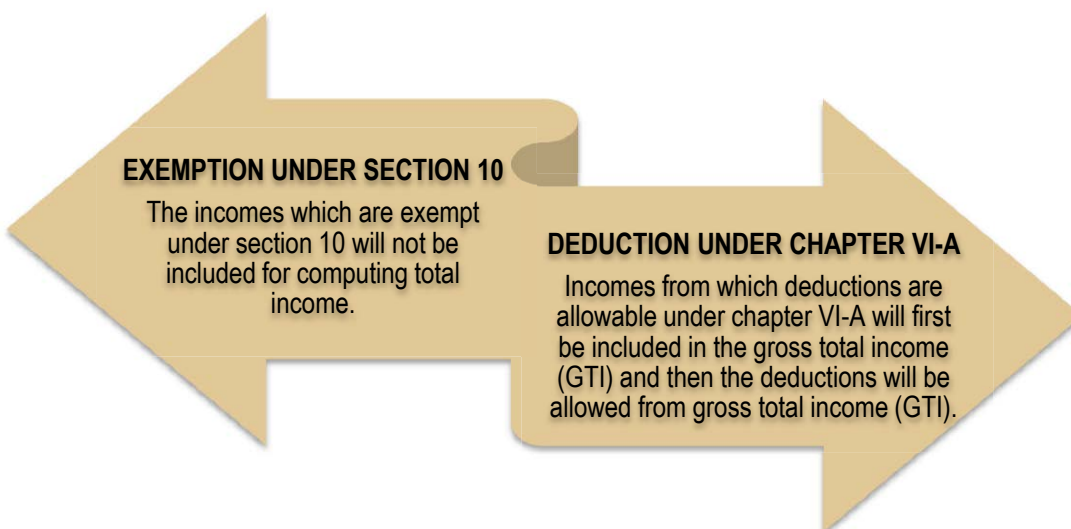


2.1 INTRODUCTION

(1) Exemption under section 10 *vis-a-vis* Deduction under Chapter VI-A

The various items of income referred to in the different clauses of section 10 are excluded from the total income of an assessee. These incomes are known as exempted incomes. Consequently, such income shall not enter into the computation of taxable income.

Moreover, there are certain other incomes which are included in gross total income but are wholly or partly allowed as deductions under Chapter VI-A in computation of total income. Students should note a very important difference between exemption under section 10 and the deduction under Chapter VI-A.



(2) Exemptions which are discussed under the relevant chapters:

In this chapter, we are going to study the provisions of section 10 which enumerate the various categories of income that are exempt from tax.

Students may note that, in this chapter, only some of the exemptions are discussed. The remaining exemptions are being discussed in the respective chapters as shown hereunder¹:

¹ The exemptions under section 10 in relation to Salaries have been dealt with in detail at the Intermediate level itself. The remaining exemptions are discussed in other chapters of this Study Material.

LIST OF EXEMPTIONS BEING DISCUSSED IN RESPECTIVE CHAPTERS

Capital Gains	• Capital gain on transfer of a unit of Unit Scheme [Section 10(33)] • Income received on buy-back of shares of domestic company [Section 10(34A)] • Capital gain on compulsory acquisition of agricultural land within specified urban limits [Section 10(37)] • Transfer of specified capital asset under Land Pooling Scheme [Section 10(37A)] • Income received in transaction of reverse mortgage [Section 10(43)]
Income from Other Sources	• Receipts from LIC [Section 10(10D)] • Interest income arising to certain persons [Section 10(15)] • Family pension received by widow/ children/ nominated heirs of armed forces members [Section 10(19)]
Income of other Persons Included in Assessee's Total Income	• Exemption in respect of minor's income included in the hands of parent [Section 10(32)]
Gross Total Income	• Payment from Sukanya Samriddhi Account [Section 10(11A)] • Payment from NPS Trust to an assessee on closure of his account or on his opting out of the pension scheme [Section 10(12A)] • Payment from NPS Trust to an employee on partial withdrawal [Section 10(12B)] • Payment from Agnipath Corpus Fund to a person enrolled under the Agnipath Scheme or to his nominee [Section 10(12C)]
Assessment of Trusts and Institutions, Political Parties and other special entities	• Income of certain funds or institutions [Section 10(23C)] • Income of Securitisation trusts [Section 10(23DA)] • Income of Investment Fund [Section 10(23FBA)] • Income of Unit holders of Investment Fund [Section 10(23FBB)] • Income of business trusts [Sections 10(23FC), 10(23FCA) and 10(23FD)]

Taxation of Digital transactions

- Any income arising from providing any specified service or arising from any e-commerce supply or service made or provided or facilitated on or after 01.04.2020 and chargeable to equalisation levy [Section 10(50)]

Non-resident Taxation

- Interest on moneys standing to the credit of individual in his NRE account [Section 10(4)(ii)]
- Interest income of a non-corporate non-resident or foreign company on specified off-shore Rupee Denominated Bonds issued by an Indian company or business trust [Section 10(4C)]
- Income of a specified fund on transfer of certain specified asset [Section 10(4D)]
- **Income of a non-resident as a result of transfer of non-deliverable forward contracts/ offshore derivative instruments/ over the counter derivatives entered into with an offshore banking unit of an IFSC [Section 10(4E)]**
- Income of a non-resident by way of royalty or interest, on account of lease of an aircraft or a ship in a previous year, paid by a unit of an IFSC [Section 10(4F)]
- **Income of a non-resident from portfolio of securities etc. in an account maintained with an offshore banking unit in any IFSC [Section 10(4G)]**
- **Income received by a non-resident or a Unit of an IFSC [Section 10(4H)]**
- Remuneration received by individuals, who are not citizens of India [Section 10(6)]
- Tax paid on behalf of foreign state or foreign enterprise on amount paid as consideration of acquiring aircraft, etc. on lease [Section 10(6BB)]
- Income arising to foreign companies from projects connected with the security of India [Section 10(6C)]
- Royalty income or fees for technical services arising to non-resident from National Technical Research Organisation (NTRO) [Section 10(6D)]
- Interest income arising to certain persons [Section 10(15)]
- Income arising to foreign state or foreign enterprise by way of consideration of acquiring aircraft, etc. on lease [Section 10(15A)]
- Income of European Economic Community (EEC) [Section 10(23BBB)]
- Income derived by the SAARC Fund for Regional Projects [Section 10(23BBC)]
- Income accruing or arising to or received by a unit holder from a specified fund or on transfer of units in a specified fund [Section 10(23FBC)]
- Certain incomes of wholly owned subsidiary of Abu Dhabi Investment Authority, Sovereign Wealth Fund and specified pension fund [Section 10(23FE)]
- Capital Gains arising or received by a non-resident or a specified fund on account of transfer of share of a company resident in India [Section 10(23FF)]
- **Any income of a unit of IFSC primarily engaged in the business of leasing of an aircraft, by way of dividends from a company being a unit of any IFSC primarily engaged in the business of leasing of an aircraft [Section 10(34B)]**
- Income received by certain foreign companies in India in Indian currency from sale of crude oil to any person in India [Section 10(48)]
- Income accruing or arising to a foreign company on account of storage of crude oil in a facility in India and sale of crude oil therefrom to any person resident in India [Section 10(48A)]
- Income accruing or arising to a foreign company on account of sale of leftover stock of crude oil, if any, from the facility in India after the expiry of the agreement or the arrangement [Section 10(48B)]



2.2 INCOMES NOT INCLUDED IN TOTAL INCOME [SECTION 10]

Let us now have a look at the various incomes which are exempt from tax and the conditions to be satisfied in order to be eligible for exemption.

(1) **Agricultural income [Section 10(1)]**

Section 10(1) provides that agricultural income is not to be included in the total income of the assessee. The reason for total exemption of agricultural income from the scope of central income-tax is that under the Constitution, the Central Government has no power to levy a tax on agricultural income.

Definition of agricultural income [Section 2(1A)]

This definition is very wide and covers the income of not only the cultivators but also the land holders who might have rented out the lands. Agricultural income may be received in cash or in kind.

Agricultural income may arise in any one of the following three ways:-

- (i) It may be rent or revenue derived from **land situated in India** and **used for agricultural purposes**.
- (ii) It may be income derived from such land by
 - (a) **agriculture** or
 - (b) the performance of a **process ordinarily employed** by a cultivator or receiver of rent in kind **to render the produce fit to be taken to the market** or
 - (c) the **sale**, by a cultivator or receiver of rent in kind, **of such agricultural produce raised or received by him**, in respect of which no process has been performed other than a process of the nature mentioned in point (b) above.
- (iii) Lastly, agricultural income may be derived from any **farm building** required for agricultural operations.

Now let us take a critical look at the following aspects:

- (i) **Rent or revenue derived from land situated in India and used for agricultural purposes:** The following three conditions have to be satisfied for income to be treated as agricultural income:
 - (a) Rent or revenue should be derived from land;

- (b) Land has to be situated in India (If agricultural land is situated in a foreign country, the entire income would be taxable); and
- (c) land should be used for agricultural purposes.

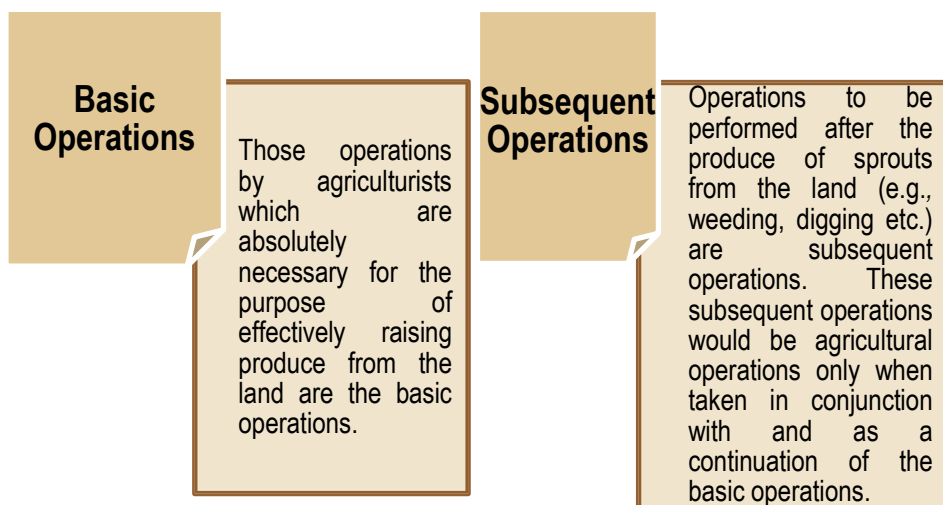
The amount received in money or in kind, by one person from another for right to use land is termed as **Rent**. The rent can either be received by the owner of the land or by the original tenant from the sub-tenant. It implies that ownership of land is not necessary. Thus, the rent received by the original tenant from sub-tenant would also be agricultural income subject to the other conditions mentioned above.

The scope of the term “**Revenue**” is much broader than rent. It includes income other than rent. For example, fees received for renewal for grant of land on lease would be revenue derived from land.

(ii) **Income derived from such land by**

- (a) **Agriculture:** The term “Agriculture” has not been defined in the Act. However, cultivation of a field involving human skill and labour on the land can be broadly termed as **agriculture**.

“Agriculture” means tilling of the land, sowing of the seeds and similar operations. It involves basic operations and subsequent operations.



“Agriculture” comprises within its scope the basic as well as the subsidiary operations regardless of the nature of the produce raised on the land. These produce may be grain, fruits or vegetables necessary for *sustenance* of human beings including plantation and groves or grass or pasture for consumption of beasts or

articles of luxury such as betel, coffee, tea, spices, tobacco or commercial crops like cotton flax, jute hemp and indigo. The term comprises of products of land having some utility either for consumption or for trade and commerce and would include forest products such as sal, tendu leaves etc.

Note: The term 'agriculture' cannot be extended to all activities which have some distant relation to land like dairy farming, breeding and rearing of live stock, butter and cheese making and poultry farming. This aspect is discussed in detail later on in this chapter.

Whether income from nursery constitutes agricultural income?

In the past, there have been court rulings that only if a nursery is maintained by carrying out the basic operations on land and subsequent operations in continuation thereof, income from such nursery would be treated as agricultural income and would qualify for exemption under section 10(1).

The Supreme Court has, in *CIT v. Raja Benoy Kumar Sahas Roy* (1957) 32 ITR 466, held that the basic operations must be performed before any income can be called as agricultural income. The basic operations involve cultivation of the ground, in the sense of tilling of the land, sowing of the seeds, planting and other similar operations on the land. Such basic operations demand the expenditure of human labour and skill upon the land itself and further, they are directed to make the crop sprout from the land. Therefore, income derived from sale of plants grown directly in pots would not be treated as agricultural income.

However, the Madras High Court, in *CIT v. Soundarya Nursery* (2000) 241 ITR 530, observed that nursing activity involves carrying out of several operations on land before the saplings were transplanted in suitable containers including pots and thereafter kept in shade or green house for further operation and growth. Therefore, income arising from nursery should be considered as agricultural income.

Explanation 3 to section 2(1A) provides that the income derived from saplings or seedlings grown in a nursery would be deemed to be agricultural income, whether or not the basic operations were carried out on land. This Explanation ratifies the view taken by the Madras High Court in favour of the taxpayer.

- (b) **Process ordinarily employed to render the produce fit to be taken to the market:** Sometimes, to make the agricultural produce a saleable commodity, it becomes necessary to perform some kind of process on the produce. The income

from the process employed to render the produce fit to be taken to the market would be agricultural income. However, it must be a process ordinarily employed by the cultivator or receiver of rent in kind and the process must be applied to make the produce fit to be taken to the market.

The ordinary process employed to render the produce fit to be taken to the market includes thrashing, winnowing, cleaning, drying, crushing etc. For example, the process ordinarily employed by the cultivator to obtain the rice from paddy is to first remove the hay from the basic grain, and thereafter to remove the chaff from the grain. The grain has to be properly filtered to remove stones etc. and finally the rice has to be packed in gunny bags for sale in the market.

After such process, the rice can be taken to the market for sale. This process of making the rice ready for the market may involve manual operations or mechanical operations. All these operations constitute the process ordinarily employed to make the product fit for the market. The produce must retain its original character in spite of the processing unless there is no market for selling it in that condition.

However, if marketing process is performed on a produce which can be sold in its raw form, income derived therefrom is partly agricultural income and partly business income.

- (c) **Sale of such agricultural produce in the market:** Any income from the sale of any produce to the cultivator or receiver of rent-in kind is agricultural income provided it is from the land situated in India and used for agricultural purposes. However, if the produce is subjected to any process other than process ordinarily employed to make the produce fit for market, the income arising on sale of such produce would be partly agricultural income and partly non-agricultural income.

Similarly, if other agricultural produce like tea, cotton, tobacco, sugarcane etc. are subjected to manufacturing process and the manufactured product is sold, the profit on such sale will consist of agricultural income as well as business income. That portion of the profit representing agricultural income will be exempted.

Apportionment of Income between business income and agriculture income: Rules 7, 7A, 7B & 8 of Income-tax Rules, 1962 provides the basis of apportionment of income between agricultural income and business income.

I. Rule 7 - Income from growing and manufacturing of any product

Where income is partially agricultural income and partially income chargeable to income-tax as business income, the market value of any agricultural produce which has been raised by

the assessee or received by him as rent in kind and which has been utilised as raw material in such business or the sale receipts of which are included in the accounts of the business shall be deducted. No further deduction shall be made in respect of any expenditure incurred by the assessee as a cultivator or receiver of rent in kind.

Determination of market value - There are two possibilities here:

- (i) The agricultural produce is capable of being sold in the market either in its raw stage or after application of any ordinary process to make it fit to be taken to the market. In such a case, the value calculated at the average price at which it has been so sold during the relevant previous year will be the market value.
- (ii) It is possible that the agricultural produce is not capable of being ordinarily sold in the market in its raw form or after application of any ordinary process. In such case the market value will be the total of the following:—
 - The expenses of cultivation;
 - The land revenue or rent paid for the area in which it was grown; and
 - Such amount as the Assessing Officer finds having regard to the circumstances in each case to represent at reasonable profit.

ILLUSTRATION 1

Mr. Amar grows sugarcane and uses the same for the purpose of manufacturing sugar in his factory. 40% of sugarcane produce is sold for ₹ 12 lakhs, and the cost of cultivation of such sugarcane is ₹ 6 lakhs. The cost of cultivation of the balance sugarcane (60%) is ₹ 15 lakhs and the market value of the same is ₹ 25 lakhs. After incurring ₹ 1.5 lakhs in the manufacturing process on the balance sugarcane, the sugar was sold for ₹ 30 lakhs. Compute Amar's business income and agricultural income.

SOLUTION

Computation of Business Income and Agriculture Income of Mr. Amar

Particulars	Business Income	Agricultural Income	
	(₹)	(₹)	(₹)
<u>Sale of Sugar</u>			
<u>Business income</u>			
Sale Proceeds of sugar	30,00,000		
Less: Market value of sugar (60%)	25,00,000		

Less: Manufacturing exp.	1,50,000		
	3,50,000		
<u>Agricultural income</u>			
Market value of sugar (60%)		25,00,000	
Less: Cost of cultivation		15,00,000	
			10,00,000
<u>Sale of sugarcane</u>			
Agricultural Income			
Sale proceeds of sugarcane (40%)		12,00,000	
Less: Cost of cultivation		6,00,000	
			6,00,000
			16,00,000

II. Rule 7A – Income from growing and manufacturing of rubber

This rule is applicable when income derived from the sale of centrifuged latex or cenex or latex based crepes or brown crepes or technically specified block rubbers manufactured or processed from field latex or coagulum obtained from rubber plants grown by the seller in India. In such cases 35% profits on sale is taxable as business income under the head “Profits and gains from business or profession”, and the balance 65% is agricultural income and is exempt.

ILLUSTRATION 2

Mr. Nilesh manufactures latex from the rubber plants grown by him in India. These are then sold in the market for ₹ 36 lakhs. The cost of growing rubber plants is ₹ 16 lakhs and that of manufacturing latex is ₹ 12 lakhs. Compute his total income.

SOLUTION

The total income of Mr. Nilesh comprises of agricultural income and business income.

Total profits from the sale of latex = ₹ 36 lakhs – ₹ 16 lakhs – ₹ 12 lakhs = ₹ 8 lakhs.

Agricultural income = 65% of ₹ 8 lakhs = ₹ 5.2 lakhs

Business income = 35% of ₹ 8 lakhs = ₹ 2.8 lakhs

III. Rule 7B – Income from growing and manufacturing of coffee

- In case of income derived from the sale of coffee grown and cured by the seller in India, 25% profits on sale is taxable as business income under the head “Profits and

gains from business or profession”, and the balance 75% is agricultural income and is exempt.

- (ii) In case of income derived from the sale of coffee grown, cured, roasted and grounded by the seller in India, with or without mixing chicory or other flavoring ingredients, 40% profits on sale is taxable as business income under the head “Profits and gains from business or profession”, and the balance 60% is agricultural income and is exempt.

IV. Rule 8 - Income from growing and manufacturing of tea

This rule applies only in cases where the assessee himself grows tea leaves and manufactures tea in India. In such cases 40% profits on sale is taxable as business income under the head “Profits and gains from business or profession”, and the balance 60% is agricultural income and is exempt.

Rule	Apportionment of income in certain cases	Agricultural Income	Business Income
7A	Income from sale of rubber products derived from rubber plant grown by the seller in India	65%	35%
7B	Income from sale of coffee		
	- grown and cured by the seller in India	75%	25%
	- grown, cured, roasted and grounded by the seller in India	60%	40%
8	Income from sale of tea grown and manufactured by the seller in India	60%	40%

- (iii) **Income from farm building** – Income from the farm building which is owned and occupied by the receiver of the rent or revenue of any such land or occupied by the cultivator or the receiver of the rent in kind, of any land with respect to which, or the produce of which, any process discussed above is carried on, would be treated as agricultural income.

However, the income arising from the use of such farm building for any purpose (including letting for residential purpose or for the purpose of business or profession) other than agriculture referred in (b) & (c) of (ii) of para (1) in page 2.5 would not be agricultural income.

Further, the income from such farm building would be agricultural income only if the following conditions are satisfied:

- The building should be on or in the immediate vicinity of the land; and
- The receiver of the rent or revenue or the cultivator or the receiver of rent in kind

should, by reason of his connection with such land require it as a dwelling house or as a store house.

In addition to the above conditions any one of the following two conditions should also be satisfied:

- (i) The land should either be assessed to land revenue in India or be subject to a local rate assessed and collected by the officers of the Government as such or;
- (ii) Where the land is not so assessed to land revenue in India or is not subject to local rate:-
 - a. It should not be situated in any area as comprised within the jurisdiction of a municipality or a cantonment board and which has a population not less than 10,000.
 - b. It should not be situated in any area within such distance, measured aerially, in relation to the range of population as shown hereunder –

	Shortest aerial distance from the local limits of a municipality or cantonment board referred to in item a.	Population according to the last preceding census of which the relevant figures have been published before the first day of the previous year.
(i)	≤ 2 kms	> 10,000
(ii)	> 2 kms but ≤ 6 kms	> 1,00,000
(iii)	> 6 kms but ≤ 8 kms	> 10,00,000

Example:

	Area	Shortest aerial distance from the local limits of a municipality or cantonment board referred to in item a.	Population according to the last preceding census of which the relevant figures have been published before the first day of the previous year	Would income derived from farm building situated in this area be treated as agricultural income?
(i)	A	1 km	9,000	Yes
(ii)	B	1.5 kms	12,000	No
(iii)	C	2 kms	11,00,000	No
(iv)	D	3 kms	80,000	Yes
(v)	E	4 kms	3,00,000	No
(v)	F	5 kms	12,00,000	No

(vi)	G	6 kms	8,000	Yes
(vii)	H	7 kms	4,00,000	Yes
(viii)	I	8 kms	10,50,000	No
(ix)	J	9 kms	15,00,000	Yes

Would income arising from transfer of agricultural land situated in urban area be agricultural income?

No, as per *Explanation 1* to section 2(1A), the capital gains arising from the transfer of such urban agricultural land would not be treated as agricultural income under section 10 but will be taxable under section 45.

Example: Suppose Bittoo sells agricultural land situated in New Delhi for ₹ 10 lakhs and makes a surplus of ₹ 8 lakhs over its cost of acquisition. This surplus will not constitute agricultural income exempt under section 10(1) and will be taxable under section 45.

Indirect connection with land

We have seen above that agricultural income is exempt, whether it is received by the tiller or the landlord. However, non-agricultural income does not become agricultural merely on account of its indirect connection with the land. The following examples will illustrate the above point.

Example: A rural society has as its principal business the selling on behalf of its member societies, butter made by these societies from cream sold to them by farmers. The making of butter was a factory process separated from the farm.

The butter resulting from the factory operations separated from the farm was not an agricultural product and the society was, therefore, not entitled to exemption under section 10(1) in respect of such income.

Example: X was the managing agent of a company. He was entitled for a commission at the rate of 10% p.a. on the annual net profits of the company. A part of the company's income was agricultural income. X claimed that since his remuneration was calculated with reference to the income of the company, part of which was agricultural income, such part of the commission as was proportionate to the agricultural income was exempt from income tax.

Since, X received remuneration under a contract for personal service calculated on the amount of profits earned by the company, such remuneration does not constitute agricultural income.

Example: Y owned 100 acres of agricultural land, a part of which was used as pasture for cows. The lands were purely maintained for manuring and other purposes connected with agriculture and

only the surplus milk after satisfying the assessee's needs was sold. The question arose whether income from such sale of milk was agricultural income.

The regularity with which the sales of milk were effected and quantity of milk sold showed that the assessee carried on regular business of producing milk and selling it as a commercial proposition. Hence, it was not agricultural income.

Example: In regard to forest trees of spontaneous growth which grow on the soil unaided by any human skill and labour there is no cultivation of the soil at all. Even though operations in the nature of forestry operations performed by the assessee may have the effect of nursing and fostering the growth of such forest trees, it cannot constitute agricultural operations.

Income from the sale of such forest trees of spontaneous growth does not, therefore, constitute agricultural income.

Examples of Agricultural income and non-agricultural income:

For better understanding of the concept, certain examples of agricultural income and non-agricultural income are given below:

Example: Agricultural income

- Income derived from saplings or seedlings grown in a nursery.
- Income from growing of flowers and creepers.
- Rent received from land used for grazing of cattle required for agricultural activities.
- Income from growing of bamboo.

Example: Non-agricultural income

- Income from breeding of livestock.
- Income from poultry farming.
- Income from fisheries.
- Income from dairy farming.

ILLUSTRATION 3

Ankur, the owner of a land situated in Kerala used for growing thereon different types of fruits, paddy, vegetables and flowers, received from Yahoo Movies Ltd., Chennai, ₹ 5 lakhs as rent towards the use of this land for shooting of a film. The amount so received was accounted by him in the books as revenue derived from land and claimed to be exempt under section 10(1). He now

wants to confirm from you whether the amount has been correctly treated by him as agricultural income.

SOLUTION

The income received by Mr. Ankur from a filmmaker for allowing them to shoot a film in the agricultural land owned by him is not in the nature of agricultural income because it was neither received by him against the sale of agricultural produce obtained nor for carrying out the normal agricultural operations on the land. The amount paid was only for the purpose of shooting of a film on such land.

To claim exemption in respect of agricultural income under section 10(1), the conditions contained in section 2(1A)(a) to (c) have to be first complied with/ fulfilled by the assessee. The Madras High Court in the case of *B. Nagi Reddi v. CIT* (2002) 258 ITR 719, following the judgment of Apex Court in the case of *CIT v Raja Benoy Kumar Sahas Roy* (1957) 32 ITR 466, has held, on identical facts, that the income derived for allowing a shooting of film in the agricultural land cannot be treated as agricultural income, as it has no nexus with the land, except that it was carried out on agricultural land.

Partial integration of agricultural income with non-agricultural income

As in the above discussion, we have seen that agricultural income is exempt subject to conditions mentioned in the definition clause of section 2(1A). However, a method has been laid down to levy tax on agricultural income in an indirect way. This concept is known as **partial integration of agricultural income with non-agricultural income**. It is applicable to individuals, HUF, AOPs, BOIs and artificial juridical persons. Two conditions which need to be satisfied for partial integration are:

1. The net agricultural income should exceed ₹ 5,000 p.a., and
2. Non-agricultural income should exceed the maximum amount not chargeable to tax. (i.e., If such person is paying tax under default tax regime u/s 115BAC, then ₹ 3,00,000 is the basic exemption limit irrespective of the age of the person. If such person has exercised the option to shift out of the default tax regime, then, the basic exemption limit would be ₹ 5,00,000 for resident individuals of the age of 80 years or more at any time during the previous year, ₹ 3,00,000 for resident individuals of the age of 60 years or more (but less than 80 years) at any time during the previous year and ₹ 2,50,000 for all others). Only if non-agricultural income exceeds this limit, partial integration would be required.

It may be noted that aggregation provisions do not apply to company, LLP, firm, co-operative society and local authority. The object of aggregating the net agricultural income with non-agricultural income is to tax the non-agricultural income at higher rates.

Tax calculation in such cases is as follows:

- Step 1:** Add non-agricultural income with net agricultural income. Compute tax on the aggregate amount.
- Step 2:** Add net agricultural income and the basic exemption limit available to the assessee. Compute tax on the aggregate amount.
- Step 3:** Deduct the amount of income tax calculated in step 2 from the income tax calculated in step 1 i.e., Step 1 – Step 2.
- Step 4:** The sum so arrived at shall be increased by surcharge, if applicable. It would be reduced by the rebate, if any, available u/s 87A.
- Step 5:** Thereafter, it would be increase by health and education cess @4%.

The above concept can be clearly understood with the help of the following illustration:

ILLUSTRATION 4

Mr. X, a resident, has provided the following particulars of his income for the P.Y. 2023-24.

i.	Income from salary (computed)	- ₹ 4,00,000
ii.	Income from house property (computed)	- ₹ 3,80,000
iii.	Agricultural income from a land in Assam	- ₹ 4,50,000
iv.	Expenses incurred for earning agricultural income	- ₹ 1,60,000

Compute his tax liability for A.Y. 2024-25 assuming his age is -

- (a) 40 years
- (b) 75 years

SOLUTION

(a) Computation of tax liability (age 40 years)

Computation of total income of Mr. X for the A.Y. 2024-25 under default tax regime under section 115BAC

For the purpose of partial integration of taxes, Mr. X has satisfied both the conditions i.e.

1. Net agricultural income exceeds ₹ 5,000 p.a., and
2. Non-agricultural income exceeds the basic exemption limit of ₹ 3,00,000.

His tax liability is computed in the following manner:

Particulars	₹	₹
Income from salary		4,00,000
Income from house property		3,80,000
Net agricultural income [₹ 4,50,000 (-) ₹ 1,60,000]	2,90,000	
Less: Exempt under section 10(1)	(2,90,000)	-
Gross Total Income		7,80,000
Less: Deductions under Chapter VI-A		-
Total Income		7,80,000

Step 1 : ₹ 7,80,000 + ₹ 2,90,000 = ₹ 10,70,000

Tax on ₹ 10,70,000 = ₹ 70,500

(i.e., 5% of ₹ 3,00,000 plus 10% of ₹ 3,00,000 plus 15% of ₹ 1,70,000)

Step 2 : ₹ 2,90,000 + ₹ 3,00,000 = ₹ 5,90,000

Tax on ₹ 5,90,000 = ₹ 14,500

(i.e. 5% of ₹ 2,90,000)

Step 3 : ₹ 70,500 – ₹ 14,500 = ₹ 56,000

Step 4 & 5 : Total tax payable = ₹ 56,000 + 4% of ₹ 56,000 = ₹ 58,240

**Computation of total income of Mr. X for the A.Y. 2024-25
under normal provisions of the Act**

For the purpose of partial integration of taxes, Mr. X has satisfied both the conditions i.e.

1. Net agricultural income exceeds ₹ 5,000 p.a., and
2. Non-agricultural income exceeds the basic exemption limit of ₹ 2,50,000.

His tax liability is computed in the following manner:

Particulars	₹	₹
Income from salary		4,00,000
Income from house property		3,80,000
Net agricultural income [₹ 4,50,000 (-) ₹ 1,60,000]	2,90,000	
Less: Exempt under section 10(1)	(2,90,000)	-

Gross Total Income		7,80,000
Less: Deductions under Chapter VI-A		-
Total Income		7,80,000

Step 1 : ₹ 7,80,000 + ₹ 2,90,000 = ₹ 10,70,000

Tax on ₹ 10,70,000 = ₹ 1,33,500

(i.e., 5% of ₹ 2,50,000 plus 20% of ₹ 5,00,000 plus 30% of ₹ 70,000)

Step 2 : ₹ 2,90,000 + ₹ 2,50,000 = ₹ 5,40,000

Tax on ₹ 5,40,000 = ₹ 20,500

(i.e. 5% of ₹ 2,50,000 plus 20% of ₹ 40,000)

Step 3 : ₹ 1,33,500 – ₹ 20,500 = ₹ 1,13,000

Step 4 & 5 : Total tax payable = ₹ 1,13,000 + 4% of ₹ 1,13,000 = ₹ 1,17,520

(b) Computation of tax liability (age 75 years)

Computation of total income of Mr. X for the A.Y. 2024-25

under default tax regime under section 115BAC

Tax liability of Mr. X would be same under default tax regime whether he is of age of 40 years of 75 years i.e., ₹ 58,240.

Computation of total income of Mr. X for the A.Y. 2024-25

under normal provisions of the Act

His tax liability is computed in the following manner:

Step 1 : ₹ 7,80,000 + ₹ 2,90,000 = ₹ 10,70,000.

Tax on ₹ 10,70,000 = ₹ 1,31,000

(i.e. 5% of ₹ 2,00,000 plus 20% of 5,00,000 plus 30% of 70,000)

Step 2 : ₹ 2,90,000 + ₹ 3,00,000 = ₹ 5,90,000.

Tax on ₹ 5,90,000 = ₹ 28,000

(i.e. 5% of ₹ 2,00,000 plus 20% of ₹ 90,000)

Step 3 : ₹ 1,31,000 – ₹ 28,000 = ₹ 1,03,000

Step 4 & 5: Total tax payable = ₹ 1,03,000 + 4% of ₹ 1,03,000 = ₹ 1,07,120.

(2) Amounts received by a member from the income of the HUF [Section 10(2)]

- (i) As explained in Chapter 1, a HUF is a 'person' and hence, a unit of assessment under the Act. Income earned by the HUF is assessable in its own hands.
- (ii) In order to prevent double taxation of one and the same income, once in the hands of the HUF which earns it and again in the hands of a member when it is paid out to him, section 10(2) provides that members of a HUF do not have to pay tax in respect of any amounts received by them from the family.
- (iii) The exemption applies only in respect of a payment made by the HUF to its member
 - (a) out of the income of the family or
 - (b) out of the income of the impartible estate belonging to the family.

(3) Share income of a partner [Section 10(2A)]

This clause exempts from tax a partner's share in the total income of the firm. In other words, the partner's share in the total income of the firm determined in accordance with the profit-sharing ratio will be exempt from tax.

Taxability of partner's share, where the income of the firm is exempt under Chapter III/ deductible under Chapter VI-A [Circular No. 8/2014 dated 31.03.2014]

Section 10(2A) provides that a partner's share in the total income of a firm which is separately assessed as such shall not be included in computing the total income of the partner. In effect, a partner's share of profits in such firm is exempt from tax in his hands.

Sub-section (2A) was inserted in section 10 by the Finance Act, 1992 with effect from 1.4.1993 consequent to change in the scheme of taxation of partnership firms. Since A.Y.1993-94, a firm is assessed as such and is liable to pay tax on its total income. A partner is, therefore, not liable to tax once again on his share in the said total income.

An issue has arisen as to the amount which would be exempt in the hands of the partners of a partnership firm, in cases where the firm has claimed exemption/deduction under Chapter III or Chapter VI-A.

The CBDT has clarified that the income of a firm is to be taxed in the hands of the firm only and the same can under no circumstances be taxed in the hands of its partners. Therefore, the entire profit credited to the partners' accounts in the firm would be exempt from tax in the hands of such partners, even if the income chargeable to tax becomes Nil in the hands of the firm on account of any exemption or deduction available under the provisions of the Act.

(4) Payments to Bhopal Gas Victims [Section 10(10BB)]

Any payment made to a person under Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985 and any scheme framed thereunder will be fully exempt.

However, payments made to any assessee in connection with Bhopal Gas Leak Disaster to the extent he has been allowed a deduction under the Act on account of any loss or damage caused to him by such disaster will not be exempted.

(5) Compensation received on account of disaster [Section 10(10BC)]

- (i) This clause exempts any amount received or receivable as compensation by an individual or his legal heir on account of any disaster.
- (ii) Such compensation should be granted by the Central Government or a State Government or a local authority.
- (iii) However, exemption would not be available in respect of compensation for alleviating any damage or loss, which has already been allowed as deduction under the Act.
- (iv) "Disaster" means a catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or manmade causes, or by accident or negligence. It should have the effect of causing -
 - (a) substantial loss of life or human suffering; or
 - (b) damage to, and destruction of, property; or
 - (c) damage to, or degradation of, environment.

It should be of such a nature or magnitude as to be beyond the coping capacity of the community of the affected area.

ILLUSTRATION 5

An amount of ₹ 5 lakhs was paid on 17.3.2024 to the parents of Amit by the Government of Chattisgarh as compensation to the aggrieved family, whose only son Amit lost his life in Maoist local bus bomb blast in Dantewada.

Examine with reasons, whether the amount of compensation received is chargeable to tax in A.Y. 2024-25.

SOLUTION

As per section 10(10BC), the meaning of “disaster” shall be derived from Disaster Management Act, 2005 which defines disaster to mean a catastrophe, mishap, calamity or grave occurrence in any area, arising from natural or manmade causes, or by accident or negligence. It should have the effect of causing substantial loss of life or human suffering or damage to, and destruction of property, or damage to, or degradation of environment. It should be of such a nature or magnitude to be beyond the coping capacity of the community of the affected area.

If, for this reason, any compensation is paid by the Central Government or by a State Government or by a local authority, then, the same will be exempt from tax. Accordingly, the amount of ₹ 5 lakhs received by the parents of deceased Amit from the Government of Chattisgarh for the disaster because of Dantewada bus bomb blast is exempt under section 10(10BC).

(6) Educational scholarships [Section 10(16)]

The value of scholarship granted to meet the cost of education would be exempt from tax in the hands of the recipient irrespective of the amount or source of scholarship.

(7) Payments to MPs & MLAs [Section 10(17)]

The following incomes of Members of Parliament or State Legislatures will be exempt:

- (i) **Daily Allowance** - Daily allowance received by any Member of Parliament or of State Legislatures or any Committee thereof.
- (ii) **Constituency Allowance of MPs** - In the case of a Member of Parliament, any allowance received under Members of Parliament (Constituency Allowance) Rules, 1986; and
- (iii) **Constituency allowance of MLAs** - Any constituency allowance received by any person by reason of his membership of any State Legislature under any Act or rules made by that State Legislature.

(8) Awards for literary, scientific and artistic works and other awards by the Government [Section 10(17A)]

Any payment, whether in cash or in kind -

- in pursuance of any award instituted in the public interest by the Central/ State Government or any body approved by the Central Government or
- as a reward by Central/ State Government for such purposes as may be approved by the Central Government in public interest,

will enjoy exemption under this clause.

(9) Pension received by recipient of gallantry awards [Section 10(18)]

- (i) **Exemption of Pension** - Any income by way of pension received by an individual is exempt from income-tax if -
- (a) such individual was an employee of Central or State Government and
 - (b) has been awarded “Param Vir Chakra” or “Maha Vir Chakra” or “Vir Chakra” or such other gallantry award notified by the Central Government in this behalf.
- (ii) **Exemption of Family Pension** - In case of the death of such individual, any income by way of family pension received by any member of the family of the individual shall also be exempt under this clause.
- (iii) **Meaning of Family** - Family, in relation to an individual, means –
- the spouse and children of the individual; and
 - the parents, brothers and sisters of the individuals or any of them wholly or mainly dependent on the individual.

Exemption of disability pension granted to disabled personnel of armed forces who have been invalided on account of disability attributable to or aggravated by such service [Circular No. 13/2019, dated 24.6.2019]

The entire disability pension, i.e. “disability element” and “service element” of pension granted to members of naval, military or air forces who have been invalided out of naval, military or air force service on account of bodily disability attributable to or aggravated by such service would be exempt from tax.

The CBDT has, vide this circular, clarified that exemption in respect of disability pension would be available to all armed forces personnel (irrespective of rank) who have been invalided out of such service on account of bodily disability attributable to or aggravated by such service. However, such tax exemption will be available only to armed forces personnel who have been invalided out of service on account of bodily disability attributable to or aggravated by such service and not to personnel who have been retired on superannuation or otherwise.

(10) Annual value of palaces of former rulers [Section 10(19A)]

The annual value of any one palace in the occupation of former Ruler during the relevant previous year would be excluded from the total income, provided the annual value was exempt before

28.12.1971 by virtue of the provisions of the prevailing orders, i.e., the Merged States (Tax Concessions) Order, 1949 or the Part B States (Tax Concessions) Order, 1950.

The Supreme Court has, in *Maharao Bhim Singh of Kota v. CIT* (2017) 390 ITR 532, observed that, in order to claim exemption from payment of income-tax on the residential palace of the Ruler under section 10(19A), it is necessary for the Ruler to satisfy the following conditions:

- (i) He should own the palace as his ancestral property;
- (ii) Such palace should be in his occupation as his residence; and
- (iii) The palace should be declared by the Central Government to be exempt from payment of Income-tax under paragraph 15(iii) of the 1950 Order.

The Supreme Court, accordingly, held that where part of the residential palace is found to be in occupation of the tenant and the remaining is in occupation of the Ruler for his residence, the Ruler is entitled to claim exemption for the whole of his residential palace under section 10(19A). Such exemption cannot be confined to that portion of the palace which is in his actual occupation thereby subjecting the income derived from the portion let out to payment of income-tax in the hands of the Ruler.

(11) Income of local authorities [Section 10(20)]

- (i) **Exempt income** - Following income arising to a local authority would be exempt
 - Income under the head house property; or
 - Income from Capital gains; or
 - Income from Other Sources; or
 - Income from trade or business carried on by it which accrues or arises
 - ✓ from the supply of commodity or service under its jurisdictional area
 - ✓ from the supply of water or electricity within or outside its own jurisdictional area.
- (ii) **Meaning of Local Authority** - For the purposes of this clause, "local authority" means the following:
 - (a) Panchayat
 - (b) Municipality
 - (c) Municipal Committee and District Board legally entitled to, or entrusted by the Government with the control or management of a Municipal or local Fund
 - (d) Cantonment Board

(12) Income of research associations approved under section 35(1)(ii)/(iii) [Section 10(21)]

This clause provides for exemption in respect of any income of research associations which are approved under section 35(1)(ii)/(iii)². This exemption has, however, been made subject to the following conditions:

- (i) **Application and accumulation for the objects** - It should apply its income or accumulate for application wholly and exclusively to its objects and provisions of section 11(2) and (3)³ would also apply in relation to such accumulation.
- (ii) **Approved modes of investment/ deposit** - The association should invest or deposit its funds in the forms or modes specified in section 11(5)⁴. This condition would however not apply to -
 - (a) any assets held by the research association where such assets form part of the corpus of the fund of the association as on 1-6-1973;
 - (b) any bonus shares allotted to the research institution, in respect of the shares mentioned above forming part of the corpus of such fund, etc.;
 - (c) any voluntary contributions received and maintained in the form of jewellery, furniture or other article as the Board may specify for any period during the previous year.
- (iii) **Exemption in relation voluntary contribution** – Exemption would not be denied in relation to voluntary contribution, other than voluntary contribution in cash or voluntary contribution of the nature referred in (a) to (c) above, subject to the condition that such voluntary contribution is not held by the association otherwise than in any one or more of the forms or modes specified in section 11(5), after the expiry of one year from the end of the previous year in which such asset is acquired.
- (iv) **Non-applicability of exemption in respect of business income** - The exemption will not apply to income of such association which are in the nature of profits and gains of business unless the business is incidental to the attainment of its objectives and separate books of account are maintained in respect of such business.
- (v) **Withdrawal of Approval** - The approval once granted may be withdrawn if at any time the Government is satisfied that –
 - (a) the research association has not applied its income in accordance with sections 11(2) and (3);

²Section 35(1)(ii)/(iii) will be discussed in Chapter 3

³Section 11(2) and (3) will be discussed in Chapter 10

⁴Section 11(5) will be discussed in Chapter 10

- (b) the research association has not invested or deposited its funds in accordance with point (ii) above.
- (c) the activities of the research association are not genuine;
- (d) the activities of the research association are not being carried out in accordance with the conditions imposed on the basis of which the approval was granted.

Such withdrawal shall be made after giving reasonable opportunity to the assessee. A copy of the order shall be sent to the Assessing Officer as well as the assessee.

(13) Income of professional associations [Section 10(23A)]

- (i) **Exempt and Non-exempt income** - All income arising to an association is exempt from inclusion in income, except the following categories of income, provided it satisfies the specified conditions:

- (a) income under the head 'income from house property';
- (b) income received for rendering any specific service; and
- (c) income by way of interest or dividends derived from its investments.

- (ii) **Conditions to be satisfied** - Associations or institutions must.

- established in India
- have as its object the control, supervision, regulation or encouragement of the profession of law, medicine, accountancy, engineering or architecture, or any other profession specified by the Central Government
- apply their income or accumulate it solely to their objects of establishment
- be approved by the Central Government by general or special order

- (iii) **Withdrawal of Approval** - However, approval once granted may be withdrawn if, at any time, the Government is satisfied that –

- (a) the association or institution has not applied or accumulated its income in accordance with the provisions of the section;

- (b) the activities of the association or institution are not being carried out in accordance with the conditions imposed on the basis of which the approval was granted.

Such withdrawal shall be made after giving reasonable opportunity to the assessee. A copy of the order shall be sent to the Assessing Officer as well as the assessee.

(14) Income of institutions established by armed forces [Section 10(23AA)]

Any income received by any person on behalf of any regimental fund or non-public fund established by the armed forces of the Union for the welfare of the past and present members of such forces or their dependents is exempt from tax.

Students may note that donations to such institutions will qualify for deduction under section 80G.

(15) Income of Funds established for welfare of employees of which such employees are members [Section 10(23AAA)]

A number of funds have been established for the welfare of employees or their dependents in which such employees themselves are members. These funds are utilised to provide benefits to a member on his superannuation, or in the event of his illness or illness of any member of his family, or to the dependents of a member on his death.

The exemption will be available to the funds only if the following conditions are fulfilled:

-  the fund should have been established for the welfare of employees or their dependents and for such purposes as may be notified by the Board
-  such employees should be the members of the fund
-  the fund should apply its income, or accumulate it for application, wholly and exclusively to the objects for which it is established
-  the fund shall invest its fund and contributions made by the employees and other sums received by it in any one mode specified u/s 11(5)
-  the fund should be approved by the Principal Commissioner or Commissioner in accordance with the prescribed rules

The approval shall have effect for such assessment year or years not exceeding three assessment years as may be specified in the order of approval.

(16) Income of Fund set up by Life Insurance Corporation or other insurer under pension scheme [Section 10(23AAB)]

Any income of a fund set up by the LIC of India or any other insurer under a pension scheme to which contribution is made by any person for receiving pensions from such fund. Such scheme should be approved by the Controller of Insurance or the IRDA.

(17) Income of institution established for development of Khadi and Village industries [Section 10(23B)]

- (i) **Institutions eligible for exemption** - The exemption will be available to institutions constituted as public charitable trusts or registered under the Societies Registration Act, 1860 or under any law corresponding to that Act in force in any part of India existing solely for development of khadi and village industries or both and not for purpose of profit.
- (ii) **Income eligible for exemption** - Income derived by such institutions from the production, sale or marketing of Khadi products or village industries would be exempt from income-tax.
- (iii) **Conditions for availing exemption** -
 - (a) The institution has to apply its income or accumulate it for application, solely for the development of khadi or village industries or both.
 - (b) They should be approved by the Khadi and Village Industries Commission.

The approval shall have effect for such assessment year or years not exceeding three assessment years as may be specified in the order of approval.
- (iv) **Withdrawal of Approval** - The approval once granted may be withdrawn if at any time the Government is satisfied that –
 - (a) the institution has not applied or accumulated its income in accordance with the provisions of the section;
 - (b) the activities of the institution are not being carried out in accordance with the conditions imposed on the basis of which the approval was granted.

Such withdrawal shall be made after giving reasonable opportunity to the assessee. A copy of the order shall be sent to the Assessing Officer as well as the assessee.

(18) Income of authorities set up under State or Provincial Act for promotion of Khadi and Village Industries [Section 10(23BB)]

Income derived by authorities similar to Khadi and Village Industries Board, set up under any State or Provincial Act, for the development of Khadi or Village industries in the state is exempt from tax.

(19) Income of authorities set up to administer religious or charitable trusts [Section 10(23BBA)]

Income of bodies or authorities established, constituted or appointed under any enactment for the administration of public religious or charitable trusts or endowments (including maths, temples, gurudwaras, wakfs, churches, synagogues, agiaries or other places of public religious worship) or societies for religious or charitable purpose is exempt from tax.

However, it is clarified that this section does not provide exemption in respect of income of any trust, endowment or society.

(20) Income of the IRDA [Section 10(23BBE)]

Any income of the IRDA established under section 3(1) of the IRDA Act, 1999 will be exempt.

(21) Income of Central Electricity Regulatory Commission [Section 10(23BBG)]

This clause provides exemption to any income of Central Electricity Regulatory Commission constituted under section 76(1) of the Electricity Act, 2003.

(22) Income of Prasar Bharati (Broadcasting Corporation of India) [Section 10(23BBH)]

Any income of the Prasar Bharati (Broadcasting Corporation of India) established under section 3(1) of the Prasar Bharati (Broadcasting Corporation of India) Act, 1990 is exempt.

(23) Income of certain funds or institutions [Section 10(23C)]

An exemption is available in respect of any income received by any person on behalf of the following entities:

- (i) the Prime Minister's National Relief Fund or the Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM CARES FUND) [Sub-clause (i)];
- (ii) the Prime Minister's Fund (Promotion of Folk Art) [Sub-clause (ii)];
- (iii) the Prime Minister's Aid to Students Fund [Sub-clause (iii)];
- (iv) the National Foundation for Communal Harmony [Sub-clause (iiia)];
- (v) the Swachh Bharat Kosh, set up by the Central Government [Sub-clause (iiiaa)];
- (vi) the Clean Ganga Fund, set up by the Central Government [Sub-clause (iiiaaa)];
- (vii) the Chief Minister's Relief Fund or the Lieutenant Governor's Relief Fund in respect of any State or Union Territory [Sub-clause (iiiaaaa)];

- (viii) any university or other educational institution exists solely for educational purposes and not for profit which is **wholly or substantially financed by the Government** [Sub-clause (iiiab)];
- (ix) any hospital or other institution **wholly or substantially financed by the Government**, which exists solely for philanthropic purposes and not for profit and which exists for the reception and treatment of persons suffering from illness or mental defectiveness or reception and treatment of convalescing persons or persons requiring medical attention or rehabilitation [Sub-clause (iiiac)];

If the government grant to a university or other educational institution, hospital or other institution during the relevant previous year exceeds **50%** of the total receipts (including any voluntary contributions), of such university or other educational institution, hospital or other institution, as the case may be, then, such university or other educational institution, hospital or other institution shall be considered as being **substantially financed by the Government** for that previous year.

- (x) any university or other educational institution existing solely for educational purposes and not for profit and aggregate annual receipts of the person from such university(ies) or educational institution(s) do not exceed ₹ 5 crore [Sub-clause (iiiad)];
- (xi) any hospital or other institution which exists solely for philanthropic purposes and not for profit and which exists for the reception and treatment of persons suffering from illness or mental defectiveness or reception and treatment of convalescing persons or persons requiring medical attention or rehabilitation if aggregate annual receipts of the person from such hospital(s) or institution(s) do not exceed ₹ 5 crore [Sub-clause (iiiae)];

If the person has receipts from university or universities or educational institution or institutions as referred to in (x) as well as from hospital or hospitals or institution or institutions as referred to in (xi), the exemptions would not apply, if the aggregate of annual receipts of the person from such university or universities or educational institution or institutions or hospital or hospitals or institution or institutions, exceed ₹ 5 crore;

- (xii) any other fund or institution for charitable purposes approved by the Principal Commissioner or Commissioner of Income-tax, having regard to the objects of the fund or institution and its importance throughout India or throughout any State or States [Sub-clause (iv)];
- (xiii) any trust (including any other legal obligation) or institution wholly for public religious or wholly for public religious and charitable purposes approved by the Principal Commissioner or Commissioner of Income-tax [Sub-clause (v)];

- (xiv) any university or other educational institutions which exists solely for educational purposes and not for profit approved by Principal Commissioner or Commissioner of Income-tax [Sub-clause (vi)];
- (xv) any hospital or other institution which exists solely for philanthropic purposes and not for profit and which exists for the reception and treatment of persons suffering from illness or mental defectiveness or reception and treatment of convalescing persons or persons requiring medical attention or rehabilitation approved by the Principal Commissioner or Commissioner of Income-tax [Sub-clause (via)].

Refer to “Chapter 10: Assessment of Trusts or institutions, Political Parties and Other special entities, wherein the provisions of section 10(23C) are discussed in detail.

(24) Income of Mutual Fund [Section 10(23D)]

- (i) The income of a Mutual Fund registered under the SEBI Act and regulations made thereunder or other Mutual Fund set up by a public sector bank/public financial institution/RBI subject to certain conditions is exempt.
- (ii) “Public sector bank” means SBI or any nationalised bank or a bank included in the category “other public sector banks” by the RBI, for example, IDBI Bank.

Note: The income of a mutual fund registered under the SEBI will be exempt without any conditions laid down by the Central Government. In the case of other mutual funds, the conditions will be applicable.

(25) Income of Investor Protection Funds set up by recognised stock exchanges in India [Section 10(23EA)]

- (i) Clause (23EA) excludes any income by way of contributions received from recognized stock exchanges and the members thereof, of an Investor Protection Fund set up by recognised stock exchanges in India, either jointly or separately, and notified by the Central Government in this behalf.
- (ii) Where any amount standing to the credit of the Fund and not charged to income-tax during any previous year is shared, either wholly or in part, with a recognised stock exchange, the whole of the amount so shared shall be deemed to be the income of the previous year in which such amount is so shared and shall accordingly be chargeable to income-tax.

(26) Specified income of Investor Protection Fund set up by commodity exchanges [Section 10(23EC)]

- (i) This clause exempts any income, by way of contributions received from commodity exchanges and the members thereof, of such Investor Protection Fund set up by commodity exchanges in India, either jointly or separately, as the Central Government may, by notification in the Official Gazette, specify in this behalf.
- (ii) Where any amount standing to the credit of the said Fund and not charged to income-tax during any previous year is shared, either wholly or in part, with a commodity exchange, the entire amount so shared shall be deemed to be the income of the previous year in which the amount is so shared and shall accordingly be chargeable to income-tax.
- (iii) A “commodity exchange” means a “registered association” as defined in section 2(jj) of the Forward Contracts (Regulation) Act, 1952 i.e., an association to which for the time being a certificate of registration has been granted by the Forward Markets Commission u/s 14B.

(27) Income of Investor Protection Fund set up by depositories [Section 10(23ED)]

- (i) Under section 10(23EA), any income by way of contributions from a recognised stock exchange received by an Investor Protection Fund set up by the recognised stock exchange is exempt from taxation.
- (ii) In line with section 10(23EA), section 10(23ED) provides that any income, by way of contribution from a depository, of such Investor Protection Fund set up by a depository in accordance with the regulations made under the SEBI Act, 1992 and the Depositories Act, 1996, will not be included while computing the total income of such investor protection fund.
- (iii) The Central Government, would, by way of notification in the Official Gazette, specify such investor protection funds set up by depositories in accordance with the SEBI and depositories regulations.
- (iv) Where any amount standing to the credit of the fund and not charged to income-tax during any previous year is shared wholly or partly with a depository, the amount so shared shall be deemed to be the income of the previous year in which such amount is shared. Accordingly, such amount would be chargeable to income-tax.
- (v) “Depository” means a company formed and registered under the Companies Act, 1956 and which has been granted a certificate of registration under section 12(1A) of the SEBI Act, 1992.

(28) Specified income of Core Settlement Guarantee Fund (SGF) set up by a recognized Clearing Corporation [Section 10(23EE)]

- (i) The Clearing Corporations are required, under the provisions of Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012 notified by SEBI, to establish a fund, called Core Settlement Guarantee Fund (Core SGF) for each segment of each recognized stock exchange to guarantee the settlement of trades executed in respective segments of the exchange.
- (ii) Under sections 10(23EA), 10(23EC) and 10(23ED), any income by way of contributions received from recognized stock exchanges or commodity exchanges and the members thereof or depositories of Investor Protection Fund set up by such recognised stock exchanges in India, or by commodity exchanges in India or by such depository, respectively, as the Central Government may notify in this behalf, are exempt from taxation.
- (iii) On parallel lines, section 10(23EE) exempts any specified income of such Core SGF set up by a recognized clearing corporation in accordance with the regulations, notified by the Central Government.
- (iv) Where any amount standing to the credit of the Fund and not charged to income-tax during any previous year is shared, either wholly or in part with the specified person, the whole of the amount so shared shall be deemed to be the income of the previous year in which such amount is shared, and shall accordingly be chargeable to income-tax.
- (v) **Meaning of certain terms:**

Terms	Meaning
Regulations	Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012 made under the SEBI Act, 1992 and Securities Contracts (Regulation) Act, 1956.
Recognised clearing corporation	Meaning assigned as per Regulation 2(1)(o) of the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012 made under the SEBI Act, 1992 and Securities Contracts (Regulation) Act, 1956 i.e., "Recognised clearing corporation" means a clearing corporation which is recognised by the SEBI under section 4 read with section 8A of the SEBI Act, 1992;
Specified Income	(a) the income by way of contribution received from specified persons; (b) the income by way of penalties imposed by the recognised clearing corporation and credited to the Core Settlement Guarantee Fund; or (c) the income from investment made by the Fund.

Specified person	(a) any recognised clearing corporation which establishes and maintains the Core Settlement Guarantee Fund; (b) any recognised stock exchange being shareholder in such recognised clearing corporation or a contributor to Core Settlement Guarantee Fund; and (c) any clearing member contributing to the Core Settlement Guarantee Fund.

(29) Income of trade unions [Section 10(24)]

Any income under the heads "Income from house property" and "Income from other sources" of a registered trade union, within the meaning of the Trade Unions Act, 1926, formed primarily for the purpose of regulating the relations between workmen and the employers or between workmen and workmen will be exempt.

Further, this exemption is also available in respect of an association of such registered unions.

(30) Income of provident funds, superannuation funds, gratuity funds [Section 10(25)]

Any income of a recognized provident fund (RPF) and of an approved superannuation fund or gratuity fund is exempt from tax and the trustees of these funds would not be liable to pay tax thereon.

The exemption also applies to -

- (i) the interest on securities which are held by or are the property of statutory provident fund (SPF) governed by the Provident Funds Act, 1925;
- (ii) the capital gains of the fund, if any, arising to it from the sale, exchange or transfer of such securities;
- (iii) any income received by the Board of Trustees constituted
 - under Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 and
 - under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952,
 on behalf of the Deposit Linked Insurance Funds established under these respective Acts.

(31) Income of Employees' State Insurance (ESI) Fund [Section 10(25A)]

The contributions paid under ESI Act, 1948 and all other moneys received on behalf of the ESI Corporation are paid into a Fund called the ESI Fund. This Fund is held and administered by the ESI Corporation. The amounts lying in the Fund are to be expended for payment of cash benefits and provision of medical treatment and attendance to insured persons and their families,

establishment and maintenance of hospitals and dispensaries, etc. Any income of the ESI Fund is exempted from income-tax.

(32) Income of member of a scheduled tribe [Section 10(26)]

A member of a Scheduled Tribe residing in -

- (i) any area specified in the Constitution i.e., The North Cachar Hills District, The Karbi Anglong District, The Bodoland Territorial Areas District, Khasi Hills District, Jaintia Hills District or The Garo Hills District or
- (ii) in the States of Manipur, Tripura, Arunachal Pradesh, Mizoram and Nagaland, or
- (iii) in Ladakh

is exempt from tax on his income arising or accruing -

- (a) from any source in the areas or States aforesaid.
- (b) by way of dividend or interest on securities.

(33) Specified income of a Sikkimese Individual [Section 10(26AAA)]

The following income, which accrues or arises to a Sikkimese individual, would be exempt from income-tax –

- (a) income from any source in the State of Sikkim; or
- (b) income by way of dividend or interest on securities.

(34) Income of an Agricultural Produce Market Committee or Board [Section 10(26AAB)]

Any income of an Agricultural Produce Market Committee or Board constituted under any law for the time being in force for the purpose of regulating the marketing of agricultural produce would be exempt.

(35) Income of a corporation etc. for the promotion of interests of members of Scheduled Casts or Tribes or backward classes or any two or all of them [Section 10(26B)]

Any income of a corporation (established by a Central, State or Provincial Act) or other body, institution or association (wholly financed by Government) formed for promotion of the interests of the members of Scheduled Castes or Tribes or backward classes or of any two or all of them is exempt from tax.

(36) Income of corporations established to protect interests of minority community [Section 10(26BB)]

Any income of a corporation established by the Central Government or any State Government for promoting the interests of the members of a minority community will be exempt from income tax.

Section 80G also provides tax relief in respect of donations made to these corporations.

(37) Income of corporation established for welfare and economic upliftment of ex-servicemen [Section 10(26BBB)]

Any income of a corporation established by a Central, State or Provincial Act for the welfare and economic upliftment of ex-servicemen, being citizens of India, would be exempt from income-tax.

(38) Income of a co-operative society for promoting interest of members of Scheduled castes or Tribes or both [Section 10(27)]

Any income of a co-operative society formed for promoting the interests of the members of either the scheduled castes or scheduled tribes or both will be exempted from being included in the total income of the society.

Conditions:

- (i) The membership of the co-operative society should consist of only other co-operative societies formed for similar purposes, and
- (ii) The finances of the society shall be provided by the Government and such other societies.

(39) Incomes of certain bodies like Coffee/Tea/Rubber Board, etc. [Section 10(29A)]

Under this clause, any income accruing or arising to the following bodies is exempt from tax:

- (i) the Coffee Board constituted under section 4 of the Coffee Act, 1942,
- (ii) the Rubber Board constituted under section 4(1) of the Rubber Board Act, 1947,
- (iii) the Tea Board established under section 4 of the Tea Act, 1953,
- (iv) the Tobacco Board constituted under the Tobacco Board Act, 1975,
- (v) the Marine Products Export Development Authority established under section 4 of the Marine Products Export Development Authority Act, 1972,
- (vi) the Agricultural and Processed Food Products Export Development Authority established under section 4 of the Agricultural and Processed Food Products Export Development Act, 1985,

- (vii) the Spices Board constituted under section 3(1) of the Spices Board Act, 1986,
- (viii) the Coir Board established under the Coir Industry Act, 1953.

(40) Tea board subsidy [Section 10(30)]

The amount of any subsidy received by any assessee engaged in the business of growing and manufacturing tea in India through or from the Tea Board will be wholly exempt from tax.

Conditions:

- (i) The subsidy should have been received under any scheme for replantation or replacement of the bushes or for rejuvenation or consolidation of areas used for cultivation of tea, as notified by the Central Government.
- (ii) The assessee should furnish a certificate from the Tea Board, as to the amount of subsidy received by him during the previous year, to the Assessing Officer.

(41) Other subsidies [Section 10(31)]

Amount of any subsidy received by an assessee engaged in the business of growing and manufacturing rubber, coffee, cardamom or other specified commodity in India, as notified by the Central Government, will be wholly exempt from tax.

Conditions:

- (i) The subsidies should have been received from or through the Rubber Board, Coffee Board, Spices Board or any other Board in respect of any other commodity under any scheme for replantation or replacement of rubber, coffee, cardamom or other plants or for rejuvenation or consolidation of areas used for cultivation of all such commodities.
- (ii) The assessee should furnish a certificate from the Board, as to the amount of subsidy received by him during the previous year, to the Assessing Officer.

(42) Specified income arising from any international sporting event in India [Section 10(39)]

- (i) This clause exempts income of the nature and to the extent, arising from any international sporting event in India, to the person or persons notified by the Central Government in the Official Gazette.
- (ii) Such international sporting event should -
 - (a) be approved by the international body regulating the international sport relating to such event;

- (b) have participation by more than two countries;
- (c) be notified by the Central Government in the Official Gazette for the purposes of this clause.

(43) Certain grants etc. received by a subsidiary from its Indian holding company engaged in the business of generation or transmission or distribution of power [Section 10(40)]

- (i) This clause exempts income of any subsidiary company by way of grant or otherwise received from an Indian company, being its holding company engaged in the business of generation or transmission or distribution of power.
- (ii) The receipt of such income should be for settlement of dues in connection with reconstruction or revival of an existing business of power generation.
- (iii) The exemption under this clause is available if the reconstruction or revival of any existing business of power generation is by way of transfer of such business to the Indian company notified under section 80-IA(4)(v)(a).

(44) Specified income of certain bodies or authorities [Section 10(42)]

- (i) This clause exempts income, of the nature and to the extent, arising to a body or authority, notified by the Central Government.
- (ii) Such body or authority should have been established or constituted or appointed -
 - (a) under a treaty or an agreement entered into by the Central Government with two or more countries or a convention signed by the Central Government;
 - (b) not for the purposes of profit.

(45) Income received by any person on behalf of NPS Trust [Section 10(44)]

The NPS Trust would exempt from the applicability of –

- (i) income-tax on any income received by any person for, or on behalf of, the NPS Trust [Section 10(44)]; and
- (ii) securities transaction tax on all purchases and sales of equity and derivatives by the NPS Trust.

Further, the NPS Trust shall receive all income without any deduction of tax at source. [Section 197A(1E)].

Thus, the NPS Trust, which was set up to manage the assets and funds under the New Pension System in the interest of the beneficiaries, would enjoy a “pass-through status”.

(46) Specified income of notified entities not engaged in commercial activity [Section 10(46)]

- (i) Section 10(46) provides for exemption of income arising to a body or authority or Board or Trust or Commission, **other than those covered under section 10(46A)**, or a class thereof, the nature and extent of which is to be specified by the Central Government.
- (ii) For availing the benefit of exemption under this clause, the body or authority or Board or Trust or Commission or a class thereof should be established or constituted by or under a Central, State or Provincial Act or constituted by the Central or State Government with the object of regulating or administering an activity for the benefit of the general public.
- (iii) Further, the body or authority or Board or Trust or Commission should –
 - (a) not be engaged in any commercial activity; and
 - (b) be notified by the Central Government in this behalf.

(47) Any income of notified entities established or constituted under a Central Act or State Act [Section 10(46A)]

- (i) Section 10(46A) provides for exemption of any income arising to a body or authority or Board or Trust or Commission, not being a company.
- (ii) For availing the benefit of exemption under this clause, the body or authority or Board or Trust or Commission, not being a company, should be established or constituted by or under a Central Act or State Act with one or more of the following purposes -
 - dealing with and satisfying the need for housing accommodation;
 - planning, development or improvement of cities, towns and villages;
 - regulating, or regulating and developing, any activity for the benefit of the general public; or
 - regulating any matter, for the benefit of the general public, arising out of the objects for which it has been created.
- (iii) Further, the body or authority or Board or Trust or Commission, not being a company should be notified by the Central Government in this behalf.

(48) Any income of National Credit Guarantee Trustee Company Ltd, credit guarantee fund or credit guarantee Fund Trust [Section 10(46B)]

Section 10(46B) provides exemption of any income accruing or arising to

- National Credit Guarantee Trustee Company Ltd., being a company established and wholly

financed by the Central Government for the purpose of operating credit guarantee funds established and wholly financed by the Central Government;

- *Credit guarantee funds established and wholly financed by the Central Government and managed by the National Credit Guarantee Trustee Company Ltd.;*
- *Credit Guarantee Fund Trust for Micro and Small Enterprises, being a trust created by the Government of India and the Small Industries Development Bank of India established under Small Industries Development Bank of India Act, 1989.*

(49) Income of notified infrastructure debt funds [Section 10(47)]

In order to give a fillip to infrastructure and encourage inflow of long-term foreign funds to this sector, the Central Government to notify infrastructure debt funds to be set up in accordance with the prescribed guidelines, the income of which would be exempt from tax.

(50) Certain income of Indian Strategic Petroleum Reserves Limited [Section 10(48C)]

Any income accruing or arising to the Indian Strategic Petroleum Reserves Limited, being a wholly owned subsidiary of the Oil Industry Development Board under the Ministry of Petroleum and Natural Gas, as a result of arrangement for replenishment of crude oil stored in its storage facility in pursuance of directions of the Central Government would be exempt.

However, exemption would not available in respect of an arrangement, if the crude oil is not replenished in the storage facility within three years from the end of the financial year in which the crude oil was removed from the storage facility for the first time.

(51) Income of an institution established for financing infrastructure and development [Section 10(48D)]

Any income accruing or arising to an institution established for financing the infrastructure and development, set up under an Act of Parliament and notified by the Central Government, for 10 consecutive assessment years beginning from the assessment year relevant to the previous year in which such institution is set up would be exempt.

(52) Income of a developmental financing institution licensed by RBI [Section 10(48E)]

Any income accruing or arising to a developmental financing institution, licensed by the RBI under an Act of Parliament referred to in section 10(48D) and notified by the Central Government, for 5 consecutive assessment years beginning from the assessment year relevant to the previous year in which the developmental financing institution is set up would be exempt.

Further, the Central Government may, by issuing notification, extend the exemption for a further period, not exceeding 5 more consecutive assessment year, subject to fulfillment of such conditions as may be specified in the said notification.

Students should carefully note that all the items under section 10 listed above are either wholly or partially exempt from taxation and the exempt portion is not even includible in the total income of the person concerned.



2.3 RESTRICTIONS ON ALLOWABILITY OF EXPENDITURE [SECTION 14A]

As per section 14A, notwithstanding anything to the contrary, expenditure incurred in relation to any exempt income is not allowed as a deduction while computing income under any of the five heads of income [Sub-section (1)].

The Assessing Officer is empowered to determine the amount of expenditure incurred in relation to such income which does not form part of total income in accordance with such method as may be prescribed [Sub-section (2)].

The method for determining expenditure in relation to exempt income is to be prescribed by the CBDT for the purpose of disallowance of such expenditure under section 14A. Such method should be adopted by the Assessing Officer in the following cases –

- (i) if he is not satisfied with the correctness of the claim of the assessee, having regard to the accounts of the assessee. [Sub-section (2)]; or
- (ii) where an assessee claims that no expenditure has been incurred by him in relation to income which does not form part of total income [Sub-section (3)].

Rule 8D lays down the method for determining the amount of expenditure in relation to income not includible in total income.

If the Assessing Officer, having regard to the accounts of the assessee of a previous year, is not satisfied with –

- (a) the correctness of the claim of expenditure by the assessee; or
- (b) the claim made by the assessee that no expenditure has been incurred

in relation to exempt income for such previous year, he shall determine the amount of expenditure in relation to such income in the manner provided hereunder –

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

- (i) the amount of expenditure directly relating to income which does not form part of total income;
- (ii) an amount equal to 1% of the annual average of the monthly averages of the opening and closing balances of the value of investment, income from which does not form part of total income.

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

Expenditure incurred during a previous year (say, P.Y. 2023-24) in relation to exempt income would be disallowed while computing total income of that previous year by applying the provisions of section 14A even though such exempt income has not accrued or arisen or has not been received during the said previous year.

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

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

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

The above position is clarified by the usage of the term “includible” in the heading to section 14A [Expenditure incurred in relation to income not includible in total income] and Rule 8D [Method for determining amount of expenditure in relation to income not includible in total income], which indicates that it is not necessary that exempt income should necessarily be included in a particular year’s income, for triggering disallowance. Also, the terminology used in section 14A is “income under the Act” and not “income of the year”, which again indicates that it is not material that the assessee should have earned such income during the financial year under consideration.

In effect, section 14A read along with Rule 8D provides for disallowance of expenditure even where the taxpayer has not earned any exempt income in a particular year.

SIGNIFICANT SELECT CASES

Case Law	
<i>CIT v. Kribhco (2012) 349 ITR 0618 (Delhi)</i>	
Issue	Analysis & Decision
Is section 14A applicable in respect of deductions, which are permissible and allowed under Chapter VI-A?	Deductions under Chapter VIA are different from the exclusions/exemptions provided under Chapter III. Section 14A is applicable only if an income is not included in the total income as per the provisions of Chapter III of the Income-tax Act, 1961. Therefore, no disallowance can be made u/s 14A in respect of income included in total income in respect of which deduction is allowable u/s 80C to 80U.

TEST YOUR KNOWLEDGE**Questions**

1. *Examine with reasons, based on the provisions of the Act, as to chargeability of the following receipts to tax in the assessment year 2024-25:*
 - (i) *Rent of ₹ 60,000 charged from tenants occupying houses constructed on the land situated in India and used for agricultural purposes. The tenants, working in the nearby industrial area, occupy these houses for their own residential purposes.*
 - (ii) *Income of ₹ 75,000 derived by Anand Nursery from the sale of seedlings grown without carrying out all the basic operations on land.*
 - (iii) *Mr. Gaitonde, born and brought up in the State of Sikkim, had a net profit of ₹ 2,25,000 from the business located in Sikkim and interest of ₹ 55,000 on the securities/ bonds issued by the Government of Rajasthan.*
2. *Mr. Akash, a resident Indian, earns income of ₹ 22 lakhs from sale of rubber manufactured from latex obtained from rubber plants grown by him in India and ₹ 30 lakhs from sale of rubber manufactured from latex obtained from rubber plants grown by him in Malaysia during the A.Y.2024-25. What would be his business income, assuming he has no other business?*
3. *Mr. Ram, a resident Indian, earns income of ₹ 15 lakhs from sale of coffee grown and cured in India during the A.Y.2024-25. His friend, Mr. Shyam, a resident Indian, earns income of ₹ 25 lakhs from sale of coffee grown, cured, roasted and grounded by him in India during the A.Y.2024-25. What would be the business income chargeable to tax in India of Mr. Ram and Mr. Shyam?*

Answers

1. (i) As per section 10(1), agricultural income is exempt from tax. The meaning and scope of agricultural income is defined in section 2(1A). According to *Explanation 2* to section 2(1A), any income derived from any building from the use of such building for any purpose (including letting for residential purposes or for the purpose of any business or profession) other than agriculture shall not be agricultural income. Therefore, the rent of ₹ 60,000 from letting out of houses constructed on agricultural land for residential purposes of industrial workers shall not be treated as agricultural

income by virtue of *Explanation 2* to section 2(1A). Hence, such income would be chargeable to tax.

- (ii) *Explanation 3* to section 2(1A) provides that the income derived from saplings or seedlings grown in a nursery shall be deemed to be agricultural income, whether or not the basic operations were carried out on land. Accordingly, the income of ₹ 75,000 derived by Anand Nursery from the sale of seedlings grown without carrying out all the basic operations on land shall be treated as agricultural income and exempt from tax under section 10(1).
 - (iii) Section 10(26AAA) exempts the income which accrues or arises to a Sikkimese individual from any source in the State of Sikkim and the income by way of dividend or interest on securities. Therefore, the income of Mr. Gaitonde from a business located in Sikkim and interest income on the securities/bonds of Government of Rajasthan shall not be subject to tax.
2. Since Mr. Akash is a resident, his global income would be taxable in India. Income of ₹ 30 lakhs from sale of rubber manufactured from latex obtained from rubber plants grown by him in Malaysia would be his business income since it is from rubber plants grown **outside India**. 35% income from sale of rubber manufactured from latex obtained from rubber plants grown by him in India would be taxable as business income and balance 65% would be exempt as agricultural income.
- Business income = 35% of ₹ 22 lakhs + ₹ 30 lakhs = ₹ 37.70 lakhs
3. In case of income derived from the sale of coffee grown and cured by the seller in India, 25% income on such sale is taxable as business income. In case of income derived from the sale of coffee grown, cured, roasted and grounded by the seller in India, 40% income on such sale is taxable as business income.
- Business income of Mr. Ram = 25% of ₹ 15 lakhs = ₹ 3.75 lakhs
- Business income of Mr. Shyam = 40% of ₹ 25 lakhs = ₹ 10 lakhs

[illegible]

PROFITS AND GAINS OF BUSINESS OR PROFESSION



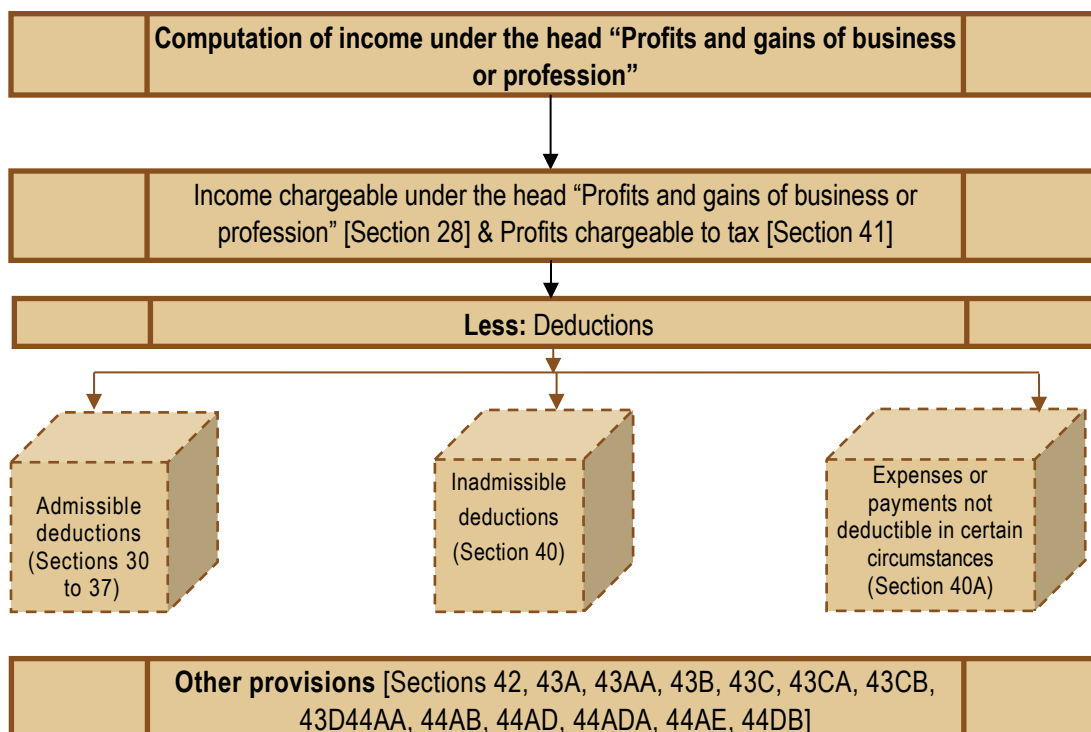
LEARNING OUTCOMES

After studying this chapter, you would be able to -

- ❑ **examine** whether a particular income would be chargeable to tax under the head “Profits and gains of business or profession” by analysing the provisions of section 28;
- ❑ **comprehend** the “Income Computation and Disclosure Standards” (ICDSs) and analyse and apply these standards to determine the income chargeable to tax under this head;
- ❑ **analyse and apply** the provisions of sections 30 to 37 to determine whether any particular expenditure /payment would be admissible as deduction while computing income under this head;
- ❑ **analyse and apply** the conditions contained under sections 40 & 40A to determine whether a particular expenditure/ payment would be admissible/ inadmissible as deduction while computing income under this head;
- ❑ **analyse and apply** the provisions of section 43B to allow/ disallow expenditures specified therein, in respect of which deduction is admissible only on actual payment;
- ❑ **examine** when certain receipts are deemed as income chargeable to tax under this head;

- ❑ **appreciate** the provisions of section 44AA relating to maintenance of books of account and identify the assessees, who are compulsorily required to maintain books of account;
- ❑ **appreciate** the provisions of section 44AB, listing the circumstances when an assessee is compulsorily required to get the books of account audited under Income-tax Act, 1961;
- ❑ **examine** the presumptive tax provisions contained in sections 44AD, 44ADA & 44AE to determine whether an assessee engaged in a business, profession or plying, hiring or leasing goods carriages can opt for such presumptive taxation schemes;
- ❑ **compute** income under this head applying the charging and deeming provisions, allowing the permissible deductions and disallowing the impermissible deductions.

CHAPTER OVERVIEW



3.1 MEANING OF ‘BUSINESS’ AND ‘PROFESSION’

The income chargeable to tax under this head is in respect of the profits and gains of **any business or profession**, carried on by an assessee at any time during the previous year.

Business	Profession
The term “ business ” has been defined in section 2(13) to “include any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture”.	The term “ profession ” has not been defined in the Act. It means an occupation requiring some degree of learning. The term ‘profession’ includes vocation as well [Section 2(36)]
Thus, a painter, a sculptor, an author, an auditor, a lawyer, a doctor, an architect and even an astrologer are persons who can be said to be carrying on a profession but not business.	

- It is, however, not material whether a person is carrying on a 'business' or 'profession' or 'vocation' since for purposes of assessment, profits from all these sources are treated and taxed alike (except in case of tax audit and presumptive income provisions, where the rates and threshold limits are different for business and profession).
- Business necessarily means a continuous exercise of an activity with a profit motive; nevertheless, profit from a single venture in the nature of trade may also be treated as business.

Meaning of 'Profits'

- (1) **Profits in cash or in kind:** Profits may be realised in money or in money's worth, i.e., in cash or in kind. Where profit is realised in any form other than cash, the cash equivalent of the receipt on the date of receipt must be taken as the value of the income received in kind.
- (2) **Capital receipts:** Capital receipts are not generally to be taken into account while computing profits under this head.
- (3) **Voluntary Receipts:** Payment voluntarily made by persons who were under no obligation to pay anything at all would be income in the hands of the recipient, if they were received in the course of a business or by the exercise of a profession or vocation. Thus, any amount paid to a lawyer by a person who was not a client, but who has been benefited by the lawyer's professional service to another would be assessable as the lawyer's income.
- (4) **Application of the gains of trade is immaterial:** Gains made even for the benefit of the community by a public body would be liable to tax. To attract the provisions of section 28, it is necessary that the business, profession or vocation should be carried on at least for some time during the accounting year but not necessarily throughout that year and not necessarily by the assessee-owner personally, but it should be under his direction and control.
- (5) **Income from distinct businesses:** The profits of each distinct business must be computed separately but the tax chargeable under this section is not on the separate income of every distinct business but on the aggregate profits of all the business carried on by the assessee.
- (6) **Computation of profits:** Profits should be computed after deducting the losses and expenses incurred for earning the income in the regular course of the business, profession, or vocation unless the loss or expenses is expressly or by necessary implication, disallowed by the Act. The charge is not on the gross receipts but on the profits and gains.

- (7) **Legality of income:** The illegality of a business, profession or vocation does not exempt its profits from tax. The revenue is not concerned with the taint of illegality in the income or its source. Thus, income tax is not restricted in its application to lawful business only.

However, expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law would not be allowable as deduction while computing profits of such business.



3.2 INCOME CHARGEABLE UNDER THIS HEAD [SECTION 28]

The various items of income chargeable to tax as income under the head 'profits and gains of business or profession' are as under:

- (1) **Income from business, profession or vocation:** Income arising to any person by way of profits and gains from the business or profession carried on by him at any time during the previous year.
- (2) **Any compensation or other payment due to or received by:**
- (i) Any person, by whatever name called, managing the whole or substantially the whole of -
 - (a) the affairs of an Indian company or
 - (b) the affairs in India of any other companyat or in connection with the termination of his management or office or the modification of any of the terms and conditions relating thereto;
 - (ii) any person, by whatever name called, holding an agency in India for any part of the activities relating to the business of any other person, at or in connection with the termination of the agency or the modification of any of the terms and conditions relating thereto;
 - (iii) any person, for or in connection with the vesting in the Government or in any corporation owned or controlled by the Government under any law for the time being in force, of the management of any property or business;
 - (iv) any person, by whatever name called, at or in connection with the termination or modification of the terms and conditions, of any contract relating to his business.

- (3) **Income from specific services performed for its members by a trade, professional or business:** Income derived by any trade, professional or similar associations from specific services rendered by them to their members. It may be noted that this forms an exception to the general principle of mutuality governing the assessment of income of mutual associations such as chambers of commerce, stock brokers' associations etc.

As a result, a trade, professional or similar association performing specific services for its members is to be deemed as carrying on business in respect of these services and on that assumption the income arising therefrom is to be subjected to tax. For this purpose, it is not necessary that the income received by the association should definitely or directly be related to these services.

- (4) **Incentives received or receivable by assessee carrying on export business:**

- (i) **Profit on sale of import entitlements:** Profits on sale of a licence granted under the Imports (Control) Order, 1955¹ made under the Imports and Exports (Control) Act, 1947².
- (ii) **Cash assistance against exports under any scheme of Govt:** Cash assistance (by whatever name called) received or receivable by any person against exports under any scheme of the Government of India.
- (iii) **Customs duty or excise duty re-paid or repayable as drawback:** Any Customs duty or Excise duty drawback repaid or repayable to any person against export under the Customs and Central Excise Duties Drawback Rules, 1971³.
- (iv) **Profit on transfer of Duty Entitlement Pass Book Scheme or Duty Free Replenishment Certificate:** Any profit on the transfer of the Duty Entitlement Pass Book Scheme⁴ or Duty Free Replenishment Certificate, being Duty Remission Scheme, under the export and import policy formulated and announced under section 5 of the Foreign Trade (Development and Regulation) Act, 1992.

- (5) **Value of any benefit or perquisite:** *The value of any benefit or perquisite arising from business or the exercise of any profession, whether –*

¹ Now Foreign Trade (Exemption from application of Rules in certain cases) Order, 1993

² Now Foreign Trade (Development and Regulation) Act, 1992

³ Now Customs and Central Excise Duties Drawback Rules, 2017

⁴ The pre-export DEPB scheme was abolished with effect from 1 April 2000. After several extensions through the years, the post-export scheme was phased out on 30 September 2011 and thereafter DEPB items were incorporated into the Duty Drawback Schedule with effect from 1 October 2011

- convertible into money or not or
- in cash or in kind or partly in cash and partly in kind

Example:

If a company provides rent free residential accommodation to a lawyer in consideration of professional services rendered by him to the company, the value of such accommodation would be assessable in the hands of the said lawyer as his income under the head "Profits and gains or business or profession".

- (6) **Sum due to, or received by, a partner of a firm:** Any interest, salary, bonus, commission or remuneration, by whatever name called, due to or received by a partner of a firm from such firm will be deemed to be income from business. However, where any interest, salary, bonus, commission or remuneration by whatever name called, or any part thereof has not been allowed to be deducted under section 40(b), in the computation of the income of the firm the income to be taxed shall be adjusted to the extent of the amount disallowed.

Example:

Suppose a firm pays interest at 20% p.a. simple interest to a partner. The allowable rate of interest is 12% p.a. Hence the excess 8% paid will be disallowed in the hands of the firm. Since the excess interest has suffered tax in the hands of the firm due to disallowance, the same will not be taxed in the hands of the partner. However the interest allowed to the extent of 12% p.a. in the hands of firm will be taxed in the hands of partner.

Exemption of share income of a partner [Section 10(2A)]

Section 10(2A) exempts from tax a partner's share in the total income of the firm. In other words, the partner's share in the total income of the firm determined in accordance with the profit-sharing ratio will be exempt from tax.

- (7) **Any sum whether received or receivable, in cash or kind, under an agreement**

- (i) **for not carrying out any activity** in relation to any business or profession; or

However, the following sums received or receivable would not be chargeable to tax under the head "profits and gains from business or profession":

- (a) any sum, whether received or receivable, in cash or kind, on account of transfer of the right to manufacture, produce or process any article or thing or right to carry on any business or profession, which is chargeable under the head "Capital gains".

- (b) any sum received as compensation, from the multilateral fund of the Montreal Protocol on Substances that Deplete the Ozone layer under the United Nations Environment Programme, in accordance with the terms of agreement entered into with the Government of India.

- (ii) **for not sharing** any know-how, patent, copyright, trade mark, licence, franchise or any other business or commercial right of similar nature or information or technique likely to assist in the manufacture or processing of goods or provision for services.

Meaning of certain terms

Term	Meaning
Agreement	Includes any arrangement or understanding or action in concert, - (A) whether or not such arrangement, understanding or action is formal or in writing; or (B) whether or not such arrangement, understanding or action is intended to be enforceable by legal proceedings;
Service	Service of any description which is made available to potential users and includes the provision of services in connection with business of any industrial or commercial nature such as accounting, banking, communication, conveying of news or information, advertising, entertainment, amusement, education, financing, insurance, chit funds, real estate, construction, transport, storage, processing, supply of electrical or other energy, boarding and lodging.

- (8) **Any sum received under a Keyman insurance policy:** Any sum received by the assessee, as an employer, under a Keyman insurance policy including the sum allocated by way of bonus on such policy will be taxable as income from business.
- (9) **Fair market value of inventory on its conversion as capital asset:** Fair market value of inventory on the date of its conversion or treatment as capital asset, determined in the prescribed manner, would be chargeable to tax as business income⁵.
- (10) **Sum received on account of capital asset referred under section 35AD:** Any sum received or receivable, in cash or kind, on account of any capital asset (in respect of which whole of the expenditure on such capital asset has been allowed as a deduction under section 35AD) being demolished, destroyed, discarded or transferred.

⁵ Rule 11UAB inserted to prescribe the manner of determination of fair market value (FMV) of the inventory on the date of conversion. For detailed reading of 11UAB of the Income-tax Rules, 1962, refer to Annexure 2 at the end of this module.

Where a specified person, being a partner of a firm or member of other AOP/Bol, receives during the P.Y. any stock in trade from a specified entity, being a firm or other AOP/Bol in connection with the dissolution or reconstitution of such specified entity, then, the specified entity would be deemed to have transferred such stock in trade to the specified person in the year in which it is received by the specified person. Profit and gains arising from such deemed transfer would be deemed to be the income of such specified entity in the same year of receipt by specified person and chargeable to income-tax under the “Profit and gains of business or profession” [Section 9B].

For detailed discussion on section 9B, refer Chapter 4 – “Capital Gains”.



3.3 SPECULATION BUSINESS

Explanation 2 to section 28 specifically provides that where an assessee carries on speculative business, that business of the assessee must be deemed as distinct and separate from any other business. This becomes necessary because section 73 provides that losses in speculation business unlike other business, cannot be set-off against the profits of any business other than a speculation business.

Likewise, a loss in speculation business carried forward to a subsequent year can be set-off only against the profit and gains of any speculative business in the subsequent year. Profits and losses resulting from speculative transaction must, therefore, be treated as separate and distinct from profits and gains of business and profession from any other business.

(1) Meaning of Speculative Transaction

“Speculative transaction” means a transaction in which a contract for the purchase or sales of any commodity including stocks and shares, is periodically or ultimately settled otherwise than by the actual delivery or transfer of the commodity or scrips [Section 43(5)].

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

However, this deeming provision does not apply to the following companies –

- (i) A company whose gross total income consists of mainly income chargeable under the heads “Interest on securities”, “Income from house property”, “Capital gains” and “Income from other sources”;
- (ii) A company, the principal business of which is –

- (a) the business of trading in shares; or
- (b) the business of banking; or
- (c) the granting of loans and advances.

Accordingly, if these companies as mentioned above carry on the business of purchase and sale of shares of other companies, they would not be deemed to be carrying on speculation business [Explanation to section 73].

(2) Transaction not deemed to be speculative transaction

The following forms of transactions shall not be deemed to be speculative transaction:

- (i) **Hedging contract in respect of raw materials or merchandise:** A contract in respect of raw materials or merchandise entered into by a person in the course of his manufacturing or merchandising business to guard against loss through future price fluctuations in respect of his contracts for the actual delivery of goods manufactured by him or merchandise sold by him; or
- (ii) **Hedging contract in respect of stocks and shares:** A contract in respect of stocks and shares entered into by a dealer or investor therein to guard against loss in his holdings of stocks and shares through price fluctuation; or
- (iii) **Forward contract:** A contract entered into by a member of a forward market or stock exchange in the course of any transaction in the nature of jobbing or arbitrage to guard against any loss which may arise in the ordinary course of his business as a member; or
- (iv) **Trading in derivatives:** An eligible transaction carried out in respect of trading in derivatives in a recognized stock exchange.

Meaning of certain terms

Term	Meaning
Eligible transaction	Any transaction,— (A) carried out electronically on screen-based systems through a stock broker or sub-broker or such other intermediary registered under section 12 of the Securities and Exchange Board of India Act, 1992 in accordance with the provisions of the Securities Contracts (Regulation) Act, 1956 or the Securities and Exchange Board of India Act, 1992 or the Depositories Act, 1996 and the rules, regulations or bye-laws made or directions issued under those Acts or by banks or mutual funds on a recognised stock exchange; and

	(B) which is supported by a time stamped contract note issued by such stock broker or sub-broker or such other intermediary to every client indicating in the contract note, the unique client identity number allotted under any Act referred to in (A) above and permanent account number;

- (v) **Trading in commodity derivatives:** An eligible transaction in respect of trading in commodity derivatives carried out in a recognised stock exchange, which is chargeable to commodities transaction tax under Chapter VII of the Finance Act, 2013.

However, the requirement of chargeability of commodities transaction tax is not applicable in respect of trading in agricultural commodity derivatives.

Meaning of certain terms

Term	Meaning
Eligible transaction	Any transaction,— (A) carried out electronically on screen-based systems through a member or an intermediary registered under the bye-laws, rules and regulations of the recognised stock exchange for trading in commodity derivative in accordance with the provisions of the Forward Contracts (Regulation) Act, 1952 and the rules, regulations or bye-laws made or directions issued under that Act on a recognised stock exchange; and (B) which is supported by a time stamped contract note issued by such member or an intermediary to every client indicating in the contract note, the unique client identity number allotted under the Act, rules, regulations or bye-laws referred to in (A) above, unique trade number and permanent account number



3.4 METHOD OF ACCOUNTING

(1) Method of Accounting (Section 145)

Section 145 of the Income-tax Act, 1961 provides for the method of accounting. Section 145(1) requires income chargeable under the head “Profits and gains of business or profession” or “Income from other sources” to be computed in accordance with either the cash or mercantile system of accounting regularly employed by the assessee, subject to the provisions of section 145(2).

However, as per section 145B, certain income would be taxable in the following manner:

- (i) interest received by an assessee on compensation or on enhanced compensation, shall be deemed to be the income of the year in which it is received. [Such income is taxable under the head “Income from other sources”]
- (ii) the claim for escalation of price in a contract or export incentives shall be deemed to be the income of the previous year in which reasonable certainty of its realisation is achieved.
- (iii) income referred to in section 2(24)(xviii) i.e., assistance in the form of a subsidy or grant or cash incentive or duty drawback or waiver or concession or reimbursement, by whatever name called, by the Central Government or a State Government or any authority or body or agency in cash or kind to the assessee shall be deemed to be the income of the previous year in which it is received, if not charged to income tax for any earlier previous year.

Under section 145(2), the Central Government is empowered to notify in the Official Gazette from time to time, **income computation and disclosure standards (ICDSs)** to be followed by any class of assessee or in respect of any class of income.

Accordingly, the Central Government has, vide *Notification No. S.O.3079(E) dated 29.9.2016*, notified ten ICDSs to be applicable from A.Y.2017-18.

The notified ICDSs have to be followed by all assessee (other than an individual or a Hindu undivided family who is not required to get his accounts of the previous year audited in accordance with the provisions of section 44AB) following the mercantile system of accounting, for the purposes of computation of income chargeable to income-tax under the head “Profits and gains of business or profession” or “Income from other sources”, from A.Y.2017-18.

The ten notified ICDSs are:

ICDS I	: Accounting Policies
ICDS II	: Valuation of Inventories
ICDS III	: Construction Contracts
ICDS IV	: Revenue Recognition
ICDS V	: Tangible Fixed Assets
ICDS VI	: The Effects of Changes in Foreign Exchange Rates
ICDS VII	: Government Grants
ICDS VIII	: Securities
ICDS IX	: Borrowing Costs
ICDS X	: Provisions, Contingent Liabilities and Contingent Assets

Cardinal features of Notified ICDSs

- (1) **Applicability:** All the notified ICDSs are applicable for computation of income chargeable under the head “Profits and gains of business or profession” or “Income from other sources” and **not** for the purpose of maintenance of books of accounts. This is stated in the Preamble at the beginning of each ICDS.
- (2) **Position in case of conflict with the Income-tax Act, 1961:** In the case of conflict between the provisions of the Income-tax Act, 1961 and the notified ICDSs, the provisions of the Act shall prevail to that extent. This is also stated in the Preamble at the beginning of each ICDS.
- (3) **Scope Paragraph:** Each of the ten notified ICDSs has a scope paragraph explaining what exactly the ICDS deals with. In some standards, the scope paragraph also specifies what the ICDS does not deal with.
- (4) **Transitional Provisions:** All ICDSs (except ICDS VIII on Securities) contain transitional provisions to facilitate first time adoption and prevent any tax leakage or any double taxation.
- (5) **Disclosure Requirements:** All ICDSs (except ICDS VI on Effects of changes in foreign exchange rates and ICDS VIII on Securities) contain specific disclosure requirements. The last paragraph(s) of these ICDSs is on disclosure.

Salient Features of the notified ICDSs

ICDS I: Accounting Policies

- ▶ This ICDS deals with significant accounting policies.
- ▶ While it recognizes the fundamental accounting assumptions of going concern, consistency and accrual, it does not recognize the concepts of “materiality” and “prudence” in selection of accounting policies.
- ▶ Treatment and presentation of transactions have to be governed by their substance and not merely by the legal form.
- ▶ Marked to market loss or an expected loss is not to be recognized unless recognition of such loss is in accordance with the provisions of any other ICDS.

ICDS II: Valuation of Inventories

- ▶ “Inventories” has been defined to mean assets held for –

- sale in the ordinary course of business;
 - in the process of production for such sale;
 - in the form of materials or supplies to be consumed in the production process or in the rendering of services.
- ▶ This ICDS requires inventory to be valued at cost or net realizable value, whichever is lower.
- ▶ This ICDS requires disclosure of the accounting policies adopted in measuring inventories including the cost formulae used and the total carrying amount of inventories and its classification appropriate to a person.

ICDS III: Construction Contracts

- ▶ This ICDS is required to be applied in determination of income for a construction contract of a contractor.
- ▶ It recognizes percentage of completion method (POCM) for recognizing contract revenue and contract costs associated with a construction contract.
- ▶ However, contract revenue and contract costs associated with the construction contract, which commenced on or before 31.3.2016 but not completed by the said date, can be recognised based on the method regularly followed by the person prior to the previous year 2016-17.
- ▶ This ICDS also contains certain disclosure requirements, like the amount of contract revenue recognized as revenue in the period, the methods used to determine the stage of completion of contracts in progress etc.

ICDS IV: Revenue Recognition

- ▶ This ICDS deals with the bases for recognition of revenue arising in the course of the ordinary activities of a person from –
- the sale of goods;
 - the rendering of services;
 - the use by others of the person's resources yielding interest, royalties or dividends.
- ▶ It does not, however, deal with the aspects of revenue recognition which are dealt with by other ICDSs.
- ▶ "Revenue" is the gross inflow of cash, receivables or other consideration arising in the course of the ordinary activities of a person from the sale of goods, from the rendering of

services, or from the use by others of the person's resources yielding interest, royalties or dividends. In an agency relationship, the revenue is the amount of commission and not the gross inflow of cash, receivables or other consideration.

- ▶ This ICDS also contains a provision wherein the revenue from sale of goods could be recognized when there is reasonable certainty of its ultimate collection.
- ▶ Revenue from service transactions is required to be recognized on the basis of percentage completion method. However, revenue can be recognised on a straight line basis over a specific period of time, when services are provided by an indeterminate number of acts over such period.
- ▶ Revenue from service contracts with duration of not more than 90 days to be recognised when the rendering of services under that contract is completed or substantially completed.
- ▶ This ICDS contains certain disclosure requirements, like the amount of revenue from service transactions recognized as revenue during the previous year, the method used to determine the stage of completion of service transactions in progress, information relating to service transactions in progress at the end of the previous year etc.

ICDS V: Tangible Fixed Assets

- ▶ This ICDS deals with the treatment of tangible fixed assets.
- ▶ "Tangible fixed asset" is an asset being land, building, machinery, plant or furniture held with the intention of being used for the purpose of producing or providing goods or services and is not held for sale in the normal course of business.
- ▶ This ICDS provides the components of actual cost of such assets and valuation of such assets in special cases.
- ▶ The fair value of a tangible fixed asset acquired in exchange for shares or other securities or another asset shall be its actual cost.
- ▶ The ICDS also provides that depreciation on such assets and income arising on transfer of such assets shall be computed in accordance with the provisions of the Income-tax Act, 1961.
- ▶ The ICDS also contains disclosure requirements in respect of such assets, like the description of asset or block of assets, rate of depreciation, actual cost or written down value, as the case may be, additions or deductions during the year with dates, depreciation allowable and written down value at the end of the year.

ICDS VI: The Effects of changes in foreign exchange rates

- ▶ This ICDS deals with treatment of transactions in foreign currencies, translating the financial statements of foreign operations and treatment of foreign currency transactions in the nature of forward exchange contracts.
- ▶ This ICDS requires exchange differences arising on settlement of monetary items or conversion thereof at last day of the previous year to be recognized as income or as expense in that previous year.
- ▶ In respect of non-monetary items, exchange differences arising on conversion thereof as at the last day of the previous year shall not be recognized as income or as expense in that previous year.
- ▶ At the last day of each previous year, foreign currency monetary items shall be converted into reporting currency by applying the closing rate.
- ▶ Non-monetary items in a foreign currency shall be converted into reporting currency by using the exchange rate at the date of the transaction.
- ▶ Non-monetary item being inventory which is carried at net realisable value denominated in a foreign currency shall be reported using the exchange rate that existed when such value was determined.
- ▶ The ICDS contains provisions for initial recognition, conversion at the last date of the previous year and recognition of exchange differences. These provisions shall be subject to the provisions of section 43A of the Income-tax Act, 1961 and Rule 115 of the Income-tax Rules, 1962.

ICDS VII: Government Grants

- ▶ This ICDS deals with the treatment of government grants. It recognizes that government grants are sometimes called by other names such as subsidies, cash incentives, duty drawbacks etc.
- ▶ This ICDS does not deal with Government assistance other than in the form of Government grants and Government participation in the ownership of the enterprise.
- ▶ It requires recognition of Government Grants when there is a reasonable assurance that the person shall comply with the conditions attached to them and the grants shall be received. However, it also states that recognition of Government grant shall not be postponed beyond the date of actual receipt.
- ▶ This ICDS requires Government grants relatable to depreciable fixed assets to be reduced from actual cost/WDV. It further provides that where the Government grant is not directly relatable to the asset acquired, then a pro-rata reduction of the amount of grant

should be made in the same proportion as such asset bears to all assets with reference to which the Government grant is so received.

- ▶ The standard requires grants relating to non-depreciable fixed assets to be recognized as income over the same period over which the cost of meeting such obligations is charged to income.
- ▶ The standard also requires Government grants receivable as compensation for expenses or losses incurred in a previous financial year or for the purpose of giving immediate financial support to the person with no further related costs to be recognized as income of the period in which it is receivable.
- ▶ All other Government Grants have to be recognized as income over the periods necessary to match them with the related costs which they are intended to compensate.
- ▶ The standard contains certain disclosure requirements, like nature and extent of Government grants recognized during the previous year as income, nature and extent of Government grants not recognized during the previous year as income and reasons thereof etc.

ICDS VIII: Securities

- ▶ This ICDS deals with securities.
- ▶ There are two parts. Part A deals with securities held as stock-in-trade. Part B deals with securities held by a scheduled bank or public financial institutions formed under a Central or a State Act or so declared under the Companies Act, 1956 or the Companies Act, 2013.
- ▶ It requires securities (referred to in Part A) to be recognized at actual cost on acquisition, which shall comprise of its purchase price and include acquisition charges like brokerage, fees, tax, duty or cess.
- ▶ The actual cost of a security (referred to in Part A) acquired in exchange for other securities or another asset shall be the fair value of the security so acquired.
- ▶ Subsequently, at the end of any previous year, securities held as stock-in-trade have to be valued at actual cost initially recognized or net realizable value at the end of that previous year, whichever is lower.
- ▶ It goes on to provide that such comparison of actual cost initially recognized and net realizable value has to be done category-wise and not for each individual security.
- ▶ Where actual cost initially recognized cannot be ascertained by reference to specific identification, use of "First in First Out" method or "Weighted Average Cost" formula is permitted for subsequent measurement of securities held as stock-in-trade (other than unlisted or unquoted securities) referred to in Part A.

- ▶ Securities referred to in Part B to be classified, recognised and measured in accordance with the extant guidelines issued by the RBI in this regard. Any claim for deduction in excess of the said guidelines will not be taken into account. To this extent, the provisions of ICDS VI on the effect of changes in foreign exchange rates relating to forward exchange contracts would not apply.

ICDS IX: Borrowing Costs

- ▶ This ICDS deals with the treatment of borrowing costs. It does not deal with the actual or imputed cost of owners' equity and preference share capital.
- ▶ It requires borrowing costs which are directly attributable to the acquisition, construction or production of a qualifying asset to be capitalized as part of the cost of that asset. Other borrowing costs have to be recognized in accordance with the provisions of the Act.
- ▶ Qualifying asset has been defined to mean –
 - land, building, machinery, plant or furniture, being tangible assets;
 - know-how, patents, copyrights, trade marks, licences, franchises or any other business or commercial rights of similar nature, being intangible assets;
 - inventories that require a period of twelve months or more to bring them to a saleable condition.
- ▶ This ICDS requires capitalization of specific borrowing costs and general borrowing costs.
- ▶ This ICDS provides the formula for capitalization of borrowing costs when funds are borrowed generally and used for the purpose of acquisition, construction or production of a qualifying asset.
- ▶ For the purpose of computing the amount of borrowing costs to be capitalized, in a case where the funds are not borrowed specifically for the purposes of acquisition, construction or production of a qualifying asset, a qualifying asset would be such asset that necessarily require a period of 12 months or more for its acquisition, construction or production.
- ▶ It also provides as to when capitalization of borrowing costs would commence and cease.
- ▶ It requires disclosure of the accounting policy adopted for borrowing costs and the amount of borrowing costs capitalized during the year.

ICDS X: Provisions, Contingent Liabilities and Contingent Assets

- ▶ This ICDS deals with Provisions, Contingent Liabilities and Contingent Assets. However, it does not deal with provisions, contingent liabilities and contingent assets –

- resulting from financial instruments,
- resulting from executory contracts,
- arising in insurance business from contracts with policyholders and
- covered by another ICDS.

It also does not deal with recognition of revenue dealt with by ICDS on Revenue Recognition.

- ▶ The ICDS specifies the conditions for recognition of a provision, namely, existence of a present obligation as a result of a past event, reasonable certainty that outflow of resources embodying economic benefits will be required to settle the obligation and making a reliable estimate of the amount of the obligation.
- ▶ It provides that a person shall not recognize a contingent liability or a contingent asset. However, it requires contingent assets to be assessed continually. When it becomes reasonably certain that inflow of economic benefit will arise, the asset and related income have to be recognized in the previous year in which the change occurs.
- ▶ It contains provisions for measurement and review of a provision and asset and related income.
- ▶ It also provides that a provision shall be used only for expenditures for which the provision was originally recognized.
- ▶ The ICDS also contains specific disclosure requirements in respect of each class of provision, asset and related income recognized.

Clarification on Income Computation and Disclosure Standards (ICDS) notified under section 145(2) of the Income-tax Act, 1961 – [Circular No. 10/2017, dated 23-03-2017]

After notification of ICDS, it was brought to the notice of the CBDT by the stakeholders that certain provisions of ICDS may require amendment/ clarification for proper implementation. The matter was referred to an expert committee. The Committee after duly consulting the stakeholders in this regard has recommended a two-fold approach for the smooth implementation of ICDS i.e., amendment to the provisions of ICDS in respect of certain issues and issuance of clarifications by way of FAQs for the rest of issues.

The CBDT has, vide this circular, issued the following clarification on other issues:

Question 1: *Preamble of ICDS I states that this ICDS is applicable for computation of income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" and not for the purposes of maintenance of books of account. However, Para 1 of ICDS I*

states that it deals with significant accounting policies. Accounting policies are applied for maintenance of books of accounts and preparing financial statements. What is the interplay between ICDS I and maintenance of books of accounts?

Answer: As stated in the Preamble, ICDS is not meant for maintenance of books of accounts or preparing financial statements. Persons are required to maintain books of accounts and prepare financial statements as per accounting policies applicable to them. For example, companies are required to maintain books of account and prepare financial statements as per requirements of Companies Act, 2013. The accounting policies mentioned in ICDS-I being fundamental in nature shall be applicable for computing income under the heads "Profits and gains of business or profession" or "Income from other sources".

Question 2: *Certain ICDS provisions are inconsistent with judicial precedents. Whether these judicial precedents would prevail over ICDS?*

Answer: The ICDS have been notified after due deliberation and after examining judicial views for bringing certainty on the issues covered by it. Certain judicial pronouncements were pronounced in the absence of authoritative guidance on these issues under the Act for computing Income under the head "Profits and gains of business or profession" or Income from other sources. Since certainty is now provided by notifying ICDS under section 145(2), the provisions of ICDS shall be applicable to the transactional issues dealt therein in relation to assessment year 2017-18 and subsequent assessment years.

Question 3: *Does ICDS apply to non-corporate taxpayers who are not required to maintain books of account and/or those who are covered by presumptive scheme of taxation like sections 44AD, 44AE, 44ADA, 44B, 44BB, 44BBA, etc. of the Act?*

Answer: ICDS is applicable to specified persons having income chargeable under the head 'Profits and gains of business or profession' or 'Income from other sources'. Therefore, the relevant provisions of ICDS shall also apply to the persons computing income under the relevant presumptive taxation scheme. For example, for computing presumptive income of a partnership firm under section 44AD of the Act, the provisions of ICDS on Construction Contract or Revenue recognition shall apply for determining the receipts or turnover, as the case may be.

Question 4: *If there is conflict between ICDS and other specific provisions of the Income-tax Rules, 1962 governing taxation of income like rules 9A, 9B etc. of the Rules, which provisions shall prevail?*

Answer: ICDS provides general principles for computation of income. In case of conflict, if any, between the provisions of Rules and ICDS, the provisions of Rules, which deal with specific circumstances, shall prevail.

Question 5: *ICDS is framed on the basis of accounting standards notified by Ministry of Corporate Affairs (MCA) vide Notification No. GSR 739(E) dated 7th December, 2006 under section 211(3C) of erstwhile Companies Act 1956. However, MCA has notified in February, 2015 a new set of standards called 'Indian Accounting Standards' (Ind-AS). How will ICDS apply to companies which adopted Ind-AS?*

Answer: ICDS shall apply for computation of taxable income under the head "Profit and gains of business or profession" or "Income from other sources" under the Income-tax Act. This is irrespective of the accounting standards adopted by companies i.e. either Accounting Standards or Ind-AS.

Question 6: *Whether ICDS shall apply to computation of Minimum Alternate Tax (MAT) under section 115JB of the Act or Alternate Minimum Tax (AMT) under section 115JC of the Act?*

Answer: MAT under section 115JB of the Act is computed on 'book profit' that is net profit as shown in the Profit and Loss Account prepared under the Companies Act subject to certain specified adjustments. Since, the provisions of ICDS are applicable for computation of income under the regular provisions of the Act, the provisions of ICDS shall not apply for computation of MAT.

AMT under section 115JC of the Act is computed on adjusted total income which is derived by making specified adjustments to total income computed as per the regular provisions of the Act. Hence, the provisions of ICDS shall apply for computation of AMT.

Question 7: *Whether the provisions of ICDS shall apply to Banks, Non-banking financial institutions, Insurance companies, Power sector etc.?*

Answer: The general provisions of ICDS shall apply to all persons unless there are sector specific provisions contained in the ICDS or the Act. For example, ICDS VIII contains specific provisions for banks and certain financial institutions and Schedule I of the Act contains specific provisions for Insurance business.

Question 8: *Para 4(ii) of ICDS-1 provides that Mark to Market (MTM) loss or an expected loss shall not be recognized unless the recognition is in accordance with the provisions of any other ICDS. Whether similar consideration applies to recognition of MTM gain or expected incomes?*

Answer: Same principle as contained in ICDS-I relating to MTM losses or an expected loss shall apply *mutatis mutandis* to MTM gains or an expected profit.

Question 9: *ICDS-1 provides that an accounting policy shall not be changed without 'reasonable cause'. The term 'reasonable cause' is not defined. What shall constitute 'reasonable cause'?*

Answer: Under the Act, 'reasonable cause' is an existing concept and has evolved well over a period of time conferring desired flexibility to the tax payer in deserving cases.

Question 10: *Which ICDS would govern derivative instruments?*

Answer: ICDS -VI (subject to para 3 of ICDS-III) provides guidance on accounting for derivative contracts such as forward contracts and other similar contracts. For derivatives, not within the scope of ICDS-VI, provisions of ICDS-1 would apply.

Question 12: *Since there is no specific scope exclusion for real estate developers and Build - Operate-Transfer (BOT) projects from ICDS IV on Revenue Recognition, please clarify whether ICDS-III and ICDS-IV should be applied by real estate developers and BOT operators. Also, whether ICDS is applicable for leases.*

Answer: At present, there is no specific ICDS notified for real estate developers, BOT projects and leases. Therefore, relevant provisions of the Act and ICDS shall apply to these transactions as may be applicable.

Question 13: *The condition of reasonable certainty of ultimate collection is not laid down for taxation of interest, royalty and dividend. Whether the taxpayer is obliged to account for such income even when the collection thereof is uncertain?*

Answer: As a principle, interest accrues on time basis and royalty accrues on the basis of contractual terms. Subsequent non-recovery in either cases can be claimed as deduction in view of amendment to section 36(1)(vii). Further, the provision of the Act (e.g. Section 43D) shall prevail over the provisions of ICDS.

Question 14: *Whether ICDS is applicable to revenues which are liable to tax on gross basis like interest, royalty and fees for technical services for non-residents u/s. 115A of the Act.*

Answer: Yes, the provisions of ICDS, also apply for computation of these incomes on gross basis for arriving at the amount chargeable to tax.

Question 15: *Para 8 of ICDS-V states expenditure incurred on commissioning of project, including expenditure incurred on test runs and experimental production shall be capitalized. It also states that expenditure incurred after the plant has begun commercial production i.e., production intended*

for sale or captive consumption shall be treated as revenue expenditure. What shall be the treatment of expense incurred after the conduct of test runs and experimental production but before commencement of commercial production?

Answer: As clarified in Para 8 of ICDS-V, the expenditure incurred till the plant has begun commercial production, that is, production intended for sale or captive consumption, shall be treated as capital expenditure.

Question 18: If the taxpayer sells a security on 30th April 2023. The interest payment dates are December and June. The actual date of receipt of interest is on 30th June 2023 but the interest on accrual basis has been accounted as income on 31st March 2023. Whether the taxpayer shall be permitted to claim deduction of such interest i.e. offered to tax but not received while computing the capital gain?

Answer: Yes, the amount already taxed as interest income on accrual basis shall be taken into account for computation of income arising from such sale.

Question 19: Para 9 of ICDS-VIII on securities requires securities held as stock-in-trade shall be valued at actual cost initially recognised or net realisable value (NRV) at the end of that previous year, whichever is lower. Para 10 of Part-A of ICDS-VIII requires the said exercise to be carried out category wise. How the same shall be computed?

Answer: For subsequent measurement of securities held as stock-in-trade, the securities are first aggregated category wise. The aggregate cost and NRV of each category of security are compared and the lower of the two is to be taken as carrying value as per ICDS-VIII. This is illustrated below –

Security	Category	Cost	NRV	Lower of cost or NRV	ICDS Value
A	Share	100	75	75	535
B	Share	120	150	120	
C	Share	140	120	120	
D	Share	200	190	190	
	Total	560	535	505	
E	Debt Security	150	160	150	
F	Debt Security	105	90	90	
G	Debt Security	125	135	125	
H	Debt Security	220	230	220	
	Total	600	615	585	
Securities Total		1160	1150	1090	1135

Question 20: *There are specific provisions in the Act read with Rules under which a portion of borrowing cost may get disallowed under sections like 14A, 43B, 40(a)(i), 40(a)(ia), 40A(2)(b), etc. of the Act. Whether borrowing costs to be capitalized under ICDS-IX should exclude portion of borrowing costs which gets disallowed under such specific provisions?*

Answer: Since specific provisions of the Act override the provisions of ICDS, it is clarified that borrowing costs to be considered for capitalization under ICDS IX shall exclude those borrowing costs which are disallowed under specific provisions of the Act. Capitalization of borrowing cost shall apply for that portion of the borrowing cost which is otherwise allowable as deduction under the Act.

Question 21: *Whether bill discounting charges and other similar charges would fall under the definition of borrowing cost?*

Answer: The definition of borrowing cost is an inclusive definition. Bill discounting charges and other similar charges are covered as borrowing cost.

Question 22: *How to allocate borrowing costs relating to general borrowing as computed in accordance with formula provided under Para 6 of ICDS-IX to different qualifying assets?*

Answer: The capitalization of general borrowing cost under ICDS-IX shall be done on asset by-asset basis.

Question 24: *Expenditure on most post-retirement benefits like provident fund, gratuity, etc. are covered by specific provisions. There are other post-retirement benefits offered by companies like medical benefits. Such benefits are covered by AS-15 for which no parallel ICDS has been notified. Whether provision for these liabilities are excluded from scope of ICDS X?*

Answer: It is clarified that provisioning for employee benefit which are otherwise covered by AS 15 shall continue to be governed by specific provisions of the Act and are not dealt with by ICDS-X.

Question 25: *ICDS-1 requires disclosure of significant accounting policies and other ICDS requires specific disclosures. Where is the taxpayer required to make such disclosures specified in ICDS?*

Answer: Net effect on the income due to application of ICDS is to be disclosed in the Return of income. The disclosures required under ICDS shall be made in the tax audit report in Form 3CD. However, there shall not be any separate disclosure requirements for persons who are not liable to tax audit.

Notified ICDS and Corresponding AS and IND AS

ICDS	Corresponding AS	Corresponding IND AS
ICDS I - Accounting Policies	AS - 1 Disclosure of Accounting Policies	Ind AS 1 - Presentation of Financial Statements
ICDS II - Valuation of Inventories	AS - 2 Valuation of Inventories (Revised)	Ind AS - 2 Inventories
ICDS III - Construction Contracts	AS 7 - Construction Contracts	Ind AS 115 - Revenue from contracts with customers
ICDS IV - Revenue Recognition	AS 9 - Revenue Recognition	Ind AS 115 - Revenue from contracts with customers
ICDS V - Tangible Fixed Assets	AS 10 - Property, Plant and Equipment (Revised)	Ind AS 16 Property, Plant and Equipment
ICDS VI - The Effects of changes in foreign exchange rates	AS 11 - The Effects of changes in foreign exchange rates	Ind AS 21 - The Effects of changes in foreign exchange rates
ICDS VII - Government Grants	AS 12 - Accounting for Government Grants	Ind AS 20 - Accounting for Government Grants and Disclosure of Government Assistance
ICDS VIII - Securities	AS 13 - Accounting for Investments (Revised)	Ind AS 40 - Investment Property, Ind AS109 - Financial Instruments, Ind AS 105 - Non-current Assets held for Sale and Discontinued Operations
ICDS IX - Borrowing Costs	AS 16 - Borrowing Costs	Ind AS 23 - Borrowing Costs
ICDS X - Provisions, Contingent Liabilities and Contingent Assets	AS 29 - Provisions, Contingent Liabilities and Contingent Assets (Revised)	Ind AS 37 - Provisions, Contingent Liabilities and Contingent Assets

Student may note that the text of the notified ICDSs has been given as Annexure 1 at the end of this Module.

(2) Method of Accounting in certain cases [Section 145A]

The Delhi High Court had, in the case of *Chamber of Tax Consultants & Anr vs. Union of India & Ors*, held that certain provisions of ICDSs are *ultra vires* the Act, since they seek to overcome binding judicial precedents and are, thus, contrary to the law settled by the Supreme Court and various High Courts.

In order to bring certainty in the wake of such judicial pronouncements section 36(1)(xviii), section 40A(13), section 43AA, section 43CB, section 145A and section 145B have been inserted in the Income-tax Act, 1961 with effect from A.Y.2017-18.

Section 145A provides that for the purpose of determining the income chargeable under the head “Profits and gains of business or profession”:

- (a) the valuation of inventory shall be made at lower of actual cost or net realizable value computed in accordance with notified ICDS i.e., ICDS II “Valuation of inventories”.
- (b) the valuation of purchase and sale of goods or services and of inventory shall be adjusted to include the amount of any tax, duty, cess or fee actually paid or incurred by the assessee to bring the goods or services to the place of its location and condition as on the date of valuation.
- (c) inventory being securities not listed or listed but not quoted on a recognised stock exchange with regularity from time to time shall be valued at actual cost initially recognised in accordance with the notified ICDS i.e., ICDS VIII: Securities.
- (d) inventory being listed and quoted securities, shall be valued at lower of actual cost or net realisable value in accordance with notified ICDS i.e., ICDS VIII: Securities. Such comparison of actual cost and net realisable value shall be done category-wise.

However, inventories being securities held by a scheduled bank or public financial institution shall be valued in accordance with notified ICDS after taking into account the extant guidelines issued by the RBI.

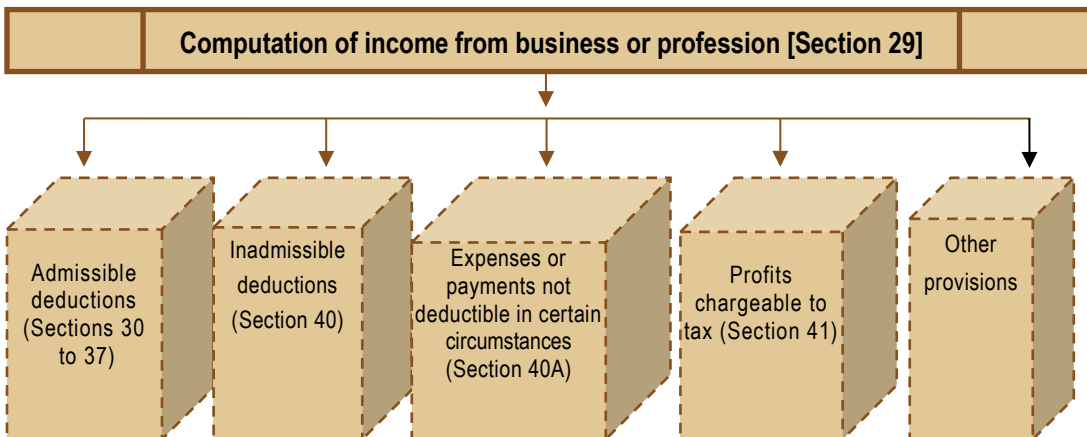
Note: Student may note that section 36(1)(xviii), section 40A(13), section 43AA, section 43CB, and section 145B are discussed at respective places in this chapter.



3.5 COMPUTATION OF PROFITS AND GAINS FROM BUSINESS OR PROFESSION [SECTION 29]

According to section 29, the profits and gains of any business or profession are to be computed in accordance with the provisions contained in sections 30 to 43D. It must, however, be remembered

that in addition to the specific allowances and deductions stated in sections 30 to 36, the Act further permits allowance of items of expenses under the residuary section 37(1), which extends the allowance to items of business expenditure not covered by sections 30 to 36, where these are allowable according to accepted commercial practices.



3.6 ADMISSIBLE DEDUCTIONS

(1) Rent, rates, taxes, repairs and insurance for buildings [Section 30]

Section 30 allows deduction in respect of the rent, rates, taxes, repairs and insurance of buildings used by the assessee for the purpose of his business or profession.

- **Where the premises are occupied by the assessee as a tenant,** the rent paid for such premises and the amount paid on account of cost of repairs, if the assessee has undertaken to bear such repairs to the premises.
- **Occupation of premises by the assessee being the owner:** Where the assessee himself is owner of the premises and occupies them for his business purposes, no notional rent would be allowed under this section. However, where a firm runs its business in the premises owned by one of its partners, the rent payable to the partner will be an allowable deduction to the extent it is reasonable and is not excessive.
- **Repairs of the premises:** Apart from rent, this section allows deductions in respect of expenses incurred on account of repairs to building in case where
 - ◆ the assessee is the owner of the building or
 - ◆ the assessee is a tenant who has undertaken to bear the cost of repairs to the premises.

- ◆ Even if the assessee occupies the premises otherwise than as a tenant or owner, i.e., as a lessee, licensee or mortgagee with possession, he is entitled to a deduction under the section in respect of current repairs to the premises.
- **Cost of repairs and current repairs of capital nature not to be allowed as deduction [Explanation to section 30]:** Amount paid on account of the cost of repairs to the premises occupied by the assessee as a tenant and the amount paid on account of current repairs to the premises occupied by the assessee, otherwise than as a tenant, shall not include any capital nature expenditure. In other words, cost of repairs and current repairs other than of capital nature is allowed as deduction while computing business income.
- **Other expenses:** In addition, deductions are allowed in respect of expenses by way of land revenue, local rates, municipal taxes and insurance in respect of the premises used for the purposes of the business or profession. Cesses, rates and taxes levied by a foreign Government are also allowed.
- **Premises used partly for business and partly for other purposes:** Where the premises are used partly for business and partly for other purposes, only a proportionate part of the expenses attributable to that part of the premises used for purposes of business will be allowed as a deduction [Section 38(1)].

(2) Repairs and insurance of machinery, plant and furniture [Section 31]

Section 31 allows deduction in respect of the expenses on current repairs and insurance of machinery, plant and furniture in computing the income from business or profession.

- **Usage of the asset:** In order to claim this deduction, the assets must have been used for purposes of the assessee's own business the profits of which are being taxed i.e., the assessee should be the beneficial owner of the asset.

The word 'used' has to be read in a wide sense so as to include active as well as passive use. However, insurance and repair charges of assets which are owned by the assessee but have not been used for the business during the previous year would not be allowed as a deduction.

Even if an asset is used for a part of the previous year, the assessee is entitled to the deduction of the full amount of expenses on repair and insurance charges and not merely an amount proportionate to the period of use.

- **Repairs exclude replacement or reconstruction:** The term 'repairs' will include renewal or renovation of an asset but not its replacement or reconstruction.

The deduction allowable under this section is only of current repairs but not arrears of repairs for earlier years even though they may still rank for a deduction under section 37(1).

- **Insurance premium:** The deduction allowable in respect of premia paid for insuring the machinery, plant or furniture is subject to the following conditions:
 - ◆ The insurance must be against the risk of damage or destruction of the machinery, plant or furniture.
 - ◆ The assets must be used by the assessee for the purposes of his business or profession during the accounting year.
 - ◆ The premium should have been actually paid (or payable under the mercantile system of accounting).

The premium may even take the form of contribution to a trade association which undertakes to indemnify and insure its members against loss; such premium or contribution would be deductible as an allowance under this section even if a part of it is returnable to the insured in certain circumstances.

It does not matter if the payment of the claim will enure to the benefit of someone other than the owner.

- **Current repairs of capital nature not to be allowed [Explanation to section 31]:** Amount paid on account of current repairs of machinery, plant or furniture shall not include any capital nature expenditure. In other words, current repairs other than of capital nature expenditure is allowed as deduction in the computation of income under the head “profits and gains of business or profession”.
- **Machinery, plant and furniture used partly for business and partly for other purposes:** Where the machinery, plant and furniture are used partly for business and partly for other purposes, only a proportionate part of the expenses attributable to that part of the machinery, plant and furniture used for purposes of business will be allowed as a deduction [Section 38(2)].

(3) Depreciation [Section 32]

- (1) **Charge of depreciation mandatory:** Section 32 allows a deduction in respect of depreciation resulting from the diminution or exhaustion in the value of certain capital assets.

The *Explanation 5* to this section provides that deduction on account of depreciation shall be made compulsorily, whether or not the assessee has claimed the deduction in computing his total income.

(2) **Conditions to be satisfied for allowance of depreciation:** The allowance of depreciation which is regulated by Rule 5 of the Income-tax Rules, 1962, is subject to the following conditions which are cumulative in their application.

(a) **The assets in respect of which depreciation is claimed must belong to either of the following categories, namely:**

- (1) buildings, machinery, plant or furniture, being tangible assets;
 - (2) know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature, being intangible assets acquired on or after 1st April, 1998, not being goodwill of a business or profession.
- ❖ The depreciation in the value of any other capital assets cannot be claimed as a deduction from the business income.
 - ❖ No depreciation is allowable on the cost of the land on which the building is erected because the term 'building' refers only to superstructure but not the land on which it has been erected.
 - ❖ The term 'plant' as defined in section 43(3) includes ships, vehicle, books, scientific apparatus and surgical equipments used for the purpose of the business or profession but does not include tea bushes or livestock or buildings or furniture and fittings.
 - ❖ However, the word 'plant' does not include an animal, human body or stock-in-trade. Thus, plant includes all goods and chattels, fixed or movable, which a businessman keeps for employment in his business with some degree of durability.
 - ❖ The expression 'plant' includes part of a plant (e.g., the engine of a vehicle); machinery includes part of machinery and building includes a part of the building.
 - ❖ Similarly, the term 'buildings' includes within its scope roads, bridges, culverts, wells and tubewells.

- (b) The assets should be actually **used** by the assessee **for purposes of his business or profession** during the previous year - The asset must be put to use at any time during the previous year. The amount of depreciation allowance is not proportionate to the period of use during the previous year. If the asset is acquired during the previous year and is not put to use in the same year, then the depreciation shall not be allowed for such asset but the cost of such asset would be added to the block of asset.

Asset used for less than 180 days - Where any asset is acquired by the assessee during the previous year and is put to use for the purposes of business or profession for a period of less than 180 days, depreciation shall be allowed **at 50 per cent** of the allowable depreciation according to the percentage prescribed in respect of the block of assets comprising such asset. It is significant to note that this restriction applies only to the year of acquisition and not for subsequent years.

➡ If the assets are not used exclusively for the business of the assessee but for other purposes as well, the depreciation allowable would be a proportionate part of the depreciation allowance to which the assessee would be otherwise entitled. This is provided in section 38.

Depreciation would be allowable to the owner even in respect of assets which are actually worked or utilized by another person e.g., a lessee or licensee. The deduction on account of depreciation would be allowed under this section to the owner who has let on hire his building, machinery, plant or furniture provided that letting out of such assets is the business of the assessee. In other cases where the letting out of such assets does not constitute the business of the assessee, the deduction on account of depreciation would still be allowable under section 57(ii).

Use includes passive use in certain circumstances: One of the conditions for claim of depreciation is that the asset must be “used for the purpose of business or profession”. Depreciation is allowed when asset is actually put to use and not ready to use. However, in certain circumstances, Courts have held that, an asset can be said to be in use even when it is “kept ready for use”.

For example, stand by equipment and fire extinguishers can be capitalized if they are ‘ready for use’.

Likewise, machinery spares which can be used only in connection with an item of tangible fixed asset and their use is expected to be irregular, has to be capitalised.

Hence, in such cases, the term “use” embraces both active use and passive use. However, such passive use should also be for business purposes.

- (c) **The assessee must own the assets, wholly or partly** – Depreciation is allowed only to the owner of the asset. If the assessee has taken an asset on lease, he, being the lessee, cannot avail depreciation in respect of such asset. On the other hands, the lessor will be entitled to depreciation on such asset as he is the owner.

➔ However, in this connection, students may note that the *Explanation 1* to section 32 provides that where the business or profession of the assessee is carried on in a building not owned by him but in respect of which the assessee holds a lease or other right of occupancy, and any capital expenditure is incurred by the assessee for the purposes of the business or profession or the construction of any structure or doing of any work by way of renovation, extension or improvement to the building, then depreciation will be allowed as if the said structure or work is a building owned by the assessee.

Depreciation is allowable not only in respect of assets “wholly” owned by the assessee but also in respect of assets “partly” owned by him and used for the purposes of his business or profession.

- (3) **Computation of Depreciation Allowance:** Depreciation allowance will be calculated on the following basis:

- (i) **Power generation undertakings:** In the case of assets of an undertaking engaged in generation or generation and distribution of power, such percentage on the actual cost to the assessee as prescribed by Rule 5(1A).

Rule 5(1A) - As per this rule, the depreciation on the abovementioned assets shall be calculated at the percentage of the actual cost at rates specified in Appendix IA of these rules. However, the aggregate depreciation allowed in respect of any asset for different assessment years shall not exceed the actual cost of the asset. It is further provided that such an undertaking as mentioned above has the option of being allowed depreciation on the written down value of such block of assets as are used for its business at rates specified in Appendix I to these rules.

However, such option must be exercised before the due date for furnishing return under section 139(1) for the assessment year relevant to the previous year in which it begins to generate power.

It is further provided that any such option once exercised shall be final and shall apply to all subsequent assessment years.

- (ii) **Block of assets:** In the case of any block of assets, at such percentage of the written down value of the block, as may be prescribed by Rule 5(1).

Block of Assets: A “block of assets” is defined in section 2(11), as a group of assets falling within a class of assets comprising—

- (a) tangible assets, being buildings, machinery, plant or furniture;
- (b) intangible assets, being know-how, patents, copyrights, trademarks, licenses, franchises or any other business or commercial rights of similar nature, not being goodwill of a business or profession,

in respect of which the same percentage of depreciation is prescribed.

Block of asset simply means “same class of assets with same rate of depreciation”.

Know-how - In this context, ‘know-how’ means any industrial information or technique likely to assist in the manufacture or processing of goods or in the working of a mine or other sources of mineral deposits (including searching for discovery or testing of deposits for the winning of access thereto).

- (iii) **Additional depreciation on Plant & Machinery [Section 32(1)(ia)]:** Additional depreciation is allowed on any new machinery or plant (other than ships and aircraft) acquired and installed after 31.3.2005 by an assessee engaged in the business of manufacture or production of any article or thing or in the business of generation or transmission or distribution of power at the rate of 20% of the actual cost of such machinery or plant.

Asset put to use for less than 180 days: As per second proviso to section 32(1)(ii), 50% of additional depreciation to be allowed, where the plant and machinery is put to use for less than 180 days during the previous year in which such asset is acquired.

Further, third proviso to section 32(1)(ii) also provides that the balance 50% of the additional depreciation on new plant or machinery acquired and used for less than 180 days which has not been allowed in the year of acquisition and installation of such plant or machinery, shall be allowed in the immediately succeeding previous year.

In case of an individual, HUF, AoP (other than a co-operative society) or BoI or an artificial juridical person, additional depreciation is not allowable under the default tax regime under section 115BAC. Additional depreciation would be allowable only if such person has exercised the option of shifting out of the default tax regime provided under section 115BAC(1A) and pays tax as per the optional tax regime under the regular provisions of the Act.

In case of companies and co-operative societies, additional depreciation would not be allowable if they opt for the special provisions u/s 115BAA/115BAB and section 115BAD/115BAE, respectively. In other words, additional depreciation would be allowable only if companies and co-operative societies pay tax under the normal provisions of the Act.

Plant and Machinery not qualifying for additional depreciation

Such additional depreciation will not be available in respect of:

- (i) any machinery or plant which, before its installation by the assessee, was used within or outside India by any other person (second hand machinery); or
- (ii) any machinery or plant installed in office premises, residential accommodation, or in any guest house; or
- (iii) office appliances or road transport vehicles; or
- (iv) any machinery or plant, the whole or part of the actual cost of which is allowed as a deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head “Profits and Gains of Business or Profession” of any one previous year.

Note: Additional depreciation is not allowed to power generation undertakings opting Appendix 1A of Rule 5 i.e., depreciation calculated as a percentage on the actual cost to the assessee.

Eligibility for grant of additional depreciation under section 32(1)(iia) in the case of an assessee engaged in printing or printing and publishing [Circular No. 15/2016, dated 19-5-2016]

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

The CBDT has, vide this Circular, clarified that the business of printing or printing and publishing amounts to manufacture or production of an article or thing and is, therefore, eligible for additional depreciation under section 32(1)(ia).

- (iv) **Terminal depreciation:** In case of a power concern as covered under clause (i) above, if any asset is sold, discarded, demolished or otherwise destroyed in the previous year (other than the previous year in which it is first brought into use) the depreciation amount will be the amount by which the moneys payable in respect of such building, machinery, plant or furniture, together with the amount of scrap value, if any, falls short of the written down value thereof. The depreciation will be available only if the deficiency is actually written off in the books of the assessee.

Example: Mahapower Ltd. purchased an asset on 20.7.2019. The actual cost of the asset was ₹ 100 lakhs. Mahapower Ltd. claimed depreciation @5% on the actual cost of the asset. WDV of the asset as on 1.4.2023 is ₹ 80 lakhs. On 15.5.2023, Mahapower Ltd. sold the asset for ₹ 55 lakhs. Deduction allowed as terminal depreciation u/s 32(1)(ii) for P.Y. 2023-24 is ₹ 25 lakhs (₹ 80 lakhs - ₹ 55 lakhs) provided the deficiency of ₹ 25 lakhs is actually written off in the books of Mahapower Ltd.

Meaning of certain terms

Term	Meaning
Moneys payable	In respect of any building, machinery, plant or furniture includes — (a) any insurance, salvage or compensation moneys payable in respect thereof; (b) where the building, machinery, plant or furniture is sold, the price for which it is sold.,
Sold	Includes a transfer by way of exchange or a compulsory acquisition under any law for the time being in force. However, it does not include a transfer, in a scheme of amalgamation, of any asset by the amalgamating company to the amalgamated company where the amalgamated company is an Indian company or a transfer of any asset by a banking company to a banking institution in a scheme of amalgamation of such banking company with the banking institution, sanctioned and brought into force by the Central Government.

Clarification regarding treatment of expenditure incurred on purchase of participating interest by the Oil Exploration and Production (E&P) Companies [Circular No. 20/2019, dated 19.08.2019]

Over the life cycle of an Oil & Gas block, Oil Exploration and Production (E&P) companies generally buy ('Farm in') and sell ('Farm out') their participating interests (PI) in the 'Production Sharing Agreement' (PSC). 'Farm-in' expenditure is incurred when an entity in this line of business acquires a PI from another entity(s) in oil/gas block(s) and becomes part of the PSC entered into with the Central Government.

The Government of India (GoI) offers exploration and development rights through global bidding for specified blocks in various rounds under the New Exploration and Licensing Policy (NELP), Hydrocarbon Exploration & Licensing Policy (HELP), Open Acreage Licensing Policy (OALP) etc. by signing the Production Sharing Contracts (PSC's) with the Oil & Gas companies. The successful Oil & Gas Companies are granted license to explore, develop and carry out production operations in Oil & Gas blocks and in India under a PSC with the GoI. Typically, owing to the large investments required and the risks involved, multiple E&P companies execute the PSC with the GoI in which each member has its agreed and defined PI.

It is common international practice for the upstream companies to buy (farm-in) and sale (farm-out) their PI in the PSC or similar contracts with the Government and thereby to share risk, bring new and niche expertise and technologies. In such transactions, PI are treated as interests in rights, licences and obligation under the PSC. Such farm-in purchase price is accounted as an asset as per guidance note issued by the Institute of Chartered Accountants of India. International accounting rules for Oil & Gas followed in Australia, Indonesia, UK etc. also require that such acquisition cost to be capitalized and depreciated. A perusal of the Model PSC's {as per the website of the Director General of Hydrocarbon (DGH)} indicates that participating interests are share in rights and obligation to explore, exploit and sell petroleum under the PSC along with related licences, permits etc. A few of the case-laws on this issue also support treatment of acquisition rights in a PSC as Intangible asset.

In this regard, it is relevant to mention that earlier vide Notification No. G.S.R. 117(E) dated 08.03.1996, in exercise of its powers under section 293A of the Act, Central Government had laid down that the persons with whom it enters into agreement for the association or participation in any business consisting of the prospecting for or extraction or production of mineral oils on or after the 1st day of April, 1992 -

- a) shall not be assessed on the income as association of persons or body of individuals consisting of such persons; but
- b) each of the persons referred to above be assessed in respect of his or its share of income, as the case may be, in the same status in which the person enters into the agreement with the Central Government.

Thus, as persons participating in an E&P contract are assessed individually in respect of their share of income, the sum expended on acquisition of whole or part of such 'Participating Interest' in an E&P contract where such acquisition is approved by the Government of India, represents the amount paid to acquire the underlying share (expressed as a percentage) being interests in rights, licences and obligations under the E&P contract.

In view of the above legal position, it is hereby clarified as under:-

- i. amount paid for acquiring the 'Participating Interest' shall not be treated either as cost for acquiring the share in partnership or investment for acquisition of a member's interest in an association of persons or body of individuals, rather it would be treated as an amount paid to acquire the underlying assets; and*
- ii. the amount paid for acquiring the 'Participating Interest', after reducing component of cost attributable to tangible assets for purposes of section 32(1)(i), would be treated as an 'intangible asset' (being a business or commercial right akin to a licence), eligible for claim of depreciation for purposes of section 32(1)(ii).*

- (4) **Rates of depreciation:** All assets have been divided into four main categories and rates of depreciation as prescribed by Rule 5(1) are given below:

PART A TANGIBLE ASSETS		
I	Buildings	
Block 1.	Buildings which are used mainly for residential purposes except hotels and boarding houses	5%
Block 2.	Buildings which are not used mainly for residential purposes and not covered by Block (1) above and (3) below	10%
Block 3.	Buildings acquired on or after 1st September, 2002 for installing machinery and plant forming part of water supply project or water treatment system and which is put to use for the purpose of business of providing infrastructure facilities	40%
Block 4.	Purely temporary erections such as wooden structures	40%
II	Furniture and Fittings	
Block 1.	Furniture and fittings including electrical fittings ["Electrical fittings" include electrical wiring, switches, sockets, other fittings and fans, etc.]	10%
III	Plant & Machinery	
Block 1.	Motor cars other than those used in a business of running them on hire, acquired during the period from 23.8.2019 to 31.3.2020 and put to use on or before 31.3.2020	30%

Block 2.	Motor cars other than those used in a business of running them on hire, acquired or put to use on or after 1-4-1990 [Other than motor cars mentioned in Block 1 above]	15%
Block 3.	Motor buses, motor lorries and motor taxis used in a business of running them on hire, acquired during the period from 23.8.2019 to 31.3.2020 and put to use on or before 31.3.2020	45%
Block 4.	Motors buses, motor lorries, motor taxis used in the business of running them on hire [Other than motor cars mentioned in Block 4 above]	30%
Block 5.	Moulds used in rubber and plastic goods factories	30%
Block 6.	Aeroplanes, Aeroengines	40%
Block 7.	Specified air pollution control equipments, water pollution control equipments, solid waste control equipment and solid waste recycling and resource recovery systems	40%
Block 8.	Plant & Machinery used in semi-conductor industry covering all Integrated Circuits (ICs) (other than mentioned in Block 7 Above)	30%
Block 9.	Life saving medical equipments	40%
Block 10.	Machinery and plant, acquired and installed on or after the 1st day of September, 2002 in a water supply project or a water treatment system and which is put to use for the purpose of business of providing infrastructure facility	40%
Block 11.	Containers made of glass or plastic used as re-fills	40%
Block 12	Energy Saving Devices (as specified)	40%
Block 13.	Renewable Energy Saving Devices (as specified) including the devices specified in (i) to (iii) below	40%
	(i) Electrically operated vehicles including battery powered or fuel-cell powered vehicles	40%
	(ii) Windmills and any specially designed devices which run on windmills installed on or after 1.4.2014	40%
	(iii) Any special devices including electric generators and pumps running on wind energy installed on or after 1.4.2014	40%
Block 14.	Windmills and any specially designed devices running on windmills installed on or before 31.3.2014 and any special devices including electric generators and pumps running on wind energy installed on or before 31.3.2014	15%

Block 15.	Computers including computer software (See Note below)	40%
Block 16.	Books (annual publications or other than annual publications) owned by assessee carrying on a profession	40%
Block 17.	Books owned by assessee carrying on business in running lending libraries	40%
Block 18.	Plant & machinery (General rate)	15%
IV	Ships	
Block 1.	Ocean-going ships	20%
Block 2.	Vessels ordinarily operating on inland waters not covered by Block 3 below	20%
Block 3.	Speed boats operating on inland water	20%

PART B INTANGIBLE ASSETS	
Know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature	25%

Note - Mobile phones and EPABX are **not** considered as computers and hence, not eligible for 40% rate of depreciation while computer accessories such as UPS, printers scanners, etc. are eligible for 40% rate of depreciation.

Note: Students should refer to Income-tax Rules, 1962 for the detailed classification of assets under Rule 5(1) and the rate of depreciation applicable thereto.

(5) Increased rate of depreciation for certain assets [Rule 5(2)]

Any new machinery or plant installed to manufacture or produce any article or thing by using any technology or other know-how developed in or is an article or thing invented in a laboratory owned or financed by the Government or a laboratory owned by a public sector company or a University or an institution recognized by the Secretary, Department of Scientific and Industrial Research, Government of India shall be treated as a part of the block of assets qualifying for depreciation @40% of written down value.

Conditions to be fulfilled:

1. The right to use such technology or other know-how or to manufacture or produce such article or thing has been acquired from the owner of such laboratory or any person deriving title from such owner.
2. The return filed by the assessee for any previous year in which the said machinery is acquired, should be accompanied by a certificate from the Secretary, Department of

Scientific and Industrial Research, Government of India to the effect that such article or thing is manufactured or produced by using such technology or other know-how developed in such laboratory or such article or thing has been invented in that laboratory.

3. The machinery or plant is not used for the purpose of business of manufacture or production of any article or thing specified in the Eleventh Schedule [The exclusion list comprises of beer, wine and other alcoholic spirits, tobacco and tobacco preparations, cosmetic and toilet preparations, tooth paste, dental cream, tooth powder and soap, confectionery and chocolates, office machines and apparatus, steel furniture etc].

The depreciation ordinarily allowable to an assessee in respect of any block of assets shall be calculated at the above specified rates on the WDV of such block of assets as are used for the purposes of the business or profession of the assessee at any time during the previous year.

ILLUSTRATION 1

XYZ (P) Ltd., engaged in manufacturing business, furnishes the following particulars:

	Particulars	₹
(1)	Opening WDV of plant and machinery as on 1.4.2023 (i.e., WDV as on 31.3.2023 after reducing depreciation for P.Y. 2022-23)	30,00,000
(2)	New plant and machinery purchased and put to use on 08.06.2023	20,00,000
(3)	New plant and machinery acquired and put to use on 15.12.2023	8,00,000
(4)	Computer acquired and installed in the office premises on 2.1.2024	3,00,000

Compute the amount of depreciation and additional depreciation as per the Income-tax Act, 1961 for the A.Y. 2024-25. Assume that all the assets were purchased by way of account payee cheque and that the company does not opt for section 115BAA/115BAB.

SOLUTION

Computation of depreciation and additional depreciation for A.Y. 2024-25

Particulars	Plant & Machinery (15%) (₹)	Computer (40%) (₹)
Normal depreciation		
• @ 15% on ₹ 50,00,000 [See Working Notes 1 & 2]	7,50,000	-
• @ 7.5% (50% of 15%, since put to use for less than 180 days) on ₹ 8,00,000	60,000	-

@ 20% (50% of 40%, since put to use for less than 180 days) on ₹ 3,00,000	-	60,000
Additional Depreciation		
@ 20% on ₹ 20,00,000 (new plant and machinery put to use for more than 180 days)	4,00,000	-
@10% (50% of 20%, since put to use for less than 180 days) on ₹ 8,00,000	80,000	-
Total depreciation	12,90,000	60,000

Working Note:
Computation of written down value of Plant & Machinery

Particulars	Plant & Machinery (₹)	Computer (₹)
Written down value as on 1.4.2023	30,00,000	-
Add: Plant & Machinery purchased on 08.6.2023 (put to use for more than 180 days)	20,00,000	-
Add: Plant & Machinery acquired on 15.12.2023 (put to use for less than 180 days)	8,00,000	-
Computer acquired and installed in the office premises (put to use for less than 180 days)	-	3,00,000
Written down value as on 31.03.2024	58,00,000	3,00,000

Composition of plant and machinery included in the WDV

Particulars	Plant & Machinery (₹)	Computer (₹)
Plant and machinery put to use for 180 days or more [₹ 30,00,000 (WDV) + ₹ 20,00,000 (purchased on 8.6.2023)]	50,00,000	
Plant and machinery put to use for less than 180 days	8,00,000	-
Computers put to use for less than 180 days	-	3,00,000
	58,00,000	3,00,000

Notes:

- As per the second proviso to section 32(1)(ii), where an asset acquired during the previous year is put to use for less than 180 days in that previous year, the amount

of deduction allowable as normal depreciation and additional depreciation would be restricted to 50% of amount computed in accordance with the prescribed percentage.

Therefore, normal depreciation on plant and machinery acquired and put to use on 15.12.2023 and computer acquired and installed on 02.01.2024, is restricted to 50% of 15% and 40%, respectively. The additional depreciation on the said plant and machinery is restricted to ₹ 80,000, being 10% (i.e., 50% of 20%) of ₹ 8 lakh.

2. As per third proviso to section 32(1)(ii), the balance additional depreciation of ₹ 80,000 being 50% of ₹ 1,60,000 (20% of ₹ 8,00,000) would be allowed as deduction in the A.Y.2025-26 if XYZ (P) Ltd. does not opt for the provisions of section 115BAA.
3. As per section 32(1)(iia), additional depreciation is allowable in the case of any new machinery or plant acquired and installed after 31.3.2005 by an assessee engaged, *inter alia*, in the business of manufacture or production of any article or thing, @20% of the actual cost of such machinery or plant.

However, additional depreciation shall not be allowed in respect of, *inter alia*, any machinery or plant installed in office premises, residential accommodation or in any guest house.

Accordingly, additional depreciation is not allowable on computer installed in the office premises.

ILLUSTRATION 2

A newly qualified Chartered Accountant Mr. Dhaval, commenced practice and has acquired the following assets in his office during F.Y. 2023-24 at the cost shown against each item. Calculate the amount of depreciation that can be claimed from his professional income for A.Y.2024-25. Assume that all the assets were purchased by way of account payee cheque.

Sl. No.	Description	Date of acquisition	Date when put to use	Amount ₹
1.	Computer including computer software	27 Sept., 23	1 Oct., 23	35,000
2.	Computer UPS	2 Oct., 23	8 Oct., 23	8,500
3.	Computer printer	1 Oct., 23	1 Oct., 23	12,500
4.	Books (of which books being annual publications are of ₹ 12,000)	1 Apr., 23	1 Apr., 23	13,000

5.	Office furniture (Acquired from a practising C.A.)	1 Apr., 23	1 Apr., 23	3,00,000
6.	Laptop	26 Sep., 23	8 Oct., 23	43,000

SOLUTION**Computation of depreciation allowable for A.Y.2024-25**

Asset		Rate	Depreciation
Block 1	Furniture [See working note below]	10%	30,000
Block 2	Plant (Computer including computer software, computer UPS, laptop, computer printer & books)	40%	34,500
Total depreciation allowable			64,500

Working Notes:**Computation of depreciation**

Block of Assets	₹
Block 1: Furniture – [Rate of depreciation - 10%]	
Put to use for more than 180 days [₹ 3,00,000@10%]	30,000
Block 2: Plant [Rate of depreciation - 40%]	
(a) Computer including computer software (put to use for more than 180 days) [₹ 35,000 @ 40%]	14,000
(b) Computer UPS (put to use for less than 180 days) [₹ 8,500@ 20%] [See Note below]	1,700
(c) Computer Printer (put to use for more than 180 days) [₹ 12,500 @ 40%]	5,000
(d) Laptop (put to use for less than 180 days) [₹ 43,000 @ 20%] [See Note below]	8,600
(e) Books (being annual publications or other than annual publications) (Put to use for more than 180 days) [₹ 13,000 @ 40%]	5,200
	34,500

Note - Where an asset is acquired by the assessee during the previous year and is put to use for the purposes of business or profession for a period of less than 180 days, the deduction on account of depreciation would be restricted to 50% of the prescribed rate. In this case, since Mr. Dhaval commenced his practice in the P.Y.2023-24 and acquired the assets during the same year, the restriction of depreciation to 50% of the prescribed rate

would apply to those assets which have been put to use for less than 180 days in that year, namely, laptop and computer UPS.

(6) Depreciation in case of succession of firm/sole proprietary concern by a company or business reorganization, amalgamation or demerger of companies or succession of business otherwise than on death

As per the sixth proviso to section 32(1)(ii), depreciation allowable in the hands of

- predecessor and the successor in case of succession of firm/ sole proprietary concern by a company fulfilling the conditions mentioned in section 47(xiii)/(xiv) or
- predecessor company and successor LLP in case of conversion of a private company or an unlisted public company into an LLP fulfilling the conditions mentioned in section 47(xiiib) or
- predecessor and the successor in case of succession of business otherwise than on death
- amalgamating/ amalgamated company or demerged or resulting company in case of amalgamation or demerger of companies

shall not exceed the amount of depreciation calculated at the prescribed rates as if the succession, business reorganization, amalgamation or demerger had not taken place.

It is also provided that such amount of depreciation shall be apportioned between the two entities **in the ratio of the number of days for which the assets were used by them.**

ILLUSTRATION 3

Sai Ltd. has a block of assets carrying 15% rate of depreciation, whose WDV as on 31.3.2023 after reducing depreciation for P.Y. 2022-23 was ₹ 40 lakhs. It purchased another asset (second-hand plant and machinery) of the same block on 01.11.2023 for ₹ 14.40 lakhs and put to use on the same day. Sai Ltd. was amalgamated with Shirdi Ltd. with effect from 01.01.2024.

You are required to compute the depreciation allowable to Sai Ltd. & Shirdi Ltd. for the previous year ended on 31.03.2024 assuming that the assets were transferred to Shirdi Ltd. at ₹ 60 lakhs. Also assume that the plant and machinery were purchased by way of account payee cheque.

SOLUTION

**Statement showing computation of depreciation allowable
to Sai Ltd. & Shirdi Ltd. for A.Y. 2024-25**

Particulars		₹
Opening WDV as on 1.4.2023 [i.e., WDV as on 31.3.2023 after reducing depreciation for P.Y. 2022-23]		40,00,000
Addition during the P.Y. 2023-24 (used for less than 180 days)		14,40,000
Total		54,40,000
Depreciation on ₹ 40,00,000 @ 15%		6,00,000
Depreciation on ₹ 14,40,000 @ 7.5%		1,08,000
Total depreciation for the P.Y. 2023-24		7,08,000
Apportionment between two companies:		
(a)	Amalgamating company, Sai Ltd.	
	₹ 6,00,000 × 275/366	4,50,820
	₹ 1,08,000 × 61/152	43,342
		4,94,162
(b)	Amalgamated company, Shirdi Ltd.	
	₹ 6,00,000 × 91/366	1,49,180
	₹ 1,08,000 × 91/152	64,658
		2,13,838

Notes:

- (i) The aggregate deduction, in respect of depreciation allowable to the amalgamating company and amalgamated company in the case of amalgamation shall not exceed in any case, the deduction calculated at the prescribed rates as if the amalgamation had not taken place. Such deduction shall be apportioned between the amalgamating company and the amalgamated company in the ratio of the number of days for which the assets were used by them.
- (ii) The price at which the assets were transferred, i.e., ₹ 60 lakhs, has no implication in computing eligible depreciation.

- (7) **Hire purchase:** In the case of assets under the hire purchase system the allowance for depreciation would under *Circular No. 9 of 1943 R. Dis. No. 27(4) I.T. 43 dated 23-3-1943*, be granted as follows:

- In every case of payment purporting to be for hire purchase, production of the agreement under which the payment is made would be insisted upon by the department.
- Where the effect of an agreement is that the ownership of the asset is at once transferred on the lessee, the transaction should be regarded as one of purchase by instalments and consequently no deduction in respect of the hire amount should be made. This principle will be applicable in a case where the lessor obtains a right to sue for arrears of installments but has no right to recover the asset back from the lessee. Depreciation in such cases should be allowed to the lessee on the hire purchase price determined in accordance with the terms of hire purchase agreement.
- Where the terms of an agreement provide that the asset shall eventually become the property of the hirer or confer on the hirer an option to purchase an asset, the transaction should be regarded as one of hire purchase. In such case, periodical payments made by the hirer should for all tax purposes be regarded as made up of
 - (i) the consideration for hirer which will be allowed as a deduction in assessment, and
 - (ii) payment on account of the purchase price, to be treated as capital outlay and depreciation being allowed to the lessee on the initial value namely, the amount for which the hired assets would have been sold for cash at the date of the agreement.

The allowance to be made in respect of the hire should be the amount of the difference between the aggregate amount of the periodical payments under the agreement and the initial value as stated above. The amount of this allowance should be spread over the duration of the agreement evenly. If, however, agreement is terminated either by outright purchase of the asset or by its return to the seller, the deduction should cease as from the date of termination of agreement.

For the purpose of allowing depreciation, an assessee claiming deduction in respect of the assets acquired on hire purchase would be required to furnish a certificate from the seller or any other suitable documentary evidence in respect of the initial value or the cash price of the asset.

In cases where no such certificate or other evidence is furnished the initial value of the assets should be arrived at by computing the present value of the amount payable under the agreement at an appropriate per centum.

For the purpose of allowing depreciation the question whether in a particular case the assessee is the owner of the hired asset or not is to be decided on a consideration of all the facts and circumstances of each case and the terms of the hire purchase agreement. Where the hired asset is originally purchased by the assessee and is registered in his name, the mere fact that the payment of the price is spread over the specified period and is made in installments to suit the needs of the purchaser does not disentitle the assessee from claiming depreciation in respect of the asset, since the assessee would be the real owner although the payment of purchase price is made subsequent to the date of acquisition of the asset itself.

(8) Actual Cost [Section 43(1)]

The expression “actual cost” means the actual cost of the asset to the assessee as reduced by that portion of the cost thereof, if any, as has been met directly or indirectly by any other person or authority.

However, where an assessee incurs any expenditure for acquisition of any asset or part thereof in respect of which a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft or use of electronic clearing system through a bank account or through such other prescribed electronic mode, exceeds ₹ 10,000, such expenditure shall not form part of actual cost of such asset [Second proviso to section 43(1)].

The prescribed electronic modes include credit card, debit card, net banking, IMPS (Immediate payment Service), UPI (Unified Payment Interface), RTGS (Real Time Gross Settlement), NEFT (National Electronic Funds Transfer), and BHIM (Bharat Interface for Money) Aadhar Pay [CBDT Notification No. 8/2020 dated 29.01.2020].

Actual cost in certain special situations [Explanations to section 43(1)]

Explanation	Situation	Actual cost of the asset to the assessee
1	Where an asset is used for the purposes of business after it ceases to be used for scientific research related to that business	Actual cost to the assessee as reduced by any deduction allowed u/s 35(1)(iv). Note - Actual cost of such asset would be Nil as already 100% deduction would have been claimed u/s 35(1)(iv)
1A	Where inventory is converted or treated as a capital asset and is used for the purpose of business or profession	Fair market value of such inventory as on the date of its conversion into capital asset determined in the prescribed manner

2	Where an asset is acquired by way of gift or inheritance	Actual cost to the previous owner <i>minus</i> depreciation allowable to the assessee as if asset was the only asset in the relevant block of assets. Further, any expenditure incurred by the assessee such as expenditure on freight, installation etc. of such asset would also be includible in the actual cost.
3	Where, before the date of its acquisition by the assessee, the asset was at any time used by any other person for the purposes of his business or profession, and the Assessing Officer is satisfied that the main purpose of the transfer of the asset directly or indirectly to the assessee was the reduction of liability of income-tax directly or indirectly to the assessee (by claiming depreciation with reference to an enhanced cost)	An amount which the Assessing Officer may, with the previous approval of the Joint Commissioner, determine, having regard to all the circumstances of the case
4	Where any asset which had once belonged to the assessee and had been used by him for the purposes of his business or profession and thereafter ceased to be his property by reason of transfer or otherwise, is re-acquired by him	(a) the actual cost when he first acquired the asset <i>minus</i> depreciation allowable to the assessee as if asset was the only asset in the relevant block of assets; or (b) the actual price for which the asset is re-acquired by him whichever is less
4A	Where before the date of acquisition by the assessee, say, Mr. A, the assets were at any time used by any other person, say Mr. B, for the purposes of his business or profession and depreciation allowance has been	Actual cost of the transferred assets, in the case of Mr. A, shall be the same as the written down value of the said assets at the time of transfer thereof by Mr. B.

	claimed in respect of such assets in the case of Mr. B and such person acquires on lease, hire or otherwise, assets from Mr. A	
5	Where a building which was previously the property of the assessee is brought into use for the purposes of the business or profession	Actual cost of the building to the assessee, as reduced by an amount equal to the depreciation calculated at the rates in force on that date that would have been allowable had the building been used for the purposes of the business or profession since the date of its acquisition by the assessee
6	When any capital asset is transferred by a holding company to its wholly owned Indian subsidiary company or by a subsidiary company to its 100% holding company, being an Indian company then, the transaction not being regarded as a transfer of a capital asset	The actual cost of the transferred capital asset to the transferee company shall be taken to be the same as it would have been if the transferor company had continued to hold the capital asset for the purposes of its own business
7	In a scheme of amalgamation, if any capital asset is transferred by the amalgamating company to the amalgamated Indian company	The actual cost of the transferred capital assets to the amalgamated company will be taken at the same amount as it would have been taken in the case of the amalgamating company had it continued to hold it for the purposes of its own business
7A	In the case of a demerger, where any capital asset is transferred by the demerged company to the resulting Indian company	The actual cost of the transferred asset to the resulting company shall be taken to be the same as it would have been if the demerged company had continued to hold the capital asset for the purpose of its own business. However, the actual cost shall not exceed the WDV of the asset in the hands of the demerged company

Explanation 4A overrides Explanation 3

Explanation 3 to section 43(1) deals with a situation where a transfer of any asset is made with the main purpose of reduction of tax liability (by claiming depreciation on enhanced cost), and the Assessing Officer, having satisfied himself about such purpose of transfer with the prior approval of the joint commissioner, may determine the actual cost having regard to all the circumstances of the case.

In the *Explanation 4A*, a *non-obstante* clause has been included to the effect that *Explanation 4A* will have an overriding effect over *Explanation 3*. The result of this is that there is no necessity of finding out whether the main purpose of the transaction is reduction of tax liability. *Explanation 4A* is activated in every situation described above without inquiring about the main purpose.

Example:

A person (say "B") owns an asset and uses it for the purposes of his business or profession. B has claimed depreciation in respect of such asset. The said asset is transferred by B to another person (say "A"). B then acquires the same asset back from A on lease, hire or otherwise. A being the new owner will be entitled to depreciation. In the above situation, the cost of acquisition of the transferred assets in the hands of A shall be the same as the written down value of the said assets at the time of transfer in the hands of B.

Actual cost in other special situations

- (i) **Capitalization of interest paid or payable in connection with acquisition of an asset:** Certain taxpayers have, with a view to obtain more tax benefits and reduce the tax outflow, resorted to the method of capitalising interest paid or payable in connection with acquisition of an asset relatable to the period after such asset is first put to use.

This capitalisation implies inclusion of such interest in the 'Actual Cost' of the asset for the purposes of claiming depreciation under the Income-tax Act, 1961. This was never the legislative intent nor was it in accordance with recognised accounting practices. Therefore, with a view to counter-acting tax avoidance through this method and placing the matter beyond doubt, *Explanation 8* to section 43(1) provides that [*Explanation 8*].

- (ii) **Amount of duty of excise or additional duty leviable shall be reduced if credit is claimed:** Where an asset is or has been acquired by an assessee, the actual cost

of asset shall be reduced by the amount of duty of excise or the additional duty leviable under section 3 of the Customs Tariff Act, 1975 in respect of which a claim of credit has been made and allowed under the Central Excise Rules, 1944⁶ [Explanation 9].

- (iii) **Subsidy or grant or reimbursement:**, then, so much of the cost as is relatable to such subsidy or grant or reimbursement shall not be included in the actual cost of the asset to the assessee.

However, where such subsidy or grant or reimbursement is of such nature that it cannot be directly relatable to the asset acquired, so much of the amount which bears to the total subsidy or reimbursement or grant the same proportion as such asset bears to all the assets in respect of or with reference to which the subsidy or grant or reimbursement is so received, shall not be included in the actual cost of the asset to the assessee [Explanation 10].

Note: ICDS VII requires Government grants relatable to depreciable assets to be reduced from actual cost of the asset/WDV of the block of asset. It further provides that where the Government grant is not directly relatable to the asset acquired, then a pro-rata reduction of the amount of grant should be made in the same proportion as such asset bears to all assets with reference to which the Government grant is so received.

- (iv) **Asset is acquired outside India by an assessee, being a non-resident and such asset is brought by him to India:** Where an asset is acquired outside India by an assessee, being a non-resident and such asset is brought by him to India and used for the purposes of his business or profession, the actual cost of asset to the assessee shall be the actual cost the asset to the assessee, as reduced by an amount equal to the amount of depreciation calculated at the rate in force that would have been allowable had the asset been used in India for the said purposes since the date of its acquisition by the assessee [Explanation 11].
- (v) **Capital asset is acquired under a scheme for corporatization:** Where any capital asset is acquired under a scheme for corporatization of a recognised stock exchange in India approved by the SEBI, the actual cost shall be deemed to be the amount which would have been regarded as actual cost had there been no such corporatization [Explanation 12].

⁶ Now Central Excise Rules, 2002

Note: Under the scheme of corporatization, recognised stock exchange gets converted into 'Company' from the status of being 'Association of persons' or 'Body of Individuals'.

- (vi) **Capital asset on which deduction is allowable under section 35AD:** *Explanation* 13 to section 43(1) provides that the actual cost of any capital asset, on which deduction has been allowed or is allowable to the assessee under section 35AD, shall be nil.

This would be applicable in the case of transfer of asset by the assessee where –

- (1) the assessee himself has claimed deduction under section 35AD; or
- (2) the previous owner has claimed deduction under section 35AD. This would be applicable where the capital asset is acquired by the assessee by way of –
 - (a) gift, will or an irrevocable trust;
 - (b) any distribution on liquidation of the company;
 - (c) any distribution of capital assets on total or partial partition of a HUF;
 - (d) any transfer of a capital asset by a holding company to its 100% subsidiary company, being an Indian company;
 - (e) any transfer of a capital asset by a subsidiary company to its 100% holding company, being an Indian company;
 - (f) any transfer of a capital asset by the amalgamating company to an amalgamated company in a scheme of amalgamation, if the amalgamated company is an Indian company;
 - (g) any transfer of a capital asset by the demerged company to the resulting company in a scheme of demerger, if the resulting company is an Indian company;
 - (h) any transfer of a capital asset or intangible asset by a firm to a company as a result of succession of the firm by a company in the business carried on by the firm, or any transfer of a capital asset to a company in the course of demutualization or corporatisation of a recognized stock exchange in India as a result of which an association of persons or body of individuals is succeeded by such company (fulfilling the conditions specified);

- (i) any transfer of a capital asset or intangible asset by a sole proprietary concern to a company, where the sole proprietary concern is succeeded by a company (fulfilling the conditions specified).
- (j) any transfer of a capital asset or intangible asset by a private company or unlisted public company to an LLP as a result of conversion of the company into LLP (fulfilling the conditions prescribed).

However, where an asset, in respect of which deduction is claimed and allowed under section 35AD is deemed to be the income of the assessee in accordance with the provisions of section 35AD(7B) (on account of being used for a purpose other than specified business under section 35AD), the actual cost of the asset to the assessee shall be actual cost to assessee **as reduced** by the amount of depreciation allowable had the asset been used for the purpose of business, calculated at the rate in force, since the date of its acquisition [Proviso to *Explanation 13* to section 43(1)]

(9) Written down value [Section 43(6)]

- (i) **Assets acquired by the assessee during the previous year:** In the case of assets acquired by the assessee during the previous year, the written down value means the actual cost to the assessee.
- (ii) **Assets acquired before the previous year:** In the case of assets acquired before the previous year, the written down value would be the actual cost to the assessee less the aggregate of all deductions actually allowed in respect of depreciation.

For this purpose, any depreciation carried forward is deemed to be depreciation actually allowed [Section 43(6)(c)(i) read with *Explanation 3*].

- (iii) **In case of any block of assets:** The written down value of any block of assets shall be worked out as under in accordance with section 43(6)(c):

(1)	W.D.V. of the block of assets in immediately preceding previous year (P.Y. 2022-23)	xxx
(2)	Less: Depreciation actually allowed in respect of that block of assets in said preceding previous year (i.e., in P.Y. 2022-23)	xxx
Opening balance as on 1st April of the current P.Y. (i.e., on 1.4.2023)		xxx
Increased by		
(3)	Actual cost of assets acquired during the previous year 2023-24, not	xxx

	being on account of acquisition of goodwill of a business or profession	
(4)	Total (1) - (2) + (3)	xxx
Reduced by		
(5)	Money receivable in respect of any asset falling within the block which is sold, discarded, demolished or destroyed during that previous year. However, such amount cannot exceed the amount in (4).	xxx
(6)	In case of slump sale , actual cost of the asset (-) amount of depreciation that would have been allowable to the assessee for any assessment year as if the asset was the only asset in the block. However, such amount of reduction cannot exceed the WDV.	xxx
(7)	W.D.V at the end of the year (as on 31.3.2024, on which depreciation is allowable) [(4) – (5) – (6)]	xxx
(8)	Depreciation at the prescribed rate (Rate of Depreciation × WDV arrived at in (7) above)	xxx

- (iv) **Succession to business or profession otherwise than on death:** When in the case of a succession to business or profession otherwise than on death, an assessment is made on the successor under section 170(2), the written down value of an asset or block of assets shall be the amount which would have been taken as the written down value if the assessment had been made directly on the person succeeded to [*Explanation 1* to section 43(6)].

Example: *Tapan succeeded his father's business due to retirement of his father. The WDV of the assets in the hands of Tapan would be the WDV of the assets in the hands of his father.*

- (v) **Transfer of block of assets by a holding company to a subsidiary company or vice versa or by amalgamating company to amalgamated company:** Where in any previous year any block of assets is transferred by a holding company to its wholly owned Indian subsidiary company or by a subsidiary company to its 100% holding company, being an Indian company or by an amalgamating company to an amalgamated company, the latter being an Indian company, then the actual cost of the block of assets in the case of transferee-company or amalgamated company as the case may be, shall be the written down value of the block of assets as in the case of the transferor company or amalgamating company, as the case may be, for

the immediately preceding year as reduced by depreciation actually allowed in relation to the said previous year [*Explanation 2* to section 43(6)].

- (vi) **Block of assets is transferred by demerged company to the resulting company:** Where in any previous year any asset forming part of a block of assets is transferred by demerged company to the resulting company, the written down value of the block of assets of the demerged company for the immediately preceding year shall be reduced by the written down value of the assets transferred to the resulting company [*Explanation 2A* to section 43(6)].
- (vii) **Block of assets is transferred by a demerged company to the resulting company:** Where any asset forming part of a block of assets is transferred by a demerged company to the resulting company, the written down value of the block of assets in the case of resulting company shall be the written down value of the transferred assets of the demerged company immediately before the demerger [*Explanation 2B* to section 43(6)].
- (viii) **Block of assets in the case of the successor LLP:** The actual cost of the block of assets in the case of the successor LLP on conversion of private or unlisted company to a LLP and the conditions of clause 47(xiiib) are satisfied, shall be the written down value of the block of assets as in the case of the predecessor company on the date of conversion [*Explanation 2C* to section 43(6)].
- (ix) **Block of assets transferred by a recognised stock exchange in India to a company under a scheme for corporatization:** Where any asset forming part of a block of assets is transferred in any previous year by a recognised stock exchange in India to a company under a scheme for corporatisation approved by SEBI, the written down value of the block shall be the written down value of the transferred assets immediately before the transfer [*Explanation 5* to section 43(6)].
- (x) **Depreciation provided in the books of account deemed to be depreciation actually allowed:** Section 32(1)(ii) provides that depreciation shall be allowed at the prescribed percentage on the written down value (WDV) of any block of assets. Section 43(6)(b) provides that written down value in the case of assets acquired before the previous year means the actual cost to the assessee less all depreciation actually allowed to him under the Income-tax Act, 1961.

Persons who were exempt from tax were not required to compute their income under the head “Profits and gains of business or profession”. However, when the

exemption is withdrawn subsequently, such persons became liable to income-tax and hence, were required to compute their income for income-tax purposes. In this regard, a question arises as to the basis on which depreciation is to be allowed under the Income-tax Act, 1961 in respect of assets acquired during the years when the person was exempt from tax.

Explanation 6 to section 43(6) provides that -

- (a) the actual cost of an asset has to be adjusted by the amount attributable to the revaluation of such asset, if any, in the books of account;
 - (b) the total amount of depreciation on such asset provided in the books of account of the assessee in respect of such previous year or years preceding the previous year relevant to the assessment year under consideration shall be deemed to be the depreciation actually allowed under the Income-tax Act, 1961 for the purposes of section 43(6);
 - (c) the depreciation actually allowed as above has to be adjusted by the amount of depreciation attributable to such revaluation.
- (xi) **Composite Income:** *Explanation 7* provides that in cases of 'composite income', for the purpose of computing written down value of assets acquired before the previous year, the total amount of depreciation shall be computed as if the entire composite income of the assessee is chargeable under the head "Profits and Gains of business or profession". The depreciation so computed shall be deemed to have been "actually allowed" to the assessee.

Rule 8 prescribes the taxability of income from the manufacture of tea. Under the said rule, income derived from the sale of tea grown and manufactured by seller shall be computed as if it were income derived from business, and 40% of such income shall be deemed to be income liable to tax.

Example: If the turnover is, say, ₹ 20 lakh, the depreciation ₹ 1 lakh and other expenses ₹ 4 lakh, then, the income would be ₹ 15 lakh. Business income would be ₹ 6 lakh (being 40% of ₹ 15 lakh). In this case, ₹ 1 lakh, being the amount of depreciation would be deemed to have been actually allowed.

The WDV is required to be computed by deducting the full depreciation attributable to composite income i.e. ₹ 1 lakh. *Explanation 7* clarifies this legislative intent.

(xii) **Cases where the Written Down Value reduced to Nil:** The written down value of any block of assets, may be reduced to nil for any of the following reasons:

- (a) The moneys receivable by the assessee in regard to the assets sold or otherwise transferred during the previous year together with the amount of scrap value may exceed the written down value at the beginning of the year as increased by the actual cost of any new asset acquired, or
- (b) All the assets in the relevant block may be transferred during the year.

(10) Carry forward and set off of depreciation [Section 32(2)]

Section 32(2) provides for carry forward of unabsorbed depreciation. Where, in any previous year the profits or gains chargeable are not sufficient to give full effect to the depreciation allowance, the unabsorbed depreciation shall be added to the depreciation allowance for the following previous year and shall be deemed to be part of that allowance. If no depreciation allowance is available for that previous year, the unabsorbed depreciation of the earlier previous year shall become the depreciation allowance of that year. The effect of this provision is that the unabsorbed depreciation shall be carried forward indefinitely till it is fully set off.

Example: Profits and gains from business or profession of Mr. X for P.Y. 2022-23, before charging depreciation of ₹ 20 lakhs u/s 32, was ₹ 16 lakhs. In such a case, after setting off the depreciation, the unabsorbed depreciation of P.Y. 2022-23 would be ₹ 4 lakhs. If profits and gains from business or profession for P.Y. 2023-24 before depreciation is ₹ 11 lakhs and depreciation allowance u/s 32 for the said previous year is ₹ 5 lakhs, then, the unabsorbed depreciation of ₹ 4 lakhs for the P.Y. 2022-23 would be added to the depreciation allowance of ₹ 5 lakhs. Consequently, ₹ 9 lakhs would be allowed to be set-off against the profits of ₹ 11 lakhs and the taxable profits for P.Y. 2023-24 would be ₹ 2 lakhs.

Order of set-off

However, in the order of set-off of losses under different heads of income, effect shall first be given to current year depreciation then brought forward business losses and only then to unabsorbed depreciation.

The provisions in effect are as follows:

- Since the unabsorbed depreciation forms part of the current year's depreciation, it can be set off against any other head of income except "Salaries".

- The unabsorbed depreciation can be carried forward for indefinite number of previous years.
- Set off will be allowed even if the same business to which it relates is no longer in existence in the year in which the set off takes place.

Current depreciation to be deducted first - The Supreme Court, in *CIT v. Mother India Refrigeration (P.) Ltd.* [1985] 23 Taxman 8, has categorically held that current depreciation must be deducted first before deducting the unabsorbed carried forward business losses of the earlier years in giving set off while computing the total income of any particular year.

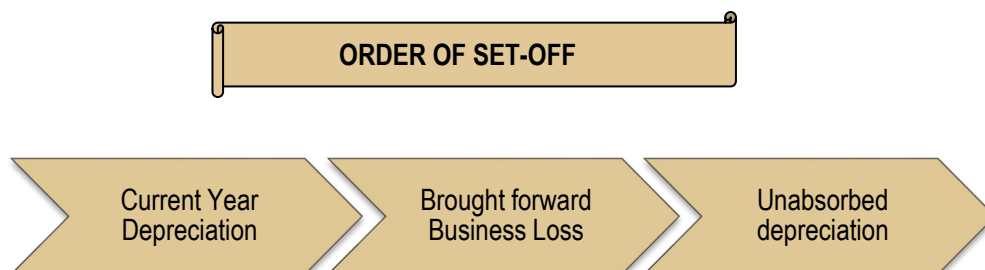


ILLUSTRATION 4

Lights and Power Ltd. engaged in the business of generation of power, furnishes the following particulars pertaining to P.Y. 2023-24. Compute the depreciation allowable under section 32 for A.Y.2024-25 and the opening balance of written down value of the block of assets as on 01.04.2023, while computing his income under the head "Profits and gains of business or profession". The company has opted for the depreciation allowance on the basis of written down value. Assume that all the assets were purchased by way of account payee cheque and that the company has not opted for the special tax regimes under section 115BAA or under section 115BAB.

	Particulars	(₹)
1.	Opening Written down value of Plant and Machinery (15% block) as on 01.04.2023 (Purchase value ₹ 8,00,000) [WDV for P.Y. 2022-23 less depreciation for that year]	5,78,000
2.	Purchase of second hand machinery (15% block) on 29.12.2023 for business purpose	2,00,000
3.	Machinery Y (15% block) purchased and installed on 12.07.2023 for the purpose of power generation	8,00,000
4.	Acquired and installed for use a new air pollution control equipment on 31.7.2023	2,50,000

5.	New air conditioner purchased and installed in office premises on 8.9.2023	3,00,000
6.	New machinery Z (15% block) acquired and installed on 23.11.2023 for the purpose of generation of power	3,25,000
7.	Sale value of an old machinery X, sold during the year (Purchase value ₹ 4,80,000, WDV as on 01.04.2023 ₹ 3,46,800)	3,10,000

SOLUTION**Computation of depreciation allowance under section 32 for the A.Y. 2024-25**

Particulars	(₹)	Plant and Machinery (15%) (₹)	Plant and Machinery (40%) (₹)
Opening WDV as on 01.04.2023		5,78,000	-
Add: Plant and Machinery acquired during the year			
- Second hand machinery	2,00,000		
- Machinery Y	8,00,000		
- Air conditioner for office	3,00,000		
- Machinery Z	3,25,000	16,25,000	-
- Air pollution control equipment		-	2,50,000
		22,03,000	2,50,000
Less: Asset sold during the year		3,10,000	Nil
Written down value as on 31.3.2024 before charging depreciation		18,93,000	2,50,000
Normal depreciation			
40% on air pollution control equipment (₹ 2,50,000 x 40%)		-	1,00,000
Depreciation on plant and machinery put to use for less than 180 days@ 7.5% (i.e., 50% of 15%)			
- Second hand machinery (₹ 2,00,000 × 7.5%)	15,000		
- Machinery Z (₹ 3,25,000 × 7.5%)	24,375	39,375	
15% on the balance WDV being put to use for more than 180 days (₹ 13,68,000 × 15%)		2,05,200	

Additional depreciation			
- Machinery Y ($\text{₹ } 8,00,000 \times 20\%$)	1,60,000		
- Machinery Z ($\text{₹ } 3,25,000 \times 10\%$, being 50% of 20%)	32,500	1,92,500	-
- Air pollution control equipment ($\text{₹ } 2,50,000 \times 20\%$)		-	50,000
Total depreciation		4,37,075	1,50,000
WDV as on 1.4.2024 [WDV of P.Y. 2023-24 less depreciation for that year]		14,55,925	1,00,000

Notes:

- (i) Power generation equipments qualify for claiming additional depreciation in respect of new plant and machinery.
- (ii) Additional depreciation is not allowed in respect of second hand machinery and air conditioner installed in office premises.
- (iii) The balance 50% additional depreciation in respect of Machinery Z of ₹ 32,500 ($10\% \times \text{₹ } 3,25,000$) can be claimed as deduction in the subsequent financial year i.e., F.Y. 2024-25.

(11) Building, machinery, plant and furniture not exclusively used for business purpose
[Section 38(2)]

Where any building, plant and machinery, furniture is not exclusively used for the purposes of business or profession, the deduction on account of expenses on account of current repairs to the premises, insurance premium of the premises, current repairs and insurance premium of machinery, plant and furniture and depreciation in respect of these assets shall be restricted to a fair proportionate part thereof, which the Assessing Officer may determine having regard to the user of such asset for the purposes of the business or profession.

(12) Balancing Charge

Section 41(2) provides for the manner of calculation of the amount which shall be chargeable to income-tax as income of the business of the previous year in which the moneys payable for the building, machinery, plant or furniture on which depreciation has been claimed under section 32(1)(i), i.e., in the case of power undertakings, is sold, discarded, demolished or destroyed. The balancing charge will be the amount by which the moneys payable in respect of such building, machinery, plant or furniture, together with the amount of scrap value, if any, exceeds the written down value. However, the amount of balancing charge should not exceed

the difference between the actual cost and the WDV. The tax shall be levied in the year in which the moneys payable become due.

The *Explanation* below section 41(2) makes it clear that where the moneys payable in respect of the building, machinery, plant or furniture referred to in section 41(2) become due in a previous year in which the business, for the purpose of which the building, machinery, plant or furniture was being used, is no longer in existence, these provisions will apply as if the business is in existence in that previous year.

Example: Mahapower Ltd. purchased an asset on 20.7.2019. The actual cost of the asset was ₹ 100 lakhs. Mahapower Ltd. claimed depreciation @5% on the actual cost of the asset. WDV of the asset as on 1.4.2023 is ₹ 80 lakhs. On 15.5.2023, Mahapower Ltd. sold the asset for ₹ 90 lakhs. The balancing charge of ₹ 10 lakhs (₹ 90 lakhs - ₹ 80 lakhs) would be taxable as income u/s 41(2).

(4) Tea Development Account/ Coffee Development Account/ Rubber Development Account [Section 33AB]

- (i) **Eligibility for deduction:** This section provides for a deduction in the computation of the taxable profits in the case of an assessee carrying on business of growing and manufacturing tea or coffee or rubber in India.
- (ii) **Quantum of deduction:** It provides that where the assessee has before the expiry of six months from the end of the previous year or before the due date of furnishing the return of income, **whichever is earlier**,
 - (a) deposited with a National Bank any amount in a special account maintained by the assessee with that Bank in accordance with a scheme approved by Tea Board or Coffee Board or Rubber Board, or
 - (b) deposited any amount in an account to be known as Deposit Account opened by the assessee in accordance with the scheme framed by the Tea Board or Coffee Board or Rubber Board, as the case may be, (hereinafter referred to as the deposit scheme) with the previous approval of the Central Government,

the assessee shall be allowed a deduction of:

- (a) A sum equal to the aggregate of the deposits made or
- (b) 40% of the profits of such business (as computed under the head 'Profits and gains of business or profession before making any deduction under this section),

whichever is less.

The above deduction will be allowed before the setting off of brought-forward loss under section 72.

- (iii) **No deduction to partner of assessee-firm or member of assessee-AOP/ BOI:** Where the assessee is a firm or any association of persons or any body of individuals, the deduction under this section shall not be allowed in the computation of the income of any partner or member of such firm, AOP or BOI.
- (iv) **Non-eligibility of deduction in any other previous year:** Where any deduction in respect of any amount deposited in the special account or Deposit Account has been allowed in any previous year, no deduction shall be allowed in respect of such amount in any other previous year.
- (v) **Audit of books of accounts:** This deduction shall not be allowed unless the accounts of such business of the assessee for the previous year have been audited by a chartered accountant before the date specified in section 44AB i.e., one month prior to the due date for furnishing return of income u/s 139(1), and the assessee furnishes by that date the report of such audit in the prescribed form duly signed and verified by such accountant.

Particulars	Due date of filing of return	Specified Date
Assesseees (other than a company) subject to tax audit	31 st October of the relevant A.Y.	30 th September of the relevant A.Y.
	For A.Y.2024-25, on or before 31 st October, 2024	For A.Y.2024-25, on or before 30 th September, 2024

However, where the assessee is required by any other law to get his accounts audited it shall be sufficient compliance with the provision of this section if such assessee gets the accounts of such business audited under any such law and furnishes the report of the audit and a further report in the prescribed form under this section.

- (vi) **Condition to withdraw the amount from special account or deposit account:** Any amount standing to the credit of the assessee in the special account or deposit account cannot be withdrawn except for the purposes specified in the scheme, or, as the case may be, in the deposit scheme.

The above amount can also be withdrawn in the following circumstances:

- (a) Closure of business
- (b) Death of an assessee
- (c) Partition of HUF

- (d) Dissolution of a firm
- (e) Liquidation of a company.

(vii) **Amount withdrawn and utilised for purchase of specified assets would be chargeable to tax as business income:** Where the sum standing to the credit of the assessee in the Special account or in the Deposit account is released by the National Bank or is withdrawn by the assessee from the Deposit account and is utilised for the purchase of:

- (a) Any machinery or plant installed in any office premises or residential accommodation including a guest house.
- (b) Any office appliances (other than computers)
- (c) Any machinery or plant, the whole of the actual cost of which is allowed as a deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head 'Profits and gains of business or profession' of any one previous year;
- (d) Any new machinery or plant to be installed in an industrial undertaking for the purpose of the business of construction, manufacture or production of any article or thing specified in the list in the Eleventh Schedule.

the whole of such amount so utilised will be treated as taxable profits of that year and taxed accordingly.

(viii) **Amount withdrawn on the closure of business or dissolution of a firm:** Where any amount is withdrawn by the assessee from the special account or deposit account during any previous year on the closure of his business or dissolution of a firm, the whole of such withdrawal shall be deemed to be the profits and gains of business of that previous year and shall be chargeable to tax as the income of that previous year, as if the business had not closed or the firm had not been dissolved.

(ix) **Utilisation from scheme for business purpose not available as a deduction:** Where any amount standing to the credit of the assessee in the special account or in the deposit account is utilised by the assessee for the purpose of any expenditure in connection with such business in accordance with the scheme or deposit scheme, such expenditure shall not be allowed in computing the business income.

(x) **Consequences of non-utilisation of withdrawn amount:** Where any amount in the special account which is released during any previous year by the National Bank or is withdrawn by the assessee from the Deposit Account, for being utilised by the assessee for

the purposes of such business and is not utilized in accordance with the scheme or deposit scheme in that year, the unutilised amount shall be deemed to be profits and gains and chargeable to income-tax as the income of that previous year.

However, where such amount is released during the previous year at the closing of the account on the death of the assessee, partition of a HUF or liquidation of a company, the above restriction will not apply.

- (xi) **Consequences of sale or transfer:** Where an asset acquired in accordance with the scheme or deposit scheme is sold or otherwise transferred in any previous year by the assessee to any person at any time before the expiry of 8 years from the end of the previous year in which it was acquired, such portion of the cost relatable to the deduction allowed under section 33AB(1) shall be deemed to be profits and gains of business or profession of the previous year in which the asset is sold or transferred and shall be chargeable to income-tax as the income of that previous year.

Exceptions: Such restriction will not apply in the following cases:

- (a) Where the asset is sold or otherwise transferred to Government, local authority, statutory corporation or a Government company.
- (b) Where the sale or transfer is made in connection with the succession of a firm by a company in the business or profession carried on by the firm as a result of which the firm sells or otherwise transfers any asset to the company and the scheme or deposit scheme continues to apply to the company in the same manner as applicable to the firm.

Further, all the properties and liabilities of the firm relating to the business or profession immediately before the succession should become the properties and liabilities of the company and all the shareholders of the company should have been partners of the firm immediately before the succession.

- (xii) **Power to Central Government for specified period:** The Central Government has the power to direct that the deduction allowable under this section shall not be allowed after a specified date.
- (xiii) **Meaning of National Bank:** “National Bank” means the National Bank for Agricultural and Rural Development (NABARD).

(5) Site Restoration Fund [Section 33ABA]

- (i) **Eligibility for deduction:** This section provides for a deduction in the computation of the taxable profits in the case of an assessee carrying on business of prospecting for, or extraction or production, of petroleum or natural gas or both in India and in relation to which the Central Government has entered into an agreement with such assessee for such business.
- (ii) **Quantum of deduction:** It provides that where the assessee has before the end of the previous year -
- (a) deposited any sum with the State Bank of India in a special account maintained by the assessee with that bank in accordance with the scheme approved in this behalf by the Government of India in the Ministry of Petroleum and Natural Gas, or
 - (b) deposited any amount in a Site Restoration Account opened by the assessee for the purposes specified in a scheme framed by the said Ministry (hereinafter referred to as the deposit scheme),

the assessee shall be entitled to a deduction of —

- a sum equal to the sum deposited; or
- a sum equal to **20%** of its profits (as computed under the head “Profits and gains of business or profession” before making any deduction under this section),

whichever is less.

For this purpose, it is provided that any amount credited in the special account or Site Restoration Account by way of interest shall also be deemed to be a deposit.

The above deduction will be allowed before the setting off of brought-forward loss under section 72.

- (iii) **No deduction to partner of assessee-firm or member of assessee-AOP/ BOI:** Where the assessee is a firm or any association of persons or anybody of individuals the deduction under this section shall not be allowed in the computation of the income of any partner or member of such firm, AOP or BOI.
- (iv) **Non-eligibility of deduction in any other previous year:** Where any deduction in respect of any amount deposited in the special account or Site Restoration Account has been allowed in any previous year, no deduction shall be allowed in respect of such amount in any other previous year.

- (v) **Audit of books of accounts:** This deduction shall not be allowed unless the accounts of such business of the assessee for the previous year have been audited by a chartered accountant before the date specified in section 44AB i.e., one month prior to the due date for furnishing return of income u/s 139(1) and the assessee furnishes by that date the report of such audit in the prescribed form duly signed and verified by such accountant.

However, where the assessee is required by any other law to get his accounts audited it shall be sufficient compliance with the provision of this section if such assessee gets the accounts of such business audited under any such law and furnishes the report of the audit and a further report in the prescribed form under this section.

- (vi) **Condition to withdraw the amount** - Any amount standing to the credit in the special account or the Site Restoration Account will not be allowed to be withdrawn except for the purposes specified in the scheme or in the deposit scheme.

- (vii) **No deduction:** No deduction shall be allowed in respect of any amount utilised for the purchase of the following items:

- (a) any machinery or plant to be installed in any office premises or residential accommodation, including any accommodation in the nature of a guest house;
- (b) any office appliances (not being computers);
- (c) any machinery or plant, the whole of the actual cost of which is allowed as a deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head 'Profits and gains of business or profession' of any one previous year;
- (d) any new machinery or plant to be installed in an industrial undertaking for the purpose of the business of construction, manufacture or production of any article or thing specified in the list in the Eleventh Schedule.

- (viii) **Withdrawal on closure of account:** Where any amount standing to the credit of the assessee in the special account or in the Site Restoration Account is withdrawn on closure of the account during any previous year by the assessee, the amount so withdrawn from the account **as reduced by** the amount, if any, payable to the Central Government by way of profit or production share as provided in the agreement referred to in section 42, shall be deemed to be the profits and gains of business or profession of that previous year and shall accordingly be chargeable to income-tax as the income of that previous year.

Where any amount is withdrawn on closure of the account in a previous year in which the business carried on by the assessee is no longer in existence, these provisions will apply as if the business is in existence in that previous year.

- (ix) **Utilisation from scheme for business purpose not available as a deduction:** Where any amount standing to the credit of the assessee in the special account or in the Site Restoration Account is utilised by the assessee for the purpose of any expenditure in connection with such business in accordance with the scheme or deposit scheme, such expenditure shall not be allowed in computing the business income.
- (x) **Consequences of non-utilisation of withdrawn amount:** Where any amount in the special account or Site Restoration Account is released in the previous year by the State Bank of India or is withdrawn from the Site Restoration Account for being utilised by the assessee for the purposes of such business and is not utilised in accordance with the scheme or the deposit scheme in that year, the unutilised amount shall be deemed to be profits and gains and chargeable to income-tax as the income of that previous year.
- (xi) **Consequences of sale or transfer -** Where any asset acquired in accordance with the scheme or the deposit scheme is sold or otherwise transferred in any previous year by the assessee to any person at any time before the expiry of 8 years from the end of the previous year in which such assets were acquired, such part of the cost of such asset as is relatable to the deduction allowed under section 33ABA(1) shall be deemed to be the profits and gains of business or profession of the previous year in which the asset is sold or otherwise transferred and shall accordingly be chargeable to income-tax as the income of that previous year.

Exceptions: This restriction will not apply in the following cases:

- (a) Where the asset is sold or otherwise transferred to Government, local authority, statutory corporation or a Government company.
- (b) Where the sale or transfer of the asset is made in connection with the succession of a firm by a company in the business or profession carried on by the firm as a result of which the firm sells or otherwise transfers to the company any asset and the scheme or the deposit scheme continues to apply to the company in the manner applicable to the firm.

Further, all the properties and liabilities of the firm relating to the business or profession immediately before the succession should become the properties and

liabilities of the company and all the shareholders of the company should have been partners of the firm immediately before the succession.

- (xii) **Power to Central Government for specified period:** The Central Government has the power to direct that the deduction allowable under this section shall not be allowed after a specified date.

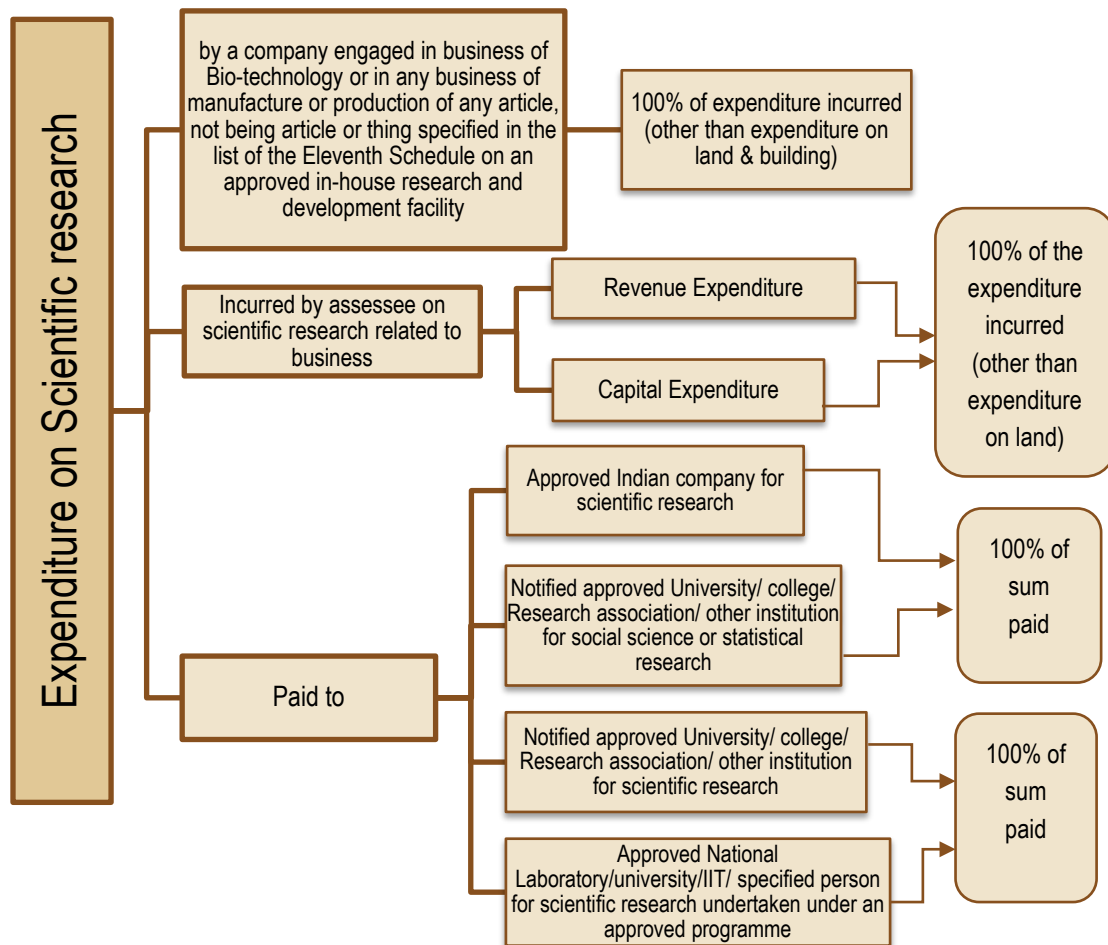
(6) Expenditure on Scientific Research [Section 35]

This section allows a deduction in respect of any expenditure on scientific research related to the business of assessee.

Meaning of certain terms:

Term	Meaning
Scientific research	Activities for the extension of knowledge in the fields of natural or applied science including agriculture, animal husbandry or fisheries [Section 43(4)(i)].
Scientific research expenditure	Expenditure incurred on scientific research would include all expenditure incurred for the prosecution or the provision of facilities for the prosecution of scientific research but does not include any expenditure incurred in the acquisition of rights in or arising out of scientific research.
Scientific research related to a business or a class of business	Scientific research related to a business or a class of business would include (i) any scientific research which may lead to or facilitate an extension of that business or all the business of that class, as the case may be; (ii) any scientific research of a medical nature which has a special relation to the welfare of the workers employed in that business or all the business of that class, as the case may be.

The deduction allowable under this section consists of –



(I) Incurred by assessee:

- (i) **Revenue Expenditure:** Any revenue expenditure incurred by the assessee on scientific research **related to his business** would be allowed as deduction in the year in which it was incurred. Expenditure incurred within 3 years immediately preceding the commencement of the business on payment of salary to research personnel engaged in scientific research related to his business carried on by the taxpayer or on purchase of material inputs for such scientific research will be allowed as deduction in the year in which the business is commenced. The deduction will be limited to the amount certified by the prescribed authority [Section 35(1)(i)]

- (ii) **Capital Expenditure:** Any expenditure of a capital nature on scientific research **related to the business** carried on by the assessee would be deductible in full in the previous year in which it is incurred [Section 35(1)(iv)].

(a) **Capital expenditure prior to commencement of business**

The *Explanation 1* to section 35(2)(ia) specifically provides that where any capital expenditure has been incurred prior to the commencement of the business, the aggregate of the expenditure so incurred within the three years immediately preceding the commencement of the business shall be deemed to have been incurred in the previous year in which the business is commenced and will rank for deduction as expenditure for scientific research incurred during the previous year.

Expenditure on land disallowed

No deduction will be allowed in respect of capital expenditure incurred on the acquisition of any land whether the land is acquired as such or as part of any property.

(b) **Carry forward of deficiency**

Capital expenditure incurred on scientific research which cannot be absorbed by the business profits of the relevant previous year can be carried forward to the immediately succeeding previous year and shall be treated as the allowance for that year. In effect, this means that there is no time bar on the period of carry forward. It shall be accordingly allowable for that previous year against any head of income other than salaries [Section 35(4)].

(c) **No depreciation**

Section 35(2)(iv) clarifies that no depreciation will be admissible on any capital asset represented by expenditure which has been allowed as a deduction under section 35 whether in the year in which deduction under section 35 was allowed or in any other previous year.

(d) **Sale of asset representing expenditure of capital nature on scientific research**

Section 41, *inter alia*, seeks to tax the profits arising on the sale of an asset representing expenditure of a capital nature on scientific research.

Where the asset representing expenditure of a capital nature on scientific research is sold without having been used for other purposes, the provisions of section 41(3) would be attracted. If the proceeds of sale together with the total amount of the deductions made under section 35(1)(iv) exceed the amount of capital expenditure, the excess or the amount of deduction so made, whichever is less, will be charged to tax as income of the business of the previous year in which the sale took place.

In simple words, since amount of deduction under section 35(1)(iv) is equal to the amount of expenditure, lower of amount of sale proceeds or deduction allowed under section 35(1)(iv) will be charged to tax as income of the business in the previous year in which the asset is sold.

Example - If capital expenditure incurred for scientific research in P.Y. 2022-23 is ₹ 3 lakhs, then deduction u/s 35(1)(iv) would have been ₹ 3 lakhs in that P.Y. If the asset is sold for ₹ 4 lakhs in P.Y. 2023-24, ₹ 3 lakhs, being lower of sale proceeds of ₹ 4 lakhs and deduction u/s 35(1)(iv) of ₹ 3 lakhs, would be charged to tax u/s 41(3) in the P.Y. 2023-24, being the year of sale.

Note - Deduction under section 35(1)(i) and 35(1)(iv) read with section 35(2) would be available to an assessee under the special concessional tax regimes under section 115BAA/115BAB/115BAC/115BAD/115BAE as well as the regular provisions of the Act.

(II) Amount contributed or paid to:

(i) Notified approved research association, university, college or other institution:

An amount equal to any sum paid to -

- a research association which has as its object, the undertaking of scientific research or
- to a university, college or other institution to be used for scientific research.

provided that such university, college, institution or association is approved for this purpose and notified by the Central Government. [Section 35(1)(ii)]

The payments so made to such institutions would be allowable irrespective of whether:

- (a) the field of scientific research is related to the assessee's business or not, and
- (b) the payment is of a revenue nature or of a capital nature.

Note - Deduction u/s 35(1)(ii) would be available to an individual, HUF, AoP (other than a co-operative society) or Bol or an artificial juridical person only if they exercise the option of shifting out of the default tax regime provided under section 115BAC(1A) and pay tax as per the optional tax regime under the regular provisions of the Act.

In case of companies and co-operative societies, deduction u/s 35(1)(ii) would not be allowable if they opt for the special provisions u/s 115BAA/115BAB and section 115BAD/115BAE, respectively. In other words, deduction u/s 35(1)(ii) would be allowable only if they pay tax under the normal provisions of the Act.

- (ii) **Approved Indian company for scientific research:** A sum equal to any amount paid to a company to be used by it for scientific research [Section 35(1)(iia)]

However, such deduction would be available only if;

- the company is registered in India and
- has as its main object the scientific research and development.

Further, it should be approved by the prescribed authority and should fulfill the other prescribed conditions.

Note - Deduction u/s 35(1)(iia) would be available to an individual, HUF, AoP (other than a co-operative society) or Bol or an artificial juridical person only if they exercise the option of shifting out of the default tax regime provided under section 115BAC(1A) and pay tax as per the optional tax regime under the regular provisions of the Act.

In case of companies and co-operative societies, deduction u/s 35(1)(iia) would not be allowable if they opt for the special provisions u/s 115BAA/115BAB and section 115BAD/115BAE, respectively. In other words, deduction u/s 35(1)(iia) would be allowable only if they pay tax under the normal provisions of the Act.

- (iii) **Approved notified research association, university, college or other institution:**

A sum equal to any amount paid to

- a research association which has as its object the undertaking of research in social science or statistical research or
- a university, college or other institution to be used for research in any social science or statistical research

provided that they are approved for this purpose and notified by the Central Government. [Section 35(1)(iii)]

Further, it has been clarified that the deduction to which an assessee (i.e. donor) is entitled on account of payment of any sum to a research association or university or college or other institution for scientific research or research in a social science or statistical research **or to a company for scientific research**, shall not be denied merely on the ground that subsequent to payment of such sum by the assessee, the approval granted to any of the aforesaid entities is withdrawn.

Note - Deduction u/s 35(1)(iii) would be available to an individual, HUF, AoP (other than a co-operative society) or BoI or an artificial juridical person only if they exercise the option of shifting out of the default tax regime provided under section 115BAC(1A) and pay tax as per the optional tax regime under the regular provisions of the Act.

In case of companies and co-operative societies, deduction u/s 35(1)(iii) would not be allowable if they opt for the special provisions u/s 115BAA/115BAB and section 115BAD/115BAE, respectively. In other words, deduction u/s 35(1)(iii) would be allowable only if they pay tax under the normal provisions of the Act.

Approval -

The research association, university, college or other institution for scientific research or research in a social science or statistical research has to make an application in the prescribed form and manner to the Central Government for the purpose of grant of approval, or continuance thereof.

The Central Government before granting approval, call for such documents or information as it thinks necessary in order to satisfy itself about the genuineness of the activities of the research association, university, college or other institution and that Government may also make such inquiries as it may deem necessary.

Every notification in respect of research association, university, college or other institution or Indian company for scientific research issued on or before 1.4.2021 shall be deemed to have been withdrawn unless such association/institution/university/college/company makes an intimation to the prescribed income-tax authority in the prescribed form. Such intimation has to be made within 3 months from 1.4.2021. Such notification shall be valid for a period of 5

consecutive assessment years beginning with the A.Y. 2022-23 or thereafter subject to the intimation made by the association/institution/university/college/company.

However, where any notification is issued by the Central Government after 29.9.2020, it shall, at any time, have effect for such assessment year(s), but not exceeding 5 assessment years as may be specified in the notification.

Requirements –

Research association, university, college or other institution or Indian company for scientific research has to

- (i) prepare prescribed statement for prescribed period and deliver or cause to be delivered such statement to the prescribed income-tax authority or the person authorized by such authority in such form, verified in such manner, setting forth such particulars and within such prescribed time.

Such association/institution/university/college/company may also deliver to the prescribed authority a correction statement for rectification of any mistake or to add, delete or update the information furnished in the statement delivered in the prescribed form and verified in prescribed manner.

- (ii) furnish to the donor, a certificate specifying the amount of donation in the such manner, containing such particulars and within such time from the date of receipt of sum, as may be prescribed.

The deduction with respect to the donation given by the assessee to any research association, university, college or other institution referred to in section 35(1)(ii)/(iii) or the company referred to in section 35(1)(ia) would not be allowed unless such research association, university, college or other institution or company complies with the above requirements stipulated under section 35(1A) .

- (iv) **Sum paid to National Laboratory, etc. [Section 35(2AA)]:** Section 35(2AA) provides that any sum paid by an assessee to a National Laboratory or University or Indian Institute of Technology or a specified person for carrying out programmes of scientific research approved by the prescribed authority will be eligible for deduction of the amount so paid.

No other deduction under the Act: No contribution which qualifies for deduction under this clause will be entitled to deduction under any other provision of the Act.

Further, it has been clarified that the deduction to which an assessee is entitled on account of payment of any sum by him to an approved National Laboratory, University, Indian Institute of Technology or a specified person for the approved programme shall not be denied to the donor-assessee merely on the ground that after payment of such sum by him, the approval granted to any of the aforesaid donee-entities or the programme has been withdrawn.

Term	Meaning
Specified person	A person who is approved by the prescribed authority

Note - Deduction u/s 35(2AA) would be available to an individual, HUF, AoP (other than a co-operative society) or BoI or an artificial juridical person only if they exercise the option of shifting out of the default tax regime provided under section 115BAC(1A) and pay tax as per the optional tax regime under the regular provisions of the Act.

In case of companies and co-operative societies, deduction u/s 35(2AA) would not be allowable if they opt for the special provisions u/s 115BAA/115BAB and section 115BAD/115BAE, respectively. In other words, deduction u/s 35(2AA) would be allowable only if they pay tax under the normal provisions of the Act.

(III) **Company engaged in Business of bio-technology or manufacturing of article or thing etc. [Section 35(2AB)]**

Where a company engaged in **the business of bio-technology or in any business of manufacture or production of any article or thing**, not being an article or thing specified in the list of the Eleventh Schedule [The exclusion list comprises of beer, wine and other alcoholic spirits, tobacco and tobacco preparations, cosmetic and toilet preparations, tooth paste, dental cream, tooth powder and soap, confectionery and chocolates, office machines and apparatus, steel furniture etc] incurs any expenditure on scientific research on in-house research and development facility as approved by the prescribed authority, a deduction of a **sum equal to the expenditure** will be allowed. Such expenditure **should not be in the nature of cost of any land or building**.

“Expenditure on scientific research” in relation to drugs and pharmaceuticals shall include expenditure incurred on clinical drug trial, obtaining approval from any state regulatory authority, and filing an application for a patent under the Patents Act, 1970.

No other deduction under the Act: No deduction will be allowed in respect of the above expenditure under any other provision of the Income-tax Act, 1961.

Agreement with the prescribed authority: No company will be entitled to this deduction unless it enters into an agreement with the prescribed authority for co-operation in such research and development facility and fulfills the prescribed conditions with regard to maintenance and audit of accounts and also furnishes prescribed reports in the prescribed manner.

Approval of the Authority: The prescribed authority shall submit its report in relation to the approval of the said facility to the Principal Chief Commissioner or the Chief Commissioner or Principal Director General Director General in such form and within such time as may be prescribed.

Note - In case of companies, deduction u/s 35(2AB) would not be allowable if they opt for the special provisions u/s 115BAA/115BAB. In other words, deduction u/s 35(2AB) would be allowable only if they pay tax under the normal provisions of the Act.

ILLUSTRATION 5

A Ltd., engaged in the business of manufacturing, furnishes the following particulars for the P.Y.2023-24. Compute the deduction allowable under section 35 for A.Y.2024-25, while computing its income under the head "Profits and gains of business or profession", assuming that it does not opt for special tax regime under section 115BAA or under section 115BAB.

	Particulars	₹
1.	Amount paid to notified approved Indian Institute of Science, Bangalore, for scientific research	1,00,000
2.	Amount paid to IIT, Delhi for an approved scientific research programme	2,50,000
3.	Amount paid to X Ltd., a company registered in India which has as its main object scientific research and development, as is approved by the prescribed authority	4,00,000
4.	Expenditure incurred on in-house research and development facility as approved by the prescribed authority	
	(a) Revenue expenditure on scientific research	3,00,000
	(b) Capital expenditure (including cost of acquisition of land ₹ 5,00,000) on scientific research	7,50,000

SOLUTION**Computation of deduction under section 35 for the A.Y.2024-25**

Particulars	₹	Section	% of deduction	Amount of deduction (₹)
Payment for scientific research				
Indian Institute of Science	1,00,000	35(1)(ii)	100%	1,00,000
IIT, Delhi	2,50,000	35(2AA)	100%	2,50,000
X Ltd.	4,00,000	35(1)(iia)	100%	4,00,000
Expenditure incurred on in-house research and development facility				
Revenue expenditure	3,00,000	35(2AB))	100%	3,00,000
Capital expenditure (excluding cost of acquisition of land ₹ 5,00,000)	2,50,000	35(2AB)	100%	2,50,000
Deduction allowable under section 35				13,00,000

(7) Expenditure for obtaining right to use spectrum for telecommunication services [Section 35ABA]

- (i) Section 32 allows depreciation in respect of assets including certain intangible assets. Section 35ABB provides for amortisation of licence fee in case of telecommunication service.
- (ii) The Government has introduced spectrum fee for auction of airwaves.
- (iii) In order to resolve the uncertainty in tax treatment of payments in respect of spectrum i.e., whether spectrum is an intangible asset and the spectrum fees paid is eligible for depreciation under section 32 or whether it is in the nature of a 'licence to operate telecommunication business' and eligible for deduction under section 35ABB, section 35ABA provides for tax treatment of spectrum fee.

(iv) Tax treatment of spectrum fee:

	Transaction	Manner of deduction
(1)	Acquisition of right to use spectrum	
	Any capital expenditure incurred for acquisition of any	Appropriate fraction of the amount of such expenditure [1/ total number of relevant previous years]

right to use spectrum for telecommunication services either before the commencement of the business or thereafter at any time during any previous year and for which payment has actually been made to obtain a right to use spectrum.	Meaning of relevant previous years:	
	Case	Meaning
	Where the spectrum fee is actually paid before the commencement of business to operate telecommunication services	The previous years beginning with the P.Y. in which such business commenced and the subsequent P.Y. or P.Y.s during which the spectrum, for which the fee is paid, shall be in force.
	In any other case	The previous years beginning with the P.Y. in which the spectrum fee is actually paid and the subsequent P.Y. or years during which the spectrum, for which the fee is paid, shall be in force.
Meaning of ‘payment has actually been made’.		
Payment has actually been made means actual payment of expenditure irrespective of the previous year in which the liability for expenditure was incurred according to the method of accounting regularly employed by the assessee or payable in the prescribed manner.		
Rule 6A substantiates the meaning of the phrase ‘payment has actually been made’		
(a)	<u>In a case where full upfront payment of spectrum fee has been made:</u> Where an assessee has opted and been allowed by the Department of Telecommunications, Government of India to make full upfront payment of spectrum fee, the actual payment of expenditure irrespective of the previous year in which the liability for the expenditure was incurred according to the method of accounting regularly employed by the assessee;	
(b)	<u>In a case where deferred payment is made:</u> Where an assessee has opted and been allowed by the Department of Telecommunications, Government of India to make deferred payment, the amount which would have been payable by the assessee had he opted for full upfront payment of spectrum fee irrespective of the previous year in which the liability for the expenditure was incurred according to the method of accounting regularly employed by the assessee.	
However, in case of deferred payment referred to in clause (b) above, where there is failure by the assessee to comply with any of the conditions specified by the scheme of the Department of Telecommunications, Government of India and Department of		

	Telecommunications terminates the allotment or assignment of spectrum, the Assessing Officer shall, in exercise of power vested in him under section 35ABA(3), re-compute the total income of the assessee for the previous year in which the deduction has been claimed and granted to him by deeming that,- (i) the total amount of spectrum fee paid up to the date of termination is the amount of "payment actually been made"; (ii) the spectrum was in force up to the date of its termination for the purpose of computing "relevant previous year".
(2)	Transfer of the spectrum
Case 1: Where the proceeds of the transfer of spectrum are less than the expenditure incurred remaining unallowed	The expenditure remaining unallowed as reduced by the proceeds of transfer shall be allowed in the previous year in which the spectrum has been transferred. Amount of deduction = Expenditure remain unallowed – Sale proceeds
Case 2: Where the proceeds of the transfer of whole or any part of the spectrum exceed the amount of expenditure remaining unallowed	The excess amount or expenditure allowed till date (i.e., difference between expenditure incurred to obtain spectrum and the expenditure remain unallowed), whichever is less, shall be chargeable to tax as profits and gains of business in the previous year in which the spectrum has been transferred. Taxable as profits and gains from business and profession = Sale proceeds – Expenditure remain unallowed } OR Expenditure allowed till date } Whichever is less If the spectrum is transferred in a previous year in which the business is no longer in existence, the taxability would arise in the above manner as though the business is in existence in that previous year.
Case 3: Where the proceeds of the transfer of whole or any part of the spectrum are not less than the amount of expenditure incurred remaining unallowed.	No deduction for such expenditure shall be allowed in the previous year in which spectrum is transferred or in respect of any subsequent previous year or years. Amount of deduction = NIL

	Case 4: Where a part of the spectrum is transferred and the case is not covered under Case 2 above i.e., the proceeds of transfer of a part of the spectrum does not exceed the amount of expenditure remaining unallowed	Unallowed expenditure would be amortised in the following manner – (i) subtracting the proceeds of transfer from the expenditure remaining unallowed; and (ii) dividing the remainder by the number of relevant previous years which have not expired at the beginning of the previous year during which the spectrum is transferred. $\text{Amount of deduction} = \frac{\text{Unallowed expenditure} - \text{Sale proceeds}}{\text{Unexpired number of relevant P.Y.s}}$
(3) Transfer of spectrum in a scheme of amalgamation		
	If the amalgamating company sells or transfers the spectrum to the amalgamated company, being an Indian company under the scheme of amalgamation	The provisions of section 35ABA will apply to amalgamated company as they would have applied to amalgamating company as if the latter has not transferred the spectrum. The tax treatment in cases 1, 2 & 3 given in (2) above will not apply to the amalgamating company.
(4) Transfer of spectrum in a scheme of demerger		
	If the demerged company sells or transfers the spectrum to the resulting company, being an Indian company under the scheme of demerger	The provisions of section 35ABA will apply to resulting company as they would have applied to demerged company as if the latter has not transferred the spectrum. The tax treatment in cases 1, 2 & 3 given in (2) above will not apply to the demerged company.

(v) No depreciation

Where a deduction is claimed and allowed for any previous year under this section, then no depreciation on capital expenditure so incurred shall be allowed by way of depreciation under section 32(1) for the same previous year or in any other previous year.

(vi) Consequences of failure to comply with the conditions after grant of deduction:

Where, in a previous year, any deduction has been claimed and granted to an assessee and subsequently, there is failure to comply with any of the provisions of this section, then –

- (1) the deduction shall be deemed to have been wrongly allowed;
- (2) the Assessing Officer may recompute the total income of the assessee for the said previous year and make the necessary rectification. This is notwithstanding anything contained in the Income-tax Act, 1961;
- (3) the provisions under section 154 for rectification of mistake apparent from the record would apply. The period of four years would be reckoned from the end of the previous year in which the failure to comply with the provisions of section 35ABA takes place.

(8) Expenditure for obtaining licence to operate telecommunication services [Section 35ABB]

(i) Tax treatment of licence fee:

	Transaction	Manner of deduction	
(1)	Acquisition of right to operate telecommunication services		
	Any capital expenditure incurred for acquisition of any right to operate telecommunication services either before the commencement of the business or thereafter at any time during any previous year and for which payment has actually been made (actual payment of expenditure) to obtain a licence.	Appropriate fraction of the amount of such expenditure [1/ total number of relevant previous years]	
		Meaning of relevant previous years:	
		Case	Meaning
		Where the licence fee is actually paid before the commencement of business to operate telecommunication services	The previous years beginning with the P.Y. in which such business commenced and the subsequent P.Y. or P.Y.s during which the licence, for which the fee is paid, shall be in force.
		In any other case	The previous years beginning with the P.Y. in which the licence fee is actually paid and the subsequent P.Y. or years during which the licence, for which the fee is paid, shall be in force.
Payment has actually been made means the actual payment of expenditure irrespective of the previous year in which the liability for the expenditure was incurred according to the method of accounting regularly employed by the assessee.			

(2)	Transfer of the licence
Case 1: Where the proceeds of the transfer of licence are less than the expenditure incurred remaining unallowed	The expenditure remaining unallowed as reduced by the proceeds of transfer shall be allowed in the previous year in which the licence has been transferred. $\text{Amount of deduction} = \text{Expenditure remain unallowed} - \text{Sale proceeds}$
Case 2: Where the proceeds of the transfer of whole or any part of the licence exceed the amount of expenditure remaining unallowed	The excess amount shall be chargeable to tax as profits and gains of business in the previous year in which the licence has been transferred. However, the excess should not exceed the difference between the expenditure incurred to obtain the licence and the amount of expenditure remaining unallowed. Taxable as profits and gains from business and profession = $\left. \begin{array}{l} \text{Sale proceeds} - \text{Expenditure remain unallowed} \\ \text{OR} \\ \text{Expenditure allowed till date} \end{array} \right\} \text{Whichever is less}$ If the licence is transferred in a previous year in which the business is no longer in existence, the taxability would arise in the above manner as if the business is in existence in that previous year.
Case 3: Where the proceeds of the transfer of whole or any part of the licence are not less than the amount of expenditure incurred remaining unallowed.	No deduction for such expenditure shall be allowed in the previous year in which licence is transferred or in respect of any subsequent previous year or years. $\text{Amount of deduction} = \text{NIL}$
Case 4: Where a part of the licence is transferred and the case is not covered under Case 2 above i.e., the proceeds of transfer of a part of the licence does not exceed the	Unallowed expenditure would be amortised in the following manner – - subtracting the proceeds of transfer from the expenditure remaining unallowed; and - dividing the remainder by the number of relevant previous years which have not expired at the beginning of the previous year during which the licence is transferred. $\text{Amount of deduction} = \frac{\text{Unallowed expenditure} - \text{Sale proceeds}}{\text{Unexpired number of relevant P.Y.s}}$

	amount of expenditure remaining unallowed	
(3)	Transfer of licence in a scheme of amalgamation	
	If the amalgamating company sells or transfers the licence to the amalgamated company, being an Indian company, under the scheme of amalgamation	The provisions of section 35ABB will apply to amalgamated company as they would have applied to amalgamating company as if the latter has not transferred the licence. The tax treatment in cases 1, 2 & 3 given in (2) above will not apply to the amalgamating company.
(4)	Transfer of licence in a scheme of demerger	
	If the demerged company sells or transfers the licence to the resulting company, being an Indian company, under the scheme of demerger	The provisions of section 35ABB will apply to resulting company as they would have applied to demerged company as if the latter has not transferred the licence. The tax treatment in cases 1, 2 & 3 given in (2) above will not apply to the demerged company.

(ii) No depreciation

Where a deduction is claimed and allowed for any previous year under this section, then no depreciation on capital expenditure so incurred shall be allowed by way of depreciation under section 32(1) for the same previous year or in any other previous year.

ILLUSTRATION 6

X Ltd., providing telecommunication services, acquired a telecom licence at cost of ₹ 50 lakhs on 01.04.2021 for a period of 10 years. Assuming the telecom licence is transferred by X Ltd. in P.Y. 2023-24, say for: (a) ₹ 32 lakhs; (b) ₹ 43 lakhs or (c) ₹ 52 lakhs, and if:

- (i) *Whole of the license is transferred*
- (ii) *Part of the license is transferred.*

Explain, how the transfer shall be dealt with under the Income-tax Act, 1961 and the amount, if any, deductible for A.Y. 2024-25.

SOLUTION**(i) Whole of the license is transferred:**

Particulars	₹ (in lakhs)
Cost of the licence	50
Less: Deduction u/s 35ABB for P.Y. 2021-22	5
	45
Less: Deduction u/s 35ABB for P.Y. 2022-23	5
Expenditure remaining unallowed	40
(a) If transferred for ₹ 32 lakhs	
Proceeds from transfer	32
Deduction allowed u/s 35ABB in P.Y. 2023-24 (Expenditure remaining unallowed as reduced by the proceeds of transfer)	8
(b) If transferred for ₹ 43 lakhs	
Proceeds from transfer	43
Taxable as profits and gains from business and profession (Lesser of: ₹ 3 lakhs i.e., Proceed from transfer - Expense remain unallowed i.e. ₹ 43 lakhs - ₹ 40 lakhs OR ₹ 10 lakhs i.e., expense allowed till date)	3
(c) If transferred for ₹ 52 lakhs	
Proceeds from transfer	52
Taxable as profits and gains from business and profession (Lesser of: ₹ 12 lakhs i.e., Proceed from transfer - Expense remain unallowed i.e. ₹ 52 lakhs - ₹ 40 lakhs OR ₹ 10 lakhs i.e., expense allowed till date)	10
Short Term Capital Gains (₹ 52 lakhs - ₹ 40 lakhs - ₹ 10 lakhs)	2

(ii) Part of the license is transferred:

Particulars	₹ (in lakhs)
Cost of the licence	50
Less: Deduction u/s 35ABB for P.Y. 2021-22	5
	45
Less: Deduction u/s 35ABB for P.Y. 2022-23	5
Expenditure remaining unallowed	40

(a) If transferred for ₹ 32 lakhs	
Proceeds from transfer	32
Deduction allowed u/s 35ABB in P.Y. 2023-24 [₹ 40 lakhs - ₹ 32 lakhs)/ 8 years	1
(b) If transferred for ₹ 43 lakhs	
Proceeds from transfer	43
Taxable as profits and gains from business and profession (Lesser of: ₹ 3 lakhs i.e., Proceeds from transfer - Expense remaining unallowed i.e. ₹ 43 lakhs - ₹ 40 lakhs OR ₹ 10 lakhs i.e., expense allowed till date)	3
(c) If transferred for ₹ 52 lakhs	
Proceeds from transfer	52
Amount taxable as profits and gains from business and profession (Lesser of: ₹ 12 lakhs i.e., Proceeds from transfer - Expense remaining unallowed i.e. ₹ 52 lakhs - ₹ 40 lakhs OR ₹ 10 lakhs i.e., expense allowed till date)	10
Short Term Capital Gains (₹ 52 lakhs - ₹ 40 lakhs - ₹ 10 lakhs)	2

(9) “Investment-linked tax incentives” for specified businesses [Section 35AD]

(i) **List of specified businesses:** With the specific objective of creating rural infrastructure and environment friendly alternate means for transportation of bulk goods, investment-linked tax incentives have been introduced for specified businesses, namely –

- setting-up and operating ‘cold chain’ facilities for specified products;
- setting-up and operating warehousing facilities for storing agricultural produce;
- laying and operating a cross-country natural gas or crude or petroleum oil pipeline network for distribution, including storage facilities being an integral part of such network;
- building and operating a hotel of two-star or above category, anywhere in India;
- building and operating a hospital, anywhere in India, with at least 100 beds for patients;
- developing and building a housing project under a notified scheme for slum redevelopment or rehabilitation framed by the Central Government or a State Government.
- developing and building a housing project under a notified scheme for affordable housing framed by the Central Government or State Government;
- production of fertilizer in India;

- setting up and operating an inland container depot or a container freight station notified or approved under the Customs Act, 1962;
- bee-keeping and production of honey and beeswax;
- setting up and operating a warehousing facility for storage of sugar;
- laying and operating a slurry pipeline for the transportation of iron ore;
- setting up and operating a semiconductor wafer fabrication manufacturing unit, if such unit is notified by the Board in accordance with the prescribed guidelines;
- developing or maintaining and operating or developing, maintaining and operating a new infrastructure facility.

(ii) **Deduction for Capital Expenditure:** 100% of the capital expenditure incurred during the previous year, wholly and exclusively for the above businesses would be allowed as deduction from the business income to the assessee opting for deduction under section 35AD.

➡ However, expenditure incurred on acquisition of any **land, goodwill or financial instrument** would **not** be eligible for deduction.

➡ Further, any expenditure in respect of which payment or aggregate of payment made to a person of an amount exceeding **₹ 10,000 in a day** otherwise than by an account payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account or through such other prescribed electronic mode would not be eligible for deduction. The prescribed electronic modes include credit card, debit card, net banking, IMPS (Immediate payment Service), UPI (Unified Payment Interface), RTGS (Real Time Gross Settlement), NEFT (National Electronic Funds Transfer), and BHIM (Bharat Interface for Money) Aadhar Pay [Notification No. 8/2020 dated 29.01.2020].

Note - In case of an individual/HUF/AoP/Bol carrying on specified business, deduction u/s 35AD would be available only if such person exercises the option of shifting out of the default tax regime provided under section 115BAC(1A). If such person is paying concessional rates of tax under the default tax regime u/s 115BAC, deduction u/s 35AD would not be available.

A company/ cooperative society would not be eligible for deduction under section 35AD, if it opts for the special provisions of section 115BAA/115BAB or section 115BAD/115BAE, respectively.

- (iii) **Expenditure prior to commencement of operation:** Further, the expenditure incurred, wholly and exclusively, for the purpose of specified business prior to commencement of operation would be allowed as deduction during the previous year in which the assessee commences operation of his specified business.

The amount incurred prior to commencement should be capitalized in the books of account of the assessee on the date of commencement of its operations.

- (iv) **Conditions to be fulfilled:** For claiming deduction under section 35AD, the specified business should fulfill the following conditions –

General Conditions:	
To be fulfilled by every specified business	
(i)	it should not be set up by splitting up, or the reconstruction, of a business already in existence;
(ii)	it should not be set up by the transfer to the specified business of machinery or plant previously used for any purpose; In order to satisfy this condition, the total value of the plant or machinery so transferred should not exceed 20% of the value of the total plant or machinery used in such specified business. For the purpose of this condition, machinery or plant would not be regarded as previously used if it had been used outside India by any person other than the assessee provided the following conditions are satisfied: - such plant or machinery was not used in India at any time prior to the date of its installation by the assessee; - the plant or machinery was imported into India from a foreign country; - no deduction in respect of depreciation of such plant or machinery has been allowed to any person at any time prior to the date of installation by the assessee.
Conditions required to be fulfilled by certain specified businesses:	
I. Business of laying and operating a cross-country natural gas or crude or petroleum oil pipeline network for distribution, including storage facilities being an integral part of such network	
(i)	Such business should be owned by a company formed and registered in India under the Companies Act, 1956 ⁷ or by a consortium of such companies or by an authority or a board or a corporation established or constituted under any Central or State Act;

⁷ Now Companies Act, 2013

(ii)	It should have been approved by the Petroleum and Natural Gas Regulatory Board and notified by the Central Government in the Official Gazette
(iii)	It should have made not less than such proportion of its total pipeline capacity available for use on common carrier basis by any person other than the assessee or an associated person.
(iv)	It should fulfill any other prescribed condition.
II. Business of developing or operating and maintaining or developing, operating and maintaining a new infrastructure facility	
(i)	The business should be owned by a company registered in India or by a consortium of such companies or by an authority or a board or corporation or any other body established or constituted under any Central or State Act.
(ii)	The entity should have entered into an agreement with the Central Government or a State Government or a local authority or any other statutory body for developing or operating and maintaining or developing, operating and maintaining, a new infrastructure facility.

- (v) **No deduction under section 10AA or Chapter VI-A under the heading “C.-Deductions in respect of certain incomes”:** Where a deduction under this section is claimed and allowed in respect of the specified business for any assessment year, no deduction under the provisions of Chapter VI-A under the heading “C - Deductions in respect of certain incomes” or section 10AA is permissible in relation to such specified business for the same or any other assessment year.

Correspondingly, section 80A has been amended to provide that where a deduction under any provision of this Chapter under the heading “C – Deductions in respect of certain incomes” is claimed and allowed in respect of the profits of such specified business for any assessment year, no deduction under section 35AD is permissible in relation to such specified business for the same or any other assessment year.



In short, once the assessee has claimed the benefit of deduction under section 35AD for a particular year in respect of a specified business, he cannot claim benefit under Chapter VI-A under the heading “C.-Deductions in respect of certain incomes” or section 10AA, **for the same or any other year and vice versa.**

- (vi) **No deduction allowable under the Act in respect of expenditure for which deduction allowed under this section:** The assessee cannot claim deduction in respect of such expenditure incurred for specified business under any other provision of the Income-tax Act, 1961 in the current year or under this section for any other year, if the deduction has been claimed or opted by him and allowed to him under section 35AD.

(vii) Date of Commencement of specified businesses:

S. No.	Specified business	Date of commencement of operations
1.	Laying and operating a cross country natural gas pipeline network for distribution, including storage facilities being an integral part of such network	on or after 1st April, 2007
2.	(a) building and operating anywhere in India, a hotel of two-star or above category as specified by the Central Government (b) building and operating a hospital with at least 100 beds for patients (c) notified scheme for slum redevelopment or rehabilitation housing projects	on or after 1st April, 2010
3.	(a) notified scheme for affordable housing projects and (b) production of fertilizer in a new plant or in a newly installed capacity in an existing plant	on or after 1 st April, 2011
4.	(a) setting up and operating an inland container depot or a container freight station notified or approved under the Customs Act, 1962, (b) bee-keeping and production of honey and beeswax and (c) setting up and operating a warehousing facility for storage of sugar	on or after 1 st April, 2012
5.	(a) laying and operating a slurry pipeline for the transportation of iron ore or (b) setting up and operating a semi-conductor wafer fabrication manufacturing unit	on or after 1 st April, 2014
6.	developing or operating and maintaining or developing, operating and maintaining, any infrastructure facility	on or after 1 st April, 2017
7.	In any other case, namely, setting and operating - (a) "cold-chain" facilities for specified products or (b) warehousing facilities for storing agricultural produce	on or after 1st April, 2009

(viii) Meaning of certain terms

Term	Meaning
Cold chain facility	A chain of facilities for storage or transportation of agricultural and forest produce, meat and meat products, poultry, marine and dairy products, products of horticulture, floriculture and apiculture and

	processed food items under scientifically controlled conditions including refrigeration and other facilities necessary for the preservation of such produce.
Associated person	In relation to the assessee means a person— (i) who participates directly or indirectly or through one or more intermediaries in the management or control or capital of the assessee; (ii) who holds, directly or indirectly, shares carrying not less than 26% of the voting power in the capital of the assessee; (iii) who appoints more than half of the Board of directors or members of the governing board, or one or more executive directors or executive members of the governing board of the assessee; or (iv) who guarantees not less than 10% of the total borrowings of the assessee.
Infrastructure facility	(i) A road including toll road, a bridge or a rail system. (ii) A highway project including housing or other activities being an integral part of the highway project. (iii) A water supply project, water treatment system, irrigation project, sanitation and sewerage system or solid waste management system. (iv) A port, airport, inland waterway, inland port or navigational channel in the sea.

(ix) Set-off or carry forward and set-off of loss from specified business:

The loss of an assessee claiming deduction under section 35AD in respect of a specified business can be set-off against the profit of another specified business under section 73A, irrespective of whether the latter is eligible for deduction under section 35AD.

Such loss can, however, be carried forward indefinitely for set-off against profits of the same or any other specified business but the assessee has to file return of income on or before the due date of filing return of income under section 139 for carry forward of losses from specified business.

Example:

A assessee can therefore, set-off the losses of a hospital or hotel which begins to operate after 1st April, 2010 and which is eligible for deduction section 35AD, against the profits of the existing business of operating a hospital (with atleast 100 beds for patients) or a hotel (of two-star or above category) started before 1st April, 2010, even if the latter is not eligible for deduction under section 35AD.

ILLUSTRATION 7

Mr. A commenced operations of the businesses of setting up a warehousing facility for storage of food grains, sugar and edible oil on 1.4.2023. He incurred capital expenditure of ₹ 80 lakh, ₹ 60 lakh and ₹ 50 lakh, respectively, on purchase of land and building during the period January, 2023 to March, 2023 exclusively for the above businesses, and capitalized the same in its books of account as on 1st April, 2023. The cost of land included in the above figures is ₹ 50 lakh, ₹ 40 lakh and ₹ 30 lakh, respectively. During the P.Y. 2023-24, he incurred capital expenditure of ₹ 20 lakh, ₹ 15 lakh & ₹ 10 lakh, respectively, for extension/ reconstruction of the building purchased and used exclusively for the above businesses.

The profits from the business of setting up a warehousing facility for storage of food grains, sugar and edible oil (before claiming deduction under section 35AD and section 32) for the A.Y. 2024-25 is ₹ 16 lakhs, ₹ 14 lakhs and ₹ 31 lakhs, respectively. Assume in respect of expenditure incurred, the payments are made by account payee cheque or use of ECS through bank account.

Compute the income under the head “Profits and gains of business or profession” for the A.Y.2024-25 and the loss to be carried forward, assuming that Mr. A is exercising the option of shifting out of the default tax regime provided under section 115BAC(1A) and has fulfilled all the conditions specified for claim of deduction under section 35AD and wants to claim deduction under section 35AD and has not claimed any deduction under Chapter VI-A under the heading “C. – Deductions in respect of certain incomes”.

SOLUTION
Computation of profits and gains of business or profession for A.Y. 2024-25

Particulars	₹ (in lakhs)
Profit from business of setting up of warehouse for storage of edible oil (before providing for depreciation under section 32)	31
Less: Depreciation under section 32	
10% of ₹ 30 lakh, being (₹ 50 lakh – ₹ 30 lakh + ₹ 10 lakh)	3
Income chargeable under “Profits and gains from business or profession”	28

Computation of income/loss from specified business under section 35AD

	Particulars	Food Grains	Sugar	Total
		₹ (in lakhs)		
(A)	Profits from the specified business of setting up a warehousing facility (before providing deduction under section 35AD)	16	14	30

	Less: Deduction under section 35AD			
(B)	Capital expenditure incurred prior to 1.4.2023 (i.e., prior to commencement of business) and capitalized in the books of account as on 1.4.2023 (excluding the expenditure incurred on acquisition of land) = ₹ 30 lakh (₹ 80 lakh – ₹ 50 lakh) and ₹ 20 lakh (₹ 60 lakh – ₹ 40 lakh)	30	20	50
(C)	Capital expenditure incurred during the P.Y.2023-24	20	15	35
(D)	Total capital expenditure (B + C)	50	35	85
(E)	Deduction under section 35AD			
	100% of capital expenditure (food grains/sugar)	50	35	85
	Total deduction u/s 35AD for A.Y.2024-25	50	35	85
(F)	Loss from the specified business of setting up and operating a warehousing facility (after providing for deduction under section 35AD) to be carried forward as per section 73A (A-E)	(34)	(21)	(55)

Notes:

- (i) Deduction of 100% of the capital expenditure is available under section 35AD for A.Y.2024-25 in respect of specified business of setting up and operating a warehousing facility for storage of sugar and setting up and operating a warehousing facility for storage of agricultural produce where operations are commenced on or after 01.04.2012 or on or after 01.04.2009, respectively.
- (ii) However, since setting up and operating a warehousing facility for storage of edible oils is not a specified business, Mr. A is not eligible for deduction under section 35AD in respect of capital expenditure incurred in respect of such business.
- (iii) Mr. A can, however, claim depreciation@10% under section 32 in respect of the capital expenditure incurred on buildings. It is presumed that the buildings were put to use for more than 180 days during the P.Y. 2023-24.
- (iv) Loss from a specified business can be set-off only against profits from another specified business. Therefore, the loss of ₹ 55 lakh from the specified businesses of setting up and operating a warehousing facility for storage of food grains and sugar cannot be set-off against the profits of ₹ 28 lakh from the business of setting and operating a warehousing facility for storage of edible oils, since the same is not a specified business. Such loss can, however, be carried forward indefinitely for set-off against profits of the same or any other specified business provided Mr. A file his return of income on or before the due date as specified u/s 139.

ILLUSTRATION 8

XYZ Ltd. commenced operations of the business of a new three-star hotel in Madurai, Tamil Nadu on 1.4.2023. The company incurred capital expenditure of ₹ 50 lakh during the period January, 2023 to March, 2023 exclusively for the above business, and capitalized the same in his books of account as on 1st April, 2023. Further, during the P.Y. 2023-24, it incurred capital expenditure of ₹ 2 crore (out of which ₹ 1.50 crore was for acquisition of land) exclusively for the above business.

Compute the income under the head “Profits and gains of business or profession” for the A.Y.2024-25, assuming that XYZ Ltd. has fulfilled all the conditions specified for claim of deduction under section 35AD and opted for claiming deduction under section 35AD; and has not claimed any deduction under Chapter VI-A under the heading “C. – Deductions in respect of certain incomes”. The company is not opting for the concessional tax regime under section 115BAA.

The profits from the business of running this hotel (before claiming deduction under section 35AD) for the A.Y.2024-25 is ₹ 25 lakhs. Assume that the company also has another existing business of running a four-star hotel in Coimbatore, which commenced operations fifteen years back, the profits from which are ₹ 120 lakhs for the A.Y.2024-25. Also, assume that expenditure incurred during the previous year 2023-24 were paid by account payee cheque or use of ECS through bank account.

SOLUTION
Computation of profits and gains of business or profession for A.Y. 2024-25

Particulars	₹ (in lakhs)
Profits from the specified business of new hotel in Madurai (before providing deduction under section 35AD)	25
Less: Deduction under section 35AD	
Capital expenditure incurred during the P.Y.2023-24 (excluding the expenditure incurred on acquisition of land) = ₹ 200 lakhs – ₹ 150 lakhs	50 lakh
Capital expenditure incurred prior to 1.4.2023 (i.e., prior to commencement of business) and capitalized in the books of account as on 1.4.2023	50 lakh
Total deduction under section 35AD for A.Y.2024-25	100
Loss from the specified business of new hotel in Madurai	(75)
Profit from the existing business of running a hotel in Coimbatore	120
Net profit from business after set-off of loss of specified business against profits of another specified business under section 73A	45

- (x) **Transfer of hotel built by the assessee:** Where the assessee builds a hotel of two-star or above category as classified by the Central Government and subsequently, while continuing to own the hotel, transfers the operation of the said hotel to another person, the assessee shall be deemed to be carrying on the specified business of building and operating a hotel. Therefore, he would be eligible to claim investment-linked tax deduction under section 35AD.

➔ Therefore, in effect, the assessee shall be deemed to be carrying on the specified business of building and operating hotel if –

- (i) The assessee builds a hotel of two-star or above category;
- (ii) Thereafter, he transfers the operation of the hotel to another person;
- (iii) He, however, should continue to own the hotel.

- (xi) **Other conditions contained under section 35AD**

S. No.	Particulars	Condition
1.	Transfer of goods and services	Where any goods or services held for the purposes of the specified business are transferred to any other business carried on by the assessee, or vice versa, and if the consideration for such transfer does not correspond with the market value of the goods or services then the profits and gains of the specified business shall be computed as if the transfer was made at market value. Market value means the price such goods or services would ordinarily fetch in the open market, subject to statutory or regulatory restrictions, if any.
2.	Close connection between assessee and any other person	Where due to the close connection between the assessee and the other person or for any other reason, it appears to the Assessing Officer that the profits of specified business is increased to more than the ordinary profits, the Assessing Officer shall compute the amount of profits of such eligible business on a reasonable basis for allowing the deduction.
2.	Audit of accounts	The deduction shall be allowed to the assessee only if the accounts of the assessee for the relevant previous year have been audited by a chartered accountant and the assessee furnishes the audit report in the prescribed form, duly signed and verified by such accountant along with his return of income.

3.	Asset to be used for specified business for eight years	Section 35AD(7A) provides that any asset in respect of which a deduction is claimed and allowed under section 35AD shall be used only for the specified business for a period of eight years beginning with the previous year in which such asset is acquired or constructed.
4.	Asset demolished, destroyed, discarded or transferred for which a deduction has been allowed	If any asset on which a deduction under section 35AD has been claimed and allowed, is demolished, destroyed, discarded or transferred, the sum received or receivable for the same is chargeable to tax under clause (vii) of section 28. This does not take into account a case where asset on which deduction under section 35AD has been claimed is used for any purpose other than the specified business by way of a mode other than that specified above.
5.	Asset used for any other business other than specified business during 8 years [Section 35AD(7B)]	If asset is used for any purpose other than the specified business during 8 years beginning with the previous year in which such asset is acquired, the total amount of deduction so claimed and allowed in any previous year(s) in respect of such asset, as reduced by the amount of depreciation allowable in accordance with the provisions of section 32 as if no deduction had been allowed under section 35AD, <u>shall be deemed to be income</u> of the assessee chargeable under the head "Profits and gains of business or profession" of the previous year in which the asset is so used. In such a case, as per the proviso to <i>Explanation 13</i> to Section 43(1), the actual cost of such asset for the assessee shall be the actual cost as reduced by amount of depreciation would have been allowable had the asset been used for the purpose of business since the date of its acquisition. However, the deeming provision under sub-section (7B) shall not be applicable to a company which has become a sick industrial company under section 17(1) of the Sick Industrial Companies (Special Provisions) Act, 1985, during the intervening period of eight years specified in sub-section (7A).

ILLUSTRATION 9

ABC Ltd. is a company having two units – Unit A carries on specified business of setting up and operating a warehousing facility for storage of sugar; Unit B carries on non-specified business of operating a warehousing facility for storage of edible oil.

Unit A commenced operations on 1.4.2022 and it claimed deduction of ₹ 100 lakhs incurred on purchase of two buildings for ₹ 50 lakhs each (for operating a warehousing facility for storage of sugar) under section 35AD for A.Y. 2023-24. However, in February, 2024, Unit A transferred one of its buildings to Unit B.

Examine the tax implications of such transfer in the hands of ABC Ltd.

SOLUTION

Since the capital asset, in respect of which deduction of ₹ 50 lakhs was claimed under section 35AD, has been transferred by Unit A carrying on specified business to Unit B carrying on non-specified business in the P.Y.2023-24, the deeming provision under section 35AD(7B) is attracted during the A.Y. 2024-25.

Particulars	₹
Deduction allowed under section 35AD for A.Y.2023-24	50,00,000
Less: Depreciation allowable u/s 32 for A.Y.2023-24 [10% of ₹ 50 lakhs]	5,00,000
Deemed income under section 35AD(7B)	45,00,000

ABC Ltd., however, by virtue of *proviso to Explanation 13 to section 43(1)*, can claim depreciation under section 32 on the building in Unit B for A.Y. 2024-25. For the purpose of claiming depreciation on building in Unit B, the actual cost of the building would be:

Particulars	₹
Actual cost to the assessee	50,00,000
Less: Depreciation allowable u/s 32 for A.Y.2023-24 [10% of ₹ 50 lakhs]	5,00,000
Actual cost in the hands of ABC Ltd. in respect of building in Unit B	45,00,000

(10) Contributions for Rural Development [Section 35CCA]

This section allows a deduction of the following payment or contribution made by the assessee during the previous year to:

- (1) **Notified rural development fund** - Payment to a rural development fund set up and notified by the Central Government.
- (2) **Notified National Urban Poverty Eradication Fund** - Payments made to “National Urban Poverty Eradication Fund” (NUPEF) set up and notified by the Central Government.

No other deduction - It has been specifically provided that in every case where any deduction under this section is claimed by the assessee and allowed to him for any assessment year in respect of any expenditure incurred by way of payment of contribution to such notified fund, no deduction in respect of the same expenditure can again be claimed by the assessee under any other relevant provision for the same or any other assessment year.

(11) Deduction in respect of expenditure incurred on notified agricultural extension project [Section 35CCC]

- (i) **Eligible project and Quantum of Deduction:** In order to incentivize the business entities to provide better and effective agriculture extensive services, section 35CCC provides a deduction of a sum equal to expenditure incurred by an assessee on agricultural extension project in accordance with the prescribed guidelines.
- (ii) **No other deduction:** In case deduction in respect of such expenditure is allowed under this section then, no deduction in respect of such expenditure shall be allowed under any other provisions of the Act in the same or any other assessment year.
- (iii) **Project must be notified:** The agricultural extension project eligible for this deduction shall be notified by the CBDT.

The agricultural extension project shall be considered for notification if it fulfils **all** of the following conditions, namely:—

- (a) the project shall be undertaken by an assessee for training, education and guidance of farmers;
- (b) the project shall have prior approval of the Ministry of Agriculture, Government of India; and
- (c) an expenditure (not being expenditure in the nature of cost of any land or building) exceeding the amount of ₹ 25 lakhs is expected to be incurred for the project.

Components of expenditure: All expenses (not being expenditure in the nature of cost of any land or building), as reduced by the amount received from beneficiary, if any, incurred wholly and exclusively for undertaking an eligible agricultural extension project **shall be eligible for deduction** under section 35CCC.

However, expenditure incurred on the agricultural extension project which is reimbursed or reimbursable to the assessee by any person, whether directly or indirectly, shall not be eligible for deduction under section 35CCC.

- (iv) **Conditions for claiming deduction:** Deduction in respect of expenditure incurred for notified agricultural extension project would be available, if
 - ◆ assessee maintain separate books of account of such agricultural extension project and get such books of account audited by an Accountant and
 - ◆ furnish the following on or before the due date of furnishing the return of income to

the Commissioner of Income-tax or Director of Income-tax, as the case may be :-

- ❖ the audited statement of accounts of the agricultural extension project along with the audited report and amount of deduction claimed under this section,
- ❖ a note on agricultural project undertaken and programme of agricultural extension project to be undertaken during the current year and financial allocation for such programme and
- ❖ a certificate from Ministry of Agriculture, Government of India, regarding the genuineness of such project.

Note - In case of an individual, HUF, AoP (other than a co-operative society) or BoI or an artificial juridical person, deduction u/s 35CCC would be available only if such person exercises the option of shifting out of the default tax regime provided under section 115BAC(1A). If such person is paying concessional rates of tax under the default tax regime u/s 115BAC, deduction u/s 35CCC would not be available.

A company/ cooperative society would not be eligible for deduction under section 35CCC, if it opts for the special provisions of section 115BAA/115BAB or section 115BAD/115BAE, respectively.

(12) Deduction in respect of expenditure incurred by companies on notified skill development project [Section 35CCD]

- (i) **Quantum of Deduction:** In order to encourage **companies** to invest on skill development projects in the manufacturing sector, section 35CCD provides for a deduction of a sum equal to the expenditure (not being expenditure in the nature of cost of any land or building) on skill development project incurred by the company in accordance with the prescribed guidelines. However, expenditure incurred on the notified skill development project which is reimbursed or reimbursable to the company by any person, whether directly or indirectly, shall not be eligible for deduction under section 35CCD.
- (ii) **No other deduction allowed:** In case deduction in respect of such expenditure is allowed under this section then, no deduction of such expenditure shall be allowed under any other provisions of the Act in the same or any other assessment year.
- (iii) **Only notified projects are eligible:** The skill development project eligible for this deduction shall be notified by the CBDT.

A skill development project would be considered for notification if it is undertaken by an eligible company (a company engaged in the business of manufacture or production of any article or thing, not being beer, wine and other alcoholic spirits and tobacco and tobacco

preparations or engaged in providing specified services) and the project is undertaken in separate facilities in a training institute.

Skill development project in respect of existing employees of the company, however, would not be eligible for notification, where the training of such employees commences after six months of their recruitment.

Further, the deduction would be available, if the company undertaking such project

- maintain separate books of account of the skill development project and get such books of account audited by an accountant.
- furnish the audited statement of accounts of the skill development project along with the audited report and amount of deduction claimed under this section, to the Commissioner of Income-tax or Director of Income-tax, as the case may be.

Note - A company would not be eligible for deduction under section 35CCD, if it opts for the special provisions of section 115BAA/115BAB.

(13) Amortisation of Preliminary Expenses [Section 35D]

- (i) **Nature of expenditure:** Section 35D provides for the amortisation of preliminary expenses incurred by Indian companies and other resident non-corporate taxpayers for the establishment of business concerns or the expansion of the business of existing concerns.
- (ii) **Applicable:** This section applies
 - (a) only to Indian companies and resident non-corporate assesseees;
 - (b) in the case of new companies to expenses incurred before the commencement of the business;
 - (c) in the case of extension of an existing undertaking to expenses incurred till the extension is completed, i.e., in the case of the setting up of a new unit - expenses incurred till the new unit commences production or operation.
- (iii) **Amount eligible for deduction:** Such preliminary expenditure incurred shall be amortised over a period of 5 years. In other words, 1/5th of such expenditure is allowable as a deduction for each of the five successive previous years beginning with the previous year in which the business commences or, the previous year in which the extension of the undertaking is completed or the new unit commences production or operation, as the case may be.
- (iv) **Eligible expenses** - The following expenditure are eligible for amortisation:

- (I) Expenditure in connection with –
- (a) the preparation of feasibility report
 - (b) the preparation of project report;
 - (c) conducting market survey or any other survey necessary for the business of the assessee;
 - (d) engineering services relating to the assessee's business;

The assessee has to furnish a statement containing the particulars of above expenditure within one month prior to the due date for furnishing the return of income as specified under section 139(1) to the Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems), as the case may be, or any person authorised by the Principal Director General of Income-tax (Systems) or Director General of Income-tax (Systems) in the Form No. 3AF in prescribed manner for each previous year [Rule 6ABBB].

- (e) legal charges for drafting any agreement between the assessee and any other person for any purpose relating to the setting up to conduct the business of assessee.
- (II) **Where the assessee is a company**, in addition to the above, expenditure incurred –
- (f) by way of legal charges for drafting the Memorandum and Articles of Association of the company;
 - (g) on printing the Memorandum and Articles of Association;
 - (h) by way of fees for registering the company under the Companies Act; 1956⁸,
 - (i) in connection with the issue, for public subscription, of the shares in or debentures of the company, being underwriting commission, brokerage and charges for drafting, printing and advertisement of the prospectus; and
- (III) Such other items of expenditure (not being expenditure qualifying for any allowance or deduction under any other provision of the Act) as may be prescribed by the Board for the purpose of amortisation. However, the Board, so far, has not prescribed any specific item of expense as qualifying for amortisation under this clause.

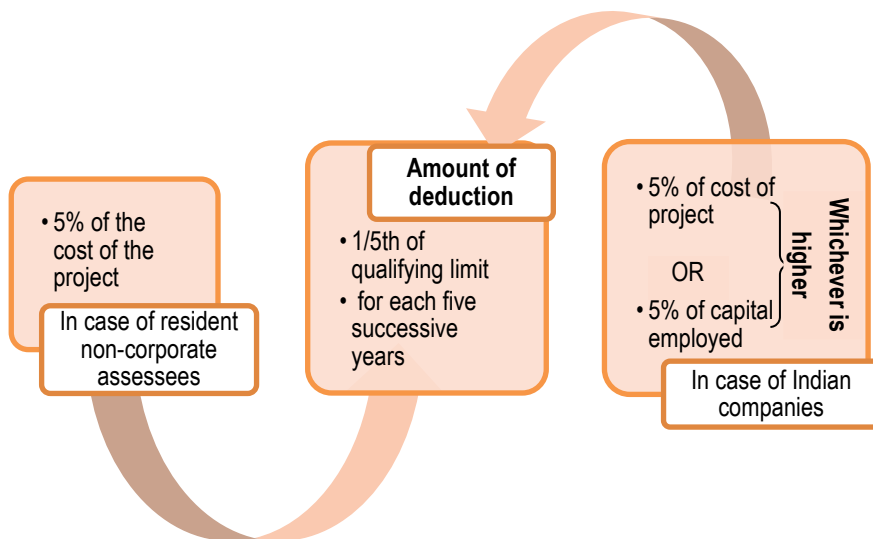
⁸ Now Companies Act, 2013

- (v) **Overall Limits** - The maximum aggregate amount of the qualifying expenses that can be amortised is

In case of resident non-corporate assessee - 5% of the cost of the project

In the case of an Indian company – 5% of the cost of the project or, at the option of the company, 5% of the capital employed in the business of the company, whichever is higher.

The excess, if any, of the qualifying expenses shall be ignored.



- (vi) **Meaning of certain terms:**

Terms	Meaning
Cost of the project	(i) Expenses incurred before the commencement of business: The actual cost of the fixed assets, being land, buildings, leaseholds, plant, machinery, furniture, fittings, railway sidings (including expenditure on the development of land, buildings) which are shown in the books of the assessee as on the last day of the previous year in which the business of the assessee commences; (ii) Expenses incurred for extension of the business or setting up of a new unit: The cost of the fixed assets being land, buildings, leaseholds, plant, machinery, furniture, fittings, and railway sidings (including expenditure on the development of land and buildings) which are shown in the books of the assessee as on the last day of the previous year in which the extension of the undertaking is completed or, as the case may be, the new unit commences production or operation, in so far as such assets have been acquired or developed in connection with the extension of the undertaking or the setting up of the new unit.

Capital employed in the business of the company	(i) In the case of new company: The aggregate of the issued share capital, debentures and long-term borrowings as on the last day of the previous year in which the business of the company commences; (ii) In the case of extension of the business or the setting up of a new unit: The aggregate of the issued share capital, debentures, and long-term borrowings as on the last day of the previous year in which the extension of the undertaking is completed or, as the case may be, the unit commences production or operation in so far as such capital, debentures and long-term borrowings have been issued or obtained in connection with the extension of the undertaking or the setting up of the new undertaking or the setting up of the new unit of the company.
Long-term borrowing	(i) Any moneys borrowed in India by the company from the Government or the Industrial Finance Corporation of India or the Industrial Credit and Investment Corporation of India or any other financial institution eligible for deduction under section 36(1)(viii) or any banking institution, or (ii) any moneys borrowed or debt incurred by it in a foreign country in respect of the purchase outside India of plant and machinery where the terms under which such moneys are borrowed or the debt is incurred provide for the repayment thereof during a period of not less than 7 years.

- (vii) **Audit of accounts:** In cases where the assessee is a person other than a company or a co-operative society, the deduction would be allowable only if the accounts of the assessee for the year or years in which the expenditure is incurred have been audited by a Chartered Accountant before the date specified in section 44AB i.e., one month prior to the due date for furnishing return of income u/s 139(1); and the assessee has, by that date, furnished for the first year in which the deduction is claimed, the report of such audit in the prescribed form duly signed and verified by the auditor and setting forth such other particulars as may be prescribed.

Particulars	Due date of filing of return	Specified Date
Assessees (other than a company) subject to tax audit	31 st October of the relevant A.Y.	30 th September of the relevant A.Y.
	For A.Y.2024-25, on or before 31 st October, 2024	For A.Y.2024-25, on or before 30 th September, 2024

- (viii) **Special provisions for amalgamation and demerger-** Where the undertaking of an Indian company is transferred, before the expiry of the period of five years, to another Indian company under a scheme of amalgamation, the aforesaid provisions will apply to the amalgamated company as if the amalgamation had not taken place. But no deduction will be admissible in the case of the amalgamating company for the previous year in which the amalgamation takes place.

Likewise, in the scheme of demerger where the resulting company will be able to claim amortisation of preliminary expenses as if demerger had not taken place, and no deduction shall be allowed to the demerged company in the year of demerger.

- (ix) **No other deduction under any provision of the Act:** It has been clarified that in case where a deduction under this section is claimed and allowed for any assessment year in respect of any item of expenditure, the expenditure in respect of which deduction is so allowed shall not qualify for deduction under any other provision of the Act for the same or any other assessment year.

(14) Amortisation of expense for Amalgamation/demerger [Section 35DD]

- (i) **Nature of expenditure:** This section applies where an assessee, being an Indian company, incurs expenditure, wholly and exclusively for the purpose of amalgamation or demerger.
- (ii) **Amount of deduction:** The assessee shall be allowed a deduction **equal to one-fifth of such expenditure** for five successive previous years beginning with the previous year in which amalgamation or demerger takes place.
- (iii) **No other deduction under any provision of the Act:** No deduction shall be allowed in respect of the above expenditure under any other provisions of the Act.

(15) Amortisation of expenditure incurred under voluntary retirement scheme [Section 35DDA]

- (i) **Nature of expenditure:** This section applies to an assessee who has incurred expenditure in any previous year in the form of payment to any employee in connection with his voluntary retirement, in accordance with any scheme or schemes of voluntary retirement.
- (ii) **Amount of deduction:** The amount of **deduction allowable is one-fifth of the amount paid** for that previous year, and the balance in four equal installments in the four immediately succeeding previous years.
- (iii) **Transfer of business:** In case of amalgamation, demerger, reorganisation or succession of business during the intervening period of the said 5 years, the benefit of deduction will be

available to the “new company” for the balance period including the year in which such amalgamation/ demerger/ reorganisation or succession takes place.

Conditions to be satisfied - This will be applicable in the following situations:

- (i) where an Indian company is transferred to another Indian company in a scheme of amalgamation;
- (ii) where the undertaking of an Indian company is transferred to another company in a scheme of demerger;
- (iii) where due to a re-organisation of business, a firm is succeeded by a company fulfilling the conditions in section 47(xiii) or a proprietary concern is succeeded by a company fulfilling the conditions in section 47(xiv);
- (iv) where a private company or unlisted company is succeeded by LLP fulfilling the conditions laid down in section 47(xiiib).

In the above cases, the **deduction shall be available to the successor** company as such deduction would have applied to the original entity if such transfer had not taken place at all.

It is further provided that **no deduction shall be available to the original entity** being the amalgamating company, demerged company, or the firm or proprietary concern or private company (as the case may be) **for the previous year in which the amalgamation, demerger or succession takes place.**

- (iv) **No other deduction under any provision of the Act:** No deduction shall be allowed in respect of the above expenditure under any other provision of the Act.

(16) Amortisation of expenses for prospecting and development of certain minerals [Section 35E]

- (i) **Eligible assessee:** This provision applies only to expenditure incurred by an Indian company or other resident non-corporate taxpayer. In order to qualify for amortisation, the assessee should be engaged in any operations relating to prospecting for or the extraction or production of any mineral.
- (ii) **Eligible expenses** - The nature and kind of expenditure qualifying for amortisation are –
 - (i) It must have been incurred during the year of commercial production and any one or more of the four years immediately preceding that year,
 - (ii) It must be incurred wholly and exclusively on any operations relating to the prospecting for any mineral or group of certain minerals listed in the Seventh Schedule of

the Income-tax Act, 1961 or on the development of a mine or other natural deposit of any mineral or group of associated minerals.

- (iii) **Expenditure not allowed for deduction** - Any portion of the expenditure which is met directly or indirectly by any other persons or authority and the sale, salvage, compensation or insurance moneys realised by the assessee in respect of any property or rights brought into existence as a result of the expenditure should be excluded from the amount of expenditure qualifying for amortisation.

Further, specific provision has been made to the effect that the following items of expenses do not qualify for amortisation at all viz.:

- (a) Expenditure incurred on the acquisition of the site of the source of any minerals or group of associated minerals stated above or of any right in or over such site;
- (b) Expenditure on the acquisition of the deposits of minerals or group of associated minerals referred to above or to any rights in or over such deposits; or
- (c) Expenditure of a capital nature in respect of any building, machinery, plant or furniture for which depreciation allowance is permissible under section 32.

- (iv) **Amount of deduction** - The assessee will be allowed for each of ten relevant previous years, **a deduction of an amount equal to one-tenth** of the aggregate amount of the qualifying expenditure.

Thus, the deduction to be allowed for any relevant previous year is

- (i) one-tenth of the expenditure or
- (ii) such amount as will reduce to nil the income of the previous year arising from the commercial exploration of any minerals or other natural deposit of the mineral or minerals in a group of associated minerals in respect of which the expenditure was incurred,

whichever figure is less.

The amount of the deduction admissible in respect of any relevant previous year to the extent to which it remains unallowed, shall be carried forward and added to the installment relating to the previous year next following and shall be deemed to be a part of the installment and so on, for ten previous years beginning from the year of commercial production.

(v) **Meaning of certain terms:**

Term	Meaning
Operation relating to prospecting	Any operation undertaken for the purpose of exploiting, locating or proving deposits of any minerals and includes any such operation which proves to be infructuous or abortive.
Year of commercial production	The previous year in which as a result of any operation relating to prospecting or commercial production of any material or one or more of the minerals in a group of associated minerals specified in Part A or Part B, respectively, of the Seventh Schedule to Act actually commences.
Relevant previous year	Ten previous years beginning with the year of commercial production

(vi) **Audit of accounts:** The provisions with regard to audit of accounts relating to the qualifying expenditure are similar to those applicable for amortisation of preliminary expenses discussed earlier.

(vii) **Special provisions for amalgamation or demerger:** In the case of amalgamation, such deduction would continue to be admissible to the amalgamated company as if the amalgamation had not taken place.

Likewise, in case of demerger where such deduction can be availed of by the resulting company as if the demerger had not taken place.

Further, no deduction will be admissible to the amalgamating/ demerged company in the year of amalgamation/ demergers.

(viii) **No other deduction allowed in respect of the expenditure for which deduction is claimed under this section:** Where a deduction is claimed and allowed on account of amortisation of the expenses under section 35E in any year in respect of any expenditure, the expenditure in respect of which deduction is so allowed shall not again qualify for deduction from the profits and gains under any other provisions of the Act for the same or any other assessment year.

(17) Other Deductions [Section 36]

This section authorises deduction of certain specific expenses. The items of expenditure and the conditions under which such expenditures are deductible are:

(1) **Insurance premia paid [Section 36(1)(i)]** - If insurance policy has been taken out against risk, damage or destruction of the stock or stores of the business or profession, the premia

paid is deductible. But the premium in respect of any insurance undertaken for any other purpose is not allowable under the clause.

- (2) **Insurance premia paid by a Federal Milk Co-operative Society [Section 36(1)(ia)]** - Deduction is allowed in respect of the amount of premium paid by a Federal Milk Co-operative Society to effect or to keep in force an insurance on the life of the cattle owned by a member of a co-operative society, being a primary society engaged in supply of milk raised by its members to such Federal Milk Co-operative Society. The deduction is admissible without any monetary or other limits.
- (3) **Premia paid by employer for health insurance of employees [Section 36(1)(ib)]** - This clause seeks to allow a deduction to an employer in respect of premia paid by him by any mode of payment other than cash to effect or to keep in force an insurance on the health of his employees in accordance with a scheme framed by
- (i) the General Insurance Corporation of India and approved by the Central Government; or
 - (ii) any other insurer and approved by the IRDA.
- (4) **Bonus and Commission [Section 36(1)(ii)]** - These are deductible in full provided the sum paid to the employees as bonus or commission shall not be payable to them as profits or dividends if it had not been paid as bonus or commission.

It is a provision intended to safeguard against a private company or an association escaping tax by distributing a part of its profits by way of bonus amongst the members, or employees of their own concern instead of distributing the money as dividends or profits.

- (5) **Interest on borrowed capital [Section 36(1)(iii)]** - Deduction of interest is allowed in respect of capital borrowed for the purposes of business or profession in the computation of income under the head "Profits and gains of business or profession".

Capital may be borrowed for several purposes like for acquiring a capital asset, or to pay off a trading debt or loss etc. The scope of the expression 'for the purposes of business' is very wide. Capital may be borrowed in the course of the existing business as well as for acquiring assets for extension of existing business.

As per proviso to section 36(1)(iii), deduction in respect of any amount of interest paid, in respect of capital borrowed for acquisition of new asset (whether capitalised in the books of account or not) for any period beginning from the date on which the capital was borrowed

for acquisition of the asset till the date on which such asset was first put to use shall not be allowed.

Explanation 8 to section 43(1) clarifies that interest relatable to a period after the asset is first put to use cannot be capitalised. Interest in respect of capital borrowed for any period from the date of borrowing to the date on which the asset was first put to use should, therefore, be capitalised.

Note: In the case of genuine business borrowings, the department cannot disallow any part of the interest on the ground that the rate of interest is unreasonably high except in cases falling under section 40A.

- (6) **Discount on Zero Coupon Bonds (ZCBs) [Section 36(1)(iiia)]** - Section 36(1)(iiia) provides deduction for the discount on ZCB on pro rata basis having regard to the period of life of the bond to be calculated in the manner prescribed.

Term	Meaning
Discount	Difference of the amount received or receivable by an infrastructure capital company/ infrastructure capital fund/ public sector company/ scheduled bank on issue of the bond and the amount payable by such company or fund or bank on maturity or redemption of the bond.
Period of life of the bond	The period commencing from the date of issue of the bond and ending on the date of the maturity or redemption.

Meaning of Infrastructure Capital Company [Section 2(26A)]

"Infrastructure capital company" means such company which makes investments by way of acquiring shares or providing long-term finance to -

- (1) any enterprise or undertaking wholly engaged –
 - (a) in the business referred to in section 80-IA(4) i.e. business of
 - (i) developing/ operating and maintaining/ developing, operating and maintaining any infrastructure facility fulfilling the specified conditions
 - (ii) providing telecom services, whether basic or cellular
 - (iii) developing, developing and operating or maintaining and operating an industrial park or special economic zone notified by the Central Government

- (iv) generating, transmitting or distributing power or undertaking substantial renovation and modernization of the existing network of transmission or distribution lines.
- (b) in the business referred to in section 80-IAB(1) i.e. any business of developing a SEZ.
- (2) an undertaking developing and building a housing project referred to in section 80-IB(10) i.e. approved before 31.3.2008 by a local authority and commences or commenced development and construction on or after 1.10.98 and completes or completed development and construction within the time specified.
- (3) a project for constructing a hotel of not less than three-star category as classified by the Central Government or
- (4) a project for constructing a hospital with at least 100 beds for patients.

Meaning of Infrastructure Capital Fund [Section 2(26B)]

Infrastructure capital fund means such fund operating under a trust deed registered under the provisions of the Registration Act, 1908 established to raise monies by the trustees for investment by way of acquiring shares or providing long-term finance to -

- (1) any enterprise or undertaking wholly engaged in the business referred to in section 80-IA(4) or section 80-IAB(1); or
 - (2) an undertaking developing and building a housing project referred to in section 80-IB(10); or
 - (3) a project for constructing a hotel of not less than three star category as classified by the Central Government; or
 - (4) a project for constructing a hospital with at least 100 beds for patients.
- (7) **Contributions to provident and other funds [Section 36(1)(iv) and (v)]** - Contribution to the employees' recognised provident fund/approved superannuation fund is allowable subject to the limits laid down for the purpose of recognizing the provident fund or approving superannuation fund.

Contribution to an approved gratuity fund is allowable subject to the condition that the gratuity fund should be for exclusive benefit of the employees under an irrevocable trust

The nature of the benefit available to the employees from the fund is not material; it may be pension, gratuity or provident fund.

(8) Employer's contribution to the account of the employee under a Pension Scheme referred to in section 80CCD [Section 36(1)(iva)]

- (i) Section 36(1)(iva) to provide that the employer's contribution to the account of an employee under a Pension Scheme as referred to in section 80CCD would be allowed as deduction while computing business income.
- (ii) However, deduction would be restricted to 10% of salary of the employee in the previous year.
- (iii) Salary, for this purpose, includes dearness allowance, if the terms of employment so provide, but excludes all other allowances and perquisites.
- (iv) Correspondingly, section 40A(9), which provides for disallowance of any sum paid by an employer towards contribution to any fund or trust has been amended to exclude from the scope of its disallowance, contribution by an employer to the pension scheme referred to in section 80CCD, to the extent to which deduction is allowable under section 36(1)(iva).

ILLUSTRATION 10

X Ltd. contributes 20% of basic salary to the account of each employee under a pension scheme referred to in section 80CCD. Dearness Allowance is 40% of basic salary and it forms part of pay of the employees.

Compute the amount of deduction allowable under section 36(1)(iva), if the basic salary of the employees aggregate to ₹ 10 lakh. Would disallowance under section 40A(9) be attracted, and if so, to what extent?

SOLUTION

Computation of deduction u/s 36(1)(iva) and disallowance u/s 40A(9)

Particulars	₹
Basic Salary	10,00,000
Dearness Allowance@40% of basic salary [DA forms part of pay]	4,00,000
Salary for the purpose of section 36(1)(iva) (Basic Salary + DA)	14,00,000
Actual contribution (20% of basic salary i.e., 20% of ₹10 lakh)	2,00,000
Less: Permissible deduction under section 36(1)(iva) [10% of (basic salary plus dearness pay) = 10% of ₹ 14,00,000 = ₹ 1,40,000]	1,40,000
Excess contribution disallowed under section 40A(9)	60,000

- (9) **Amount received by assessee-employer as contribution from his employees towards their welfare fund to be allowed only if such amount is credited on or before due date** – Section 36(1)(va) and section 57(ia) provide that deduction in respect of any sum received by the taxpayer as contribution from his employees towards any welfare fund of such employees will be allowed only if such sum is credited by the taxpayer to the employee's account in the relevant fund on or before the due date.

Due date	The date by which the assessee is required as an employer to credit such contribution to the employee's account in the relevant fund under the provisions of any law on term of contract of service or otherwise.

As per the Employees Provident Funds Scheme, 1952, the amounts under consideration in respect of wages of the employees for any particular month shall be paid within 15 days of the close of every month.

Note - It is clarified that the provisions of section 43B regarding allowability of certain expenditure in a previous year only on actual payment basis on or before due date of filing of return of income for relevant assessment year, does not apply and would deemed never to be applied on employee's contribution received by employer towards any welfare fund of such employee. In effect, the extended time upto due date of filing of return for is not available for credit of employees contribution towards any welfare fund received by the employer.

- (10) **Allowance for animals [Section 36(1)(vi)]** – This clause grants an allowance in respect of animals which have died or become permanently useless.

The amount of the allowance is the difference between the actual cost of the animals and the price realized on the sale of the animals themselves or their carcasses.

The allowance under the clause would thus recoup to the assessee the entire capital expenditure in respect of animal.

- (11) **Bad debts [Section 36(1)(vii) and section 36(2)]** – These can be deducted subject to the following conditions:

- The debts or loans should be in respect of a business which was carried on by the assessee during the relevant previous year.
- The debt should have been taken into account in computing the income of the assessee of the previous year in which such debt is written off or of an earlier

previous year or should represent money lent by the assessee in the ordinary course of his business of banking or money lending.

I. Deduction under section 36(1)(vii) for bad debts limited to the amount by which bad debts exceed credit balance in the provision for doubtful debts account under section 36(1)(viia)

Under section 36(1)(vii), bad debt actually written off as irrecoverable in the books of account of the assessee is deductible. However, in the case of entities for which provision for bad and doubtful debts is allowable under section 36(1)(viia), deduction for bad debts written off under said clause (vii) shall be limited to the amount by which the bad debt written off exceeds the credit balance in the provision for bad and doubtful debts account made under section 36(1)(viia). This is provided in the proviso to section 36(1)(vii).

The CBDT has, clarified vide Circular no. 12/2016, dated 30-05-2016, that claim for any debt or part thereof in any previous year, shall be admissible under section 36(1)(vii), if it is written off as irrecoverable in the books of accounts of the assessee for that previous year and it fulfills the conditions stipulated in section 36(2).

However, no such requirement is there in law that the assessee has to establish that the debt has, in fact, become irrecoverable.

Further, the provisions of section 36(1)(vii) are subject to the provisions of section 36(2). Section 36(2)(v) provides that where the debt or part thereof relates to advances made by an assessee, to which section 36(1)(viia) applies, no deduction shall be allowed unless the assessee has debited the amount of such debt or part of such debt in that previous year to the provision for bad and doubtful debts account made under section 36(1)(viia).

Explanation 2 to section 36(1)(vii) states that for the purposes of the proviso to section 36(1)(vii) and section 36(2)(v), only one account as referred to therein shall be made in respect of provision for bad and doubtful debts under section 36(1)(viia) and such account shall relate to all types of advances, including advances made by rural branches.

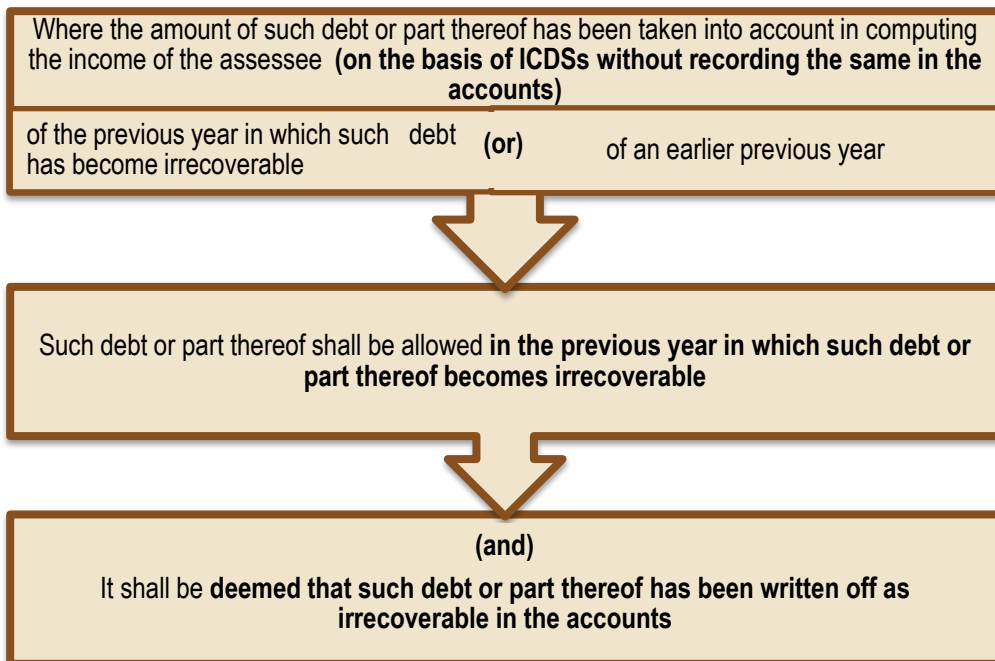
Therefore, in the case of an assessee to which section 36(1)(viia) applies, the amount of deduction in respect of the bad debts actually written off under section 36(1)(vii) shall be limited to the amount by which such bad debts exceeds the credit

balance in the provision for bad and doubtful debts account made under section 36(1)(viia) without any distinction between rural advances and other advances.

II. Amount of debt taken into account in computing the income of the assessee on the basis of notified ICDSs to be allowed as deduction in the previous year in which such debt or part thereof becomes irrecoverable [Second proviso to section 36(1)(vii)]

- (i) Under section 36(1)(vii), deduction is allowed in respect of the amount of any bad debt or part thereof which is written off as irrecoverable in the accounts of the assessee for the previous year.
- (ii) Therefore, write off in the books of account is an essential condition for claim of bad debts under section 36(1)(vii).
- (iii) Amount of debt taken into account in computing the income of the assessee on the basis of notified ICDSs to be allowed as deduction in the previous year in which such debt or part thereof becomes irrecoverable.

If a debt, which has not been recognized in the books of account as per the requirement of the accounting standards but has been taken into account in the computation of income as per the notified ICDSs, has become irrecoverable, it can still be claimed as bad debts under section 36(1)(vii) since **it shall be deemed that the debt has been written off as irrecoverable in the books of account by virtue of the second proviso to section 36(1)(vii)**. This is because some ICDSs require recognition of income at an earlier point of time (prior to the point of time such income is recognised in the books of account). Consequently, if the whole or part of such income recognised at an earlier point of time for tax purposes becomes irrecoverable, it can be claimed as bad debts on account of the second proviso to section 36(1)(vii).



III. Deduction of differential amount of debts due as bad debts in the year of recovery, to the extent of deficiency in recovery

If on the final settlement the amount recovered in respect of any debt, where deduction had already been allowed, falls short of the difference between the debt due and the amount of debt allowed, the deficiency can be claimed as a deduction from the income of the previous year in which the ultimate recovery out of the debt is made. It is permissible for the Assessing Officer to allow deduction in respect of a bad debt or any part thereof in the assessment of a particular year and subsequently to allow the balance of the amount, if any, in the year in which the ultimate recovery is made, that is to say, when the final result of the process of recovery comes to be known.

Recovery of a bad debt subsequently [Section 41(4)] - If a deduction has been allowed in respect of a bad debt under section 36, and subsequently the amount recovered in respect of such debt is more than the amount due after the allowance had been made, the excess shall be deemed to be the profits and gains of business or profession and will be chargeable as income of the previous year in which it is recovered, whether or not the business or profession in respect of which the deduction has been allowed is in existence at the time.

Example: For P.Y. 2022-23, bad debts of ₹ 40,000 was allowed by the Assessing Officer out of total bad debts of ₹ 75,000. Subsequently, ₹ 44,000 is recovered during P.Y. 2023-24.

Actual bad debts of the assessee after recovery = ₹ 75,000 – ₹ 44,000 i.e. ₹ 31,000 but the bad debts allowed in P.Y. 2022-23 were ₹ 40,000, so the excess ₹ 9,000 that was allowed in P.Y. 2022-23 would be deemed to be the profits and gains of business or profession of P.Y. 2023-24 and will be chargeable as income of the P.Y. 2023-24 in which it is recovered.

(12) Provision for bad and doubtful debts in cases of specified banks [Section 36(1)(viiia)]

(i) A scheduled bank which is not a bank incorporated by or under the laws of a country outside India or a non-scheduled bank or a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank, the following deductions will be allowed:

- (a) an amount **not exceeding 8.5%** of the total income (computed before making any deduction under this clause and Chapter VI-A), and
- (b) an amount **not exceeding 10%** of the aggregate average advances made by the rural branches of such bank computed in the manner prescribed by the CBDT.

Accordingly, Rule 6ABA prescribed the manner for computation of aggregate average advance. The aggregate average advances made by the rural branches of a scheduled bank shall be computed in the following manner–

- (i) the amounts of advances made by each rural branch as outstanding at the end of the last day of each month comprised in the previous year shall be aggregated separately;
- (ii) the sum so arrived at in the case of each such branch shall be divided by the number of months for which the outstanding advances have been taken into account for the purposes of clause (i)
- (iii) the aggregate of the sums so arrived at in respect of each of the rural branches shall be the aggregate average advances made by the rural branches of the scheduled bank.

Such scheduled bank or a non-scheduled bank shall, at its option, be allowed in any of the relevant assessment years, deduction in respect of any provision made by it for any assets classified by the RBI as doubtful assets or loss assets in accordance with the guidelines issued by it in this behalf, for an

amount not exceeding 5% of the amount of such assets shown in the books of account of the bank on the last day of the previous year.

Such scheduled bank or a non-scheduled bank shall, at its option, be allowed a further deduction in excess of the limits specified in the foregoing provisions, for an amount not exceeding the income derived from redemption of securities in accordance with a scheme framed by the Central Government.

It is also provided that this deduction shall not be allowed unless such income has been disclosed in the return of income under the head "Profits and gains of business or profession".

Meaning of certain terms:

Term	Meaning
Scheduled Bank	It refers to the State Bank of India or any of its subsidiaries or any of the nationalised banks and would also include any other bank which is listed in the Second Schedule to the Reserve Bank of India Act, 1934.
Non-Scheduled Bank	This refers to a banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949 which is not a scheduled bank.
Rural branch	A branch of a scheduled bank or a non-scheduled bank situated in a place which has a population of not more than 10,000 according to the last preceding census of which the relevant figures have been published before the first day of the previous year.
Co-operative bank, primary agriculture credit society, primary co-operative agricultural and rural development bank	Shall have the same meaning assigned in <i>Explanation</i> to section 80P(4).

- (ii) **Foreign Banks:** In the case of foreign banks the deduction will be an amount **not exceeding 5%** of the total income (computed before making any deduction under this clause and Chapter VI-A).
- (iii) **Public financial institutions:** A public financial institution, a State Financial Corporation and a State Industrial Investment Corporation will be entitled to a deduction in respect of provision for bad and doubtful debts made out of profits. The

maximum amount to be allowed as a deduction will be **limited to 5%** of its total income before making any deduction in respect of the provision for bad and doubtful debt or in respect of any deduction in Chapter VI-A.

- (iv) **Non-Banking Financial Companies (NBFCs):** Since Non-Banking Financial Companies (NBFCs) are also engaged in financial lending to different sectors of society, deduction on account of provision for bad and doubtful debts of an amount **not exceeding 5%** of total income (before making any deduction under section 36(1)(viii) and Chapter VI-A) would be allowed in the case of NBFCs also.

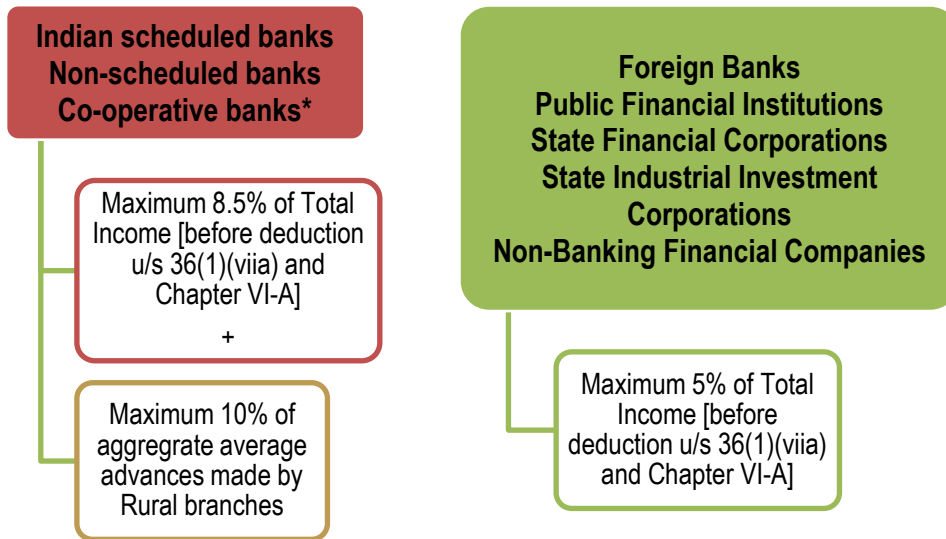
Meaning of certain terms:

Terms	Meaning
Public Financial Institution	Shall have the meaning assigned to it in section 4A of the Companies Act, 1956 ⁹
State Financial Corporation	A financial corporation established under section 3 or section 3A or an institution notified under section 46 of the State Financial Corporations Act, 1951.
State Industrial Investment Corporation	A Government company within the meaning of Section 617 of the Companies Act, 1956 ¹⁰ engaged in the business of providing long-term finance for industrial projects and eligible for deduction under clause (viii) of this sub-section.
Non-Banking Financial Company	Shall have the same meaning assigned to it in Section 45-I(f) of the Reserve Bank of India Act, 1934. Accordingly, it means (i) a financial institution which is a company (ii) a non-banking institution which is a company and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner (iii) such other non-banking institution or class of such institutions, as the Bank may, with the previous approval of the Central Government and by notification in the Official Gazette, specify.

⁹ Now section 2(72) of the Companies Act, 2013

¹⁰ Now section 2(45) of the Companies Act, 2013

Provision for bad and doubtful debts in cases of specified banks/FIs/NBFCs



* other than a primary agricultural credit society or primary co-operative agricultural and rural development bank

(13) Special deduction to specified entities engaged in eligible business [Section 36(1)(viii)]

- (i) This section provides deduction in respect of any special reserve created and maintained by a specified entity.
- (ii) **Amount of deduction:** The quantum of deduction, however, **should not exceed 20%** of the profits derived from eligible business computed under the head “Profits and gains of business or profession” (before making any deduction under this clause) carried to such reserve account.

However, where the aggregate amount carried to such reserve account exceeds twice the amount of paid up share capital and general reserve, no deduction shall be allowed in respect of such excess.

In simple terms, **quantum of deduction shall be the least of the following**

- (i) Amount transferred to special reserve
- (ii) 20% of profit derived from eligible business (before this deduction)
- (iii) 200% of paid up capital and general reserve *less* aggregate amount carried to Special Reserve account.

- (iii) **Eligible business for specified entities:** The eligible business for different entities specified are given in the table below –

	Specified entity	Eligible business
1.	(a) Financial Corporation specified in section 4A of the Companies Act, 1956 ¹¹ (b) Financial corporation which is a public sector company (c) Banking company (d) Co-operative bank (other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank)	Business of providing long-term finance for - (i) industrial or agricultural development or (ii) development of infrastructure facility in India; or (iii) development of housing in India.
2.	A housing finance company	Business of providing long-term finance for the construction or purchase of residential house in India.
3.	Any other financial corporation including a public company	Business of providing long-term finance for development of infrastructure facility in India.

- (iv) **Infrastructure facility has been defined to mean -**

- (a) (1) an infrastructure facility as defined in the Explanation to clause (i) of sub-section (4) of section 80-IA i.e.
- (i) a road including toll road, a bridge or a rail system;
 - (ii) a highway project including housing or other activities being an integral part of the highway project;
 - (iii) a water supply project, water treatment system, irrigation project, sanitation and sewerage system or solid waste management system; and
 - (iv) a port, airport, inland waterway or inland port or a navigational channel in the sea

¹¹ Section 2(72) of the Companies Act, 2013

- (2) any other public facility of a similar nature as may be notified by the CBDT in this behalf in the Official Gazette and which fulfils the prescribed conditions;

Notification of public facilities as infrastructure facility for the purpose of section 36(1)(viii) [Notification No. 188/2006, dated 20.7.2006]

The following public facilities have been notified by the CBDT as infrastructure facility for purposes of section 36(1)(viii)-

- (i) Inland Container Depot and Container Freight Station notified under the Customs Act, 1962
- (ii) Mass Rapid Transit system
- (iii) Light Rail Transit system
- (iv) Expressways
- (v) Intra-urban or semi-urban roads like ring roads or urban by-passes or flyovers
- (vi) Bus and truck terminals
- (vii) Subways
- (viii) Road dividers
- (ix) Bulk Handling Terminals which are developed or maintained or operated for development of rail system
- (x) Multilevel Computerized Car Parking.

Conditions to be fulfilled by a public facility to be eligible to be notified as an infrastructure facility [Notification No.187/2006 dated 20.7.2006]:

Rule 6ABAA has been inserted in the Income-tax Rules, 1962 which specifies the conditions to be fulfilled by a public facility to be eligible to be notified as an infrastructure facility in accordance with the provisions of clause (d) of the Explanation to clause (viii) of sub-section (1) of section 36. The conditions specified therein are -

- (i) it is owned by a company registered in India or by a consortium

of such companies or by an authority or a board or a corporation or any other body established or constituted under any Central or State Act;

- (ii) it has entered into an agreement with the Central Government or a State Government or a local authority or any other statutory body for (a) developing or (b) operating and maintaining or (c) developing, operating and maintaining a new infrastructure facility similar in nature to an infrastructure facility referred to in the *Explanation* to section 80-IA(4)(i);
 - (iii) it has started or starts operating and maintaining such infrastructure facility on or after 1st April, 1995.
- (b) an undertaking referred to in clause (ii) or clause (iii) or clause (iv) of sub-section (4) of section 80-IA (i.e. an undertaking providing telecommunication services, an undertaking developing, developing and operating, maintaining and operating an industrial park or SEZ notified by the Central Government, an undertaking generating, distributing or transmitting power, substantial renovation and modernization of existing network of transmission or distribution lines); and
- (c) an undertaking referred to in sub-section (10) of section 80-IB i.e. an undertaking developing and building housing projects approved by a local authority.
- (v) **Long term finance** - Long-term finance means any loan or advance where the terms under which moneys are loaned or advanced provide for repayment along with interest thereof during a period of not less than 5 years.

Amount withdrawal from special reserve [Section 41(4A)] - Where a deduction has been allowed in respect of any special reserve created and maintain under section 36(1)(viii), and subsequently the amount is withdrawn from such special reserve then such amount shall be deemed to be the profits and gains of business or profession and will be chargeable as income of the previous year in which such amount is withdrawn.

If the amount is withdrawn in a previous year in which the business is no longer in existence, the taxability would arise in the above manner as though the business is in existence in that previous year.

(14) Expenses on family planning by a company [Section 36(1)(ix)] - Any expenditure of revenue nature bona fide incurred by a company for the purpose of promoting family planning amongst its employees will be allowed as a deduction in computing the company's business income;

- Where, the expenditure is of a capital nature, one-fifth of such expenditure will be deducted in the previous year in which it was incurred and in each of the four immediately succeeding previous years.
- This deduction is allowable only to companies and not to other assessees.
- The assessee would be entitled to carry forward and set off the unabsorbed part of the allowance in the same way as unabsorbed depreciation.

The capital expenditure on promoting family planning will be treated in the same way as capital expenditure for scientific research for purposes of dealing with the profit or loss on the sale or transfer of the asset including a transfer on amalgamation.

(15) Deduction for expenditure incurred by entities established under any Central, State or Provincial Act [Section 36(1)(xii)] - Any expenditure (not being in the nature of capital expenditure) incurred by a corporation or a body corporate, by whatever name called, if –

- (i) it is constituted or established by a Central, State or Provincial Act;
- (ii) such corporation or body corporate is notified by the Central Government in the Official Gazette for this purpose having regard to the objects and purposes of the Act;
- (iii) the expenditure is incurred for the objects and purposes authorised by the Act under which it is constituted and established.

Accordingly, the Central Government has notified the Oil Industry Development Board for the purpose of deduction under section 36(1)(xii).

(16) Deduction of contribution by a public financial institution to Credit guarantee fund trust for small industries [Section 36(1)(xiv)]

- (i) Section 36(1)(xiv) provides for deduction of any sum paid by a public financial institution by way of contribution to such credit guarantee fund trust for small industries notified by the Central Government in the Official Gazette.

- (ii) Public financial institution has the meaning assigned to it in section 4A¹² of the Companies Act, 1956.

(17) Deduction of securities transaction tax paid [Section 36(1)(xv)] - The amount of securities transaction tax paid by the assessee during the year in respect of taxable securities transactions entered into in the course of business shall be allowed as deduction under section 36 subject to the condition that such income from taxable securities transactions is included under the head 'Profits and gains of business or profession'.

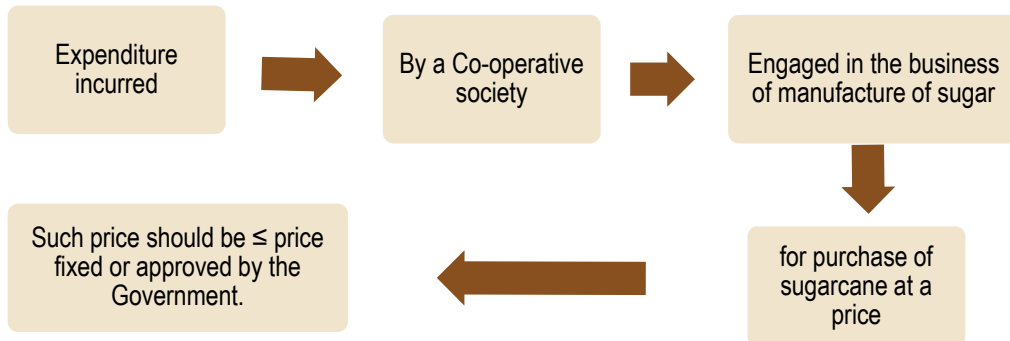
Thus, securities transaction tax paid would be allowed as a deduction like any other business expenditure.

(18) Deduction for commodities transaction tax paid in respect of taxable commodities transactions [Section 36(1)(xvi)]

- (i) Section, 36(1)(xvi) provides that an amount equal to the CTT paid by the assessee in respect of the taxable commodities transactions entered into in the course of his business during the previous year shall be allowable as deduction, if the income arising from such taxable commodities transactions is included in the income computed under the head "Profits and gains of business or profession".
- (ii) A 'taxable commodities transaction' means a transaction of sale of commodity derivatives or sale of commodity derivatives based on prices or indices of prices of commodity derivatives or option on commodity derivatives or option in goods in respect of commodities, other than agricultural commodities, traded in recognised stock exchange.
- (iii) A "commodity derivative" means –
 - (a) A contract for delivery of goods which is not a ready delivery contract
 - (b) A contract for differences which derives its value from prices or indices of prices -
 - (i) of such underlying goods; or
 - (ii) of related services and rights, such as warehousing and freight; or
 - (iii) with reference to weather and similar events and activities having a bearing on the commodity sector.

¹² Section 2(72) of the Companies Act, 2013

- (19) **Amount of expenditure incurred by a co-operative society for purchase of sugarcane at price fixed by the Government allowable as deduction [Section 36(1)(xvii)]** - Section 36(xvii) provides for 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.



The CBDT has, vide Circular no. 18/2021 dated 25.10.2021, clarified that the phrase 'price fixed or approved by the Government' includes price fixation by State Governments through State-level Acts/Orders or other legal instruments that regulate the purchase price for sugarcane, including State Advised Price, which may be higher than the Statutory Minimum Price/ Fair and Remunerative Price fixed by the Central Government.

- (20) **Marked to market loss [Section 36(1)(xviii)]** - Marked to market loss or other expected loss as computed in accordance with the ICDS notified under section 145(2), shall be allowed as deduction. ICDS I provides that marked to market losses would not be allowed unless the same is in accordance with any other ICDS. Therefore, only marked to market losses specifically permitted under any other ICDS would be allowable as deduction under section 36.

(18) **Residuary Expenses [Section 37]**

- (1) **Revenue expenditure incurred for purposes of carrying on the business, profession or vocation** - This is a residuary section under which only business expenditure is allowable but not the business losses, e.g., those arising out of embezzlement, theft, destruction of assets, misappropriation by employees etc. The deduction is limited only to the amount actually expended and does not extend to a reserve created against a contingent liability.
- (2) **Conditions for allowance:** The following conditions should be fulfilled in order that a particular item of expenditure may be deductible under this section:

- (a) The expenditure should **not** be of the nature described in **sections 30 to 36**.
- (b) It should have been **incurred by the assessee** in the accounting year.
- (c) It should be in respect of a business carried on by the assessee the profits of which are being computed and assessed.
- (d) It must have been incurred after the business was set up.
- (e) It should **not** be in the nature of **any personal expenses** of the assessee.
- (f) It should have been laid out or expended **wholly and exclusively for the purposes of such business**.
- (g) It should **not** be in the nature of **capital expenditure**.
- (h) The expenditure should **not** have been incurred by the assessee for any purpose which is an **offence or is prohibited by law**.

This section is thus limited in scope. It does not permit an assessee to make all deductions which a prudent trader would make in ascertaining his own profit. It might be observed that the section requires that the expenditure should be wholly and exclusively laid out for purpose of the business but not that it should have been necessarily laid out for such purpose. Therefore, expenses wholly and exclusively laid out for the purpose of trade are, subject to the fulfilment of other conditions, allowed under this section even though the outlay is unnecessary.

- (3) **Expenditure incurred on Keyman insurance policy:** CBDT Circular no. 762/1998 dated 18.02.1998 clarifies that the premium paid on the Keyman Insurance Policy is allowable as business expenditure.

Taking into account the *Explanation* to Section 10(10D) and the CBDT Circular no. 762 dated 18.02.1998, Courts have held that a Keyman Insurance Policy is not confined to a policy taken for an employee but also extends to an insurance policy taken with respect to the life of another person who is connected in any manner whatsoever with the business of the subscriber (assessee).

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

Insurance Policy of partner of the firm is wholly and exclusively for the purpose of business and is allowable as business expenditure”.

In view of the above, the CBDT has clarified that in case of a firm, premium paid by the firm on the Keyman Insurance Policy of a partner, to safeguard the firm against a disruption of the business, is an admissible expenditure under section 37 of the Act.

- (4) **Explanation 1 to section 37(1)** - This Explanation provides that any expenditure incurred by the assessee for any purpose which is an offence or is prohibited by law shall not be allowed as a deduction or allowance.
- (5) **Explanation 3 to section 37(1)** – It is clarified that the expression “expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law” in (4) above would include and would be deemed to have always included the expenditure incurred by an assessee, -
- (i) for any purpose which is an offence under any law for the time being in force, in India or outside India or which is prohibited by any law for the time being in force, in India or outside India; or
 - (ii) to provide any benefit or perquisite, in whatever form, to a person, whether or not carrying on a business or exercising a profession, and acceptance of such benefit or perquisite by such person is in violation of any law or rule or regulation or guidelines, as the case may be, for the time being in force, governing the conduct of such person; or
 - (iii) to compound an offence under any law for the time being in force, in India or outside India [*Explanation 3 to section 37(1)*].

For eg: expenses incurred in providing freebies to medical practitioner by pharmaceutical and allied health sector industry are in violation of the provisions of Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations. Hence, such expenditure is considered to be expenses prohibited by the law and not allowed in the hands of such pharmaceutical or allied health sector industry or other assessee which has provided aforesaid freebies.

The Supreme Court, in *Apex Laboratories Pvt. Ltd. v. DCIT (2022) 442 ITR 1*, held that the incentives (or “freebies”) given by the pharmaceutical company, to the doctors, had a direct result of exposing the recipients to the odium of sanctions, leading to a ban on their practice of medicine. Those sanctions are mandated by law, as they are embodied in the code of conduct and ethics, which are normative, and have legally binding effect. The conceded

participation of the assessee – Pharmaceutical company, i.e., the provider or donor, was plainly prohibited, as far as their receipt by the medical practitioners was concerned. That medical practitioners were forbidden from accepting such gifts, or "freebies" was no less a prohibition on the part of their giver, or donor, i.e., pharmaceutical company.

Thus, pharmaceutical companies' gifting freebies to doctors is clearly "prohibited by law", and not allowed to be claimed as a deduction under section 37(1). Doing so would wholly undermine public policy.

Explanation 3 inserted in section 37(1) is in consonance with the above Supreme Court judgement.

(6) Disallowance of CSR expenditure [*Explanation 2* to Section 37(1)]

- (i) Section 135 of the Companies Act, 2013 read with Schedule VII thereto and Companies (Corporate Social Responsibility) Rules, 2014 are the special provisions under the new company law regime imposing mandatory CSR obligations in respect of companies having net worth/turnover/net profit exceeding specified threshold limits. Such companies have to spend a specified percentage of their average net profits on CSR activities.
- (ii) Under section 37(1) of the Income-tax Act, 1961, only expenditure, not covered under sections 30 to 36, and incurred wholly and exclusively for the purposes of the business is allowed as a deduction while computing taxable business income. The issue under consideration is whether CSR expenditure is allowable as deduction under section 37.
- (iii) It has now been clarified that for the purposes of section 37(1), any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in section 135 of the Companies Act, 2013 shall not be deemed to have been incurred for the purpose of business and hence, shall not be allowed as deduction under section 37.
- (iv) The rationale behind the disallowance is that CSR expenditure, being an application of income, is not incurred wholly and exclusively for the purposes of carrying on business.
- (v) However, the Explanatory Memorandum to the Finance (No.2) Bill, 2014 clarifies that CSR expenditure, which is of the nature described in sections 30 to 36, shall be allowed as deduction under those sections subject to fulfillment of conditions, if any, specified therein.

- (7) **Advertisements in souvenirs of political parties:** Section 37(2B) disallows any deduction on account of advertisement expenses representing contributions made by any person carrying on business or profession in computing the profits and gains of the business or profession. It has specifically been provided that this provision for disallowance would apply notwithstanding anything to the contrary contained in section 37(1).

In other words, the expenditure representing contribution for political purposes would become disallowable even in those cases where the expenditure is otherwise incurred by the assessee in his character as a trader and the amount is wholly and exclusively incurred for the purpose of the business.

Accordingly, a taxpayer would not be entitled to any deduction in respect of expenses incurred by him on advertisement in any souvenir, brochure, tract or the like published by any political party, whether it is registered with the Election Commission of India or not.

- (8) **Deduction in respect of cost of production allowable under section 37 in the case of Abandoned Feature Films [Circular No. 16, dated 6.10.2015]**

The deduction in respect of the cost of production of a feature film certified for release by the Board of Film Censors in a previous year is provided in Rule 9A.

In the case of abandoned films, however, since certificate of Board of Film Censors is not received, in some cases no deduction was allowed by applying Rule 9A of the Rules or by treating the expenditure as capital expenditure.

The CBDT has examined the matter in light of judicial decisions on this subject. The order of the Hon'ble Bombay High Court dated 28.1.2015 in ITA 310 of 2013 in the case of *Venus Records and Tapes Pvt. Ltd.* on this issue has been accepted and the aforesaid disputed issue has not been further contested.

Consequently, it is clarified that Rule 9A does not apply to abandoned feature films and that the expenditure incurred on such abandoned feature films is **not** to be treated as a capital expenditure. 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.

ILLUSTRATION 11

Isac limited is a company engaged in the business of biotechnology. The net profit of the company for the financial year ended 31.03.2024 is ₹ 35,25,890 after debiting the following items:

S.No.	Particulars	₹
1.	Purchase price of raw material used for the purpose of in-house research and development	11,80,000
2.	Purchase price of asset used for in-house research and development	
	(a) Land	5,00,000
	(b) Building	3,00,000
3.	Expenditure incurred on notified agricultural extension project	25,50,000
4.	Expenditure on notified skill development project:	
	(a) Purchase of land	40,00,000
	(b) Expenditure on training for skill development	32,50,000
5.	Expenditure incurred on advertisement in the souvenir published by a political party	75,000
6.	Expenditure incurred on issue of right shares	80,000
7.	Expenditure incurred on issue of debentures	50,000
8.	Penalty paid under GST Act	35,000
9.	Interest paid on loan taken from bank for payment of advance income-tax	60,000
10.	Provision for loss of subsidiary	85,000

Compute the income under the head “Profits and gains of business or profession” for the A.Y. 2024-25 of Isac Ltd assuming that the company does not opt for the provisions of section 115BAA.

SOLUTION

Computation of income under the head “Profits and gains of business or profession” for the A.Y.2024-25

Particulars	₹	₹
Net profit as per profit and loss account		35,25,890
Add: Items debited to profit and loss account, but to be disallowed		
Purchase price of Land used in in-house research and development - being capital expenditure not allowable as deduction under section 35	5,00,000	
Purchase price of building used in in-house research and development - being capital expenditure, 100% of which is allowable as deduction u/s 35(1)(iv) read with section 35(2)	-	

Purchase price of raw material used for the purpose of in-house research and development – qualifies for 100% deduction u/s 35(2AB)	-	
Expenditure incurred on notified agricultural extension project – 100% deduction is allowed under section 35CCC	-	
Expenditure incurred on notified skill development project - Purchase of land - being capital expenditure not qualifying for deduction under section 35CCD	40,00,000	
Expenditure incurred on notified skill development project - Expenditure on training for skill development – 100% deduction is allowed under section 35CCD	-	
Expenditure incurred on advertisement in the souvenir published by a political party not allowed as deduction as per section 37(2B)	75,000	
Expenditure incurred on issue of right shares not allowed as deduction since expenses is of capital nature	80,000	
Expenditure incurred on issue of debentures [allowable]	-	
Penalty paid under GST Law not allowed as deduction	35,000	
Interest paid on loan taken from bank for payment of advance income-tax not allowed as deduction since the same is not for the purpose of business or profession	60,000	
Provision for loss of subsidiary not allowed as deduction	85,000	48,35,000
Profit and gains from business		83,60,890

Note: The expenditure incurred on advertisement in the souvenir published by a political party is disallowed as per section 37(2B) while computing income under the head “Profit and Gains of Business or Profession” but the same would be allowed as deduction under section 80GGB from the gross total income of the company.

- (9) In case of an assessee carrying on business, it is relevant to see whether an outlay constitutes an expenditure “for the purpose of business” as used in section 37(1), for the purpose of claiming deduction thereunder. The source of funds from which the expenditure is made is not relevant. Every application of income towards the business objective of the assessee is a business expenditure. There can be an amount treated as a capital receipt while the same amount expended may be a revenue expenditure. [*National Co-operative Development Corporation v. CIT* [2020] 427 ITR 288 (SC)]

(19) Clarification regarding treatment of expenditure incurred for development of roads/highways in Build-Operate-Transfer (BOT) agreements under the Income-tax Act, 1961 [Circular No. 09/2014, dated 23.04.2014]

The CBDT has, vide this Circular, clarified the tax treatment of expenditure incurred on development and construction of infrastructural facilities like roads/highways on Build-Operate-Transfer (BOT) basis with right to collect toll - whether the same is entitled to depreciation under section 32(1)(ii) or can be amortized by treating it as an allowable business expenditure under the relevant provisions of the Income- tax Act, 1961.

Generally, the BOT basis projects are entered into between the developer and the government or the notified authority, on the following terms:

- (i) In such projects, the developer, in terms of concessionaire agreement with Government or its agencies, is required to construct, develop and maintain the infrastructural facility of roads/highways which, *inter alia*, includes laying of road, bridges, highways, approach roads, culverts, public amenities etc. at its own cost and its utilization thereof for a specified period.
- (ii) The possession of land is handed over to the assessee (i.e., the developer) by the Government/ notified authority for the purpose of construction of the project without any actual transfer of ownership. The assessee, therefore, has only a right to develop and maintain such asset. It also enjoys the benefits arising from the use of asset through collection of toll for a specified period, without having actual ownership over such asset. Therefore, the rights in the land remain vested with the Government/notified agencies.
- (iii) Since the assessee does not hold any rights in the project except recovery of toll fee to recoup the expenditure incurred, it cannot be treated as an owner of the property, either wholly or partly, for purposes of allowability of depreciation under section 32(1)(ii). Thus, claim of depreciation on toll ways is not allowable due to non-fulfillment of ownership criteria in such cases.
- (iv) Where the assessee incurs expenditure on a project for development of roads/highways, it is entitled to recover cost incurred towards development of such facility (comprising of construction cost and other pre-operative expenses) during construction period. Further, expenditure incurred by the assessee on such BOT projects brings to it an enduring benefit in the form of right to collect the toll during the period of agreement.

The Supreme Court, in *Madras Industrial Investment Corporation Ltd. vs. CIT* [1997] 225 ITR 802, allowed the spreading over of liability over a number of years on the ground that there was continuing benefit to the company over a period. Therefore, analogously, expenditure incurred on

an infrastructure project for development of roads/highways under BOT agreement may be treated as having been made/ incurred for the purposes of business or profession of the assessee and same shall be allowed to be spread during the tenure of concessionaire agreement.

In view of the above, the CBDT, in exercise of the powers conferred under section 119, clarifies that the cost of construction on development of infrastructure facility, being roads/highways under BOT projects, may be amortized and claimed as allowable business expenditure under the Act in the following manner:

- (i) The amortization allowable may be computed at the rate which ensures that the whole of the cost incurred in creation of infrastructural facility of road/highway is amortised evenly over the period of concessionaire agreement after excluding the time taken for creation of such facility.
- (ii) Where an assessee has claimed any deduction out of initial cost of development of infrastructure facility of roads/highways under BOT projects in earlier years, the total deduction so claimed for the assessment years prior to assessment year under consideration may be deducted from the initial cost of infrastructure facility of roads/highways and the cost so reduced shall be amortised equally over the remaining period of toll concessionaire agreement.

The clarification given in this Circular is applicable only to those infrastructure projects for development of road/highways on BOT basis where ownership is not vested with the assessee under the concessionaire agreement.



3.7 INADMISSIBLE DEDUCTIONS [SECTION 40]

By dividing the assessee into distinct groups, this section places absolute restraint on the deductibility of certain expenses as follows:

In the case of any assessee, the following expenses are not deductible:

(1) Section 40(a)(i)

Any interest, royalty, fees for technical services or other sum chargeable under this Act, which is payable,-

- (a) outside India;
- (b) in India to a non-resident, not being a company or to a foreign company,

on which tax is deductible at source under Chapter XVIIIB and such tax has not been deducted or, after deduction, has not been paid on or before the due date of filing of return specified under section 139(1).

It is also provided that 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 under section 139(1), such sum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid.

In case, assessee fails to deduct the whole or any part of tax on any such sum but is not deemed as assessee in default under the first proviso to section 201(1) by reason that such payee –

- (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 payer furnishes a certificate to this effect from an accountant in such form as may be prescribed,

it would be deemed that the assessee has deducted and paid the tax on such sum on the date on which return of income has been furnished by the payee.

Since the date of furnishing the return of income by the payee is taken to be the date on which the payer has deducted tax at source and paid the same, such expenditure/payment in respect of which the payer has failed to deduct tax at source shall be disallowed under section 40(a)(i) in the year in which the said expenditure is incurred. However, such expenditure will be allowed as deduction in the subsequent year in which the return of income is furnished by the payee, since tax is deemed to have been deducted and paid by the payer in that year.

Clarification regarding disallowance of 'other sum chargeable' under section 40(a)(i) [Circular No. 3/2015, dated 12-02-2015]

If there has been a failure in deduction or in payment of tax deducted in respect of any interest, royalty, fees for technical services or other sum chargeable under the Act either payable in India to non-corporate non-resident or a foreign company or payable outside India, then, disallowance of the related expenditure/ payment is attracted under section 40(a)(i) while computing income chargeable under the head "Profits and gains of business or profession".

The interpretation of the term 'other sum chargeable' in section 195 has been clarified in this circular i.e. whether this term refers to the whole sum being remitted or only the portion representing the sum chargeable to income-tax under the Act.

In its Instruction No. 2/2014, dated 26.02.2014, the CBDT has clarified that the Assessing Officer shall determine the appropriate portion of the sum chargeable to tax as mentioned in section

195(1), to ascertain the tax liability on which the deductor shall be deemed to be an assessee in default under section 201, in cases where no application is filed by the deductor for determining the sum so chargeable under section 195(2).

In this circular, the CBDT has, in exercise of its powers under section 119, clarified that for the purpose of making disallowance of 'other sum chargeable' under section 40(a)(i), the appropriate portion of the sum which is chargeable to tax shall form the basis of disallowance. Further, the appropriate portion shall be the same as determined by the Assessing Officer having jurisdiction for the purpose of section 195(1). Also, where the determination of 'other sum chargeable' has been made under sub-section (2), (3) or (7) of section 195 of the Act, such a determination will form the basis for disallowance, if any, under section 40(a)(i).

(2) Section 40(a)(ia)

Section 40(a)(ia) provides that **30% of any sum payable to a resident**, on which tax is deductible at source under Chapter XVII-B, shall be disallowed if –

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

If in respect of such sum, tax has been deducted in any subsequent year or has been deducted during the previous year but paid after the due date specified in section 139(1), 30% of such sum shall be allowed as deduction in computing the income of the previous year in which such tax has been paid.

In case, assessee fails to deduct the whole or any part of tax on any such sum but is not deemed as assessee in default under the first proviso to section 201(1) by reason that such payee –

- (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 payer furnishes a certificate to this effect from an accountant in such form as may be prescribed,

it would be deemed that the assessee has deducted and paid the tax on such sum.

The date of deduction and payment of taxes by the payer shall be deemed to be the date on which return of income has been furnished by the payee.

Since the date of furnishing the return of income by the payee is taken to be the date on which the payer has deducted tax at source and paid the same, 30% of such expenditure/payment in respect of which the payer has failed to deduct tax at source shall be disallowed under section 40(a)(ia) in

the year in which the said expenditure is incurred. However, 30% of such expenditure will be allowed as deduction in the subsequent year in which the return of income is furnished by the payee, since tax is deemed to have been deducted and paid by the payer in that year.

Example: Tax on royalty paid to Mr. A, a resident, has been deducted during the previous year 2023-24, the same has to be paid by 31st July/ 31st October 2024, as the case may be. Otherwise, 30% of royalty paid would be disallowed in computing the income for A.Y. 2024-25. If in respect of such royalty, tax deducted during the P.Y.2023-24 has been paid after 31st July/ 31st October, 2024, 30% of such royalty disallowed in A.Y. 2024-25 would be allowed as deduction in the year of payment.

ILLUSTRATION 12

Delta Ltd. credited the following amounts to the account of resident payees in the month of March, 2024 without deduction of tax at source. What would be the consequence of non-deduction of tax at source by Delta Ltd. on these amounts during the financial year 2023-24, assuming that the resident payees in all the cases mentioned below, have not paid the tax, if any, which was required to be deducted by Delta Ltd.?

	Particulars	Amount (₹)
(1)	Salary to its employees (credited and paid in March, 2024)	12,00,000
(2)	Directors' remuneration (credited in March, 2024 and paid in April, 2024)	28,000

Would your answer change if Delta Ltd. has deducted tax on directors' remuneration in April, 2024 at the time of payment and remitted the same in July, 2024?

SOLUTION

Non-deduction of tax at source on any sum payable to a resident on which tax is deductible at source as per the provisions of Chapter XVII-B would attract disallowance under section 40(a)(ia).

Therefore, non-deduction of tax at source on any sum paid by way of salary on which tax is deductible under section 192 or any sum credited or paid by way of directors' remuneration on which tax is deductible under section 194J, would attract disallowance@30% under section 40(a)(ia). Whereas in case of salary, tax has to be deducted under section 192 at the time of payment, in case of directors' remuneration, tax has to be deducted at the time of credit of such sum to the account of the payee or at the time of payment, whichever is earlier. Therefore, in both the cases i.e., salary and directors' remuneration, tax is deductible in the P.Y.2023-24, since salary was paid in that year and directors' remuneration was credited in that year. Therefore, the

amount to be disallowed under section 40(a)(ia) while computing business income for A.Y.2024-25 is as follows –

	Particulars	Amount paid in ₹	Disallowance u/s 40(a)(ia)@ 30% (₹)
(1)	Salary [tax is deductible under section 192]	12,00,000	3,60,000
(2)	Directors' remuneration [tax is deductible under section 194J without any threshold limit]	28,000	8,400
Disallowance under section 40(a)(ia)			3,68,400

If the tax is deducted on directors' remuneration in the next year i.e., P.Y.2024-25 at the time of payment and remitted to the Government, the amount of ₹ 8,400 would be allowed as deduction while computing the business income of A.Y.2025-26.

Disallowance of any sum paid to a resident at any time during the previous year without deduction of tax under section 40(a)(ia) [Circular No.10/2013, dated 16.12.2013]

There have been conflicting interpretations by judicial authorities regarding the applicability of provisions of section 40(a)(ia), with regard to the amount not deductible in computing the income chargeable under the head 'Profits and gains of business or profession'. Some court rulings have held that the provisions of disallowance under section 40(a)(ia) apply only to the amount which remained payable at the end of the relevant financial year and would not be invoked to disallow the amount which had actually been paid during the previous year without deduction of tax at source.

Departmental View: The CBDT's view is that the provisions of section 40(a)(ia) would cover not only the amounts which are payable as on 31st March of a previous year but also amounts which are payable at any time during the year. The statutory provisions are amply clear and in the context of section 40(a)(ia), the term "payable" would include "amounts which are paid during the previous year".

ILLUSTRATION 13

During the financial year 2023-24, the following payments/expenditure were made/incurred by Mr. Yuvan Raja, a resident individual (whose turnover during the year ended 31.3.2023 was ₹ 99 lakhs):

- (i) *Interest of ₹ 45,000 was paid to Rehman & Co., a resident partnership firm, without deduction of tax at source;*

- (ii) ₹ 10,00,000 was paid as salary to a resident individual without deduction of tax at source;
- (iii) Commission of ₹ 16,000 was paid to Mr. Vidyasagar on 2.7.2023 without deduction of tax at source.

Briefly discuss whether any disallowance arises under the provisions of section 40(a)(ia) of the Income-tax Act, 1961 assuming that the payees in all the cases mentioned above, have not paid the tax, if any, which was required to be deducted by Mr. Raja?

SOLUTION

Disallowance under section 40(a)(ia) of the Income-tax Act, 1961 is attracted where the assessee fails to deduct tax at source as is required under the Act, or having deducted tax at source, fails to remit the same to the credit of the Central Government within the stipulated time limit.

- (i) The obligation to deduct tax at source from interest paid to a resident arises under section 194A in the case of an individual, whose total turnover in the immediately preceding previous year, i.e., P.Y.2022-23 exceeds ₹ 1 crore. Thus, in present case, since the turnover of the assessee is less than ₹ 100 lakhs, he is not liable to deduct tax at source. Hence, disallowance under section 40(a)(ia) is not attracted in this case.
- (ii) The disallowance of 30% of the sums payable under section 40(a)(ia) would be attracted in respect of all sums on which tax is deductible under Chapter XVII-B. Section 192, which requires deduction of tax at source from salary paid, is covered under Chapter XVII-B. The obligation to deduct tax at source under section 192 arises, in the hands all assessee-employer even if the turnover amount does not exceed ₹ 1 crore in the immediately preceding previous year.

Therefore, in the present case, the disallowance under section 40(a)(ia) is attracted for failure to deduct tax at source under section 192 from salary payment. However, only 30% of the amount of salary paid without deduction of tax at source would be disallowed i.e. ₹ 3,00,000 (₹ 10 lakhs × 30%).

- (iii) The obligation to deduct tax at source under section 194-H from commission paid in excess of ₹ 15,000 to a resident arises in the case of an individual, whose total turnover in the immediately preceding previous year, i.e., P.Y.2022-23 exceeds ₹ 1 crore. Thus, in present case, since the turnover of the assessee is less than ₹ 1 crore, he is not liable to deduct tax at source under section 194H. Mr. Raja is not required to deduct tax at source u/s 194M also since the aggregate of such commission to Mr. Vidyasagar does not exceed ₹ 50 lakh during the P.Y. 2023-24. Therefore, disallowance under section 40(a)(ia) is not attracted in this case.

(3) Section 40(a)(ib)

Section 40(a)(ib) provides that where any consideration is paid or payable to a non-resident for a specified service on which equalisation levy is deductible, and such levy has not been deducted or after deduction, has not been paid on or before the due date under section 139(1), then, such expenses incurred by the assessee towards consideration for specified service shall not be allowed as deduction.

However, where in respect of such consideration, if the equalisation levy has been deducted in any subsequent year or has been deducted during the previous year but paid after the due date specified under section 139(1), such sum shall be allowed as deduction in computing the income of the previous year in which such levy has been paid.

(4) Section 40(a)(ii)

Any sum paid on account of rate or tax levied on the profits or gains of any business or profession or assessed at a proportion of, or on the basis of any such profits and gains is not allowed as deduction from business income.

- (a) Any sum paid outside India (on account of any rate or tax levied) which is eligible for tax relief under section 90 or deduction from the income-tax payable under section 91 is not allowable and is deemed to have never been allowable as a deduction under section 40(a).
- (b) However, the tax payers will continue to be eligible for tax credit in respect of income-tax paid in a foreign country in accordance with the provisions of section 90 or section 91, as the case may be.
- (c) Any sum paid outside India (on account of any rate or tax levied) and eligible for relief under section 90A will not be allowed as a deduction.
- (d) The term “tax” would include and would be deemed to have always included any surcharge or cess, by whatever name called, on such tax. Hence, tax including surcharge and cess would be disallowed while computing business income.

(5) Section 40(a)(iib)

- (i) any amount paid by way of royalty, licence fee, service fee, privilege fee, service charge, etc., which is levied exclusively on, or
- (ii) any amount appropriated, directly or indirectly, from a State Government undertaking, by the State Government (SG)

A State Government undertaking includes –

- (a) A corporation established by or under any Act of the State Government;
- (b) A company in which more than 50% of the paid up equity share capital is held by the State Government;
- (c) A company in which more than 50% of the paid up equity share capital is held singly or jointly by (a) or (b);
- (d) A company or corporation in which the State Government has the right to appoint the majority of directors or to control the management or policy decisions
- (e) An authority, a board or an institution or a body established or constituted by or under any Act of the State Government or owned or controlled by the State Government.

(6) Section 40(a)(iii)

Any sum which is chargeable under the head 'Salaries' if it is payable outside India or to a non-resident and if the tax has not been paid thereon nor deducted therefrom under Chapter XVII-B.

(7) Section 40(a)(iv)

Any contribution to a provident fund or the fund established for the benefit of employees of the assessee, unless the assessee has made effective arrangements to make sure that tax shall be deducted at source from any payments made from the fund which are chargeable to tax under the head 'Salaries'.

(8) Section 40(a)(v)

Tax paid on perquisites on behalf of employees is not deductible - In case of an employee, deriving income in the nature of perquisites (other than monetary payments), the amount of tax on such income paid by his employer is exempt from tax in the hands of that employee.

Correspondingly, such payment is not allowed as deduction from the income of the employer. Thus, the payment of tax on perquisites by an employer on behalf of employee will be exempt from tax in the hands of employee but will not be allowable as deduction in the hands of the employer.

In the case of any firm assessable as such or a limited liability partnership (LLP) the following amounts shall not be deducted in computing the business income

Section 40(b)

- (1) **Remuneration to non-working partner** - Any salary, bonus, commission, remuneration by whatever name called, to any partner who is not a working partner. (In the following discussion, the term 'remuneration' is applied to denote payments in the nature of salary, bonus, commission);
- (2) **Remuneration to a working partner not authorized by deed** - Any remuneration paid to the working partner or interest to any partner which is not authorised by or which is inconsistent with the terms of the partnership deed
- (3) **Remuneration to a working partner or interest to a partner authorized by deed but relates to an earlier period** - It is possible that the current partnership deed may authorise payments of remuneration to any working partner or interest to any partner for a period which is prior to the date of the current partnership deed. The approval by the current partnership deed might have been necessitated due to the fact that such payment was not authorised by or was inconsistent with the earlier partnership deed. Such payments of remuneration or interest will also be disallowed. However, it should be noted that the current partnership deed cannot authorise any payment which relates to a period prior to the date of earlier partnership deed.

Next, by virtue of a further restriction contained in section 40(b)(iii), such remuneration paid to the working partners will be allowed as deduction to the firm from the date of such partnership deed and not for any period prior thereto.

Example: If a firm incorporates the clause relating to payment of remuneration to the working partners, by executing an appropriate deed, say, on July 1, 2023 but effective from April 1, 2023 the firm would get deduction for the remuneration paid to its working partners from July 1, 2023 onwards, but not for the period from April 1 to June 30. It will not be possible to give retrospective effect to oral agreements entered into *vis-a-vis* such remuneration prior to putting the same in a written partnership deed.

- (4) **Interest to any partner in excess of 12% p.a.**- Any interest payment authorised by the partnership deed falling after the date of such deed to the extent such interest exceeds 12% simple interest p.a.

- (5) **Remuneration to a working partner in excess of prescribed limits** - Any remuneration paid to a working partner, authorised by a partnership deed and falling after the date of the deed in excess of the following limits:

Book Profits	Quantum of deduction
On the first ₹ 3 lakh of book profit or in case of loss	₹ 1,50,000 or 90% of book profit, whichever is higher
on the balance of book profit	60% of book profit

- (6) **Meaning of certain terms:**

Term	Meaning
Book Profit	The net profit as shown in the profit and loss account for the relevant previous year computed in accordance with the provisions for computing income from profits and gains [Explanation 3 to section 40(b)]. The above amount should be increased by the remuneration paid or payable to all the partners of the firm if the same has been deducted while computing the net profit.
Working partner	An individual who is actively engaged in conducting the affairs of the business or profession of the firm of which he is a partner [Explanation 4 to section 40(b)]

ILLUSTRATION 14

A firm assessed as such has paid ₹ 7,50,000 as remuneration to its partners for the P.Y.2023-24, in accordance with its partnership deed, and it has a book profit of ₹ 10 lakh as computed under section 40(b). What is the remuneration allowable as deduction?

SOLUTION

The allowable remuneration calculated as per the limits specified in section 40(b)(v) would be –

Particulars	₹
On first ₹ 3 lakh of book profit [₹ 3,00,000 × 90%]	2,70,000
On balance ₹ 7 lakh of book profit [₹ 7,00,000 × 60%]	4,20,000
	6,90,000

The excess amount of ₹ 60,000 (i.e., ₹ 7,50,000 – ₹ 6,90,000) would be disallowed as per section 40(b)(v).

- (7) **Explanations to section 40(b)**

(i) Where an individual is a partner in a firm in a representative capacity:

- (a) interest paid by the firm to such individual otherwise than as partner in a representative capacity shall not be taken into account for the purposes of this clause.
- (b) interest paid by the firm to such individual as partner in a representative capacity and interest paid by the firm to the person so represented shall be taken into account for the purposes of this clause [*Explanation 1* to section 40(b)]
- (ii) Where an individual is a partner in a firm otherwise than in a representative capacity, interest paid to him by the firm shall not be taken into account if he receives the same on behalf of or for the benefit of any other person [*Explanation 2* to section 40(b)].

Example: Mr. A is a partner in ABC & Co. on behalf of Shah HUF. Interest to its partners @15% is authorised by ABC & Co. ABC & Co. pays ₹ 7 lakhs as interest to Mr. A out of which ₹ 4 lakhs on the funds advanced by Mr. A in his individual capacity and ₹ 3 lakhs on the funds advanced by him in his representative capacity on behalf of Shah HUF. The interest of ₹ 4 lakhs paid to Mr. A in his individual capacity is allowed as deduction subject to section 40A(2) and shall not be taken into account for purpose of section 40(b). Whereas the interest paid to Mr. A in his representative capacity would be allowed to the extent of ₹ 2.40 lakhs i.e., ₹ 3 lakhs/15% x 12%.

ILLUSTRATION 15

Rao & Jain, a partnership firm consisting of two partners, reports a net profit of ₹ 7,00,000 before deduction of the following items:

- (1) Salary of ₹ 20,000 each per month payable to two working partners of the firm (as authorized by the deed of partnership).
- (2) Depreciation on plant and machinery under section 32 (computed) ₹ 1,50,000.
- (3) Interest on capital at 15% per annum (as per the deed of partnership). The amount of capital eligible for interest ₹ 5,00,000.

Compute:

- (i) Book-profit of the firm under section 40(b) of the Income-tax Act, 1961.
- (ii) Allowable working partner salary for the assessment year 2024-25 as per section 40(b).

SOLUTION

- (i) As per *Explanation 3* to section 40(b), "book profit" shall mean the net profit as per the profit and loss account for the relevant previous year computed in the manner laid down in Chapter IV-D as increased by the aggregate amount of the remuneration paid or payable to the partners of the firm if the same has been already deducted while computing the net profit.

In the present case, the net profit given is before deduction of depreciation on plant and machinery, interest on capital of partners and salary to the working partners. Therefore, the book profit shall be as follows:

Computation of Book Profit of the firm under section 40(b)

Particulars	₹	₹
Net Profit (before deduction of depreciation, salary and interest)		7,00,000
Less: Depreciation under section 32	1,50,000	
Interest @ 12% p.a. [being the maximum allowable as per section 40(b)] ($₹ 5,00,000 \times 12\%$)	60,000	2,10,000
Book Profit		4,90,000

- (ii) Salary actually paid to working partners = $₹ 20,000 \times 2 \times 12 = ₹ 4,80,000$.

As per the provisions of section 40(b)(v), the salary paid to the working partners is allowed subject to the following limits -

On the first ₹ 3,00,000 of book profit or in case of loss	₹ 1,50,000 or 90% of book profit, whichever is more
On the balance of book profit	60% of the balance book profit

Therefore, the maximum allowable working partners' salary for the A.Y. 2024-25 in this case would be:

Particulars	₹
On the first ₹ 3,00,000 of book profit [(₹ 1,50,000 or 90% of ₹ 3,00,000) whichever is more]	2,70,000
On the balance of book profit [60% of (₹ 4,90,000 - ₹ 3,00,000)]	1,14,000
Maximum allowable partners' salary	3,84,000

Hence, allowable working partners' salary for the A.Y. 2024-25 as per the provisions of section 40(b)(v) is ₹ 3,84,000.

In the case of Association of persons or body of individuals, following amounts shall not be deducted in computing the business income

Section 40(ba)

Any payment of interest, salary, commission, bonus or remuneration made by an association of persons or body of individuals to its members will also not be allowed as a deduction in computing the income of the association or body.

There are three Explanations to section 40(ba):

Explanation 1 - Where interest is paid by an AOP or BOI to a member who has paid interest to the AOP/BOI, the amount of interest to be disallowed under clause (ba) shall be limited to the net amount of interest paid by AOP/BOI to the partner.

Explanation 2 - Where an individual is a member in an AOP/BOI in a representative capacity, interest paid by AOP/BOI to such individual or by such individual to AOP/ BOI otherwise than as member in a representative capacity shall not be taken into account for the purposes of clause (ba). But interest paid to or received from each person in his representative capacity shall be taken into account.

Explanation 3 - Where an individual is a member in his individual capacity, interest paid to him in his representative capacity shall not be taken into account.



3.8 EXPENSES OR PAYMENTS NOT DEDUCTIBLE IN CERTAIN CIRCUMSTANCES [SECTION 40A]

(1) Payments to relatives and associates

Section 40A(2) provides that where the assessee incurs any expenditure in respect of which a payment has been or is to be made to a specified person [See column (2) of Table below] so much of the expenditure as is considered to be excessive or unreasonable shall be disallowed by the Assessing Officer. While doing so he shall have due regard to:

- (a) the fair market value of the goods, service of facilities for which the payment is made; or
- (b) the legitimate needs of the business or profession carried on by the assessee; or
- (c) the benefit derived by or accruing to the assessee from such a payment.

Assessee	Specified Person
(1)	(2)
Individual	- Any relative of the individual assessee - Any person who carries on a business or profession, if - the individual has a substantial interest in the business of that person <u>or</u> - any relative of the individual has a substantial interest in the business of that person
Company, Firm, HUF or AOP	- Any director, partner of the firm or member of the family or association or any relative of such director, partner or member or - In case of a company assessee, any individual who has substantial interest

	in the business or profession of the company or any relative of such individual or 3. Any person who carries on a business or profession, in which the Company/ Firm/ HUF/ AOP or director of the company, partner of the firm or member of the family or association or any relative of such director, partner or member has substantial interest in the business of that person	
All assessees	The following are specified persons:	
	Person who has substantial interest in the assessee's business	Other related persons of such person, who has a substantial interest in the assessee's business
	Company/ AOP/ Firm/ HUF a director, partner or member	- Any director of such company, partner of such firm or the member of such family or association or - any relative of such director, partner or member or - Any other company carrying on business or profession in which the first mentioned company has a substantial interest - Company/ Firm/ AOP/ HUF of which he is a director, partner or member or - Any other director/ partner/ member of the such Company/ Firm/ AOP/ HUF or - Any relative of such director, partner or member
<i>Relative in relation to an Individual means the spouse, brother or sister or any lineal ascendant or descendant of that individual [Section 2(41)].</i>		
Substantial interest in a business or profession		
A person shall be deemed to have a substantial interest in a business or profession if - - in a case where the business or profession is carried on by a company, such person is, at any time during the previous year, the beneficial owner of equity shares carrying not less than 20% of the voting power and - in any other case, such person is, at any time during the previous year, beneficially entitled to not less than 20% of the profits of such business or profession.		

(2) Payments in excess of ₹ 10,000 made otherwise than through prescribed modes

According to section 40A(3), where the assessee incurs any expenditure, in respect of which payment or aggregate of payments made to a person in a day otherwise than by an account payee cheque drawn on a bank or by an account payee bank draft or use of electronic system through bank account or through such other prescribed electronic modes exceeds ₹ 10,000, such expenditure shall not be allowed as a deduction.

The prescribed electronic modes are credit card, debit card, net banking, IMPS (Immediate payment Service), UPI (Unified Payment Interface), RTGS (Real Time Gross Settlement), NEFT (National Electronic Funds Transfer), and BHIM (Bharat Interface for Money) Aadhar Pay [CBDT Notification No. 8/2020 dated 29.01.2020].

The provision applies to all categories of expenditure involving payments for goods or services which are deductible in computing the taxable income.

Example:

If, in respect of an expenditure of ₹ 32,000 incurred by X Ltd., 4 cash payments of ₹ 8,000 are made on a particular day to one Mr. Y – one in the morning at 10 a.m., one at 12 noon, one at 3 p.m. and one at 6 p.m., the entire expenditure of ₹ 32,000 would be disallowed under section 40A(3), since the aggregate of cash payments made during a day to Mr. Y exceeds ₹ 10,000.

Payments in excess of ₹ 10,000 made otherwise than through prescribed modes deemed to be the income of the subsequent year, if expenditure has been allowed as deduction in any previous year on due basis:

In case of an assessee following mercantile system of accounting, if an expenditure has been allowed as deduction in any previous year on due basis, and payment has been made in a subsequent year otherwise than by account payee cheque or account payee bank draft or use of electronic clearing system through a bank account or through such other prescribed electronic modes such as credit card, debit card, net banking, IMPS (Immediate payment Service), UPI (Unified Payment Interface), RTGS (Real Time Gross Settlement), NEFT (National Electronic Funds Transfer), and BHIM (Bharat Interface for Money) Aadhar Pay, then the payment so made shall be deemed to be the income of the subsequent year if such payment or aggregate of payments made to a person in a day exceeds ₹ 10,000 [Section 40A(3A)].

Increase in limit of cash payment, where payment made to transport operator: This limit of ₹ 10,000 has been raised to ₹ 35,000 in case of payment made to transport operators for plying, hiring or leasing goods carriages. Therefore, payment or aggregate of payments up to ₹ 35,000 in a day can be made to a transport operator otherwise than by way of account payee cheque or account payee bank draft or use of electronic clearing system through a bank account or through such other prescribed electronic modes such as credit card, debit card, net banking, IMPS (Immediate payment Service), UPI (Unified Payment Interface), RTGS (Real Time Gross Settlement), NEFT (National Electronic Funds Transfer), and BHIM (Bharat Interface for Money) Aadhar Pay. In all other cases, the limit would continue to be ₹ 10,000.

Cases where disallowances would not be attracted:

- (i) **Loan transactions:** It does not apply to loan transactions because advancing of loans or repayments of the principal amount of loan does not constitute an expenditure deductible in computing the taxable income. However, interest payments of amounts exceeding ₹ 10,000 at a time are required to be made by account payee cheques or drafts or electronic clearing system or through such other prescribed electronic modes such as credit card, debit card, net banking, IMPS (Immediate payment Service), UPI (Unified Payment Interface), RTGS (Real Time Gross Settlement), NEFT (National Electronic Funds Transfer), and BHIM (Bharat Interface for Money) Aadhar Pay as interest is a deductible expenditure.
- (ii) **Payment made by commission agents:** This requirement does not apply to payment made by commission agents for goods received by them for sale on commission or consignment basis because such a payment is not an expenditure deductible in computing the taxable income of the commission agent.

For the same reason, this requirement does not apply to advance payment made by the commission agent to the party concerned against supply of goods.

However, where commission agent purchases goods on his own account but not on commission basis, the requirement will apply. The provisions regarding payments by account payee cheque or draft or electronic clearing system or through such other prescribed electronic modes such as credit card, debit card, net banking, IMPS (Immediate payment Service), UPI (Unified Payment Interface), RTGS (Real Time Gross Settlement), NEFT (National Electronic Funds Transfer), and BHIM (Bharat Interface for Money) Aadhar Pay apply equally to payments made for goods purchased on credit.

Cases and circumstances in which a payment or aggregate of payments exceeding ten thousand rupees may be made to a person in a day, otherwise than by an account payee cheque/ account payee bank draft/ use of ECS through a bank account or through such other prescribed electronic modes [Rule 6DD]:

As per this rule, no disallowance under section 40A(3) shall be made and no payment shall be deemed to be the profits and gains of business or profession under section 40A(3A) where a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft or use of electronic clearing system through a bank account or through such other prescribed electronic modes such as credit card, debit card, net banking, IMPS (Immediate payment Service), UPI (Unified Payment Interface), RTGS (Real Time Gross Settlement), NEFT (National Electronic Funds Transfer), and BHIM

(Bharat Interface for Money) Aadhar Pay, exceeds ₹10,000 in the cases and circumstances specified hereunder, namely:

- (a) where the payment is made to
 - (i) the Reserve Bank of India or any banking company;
 - (ii) the State Bank of India or any subsidiary bank;
 - (iii) any co-operative bank or land mortgage bank;
 - (iv) any primary agricultural credit society or any primary credit society;
 - (v) the Life Insurance Corporation of India;
- (b) where the payment is made to the Government and, under the rules framed by it, such payment is required to be made in legal tender;
- (c) where the payment is made by
 - (i) any letter of credit arrangements through a bank;
 - (ii) a mail or telegraphic transfer through a bank;
 - (iii) a book adjustment from any account in a bank to any other account in that or any other bank;
 - (iv) a bill of exchange made payable only to a bank;
- (d) where the payment is made by way of adjustment against the amount of any liability incurred by the payee for any goods supplied or services rendered by the assessee to such payee;
- (e) where the payment is made for the purchase of -
 - (i) agricultural or forest produce; or
 - (ii) the produce of animal husbandry (including livestock, meat, hides and skins) or dairy or poultry farming; or
 - (iii) fish or fish products; or
 - (iv) the products of horticulture or apiculture,to the cultivator, grower or producer of such articles, produce or products;

Notes -

- (i) The expression 'fish or fish products' (iii) above would include 'other marine products such as shrimp, prawn, cuttlefish, squid, crab, lobster etc.'.
- (ii) The 'producers' of fish or fish products for the purpose of Rule 6DD(e) would include, besides the fishermen, any headman of fishermen, who sorts the catch of fish brought by fishermen from the sea, at the sea shore itself and then sells the fish or fish products to traders, exporters etc.

However, the above exception will not be available on the payment for the purchase of fish or fish products from a person who is not proved to be a 'producer' of these goods and is only a trader, broker or any other middleman, by whatever name called.

- (f) where the payment is made for the purchase of the products manufactured or processed without the aid of power in a cottage industry, to the producer of such products;
- (g) where the payment is made in a village or town, which on the date of such payment is not served by any bank, to any person who ordinarily resides, or is carrying on any business, profession or vocation, in any such village or town;
- (h) where any payment is made to an employee of the assessee or the heir of any such employee, on or in connection with the retirement, retrenchment, resignation, discharge or death of such employee, on account of gratuity, retrenchment compensation or similar terminal benefit and the aggregate of such sums payable to the employee or his heir does not exceed fifty thousand rupees;
- (i) where the payment is made by an assessee by way of salary to his employee after deducting the income-tax from salary in accordance with the provisions of section 192 of the Act, and when such employee -
 - (i) is temporarily posted for a continuous period of fifteen days or more in a place other than his normal place of duty or on a ship; and
 - (ii) does not maintain any account in any bank at such place or ship;
- (j) where the payment is made by any person to his agent who is required to make payment in cash for goods or services on behalf of such person;
- (k) where the payment is made by an authorised dealer or a money changer against purchase of foreign currency or travelers cheques in the normal course of his business.

Note: Where any payment in respect of any expenditure is required to be made by an account payee cheque/ account payee bank draft or use of electronic clearing system through a bank account or through such other prescribed electronic modes in order that such expenditure may not be disallowed as a deduction under section 40A(3), then the payment may be made by such cheque or draft or electronic clearing system or through such other prescribed electronic modes.

No person is allowed to raise, in any suit or other proceeding, a plea based on the ground that the payment was not made or tendered in cash or in any other manner.

This is notwithstanding anything contained in any other law for the time being in force or in any contract.

(3) Disallowance of provision for gratuity

Section 40A(7) provides that no deduction would be allowable to any taxpayer carrying on any business or profession in respect of any provision (whether called as provision or by any other names) made by him towards the payment of gratuity to his employers on their retirement or on the termination of their employment for any reason.

The reason for this disallowance is that, under section 36(1)(v), deduction is allowable in computing the profits and gains of the business or profession in respect of any sum paid by a taxpayer in his capacity as an employer in the form of contributions made by him to an approved gratuity fund created for the exclusive benefit of his employees under an irrevocable trust. Further, section 37(1) provides that any expenditure other than the expenditure of the nature described in sections 30 to 36 laid out or expended, wholly and exclusively for the purpose of the business or profession must be allowed as a deduction in computing the taxable income from business.

A reading of these two provisions clearly indicates that the intention of the legislature has always been that the deduction in respect of gratuity be allowable to the employer either in the year in which the gratuity is actually paid or in the year in which contributions to an approved gratuity fund are actually made by employer.

This provision, therefore, makes it clear that any amount claimed by the assessee towards provision for gratuity, by whatever name called would be disallowable in the assessment of employer even if the assessee follows the mercantile system of accounting.

However, no disallowance would be made as per section 40A(7) in the case where any provision is made by the employer for the purpose of payment of sum by way of contribution to an approved gratuity fund during the previous year or for the purpose of making payment of any gratuity that has become payable during the previous year by virtue of the employee's retirement, death, termination of service etc.

Further, where any provision for gratuity for any reason has been allowed as a deduction to the assessee for any assessment year, any sum paid out of such provision by way of contribution towards an approved gratuity fund or by way of gratuity to employee shall not be allowed as deduction to the assessee in the year in which it is paid.

(4) Contributions by employers to funds, trust etc. [Sections 40A(9)]

This sub-section has been introduced to curb the growing practice amongst employers to claim deductions from taxable profits of the business of contributions made apparently to the welfare of employees from which, however, no genuine benefit flows to the employees.

Accordingly, no deduction will be allowed where the assessee pays in his capacity as an employer, any sum towards setting up or formation of or as contribution to any fund, trust, company, association of persons, body of individuals, society registered under the Societies Registration Act, 1860 or other institution for any purpose.

However, where such sum is paid in respect of funds covered by sections 36(1)(iv), 36(1)(iva) and 36(1)(v) or any other law, then the deduction will not be denied.

(5) Marked to market loss or other expected loss [Sections 40A(13)]

Section 40A(13) provides that no deduction or allowance in respect of any marked to market loss or other expected loss shall be allowed except as allowable under section 36(1)(xviii). 36(1)(xviii) provides that marked to market loss or other expected loss as computed in accordance with the ICDS notified under section 145(2), would be allowed as deduction. ICDS I provide that marked to market losses would not be allowed unless the same is in accordance with any other ICDS. Therefore, only marked to market losses specifically permitted under any other ICDS would be allowable as deduction under section 36. Other marked to market losses would not be allowed as deduction as per section 40A(13). This amendment is effective from A.Y. 2017-18.



3.9 PROFITS CHARGEABLE TO TAX [SECTION 41]

This section enumerates certain receipts which are deemed to be income under the head “business or profession.” Such receipts would attract charge even if the business from which they arise had ceased to exist prior to the year in which the liability under this section arises. The particulars of such receipts are given below:

(1) Remission or cessation of trading liability [Section 41(1)]

Suppose an allowance or deduction has been made in any assessment year in respect of loss, expenditure or trading liability incurred by A. Subsequently, if A has obtained, whether in cash or in

any manner whatsoever, any amount in respect of such loss or expenditure of some benefit in respect of such trading liability by way of remission or cessation thereof, the amount obtained by A, or the value of benefit accruing to him shall be taxed as income of that previous year. It does not matter whether the business or profession in respect of which the allowance or deduction has been made is in existence in that year or not.

It is possible that after the above allowance in respect of loss, expenditure, or trading liability has been given to A, he could have been succeeded in his business by another person. In such a case, the successor will be liable to be taxed in respect of any such benefit received by him during a subsequent previous year.

Successor in business:

- (i) Where there has been an amalgamation of a company with another company, the successor will be the amalgamated company.
- (ii) Where a firm carrying on a business or profession is succeeded by another firm the successor will be the other firm.
- (iii) In any other case, where one person is succeeded by any other person in that business or profession the other person will be the successor.
- (iv) In case of a demerger, the successor will be the resulting company.

Remission or cessation of a trading liability includes remission or cessation of liability by a unilateral act of the assessee by way of writing off such liability in his accounts.

(2) Balancing charge, sale of capital asset used for scientific research, recovery of a bad debt subsequently and withdrawal from reserves created [Section 41(2), (3), (4) & (4A)]

The provisions of section 41(2) relating to balancing charge, section 41(3) relating to sale of capital assets acquired for scientific research, section 41(4) dealing with recovery of bad debts and of section 41(4A) relating to withdrawal from special reserve created have been dealt with earlier under the respective items.

(3) Brought forward losses of defunct business [Section 41(5)]

In cases where a receipt is deemed to be profit of a business under section 41 relating to a business that had ceased to exist and there is an unabsorbed loss, not being a speculation loss, which arose in that business during the previous year in which it had ceased to exist, it would be set off against income that is chargeable under this section even after the expiry of 8 years.



3.10 OTHER PROVISIONS

(1) Special provisions for deduction in case of business for prospecting etc. for mineral oil [Section 42]

This section enables an assessee to claim an allowance which may on general principles be inadmissible, e.g., allowance in respect of expenditure which would be regarded as an accretion to capital on the ground that it brings into existence an asset of enduring benefit or to constitute initial expenditure incurred on the setting up of a profit-earning machinery in motion. It must further be noted that this concession can be availed of only in relation to contract or arrangements entered into by the Central Government for prospecting for, or the extraction or production of mineral oils.

(i) Allowable expenses

The allowance permissible under this section shall be in relation to

- (a) the expenditure by way of infructuous or abortive exploration expenses in respect of an area surrendered prior to the beginning of commercial production by the assessee;
- (b) after the beginning of commercial production, the expenditure incurred by the assessee, whether before or after such commercial production in respect of drilling or exploration activities or services or in respect of physical assets used in that connection; and
- (c) to the depletion of mineral oil in the mining area in respect of the assessment year relevant to the previous year in which commercial production is begun and for such succeeding years as may be specified in the agreement.

(ii) Amount of deduction

The sum of those allowances should be computed and deduction should be made in the manner specified in the agreement entered into by the Central Government with any person for the association or participation of the Central Government or any authorized person by it in such business for the prospecting or exploration of mineral oil.

It has been specifically provided that the other provisions of the Act are being deemed, for the purpose of this allowance, to have been modified to the extent necessary to give effect to the terms of the agreement. It may be noted that allowances in this regard are made in lieu of or in addition to the other allowances permissible under the Act, depending upon the terms of the agreement.

(iii) Taxability in case of transfer

	Transaction	Manner of deduction
(1)	Subject to the provisions of the agreement entered into by the Central Government, where the business of assessee consisting of the prospecting for or extraction or production of petroleum and natural gas is transferred or any interest therein is transferred, wholly or partly, in accordance with the aforesaid agreement,	
	Case 1: Where the proceeds of the transfer are less than the expenditure incurred remaining unallowed	The expenditure remaining unallowed as reduced by the proceeds of transfer shall be allowed in the previous year in which the business or interest has been transferred. Amount of deduction = Expenditure remain unallowed – Sale proceeds
	Case 2: Where the proceeds of the transfer of whole or any part of the business or interest therein exceed the amount of expenditure remaining unallowed	The excess amount or expenditure allowed till date (i.e., difference between expenditure incurred in connection with the business or to obtain interest therein and the expenditure remaining unallowed), whichever is less, shall be chargeable to tax as profits and gains of business in the previous year in which the business or interest therein has been transferred. Taxable as profits and gains from business and profession = Sale proceeds – Expenditure remain unallowed OR Expenditure allowed till date } Whichever is less If the business or interest therein is transferred in a previous year in which the business is no longer in existence, the taxability would arise in the above manner as though the business is in existence in that previous year.
	Case 3: Where the proceeds of the transfer are not less than the amount of expenditure incurred remaining unallowed.	No deduction for such expenditure shall be allowed in the previous year in which business or interest therein is transferred or in respect of any subsequent previous year or years. Amount of deduction = NIL
	Case 4: Where transfer of the business or interest is not covered under Case 2 above	Deduction of unallowed expenditure as reduced by the proceeds of transfer from the expenditure remaining unallowed Allowable deduction = Unallowed expenditure – Sale proceeds

(2)	Transfer of business in a scheme of amalgamation	If the amalgamating company sells or transfers the business to the amalgamated company, being an Indian company under the scheme of amalgamation The provisions of section 42 will apply to amalgamated company as they would have applied to amalgamating company as if the latter has not transferred the business or interest therein. The tax treatment in cases 1, 2, 3 & 4 given in (1) above will not apply to the amalgamating company.
(3)	Transfer of business in a scheme of demerger	If the demerged company sells or transfers the business to the resulting company, being an Indian company under the scheme of demerger The provisions of section 42 will apply to resulting company as they would have applied to demerged company as if the latter has not transferred the business or interest therein. The tax treatment in cases 1, 2, 3 & 4 given in (1) above will not apply to the demerged company.

Note: Mineral oil includes petroleum and natural gas.

(2) Changes in the rate of exchange of currency [Section 43A]

- (i) The section provides that where an assessee has acquired any asset from a foreign country for the purpose of his business or profession, and due to a change thereafter in the exchange rate of the two currencies involved, there is an increase or decrease in the liability (expressed in Indian rupees) of the assessee **at the time of making the payment**, the following values may be changed accordingly with respect to the increase or decrease in such liability:
- the actual cost of the asset under section 43(1)
 - the amount of capital expenditure incurred on scientific research under section 35(1)(iv)
 - the amount of capital expenditure incurred by a company for promoting family planning amongst its employees under section 36(1)(ix)
 - the cost of acquisition of a non-depreciable capital asset falling under section 48.

The amount arrived at after making the above adjustment shall be taken as the amount of capital expenditure or the cost of acquisition of the capital asset, as the case may be.

- (ii) Where the whole or any part of the liability aforesaid is met, not by the assessee, but, directly or indirectly, by any other person or authority, the liability so met shall not be taken into account for the purposes of this section.
- (iii) Where the assessee has entered into a contract with authorised dealer as defined in section 2 of the Foreign Exchange Management Act, 1999 for providing him with a specified sum in a foreign currency on or after a stipulated future date at the rate of exchange specified in the contract to enable him to meet the whole or any part of the liability aforesaid, the amount, if any, for adjustment under this section shall be computed with reference to the rate of exchange specified therein.

(3) Taxation of foreign exchange fluctuation [Section 43AA]

- (i) Section 43AA provides that, subject to the provisions of section 43A, any gain or loss arising on account of any change in foreign exchange rates shall be treated as income or loss, as the case may be, which shall be computed in accordance with the notified ICDS i.e., ICDS VI: The effects of changes in foreign exchange rates.
- (ii) Gain or loss arising on account of the effects of change in foreign exchange rates shall be in respect of all foreign currency transactions, including those relating to –
 - (a) monetary items and non-monetary items;
 - (b) translation of financial statements of foreign operations
 - (c) forward exchange contracts;
 - (d) foreign currency translation reserves.

(4) Certain Deductions to be made only on actual payment [Section 43B]

The following sums are allowed as deduction only in that previous year in which such sum is actually paid i.e., on actual payment basis.

- (a) Any sum payable by way of **tax, duty, cess or fee**, by whatever name called, under any law for the time being in force, or
- (b) Any sum payable by the assessee as an **employer** by way of **contribution to any provident fund or superannuation fund or gratuity fund** or any other fund for the welfare of employees, or
- (c) **Bonus or Commission** for services rendered payable to employees, or

- (d) Any sum payable by the assessee as **interest on any loan or borrowing** from any **public financial institution or a State Financial Corporation or a State Industrial Investment Corporation**, or
- (da) Any sum payable by the assessee as **interest on any loan or borrowing from notified class of non-banking financial companies**, in accordance with the terms and conditions of the agreement governing such loan or borrowing, or
- (e) **Interest on any loan or advance from a scheduled bank or co-operative bank** other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank, in accordance with the terms and conditions of the agreement governing such loan or borrowing, or
- (f) Any sum paid by the assessee as an **employer in lieu of earned leave of his employee**, or
- (g) Any sum payable by the assessee **to the Indian Railways for use of Railway assets**.

For the purpose of claiming deduction of the **sums referred to above in clauses (a) to (g)** in the relevant previous year in which the expenditure is incurred, the above sums have to be **paid by the assessee on or before the due date for furnishing the return of income under section 139(1)** in respect of the previous year in which the liability to pay such sum was incurred and the evidence of such payment is furnished by the assessee along with such return.

Conversion of interest into a loan or borrowing or debenture or any other instrument

Explanation 3C, 3CA & 3D clarifies that if any sum payable by the assessee as interest on any such loan or borrowing or advance referred to in (d), (da) and (e) above, is converted into a loan or borrowing or advance or debenture or any other instrument by which the liability to pay is deferred to a future date, the interest so converted and not “actually paid” shall not be deemed as actual payment, and hence would not be allowed as deduction. The clarificatory explanations only reiterate the rationale that conversion of interest into a loan or borrowing or advance or debenture or any other instrument by which the liability to pay is deferred to a future date does not amount to actual payment.

The manner in which the converted interest will be allowed as deduction has been clarified in *Circular No.7/2006 dated 17.7.2006*. The unpaid interest, whenever actually paid to the bank or financial institution, will be in the nature of revenue expenditure deserving deduction in the computation of income. Therefore, irrespective of the nomenclature, the deduction will be allowed in the previous year in which the converted interest is actually paid.

Meaning of Non-banking financial company:

- (i) a financial institution which is a company;
- (ii) a non-banking institution which is a company and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner;
- (iii) such other non-banking institution or class of such institutions, as the bank may, specify with the previous approval of the Central Government and by notification in the Official Gazette.

ILLUSTRATION 16

Hari, an individual, carried on the business of purchase and sale of agricultural commodities like paddy, wheat, etc. He borrowed loans from Andhra Pradesh State Financial Corporation (APSFC) and Indian Bank and has not paid interest as detailed hereunder:

		₹
(i)	Andhra Pradesh State Financial Corporation (P.Y. 2022-23 & 2023-24)	15,00,000
(ii)	Indian Bank (P.Y. 2023-24)	30,00,000
		45,00,000

Both APSFC and Indian Bank, while restructuring the loan facilities of Hari during the year 2023-24, converted the above interest payable by Hari to them as a loan repayable in 60 equal installments. During the year ended 31.3.2024, Hari paid 5 installments to APSFC and 3 installments to Indian Bank.

Hari claimed the entire interest of ₹ 45,00,000 as an expenditure while computing the income from business of purchase and sale of agricultural commodities. Discuss whether his claim is valid and if not what is the amount of interest, if any, allowable.

SOLUTION

According to section 43B, any interest payable on the term loans to specified financial institutions and any interest payable on any loans and advances to, *inter alia*, scheduled banks shall be allowed only in the year of payment of such interest irrespective of the method of accounting followed by the assessee. Where there is default in the payment of interest by the assessee, such unpaid interest may be converted into loan. Such conversion of unpaid interest into loan shall not be construed as payment of interest for the purpose of section 43B. The amount of unpaid interest so converted as loan shall be allowed as deduction only in the year in which the converted loan is actually paid.

In the given case of Hari, the unpaid interest of ₹ 15,00,000 due to APSFC and of ₹ 30,00,000 due to Indian Bank was converted into loan. Such conversion would not amount to payment of interest and would not, therefore, be eligible for deduction in the year of such conversion. Hence, claim of Hari that the entire interest of ₹ 45,00,000 is to be allowed as deduction in the year of conversion is not tenable. The deduction shall be allowed only to the extent of repayment made during the financial year. Accordingly, the amount of interest eligible for deduction for the A.Y.2024-25 shall be calculated as follows:

	Interest outstanding (₹)	Number of Instalments	Amount per instalment (₹)	Instalments paid	Interest allowable (₹)
APSFC	15 lakh	60	25,000	5	1,25,000
Indian Bank	30 lakh	60	50,000	3	1,50,000
Total amount eligible for deduction					2,75,000

Clarification on non-applicability of section 43B in respect of employee's Contribution to welfare funds [Explanation 5 to section 43B]

As per section 2(24)(x), any sum received by an assessee, being an employer from his employee as contribution to any provident fund or superannuation fund or any fund set up under Employee's State Insurance Act, 1948 or any other fund for the welfare of employees would be considered as the income of an employer.

The deduction in respect of above sum will be allowed to the assessee under section 36(1)(va) only if such sum is credited by the assessee to the employee's account in the relevant fund on or before the due date, being the date specified under the relevant Act, Rule, order or notification issued thereunder.

As per section 43B, any sum payable by the assessee as an employer by way of contribution to any provident fund or superannuation fund or gratuity fund or any other fund for the welfare of employees, would be allowable during any P.Y. if the same has been paid on or before the 'due date' applicable in his case for furnishing the return of income under section 139(1) in respect of that P.Y.

Explanation 5 clarifies that the provisions of section 43B regarding allowability of certain expenditure in a previous year only on actual payment basis (i.e., payment on or before the due date of filing of return of income for relevant assessment year), does not apply and would deemed never to be applied to employee's contribution received by employer towards any welfare fund. In effect, clause (b) of section 43B covers only employer's contribution to provident fund, superannuation fund, gratuity fund or any other fund for welfare of employees, for remittance of

which extended time limit upto due date of filing return u/s 139(1) is available; however, it does not include within its scope, employees' contribution to such funds received by the employer, which has to be credited to the employee's account in the relevant fund on or before the due date specified under the relevant Act, Rule etc. Amount credited after the said due date but on or before the due date under section 139(1) would not be eligible for deduction.

Section 43B [Clause (h)]

Any sum payable by the assessee to a micro or small enterprise beyond the time-limit specified in section 15 of the Micro, Small and Medium Enterprises Development Act, 2006 would be allowed as deduction only in that previous year in which such sum is actually paid.

Section 15 of the of the Micro, Small and Medium Enterprises Development Act, 2006 mandates payment of goods or services to supplier, being a micro or small enterprises by the buyer on or before the date agreed upon between them in writing i.e., as per the written agreement, which cannot be more than 45 days from the day of acceptance or the day of deemed acceptance of any goods or services by a buyer from a supplier. If there is no such written agreement, the payment shall be made before the appointed day i.e., within 15 days.

If the sum payable by the assessee to a micro or small enterprise is paid as per written agreement (maximum within 45 days) or within 15 days in case of no agreement, the deduction can be claimed on accrual basis if mercantile method of accounting is followed by the assessee.

However, if the sum payable by the assessee to a micro or small enterprise is not paid as per written agreement or within 15 days in case of no agreement, the deduction would be allowed in the previous year in which it is actually paid.

Example: Mr. A has purchased goods of ₹ 10,000 from A & Co., a micro enterprise on 1.3.2024. As per the written agreement between them, the payment has to be made by 5.4.2024. Mr. A follows mercantile method of accounting.

(i) If Mr. A paid the sum on 2.4.2024

Since Mr. A paid the sum on or before 5.4.2024, the deduction would be allowed in P.Y. 2023-24.

(ii) If Mr. A paid the sum on 20.4.2024

Since Mr. A paid the sum beyond the time limit, the deduction would be allowed in the year of actual payment i.e., P.Y. 2024-25.

Meaning of Micro and Small enterprise

S. No.	Meaning		
(1)	Micro Enterprise		
	Investment in Plant and Machinery or Equipment $\leq$ ₹1 crore	AND	Turnover $\leq$ ₹5 crore
(2)	Small Enterprise		
	Investment in Plant and Machinery or Equipment $\leq$ ₹10 crore	AND	Turnover $\leq$ ₹50 crore

Any sum payable means a sum for which the assessee incurred liability in the previous year even though such sum might not have been payable within that year under the relevant law.

(5) Special provision for computation of cost of acquisition of certain assets [Section 43C]

- (i) Where an asset acquired under a scheme of amalgamation is sold by an amalgamated company as its stock-in-trade then in computing the profits and gains derived from sale of such stock-in-trade, the cost of acquisition of stock-in-trade to the amalgamated company shall be the cost of acquisition of the asset to the amalgamating company as increased by the cost, if any, of any improvement thereto and the expenditure incurred wholly and exclusively in connection with such a transfer.
- (ii) The provisions of section 43C will thus apply to the following cases of revaluation:
 - (a) When the stock-in-trade of the amalgamating company is taken over at revalued price by the amalgamated company under the scheme of amalgamation.
 - (b) Where a capital asset of the amalgamating company is taken over as stock-in-trade by the amalgamated company after revaluation under the scheme of amalgamation.
- (iii) The situation referred to at (b) above will in turn cover three situations:
 - (a) When the capital asset is converted to stock-in-trade by the amalgamating company with revaluation and the revalued asset is taken over by the amalgamated company under the scheme of amalgamation.

- (b) Where the capital asset is taken over as stock-in-trade by the amalgamated company at revalued price at the time of amalgamation.
- (c) Where the capital asset of the amalgamating company is taken over by the amalgamated company as a capital asset and has been converted into stock-in-trade and revalued.
- (iv) In a case referred to (c) above, where the revaluation and conversion of capital asset into stock-in-trade takes place in the hands of the amalgamated company, the provisions of section 45(2) will apply. In such a case, the provisions of section 43C will not apply. This has been done with a view to ensure that a tax payer does not face double taxation in respect of the same transaction. However, when the stock-in-trade referred to in item (ii)(a) as well as at (a) and (b) of (iii) above are sold, the provisions of section 43C will apply.
- (v) A similar provision in section 43C has also been made to cover cases where the asset sold as stock-in-trade has been acquired by the assessee either by way of full or partial partition of HUF or under a gift or will or an irrevocable trust and such asset is sold as stock-in-trade.

(6) Stamp Duty Value of land and building to be taken as the full value of consideration in respect of transfer, even if the same are held by the transferor as stock-in-trade [Section 43CA]

- (i) Section 43CA has been inserted as an anti-avoidance measure to provide that where the consideration for the transfer of an asset (other than capital asset), being land or building or both, is less than the stamp duty value, the value so adopted or assessed or assessable (i.e., the stamp duty value) shall be deemed to be the full value of the consideration for the purposes of computing income under the head "Profits and gains of business of profession".

However, if the stamp duty value does not exceed 110% of the consideration received or accruing then, such consideration shall be deemed to be the full value of consideration for the purpose of computing profits and gains from transfer of such asset.
- (ii) Further, where the date of an agreement fixing the value of consideration for the transfer of the asset and the date of registration of the transfer of the asset are not same, the stamp duty value may be taken as on the date of the agreement for transfer instead of on the date of registration for such transfer, provided at least a part of the consideration has been received by way of an account payee cheque/account payee bank draft or use of ECS through a bank account or through such other prescribed electronic modes on or before the date of the agreement.

The prescribed electronic modes include credit card, debit card, net banking, IMPS (Immediate payment Service), UPI (Unified Payment Interface), RTGS (Real Time Gross Settlement), NEFT (National Electronic Funds Transfer), and BHIM (Bharat Interface for Money) Aadhar Pay [CBDT Notification No. 8/2020 dated 29.01.2020].

- (iii) The Assessing Officer may refer the valuation of the asset to a valuation officer as defined in section 2(r) of the Wealth-tax Act, 1957 in the following cases -
- (1) Where the assessee claims before any Assessing Officer that the value adopted or assessed or assessable by the authority for payment of stamp duty exceeds the fair market value of the property as on the date of transfer and
 - (2) the value so adopted or assessed or assessable by such authority has not been disputed in any appeal or revision or no reference has been made before any other authority, court or High Court.
- (iv) Where the value ascertained by the Valuation Officer exceeds the value adopted or assessed or assessable by the Stamp Valuation Authority, the value adopted or assessed or assessable shall be taken as the full value of the consideration received or accruing as a result of the transfer.

The term “assessable” covers transfers executed through power of attorney.

The term ‘**assessable**’ has been defined to mean the price which the stamp valuation authority would have, notwithstanding anything to the contrary contained in any other law for the time being in force, adopted or assessed, if it were referred to such authority for the purposes of the payment of stamp duty.

Date of transfer of land / building held as stock-in-trade	Actual consideration	Stamp duty value on the date of agreement	Stamp duty value on the date of registration	Full value of consideration	Remark
	₹ in lakhs				
Example:					
1/9/2023	100 (₹ 10 lakhs received by A/c payee	120 (1/7/2023)	210 (1/9/2023)	120	As part of the consideration is received by A/c payee cheque on the date of agreement,

	cheque on 1/7/2023)				Stamp duty value (SDV) on the date of agreement to be adopted as full value of consideration, since the SDV exceeds 110% of consideration i.e., ₹ 110 lakhs.
Example:					
1/9/2023	100 (₹ 10 lakhs received by cash on 1/7/2023)	109 (1/7/2023)	130 (1/9/2023)	130	SDV on the date of registration to be adopted as full value of consideration and such SDV exceeds 110% of consideration i.e., ₹ 110 lakhs. Since part of consideration is received by cash on the date of agreement, the SDV on the date of agreement cannot be considered vis- à-vis actual consideration.
Example:					
31/1/2024	100 (₹ 10 lakhs received by A/c payee cheque on 1/7/2023)	109 (1/7/2023)	130 (31/1/2024)	100	Actual sales consideration would be the full value of consideration, since SDV on the date of agreement does not exceed 110% of actual consideration. SDV on the date of agreement can be considered vis-à-vis actual consideration, since part of the consideration has been received by account payee cheque on the date of agreement.
Example:					
31/3/2024	100 (Full amount received in	120 (1/5/2023)	130 (31/3/2024)	130	Stamp duty value of the date of registration would be the full value of

	cash on the date of registration)				consideration since the stamp duty value exceeds 110% of consideration i.e., ₹ 110 lakhs.

(7) Income from construction and service contracts [Section 43CB]

The profits and gains arising from a construction contract or a service contract shall be computed on the basis of percentage of completion method (POCM) in accordance with the notified ICDS i.e., ICDS III: Construction Contracts.

However, the profits and gains arising from a service contract shall be computed on the basis of -

Method	Condition
Project completion method	If the duration of the contract is not more than 90 days
Straight line method	If the contract involves indeterminate number of acts over a specific period of time

For the purpose of percentage of completion method, project completion method or straight line method –

- (i) the contract revenue shall include retention money;
- (ii) the contract cost shall not be reduced by any incidental income in the nature of interest, dividends or capital gains.

(8) Special Provision in case of income of Public Financial Institutions, Public companies etc. [Section 43D]

- (i) In the case of
 - a public financial institution or
 - a scheduled bank or
 - a co-operative bank other than primary agricultural credit society or a primary co-operative agricultural and rural development bank or
 - a State financial corporation or
 - a State industrial investment corporation or
 - ***notified class of non-banking financial companies,***

the income by way of interest on such categories of bad and doubtful debts, as may be prescribed having regard to the guidelines issued by the Reserve Bank of India in relation to such debts,

- (ii) In the case of a public company, the income by way of interest in relation to such categories of bad and doubtful debts as may be prescribed having regard to the guidelines issued by the National Housing Bank established under the National Housing Bank Act, 1987 in relation to such debts,

shall be chargeable to tax in the previous year in which it is credited to the profit and loss account by the said institutions or public company for that year or in the previous in which it is actually received by it, whichever is earlier.



3.11 COMPULSORY MAINTENANCE OF ACCOUNTS [SECTION 44AA]

- (1) **Maintain the books of account and other documents by notified profession [Section 44AA(1)]:** This section provides that every person carrying on the legal, medical, engineering or architectural profession or accountancy or technical consultancy or interior decoration or any other profession as has been notified by the CBDT in the official gazette must statutorily maintain such **books of accounts and other documents as may enable the assessing officer to compute his total income in accordance with the provisions of the Income-tax Act, 1961.**

Notified professions: The professions notified so far are as the profession of authorised representative; the profession of film artist (actor, camera man, director, music director, art director, dance director, editor, singer, lyricist, story writer, screen play writer, dialogue writer and dress designer); the profession of Company Secretary; and information technology professionals.

Prescribed books of accounts & other documents: The CBDT has been authorised, having due regard to the nature of the business or profession carried on by any class of persons, to prescribe by rules the books of account and other documents including inventories, wherever necessary, to be kept and maintained by the taxpayer, the particulars to be contained therein and the form and manner in which and the place at which they must be kept and maintained.

Rules pertaining to maintenance of books of accounts & other documents:

Rule 6F of the Income-tax Rules contains the details relating to the books of account and other documents to be maintained by certain professionals under section 44AA(1).

Prescribed class of persons: As per Rule 6F, every person carrying on legal, medical, engineering, or architectural profession or the profession of accountancy or technical consultancy or interior decoration or authorised representative or film artist shall keep and maintain the books of account and other documents specified in Rule 6F(2) in the following cases :

- if his **gross receipts exceed ₹ 1,50,000 in all the 3 years immediately preceding the previous year**; or
- if, where the profession has been newly set up in the previous year, his **gross receipts are likely to exceed ₹ 1,50,000 in that year**.

***Note:** Students may note that professionals whose gross receipts are less than the specified limits given above are also required to maintain books of account but these have not been specified in the Rule.*

In other words, they are required to maintain (as per point (1) above) such books of account and other documents as may enable the Assessing Officer to compute the total income in accordance with the provisions of this Act.

Prescribed books of accounts and other documents [Sub-rule (2) of Rule 6F]: The following books of account and other documents are required to be maintained.

- (i) a cash book;
- (ii) a journal, if accounts are maintained on mercantile basis;
- (iii) a ledger;
- (iv) Carbon copies of bills and receipts issued by the person whether machine numbered or otherwise serially numbered, in relation to sums exceeding ₹ 25;
- (v) Original bills and receipts issued to the person in respect of expenditure incurred by the person, or where such bills and receipts are not issued, payment vouchers prepared and signed by the person, provided the amount does not exceed ₹ 50. Where the cash book contains adequate particulars, the preparation and signing of payment vouchers is not required.

In case of a person carrying on medical profession, he will be required to maintain the following in addition to the list given above:

- (i) a daily case register in Form 3C.

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

Place at which books to be kept and maintained: The books and documents shall be kept and maintained at the place where the person is carrying on the profession, or where there is more than one place, at the principal place of his profession. However, if he maintains separate set of books for each place of his profession, such books and documents may be kept and maintained at the respective places.

Period for which the books of account and other documents are required to be kept and maintained: The Central Board of Direct Taxes has also been empowered to prescribe, by rules, the period for which the books of account and other documents are required to be kept and maintained by the taxpayer.

Prescribed period: The above books of account and documents shall be kept and maintained for a minimum of 6 years from the end of the relevant assessment year.

ILLUSTRATION 17

Vinod is a person carrying on profession as film artist. His gross receipts from profession are as under:

	₹
Financial year 2020-21	1,15,000
Financial year 2021-22	1,80,000
Financial year 2022-23	2,10,000

What is his obligation regarding maintenance of books of accounts for Assessment Year 2024-25 under section 44AA of Income-tax Act, 1961?

SOLUTION

Section 44AA(1) requires every person carrying on any profession, notified by the Board in the Official Gazette (in addition to the professions already specified therein), to maintain such books of account and other documents as may enable the Assessing Officer to compute his total income in accordance with the provisions of the Income-tax Act, 1961.

As per Rule 6F, a person carrying on a notified profession shall be required to maintain **specified books of accounts, only if:**

- (i) his gross receipts in all the three years immediately preceding the relevant previous year has exceeded ₹ 1,50,000; or

- (ii) it is a new profession which is setup in the relevant previous year, it is likely to exceed ₹ 1,50,000 in that previous year.

In the present case, Vinod is a person carrying on profession as film artist, which is a notified profession. Since his gross receipts have not exceeded ₹ 1,50,000 in financial year 2020-21, the requirement under section 44AA to compulsorily maintain the prescribed books of account is not applicable to him for A.Y. 2024-25.

Mr. Vinod, however, required to maintain such books of accounts as would enable the Assessing Officer to compute his total income.

(2) Maintenance of books of account and other documents by persons carrying on business or profession [other than notified professions referred to in section 44AA(1)] [Section 44AA(2)]:

I. **In case of Individual or HUF:** An Individual or HUF carrying on any business or profession (other than notified professions specified in section 44AA(1)) must maintain such books of account and other documents as may enable the Assessing Officer to compute his total income in accordance the provisions of the Income-tax Act, 1961 in the following circumstances:

- (i) **Existing business or profession:** In cases where the **income** from the existing business or profession **exceeds ₹ 2,50,000 or the total sales, turnover or gross receipts**, as the case may be, in the business or profession **exceed ₹ 25,00,000 in any one of three years immediately preceding** the accounting year; or
- (ii) **Newly set up business or profession:** In cases where the business or profession is newly set up in any previous year, if his **income** from business or profession **is likely to exceed ₹ 2,50,000** or his **total sales, turnover or gross receipts**, as the case may be, in the business or profession **are likely to exceed ₹ 25,00,000** during the previous year.

II. **Person (other than individual or HUF):** Every person (other than individual or HUF) carrying on any business or profession (other than the notified professions referred to in section 44AA(1)) must maintain such books of account and other documents as may enable the Assessing Officer to compute his total income in accordance the provisions of the Income-tax Act, 1961 in the following circumstances:

- (i) **Existing business or profession:** In cases where the **income** from the business or profession **exceeds ₹ 1,20,000** or the **total sales, turnover or gross**

receipts, as the case may be, in the business or profession **exceed ₹ 10,00,000 in any one of three years** immediately preceding the accounting year; or

- (ii) **Newly set up business or profession:** In cases where the business or profession is newly set up in any previous year, if his income from business or profession is **likely to exceed ₹ 1,20,000** or his **total sales, turnover or gross receipts**, as the case may be, in the business or profession are **likely to exceed ₹ 10,00,000** during the previous year;

III. **Showing lower income as compared to income computed on presumptive basis under section 44AE or (section 44BB or section 44BBB)¹³:** Where profits and gains from the business are calculated on a presumptive basis under section 44AE or section 44BB or section 44BBB and the assessee has claimed that his income is lower than the profits or gains so deemed to be the profits and gains of his business.

IV. **Where the provisions of section 44AD(4) are applicable in his case and his income exceeds the basic exemption limit in any previous year:** In cases, where an assessee not eligible to claim the benefit of the provisions of section 44AD(1) for five assessment years subsequent to the assessment year relevant to the previous year in which the profit has not been declared in accordance with the provisions of 44AD(1) and his income exceeds the basic exemption limit during the previous year.

- (3) **Penalty for failure to maintain books of account [Section 271A]:** If a person fails to keep and maintain any such books of account and other documents as required by section 44AA in respect of any previous year or to retain such books of account and other documents for the specified period, the Assessing Officer or the **Joint Commissioner (Appeals)** or the Commissioner (Appeals) may direct a penalty of ₹ 25,000 would be leviable under section 271A.



3.12 AUDIT OF ACCOUNTS OF CERTAIN PERSONS CARRYING ON BUSINESS OR PROFESSION [SECTION 44AB]

- (1) **Requirement of Tax Audit:** It is obligatory for the persons mentioned in column (2) of the table below, carrying on business or profession, to get his accounts audited before the

¹³Section 44BB and 44BBB will be discussed in Chapter 21: Non-resident taxation in Module 4 of the Study Material.

“specified date” by a Chartered Accountant, if the conditions mentioned in the corresponding row of column (3) are satisfied

	Persons	When tax audit is required?
(1)	(2)	(3)
I	In case of a person carrying on business	
(a)	In case of a person carrying on business	If his total sales, turnover or gross receipts in business > ₹ 1 crore in the relevant PY Note – The requirement of audit u/s 44AB does not apply to a person who declares profits and gains for the previous year on presumptive basis u/s 44AD(1).
	If in case of such person carrying on business - (i) Aggregate cash receipts in the relevant PY ≤ 5% of total receipts (including receipts for sales, turnover, gross receipts); and (ii) Aggregate cash payments in the relevant PY ≤ 5% of total payments (including amount incurred for expenditure)	If his total sales, turnover or gross receipts in business > ₹ 10 crore in the relevant PY
	Note – For this purpose, the payment or receipt, as the case may be, by a cheque drawn on a bank or by a bank draft, which is not account payee, would be deemed to be the payment or receipt, as the case may be, in cash.	
(b)	In case of an assessee covered u/s 44AE i.e., an assessee engaged in the business of plying, hiring or leasing goods carriages who owns not more than 10 goods carriages at any time during the P.Y.	If such assessee claims that the profits and gains from business in the relevant P.Y. are lower than the profits and gains computed on a presumptive basis u/s 44AE [i.e., ₹ 1000 per ton of gross vehicle weight or unladen weight in case of each heavy goods vehicle and ₹ 7,500 for each vehicle, other than heavy goods vehicle, for every month or part of the month for which the vehicle is owned by the assessee].
(c)	In case of an eligible assessee carrying on business, whose total turnover, sales, gross receipts ≤ ₹ 200 lakhs, and who has opted for section 44AD in	If he declares profit for any of the five successive PYs (say, P.Y.2023-24) not in accordance with section 44AD (i.e., he declares profits lower than 8% or 6% of total turnover, sales or gross receipts, as the

	any earlier PY (say, P.Y. 2022-23)	case may be, in that year), then, he cannot opt for section 44AD for five successive PYs after the year of such default (i.e., from P.Y.2024-25 to P.Y.2028-29). For the year of default (i.e., P.Y.2023-24) and five successive previous years (i.e., P.Y.2024-25 to P.Y.2028-29), he has to maintain books of account u/s 44AA and get them audited u/s 44AB, if his income exceeds the basic exemption limit.
	<i>In case of an eligible assessee carrying on business, whose aggregate cash receipts in the relevant PY $\leq$ 5% of total turnover or gross receipts and whose total turnover, sales, gross receipts $\leq$ ₹ 300 lakhs, and who has opted for section 44AD in any earlier PY (say, P.Y. 2022-23)</i>	
II	In case of persons carrying on profession	
(a)	In case of a person carrying on profession	If his gross receipts in profession > ₹ 50 lakh in the relevant PY. Note – The requirement of audit u/s 44AB does not apply to a person who declares profits and gains for the previous year on presumptive basis u/s 44ADA(1).
(b)	In case of an assessee carrying on a notified profession under section 44AA(1) i.e., legal medical, engineering, accountancy, architecture, interior decoration, technical consultancy, whose gross receipts $\leq$ ₹ 50 lakhs <i>In case of an assessee carrying on a notified profession under section 44AA(1) i.e., legal medical, engineering, accountancy, architecture, interior decoration, technical consultancy, whose aggregate cash receipts in the relevant PY $\leq$ 5% of total gross receipts and whose gross receipts $\leq$ ₹ 75 lakhs</i>	If such resident assessee claims that the profits and gains from such profession in the relevant PY are lower than the profits and gains computed on a presumptive basis u/s 44ADA (50% of gross receipts) and his income exceeds the basic exemption limit in that PY.

- (2) **Audit Report:** The persons mentioned above would have to furnish by the specified date a report of the audit in the prescribed forms. For this purpose, the Board has prescribed under

Rule 6G, Forms 3CA/3CB/3CD containing forms of audit report and particulars to be furnished therewith. The audit report furnished may be revised by the person by getting revised report of audit from a chartered accountant, duly signed and verified by such chartered accountant, if there is payment by such person after furnishing of report which necessitates recalculation of disallowance under section 40 or section 43B. The said revised audit report has to be furnished before the end of the relevant assessment year for which the report pertains.

- (3) **Accounts audits under other statutes are considered:** In cases where the accounts of a person are required to be audited by or under any other law before the specified date, it will be sufficient if the person gets his accounts audited under such other law before the specified date and also furnish by the said date the report of audit in the prescribed form in addition to the report of audit required under such other law.

Thus, for example, the provision regarding compulsory audit does not imply a second or separate audit of accounts of companies whose accounts are already required to be audited under the Companies Act, 2013. The provision only requires that companies should get their accounts audited under the Companies Act, 2013 before the specified date and in addition to the report required to be given by the auditor under the Companies Act, 2013 furnish a report for tax purposes in the form to be prescribed in this behalf by the CBDT.

- (4) **Specified date:** The expression “**specified date**” in relation to the accounts of the previous year or years relevant to any assessment year means the date one month prior to the due date for furnishing the return of income under section 139(1).

The due date for filing return of income in case of assesseees (other than companies) who are required to get their accounts audited is 31st October of the relevant assessment year. Hence, the specified date for tax audit would be 30th September of the relevant assessment year.¹⁴

- (5) **Non-applicability:** The requirement of audit under section 44AB does not apply to a person who derives income of the nature referred to in (sections 44B and 44BBA)¹⁵.

¹⁴ In case of a person whose due date for filing return of income is 30th November of the relevant assessment year, the specified date for tax audit would be 31st October of the relevant assessment year.

¹⁵ Section 44B and 44BBA will be discussed in Chapter 21: Non-resident taxation in Module 4 of the Study Material.

(6) **Penal provision:** If any person fails to get his accounts audited in respect of any previous year or furnish the audit report by the specified date, penalty of lower of (a) and (b) mentioned below would be leviable on such person –

- (a) $\frac{1}{2}\%$ of total sales, turnover or gross receipts, as the case may be, in business or of the gross receipts in profession, in such previous year; or
- (b) ₹ 1,50,000 [Section 271B].



3.13 SPECIAL PROVISIONS FOR COMPUTING PROFITS AND GAINS OF BUSINESS ON PRESUMPTIVE BASIS [SECTION 44AD/ 44ADA/ 44AE]

	Particulars	Section 44AD	Section 44ADA	Section 44AE
(1)	Eligible Assessee	Resident individual, HUF or Partnership firm (but not LLP) engaged in eligible business and who has not claimed deduction under section 10AA or Chapter VIA under “C – Deductions in respect of certain incomes” Non-applicability of section 44AD in respect of the following persons: - A person carrying on profession specified u/s 44AA(1); - A person earning income in the nature of commission or brokerage; - A person carrying on any agency business.	Resident individual or resident partnership firm (but not LLP) engaged in any profession specified u/s 44AA(1), namely, legal, medical, engineering, architectural profession or profession of accountancy or technical consultancy or interior decoration or notified profession (authorized representative, film artist, company secretary, profession of information technology)	An assessee owning not more than 10 goods carriages at any time during the P.Y.

(2)	Eligible business/ profession	Any business, other than business referred to in section 44AE, whose total turnover/ gross receipts in the P.Y. $\leq$ ₹ 200 lakhs	Any profession specified under section 44AA(1), whose gross receipts $\leq$ ₹ 50 lakhs in the relevant P.Y.	Business of plying, hiring or leasing goods carriages
		<i>Any business, other than business referred to in section 44AE, whose total turnover/gross receipts in the P.Y. $\leq$ ₹ 300 lakhs in the relevant P.Y., if aggregate cash receipts in the relevant PY $\leq$ 5% of total turnover or gross receipts.</i>	<i>Any profession specified u/s 44AA(1), whose gross receipts $\leq$ ₹ 75 lakhs in the relevant P.Y., if aggregate receipts in the relevant PY $\leq$ 5% of total gross receipts.</i>	
		<i>In effect, if the turnover of business is $>$ ₹ 200 lakhs $\leq$ ₹ 300 lakhs, the benefit of section 44AD can be availed only if aggregate cash receipts in relevant P.Y. $\leq$ 5% of total turnover or gross receipts.</i>	<i>In effect, if the gross receipts from profession is $>$ ₹ 50 lakhs $\leq$ ₹ 75 lakhs, the benefit of section 44ADA can be availed only if aggregate cash receipts in relevant P.Y. $\leq$ 5% of total gross receipts.</i>	
		Note: For this purpose, the receipt of amount or aggregate of amounts by a cheque drawn on a bank or by a bank draft, which is not account payee, would be deemed to be the receipt in cash.		
(3)	Presumptive income	8% of total turnover/sales/gross receipts or a sum higher than the aforesaid sum claimed to have been earned by the assessee.	50% of gross receipts of such profession or a sum higher than the aforesaid sum claimed to have been earned by the assessee.	For each heavy goods vehicle ₹ 1,000 per ton of gross vehicle weight or unladen weight, as the case may be, for every month or part of a month;

		6% of total turnover/ gross receipts in respect of the amount of total turnover/ sales/ gross receipts received by A/c payee cheque/ bank draft/ ECS through a bank account or through such other prescribed electronic modes (credit card, debit card, net banking, IMPS, UPI, RTGS, NEFT, and BHIM Aadhar Pay) during the P.Y. or before due date of filing of return u/s 139(1) in respect of that P.Y. (or) such higher sum claimed to have been earned by the assessee.		For each vehicle, other than heavy goods vehicle: ₹ 7,500 per month or part of a month during which such vehicle is owned by the assessee or an amount claimed to have been actually earned from such vehicle, whichever is higher.
(4)	Non-allowability of deductions while computing presumptive income	Deductions allowable under sections 30 to 38 shall be deemed to have been given full effect to and no further deduction shall be allowed. Even in case of a firm, salary and interest paid to partners is <u>not</u> deductible.	Even in case of a firm, salary and interest paid to partners is <u>not</u> deductible.	In case of a firm, salary and interest paid to partners is deductible subject to the conditions and limits specified in section 40(b).
(5)	Written down value of asset	WDV of any asset of an eligible business/profession shall be deemed to have been calculated as if the eligible assessee had claimed and had been actually allowed depreciation for each of the relevant assessment years.		
(6)	Requirement of maintenance of books of account u/s 44AA and audit u/s 44AB	If eligible assessee declares profits and gains in accordance with the provisions of section 44AD, he is <u>not</u> required to maintain books of account	If eligible assessee declares profits and gains in accordance with the provisions of section 44ADA, he is <u>not</u> required	If eligible assessee declares profits and gains in accordance with the provisions of section 44AE, he is <u>not</u> required to

		u/s 44AA or get them audited u/s 44AB. However, if after declaring profits on presumptive basis u/s 44AD, say, for A.Y.2024-25, non-declaration of profits on presumptive basis for any of the 5 successive A.Y.s thereafter (i.e., from A.Y.2025-26 to A.Y.2029-30), say, for A.Y. 2026-27, would disentitle the assessee from claiming profits on presumptive basis for five successive AYs subsequent to the AY relevant to the PY of such non-declaration (i.e., from A.Y.2027-28 to A.Y.2031-32). In such a case, the assessee would have to maintain books of account and other documents u/s 44AA(2) and get his accounts audited u/s 44AB, if his total income exceeds the basic exemption limit in those years.	to maintain books of account u/s 44AA or get them audited u/s 44AB. However, if the assessee claims his profits to be lower than the profits computed by applying the presumptive rate, he has to maintain books of account and other documents u/s 44AA(1) and get his accounts audited u/s 44AB, if his total income > basic exemption limit for that year.	maintain books of account u/s 44AA or get them audited u/s 44AB. However, if the assessee claims his profits to be lower than the profits computed by applying the presumptive rate, he has to maintain books of account u/s 44AA(2) and get his accounts audited u/s 44AB.
(7)	Advance tax obligation	The eligible assessee opting for section 44AD is required to pay advance tax by 15th March of the financial year (F.Y.).	The eligible assessee opting for section 44ADA is required to pay advance tax by 15th March of the F.Y.	The eligible assessee has to pay advance tax in four installments [See Chapter 13 in Module 3 for details].

Meaning of certain terms for the purpose of section 44AE:

S.No	Term	Meaning
(1)	Heavy goods vehicle	any goods carriage, the gross vehicle weight of which exceeds 12,000 kilograms.
(2)	Gross vehicle weight	total weight of the vehicle and load certified and registered by the registering authority as permissible for that vehicle.
(3)	Unladen weight	the weight of a vehicle or trailer including all equipment ordinarily used with the vehicle or trailer when working but excluding the weight of driver or attendant and where alternative parts or bodies are used the unladen weight of the vehicle means the weight of the vehicle with the heaviest such alternative body or part

The CBDT clarified that in respect of a “heavy goods vehicle” i.e. any goods carriage vehicle whose gross vehicle weight exceeds 12,000 kilograms, the profits and gains from each goods carriage would be at the rate of ₹ 1,000 per ton of gross vehicle weight for every month or part of the month.

However, in respect of a tractor or a road-roller, where the gross vehicle weight is not applicable, and unladen weight exceeds 12,000 Kilograms, the profits and gains from each goods carriage shall be at the rate of ₹ 1,000 per ton of unladen weight for every month or part of the month [Clarification dated 14.8.2019].

Example:

Let us consider the following particulars relating to a resident individual, Mr. A, being an eligible assessee carrying on retail trade business whose total turnover do not exceed ₹ 2 crore in any of the previous years relevant to A.Y.2024-25 to A.Y.2026-27

Particulars	A.Y.2024-25	A.Y.2025-26	A.Y.2026-27
Total turnover (₹)	1,80,00,000	1,90,00,000	2,00,00,000
Amount received through prescribed electronic modes on or before 31 st October of the A.Y.	1,60,00,000	1,45,00,000	1,80,00,000
Income offered for taxation (₹)	11,20,000	12,30,000	10,00,000
% of gross receipts	6% on ₹ 1.60 crore and 8% on ₹ 20 lakhs	6% on ₹ 1.45 crore and 8% on ₹ 45 lakhs	5% on ₹ 2 crore
Offered income as per presumptive taxation scheme u/s 44AD	Yes	Yes	No

In the above case, Mr. A, an eligible assessee, opts for presumptive taxation under section 44AD for A.Y.2024-25 and A.Y.2025-26 and offers income of ₹ 11.20 lakh and ₹ 12.30 lakh on gross receipts of ₹ 1.80 crore and ₹ 1.90 crore, respectively.

However, for A.Y.2026-27, he offers income of only ₹ 10 lakh on turnover of ₹ 2 crore, which amounts to 5% of his gross receipts. He needs to maintain books of account under section 44AA and gets the same audited under section 44AB. Since he has not offered income in accordance with the provisions of section 44AD(1) for five consecutive assessment years, after A.Y. 2024-25, he will not be eligible to claim the benefit of section 44AD for next five assessment years succeeding A.Y.2026-27 i.e., from A.Y.2027-28 to 2031-32.

ILLUSTRATION 18

Mr. Praveen engaged in retail trade, reports a turnover of ₹ 2,98,50,000 for the financial year 2023-24. Amount received in cash during the P.Y. 2023-24 is ₹ 14,00,000 and balance through prescribed electronic modes on or before 31st October 2024. His income from the said business as per books of account is ₹ 15,00,000 computed as per the provisions of Chapter IV-D “Profits and gains from business or Profession” of the Income-tax Act, 1961. Retail trade is the only source of income for Mr. Praveen. A.Y. 2023-24 was the first year for which he declared his business income in accordance with the provisions of presumptive taxation u/s 44AD.

- (i) Is Mr. Praveen also eligible for presumptive determination of his income chargeable to tax for the assessment year 2024-25?*
- (ii) If so, determine his income from retail trade as per the applicable presumptive provision.*
- (iii) In case Mr. Praveen wants to declare profits as per books of account from retail trade, what are his obligations under the Income-tax Act, 1961?*
- (iii) What is the due date for filing his return of income under both the options?*

SOLUTION

- (i) Yes. Since his cash receipts during the P.Y. does not 5% of the total turnover $(14,00,000/2,98,50,000 \times 100)$ and his total turnover for the F.Y.2023-24 is below ₹ 300 lakhs, he is eligible for presumptive taxation scheme under section 44AD in respect of his retail trade business.*
- (ii) His income from retail trade, applying the presumptive tax provisions under section 44AD, would be ₹ 18,19,000 (₹ 1,12,000, being 8% of ₹ 14,00,000 + ₹ 17,07,000, being 6% of ₹ 2,84,50,000).*

- (iii) Mr. Praveen had declared profit for the previous year 2022-23 in accordance with the presumptive provisions and if he wants to declare profits as per books of account which is lower than the presumptive income for any of the five consecutive assessment years i.e., A.Y. 2024-25 to A.Y. 2028-29, he would not be eligible to claim the benefit of presumptive taxation for five assessment years subsequent to the assessment year relevant to the previous year in which the profit has not been declared in accordance the presumptive provisions i.e. if he declares profits lower than the presumptive income in say P.Y. 2023-24 relevant to A.Y.2024-25, then, he would not be eligible to claim the benefit of presumptive taxation for A.Y. 2025-26 to A.Y. 2029-30.

Consequently, Mr. Praveen is required to maintain the books of accounts and get them audited under section 44AB, since his income exceeds the basic exemption limit.

- (iv) In case he declares presumptive income under section 44AD, the due date would be 31st July, 2024.

In case he declares profits as per books of account which is lower than the presumptive income, he is required to get his books of account audited, in which case the due date for filing of return of income would be 31st October, 2024.

ILLUSTRATION 19

Mr. X commenced the business of operating goods vehicles on 1.4.2023. He purchased the following vehicles during the P.Y.2023-24. Compute his income under section 44AE for A.Y.2024-25.

	Gross Vehicle Weight (in kilograms)	Number	Date of purchase
(1)	7,000	2	10.04.2023
(2)	6,500	1	15.03.2024
(3)	10,000	3	16.07.2023
(4)	11,000	1	02.01.2024
(5)	15,000	2	29.08.2023
(6)	15,000	1	23.02.2024

Would your answer change if the two goods vehicles purchased in April, 2023 were put to use only in July, 2023?

SOLUTION

Since Mr. X does not own more than 10 vehicles at any time during the previous year 2023-24, he is eligible to opt for presumptive taxation scheme under section 44AE. ₹ 1,000 per ton of gross

vehicle weight or unladen weight per month or part of the month for each heavy goods vehicle and ₹ 7,500 per month or part of month for each goods carriage other than heavy goods vehicle, owned by him would be deemed as his profits and gains from such goods carriage.

Heavy goods vehicle means any goods carriage, the gross vehicle weight of which exceeds 12,000 kg.

(1)	(2)	(3)	(4)
Number of Vehicles	Date of purchase	No. of months for which vehicle is owned	No. of months × No. of vehicles [(1) × (3)]
Heavy goods vehicle			
2	29.08.2023	8	16
1	23.02.2024	2	2
			18
Goods vehicle other than heavy goods vehicle			
2	10.4.2023	12	24
1	15.3.2024	1	1
3	16.7.2023	9	27
1	2.1.2024	3	3
			55

The presumptive income of Mr. X under section 44AE for A.Y.2024-25 would be -

₹ 6,82,500, i.e., $55 \times ₹ 7,500$, being for other than heavy goods vehicle + $18 \times ₹ 1,000 \times 15$ ton being for heavy goods vehicle.

The answer would remain the same even if the two vehicles purchased in April, 2023 were put to use only in July, 2023, since the presumptive income has to be calculated per month or part of the month for which the vehicle is owned by Mr. X.



3.14 METHOD OF COMPUTING DEDUCTION IN THE CASE OF BUSINESS REORGANISATION OF CO-OPERATIVE BANKS [SECTION 44DB]

(1) This section provides the manner in which the deduction under the following sections are to be allowed in a case where business reorganisation of a co-operative bank has taken place during the financial year –

(i) Section 32 (Depreciation);

- (ii) Section 35D (Amortisation of certain preliminary expenses);
- (iii) Section 35DD (Amortisation of expenses in case of amalgamation or demerger);
- (iv) Section 35DDA (Amortisation of expenditure incurred under voluntary retirement scheme).

- (2) **Quantum of Deduction to predecessor co-operative bank:** The amount of deduction allowable to the predecessor co-operative bank under the above-mentioned sections has to be determined in accordance with the following formula-

$$A \times \frac{B}{C}$$

- A = the amount of deduction allowable to the predecessor co-operative bank if the business reorganisation had not taken place;
- B = the number of days comprised in the period beginning with the 1st day of the financial year and ending on the day immediately preceding the date of business reorganisation; and
- C = the total number of days in the financial year in which the business reorganisation has taken place.

- (3) **Quantum of Deduction to successor co-operative bank or to the converted banking company:** The amount of deduction allowable to the successor co-operative bank or to the converted banking company under the above-mentioned sections has to be determined in accordance with the formula -

$$A \times \frac{B}{C}$$

- A = the amount of deduction allowable to the predecessor co-operative bank if the business reorganisation had not taken place;
- B = the number of days comprised in the period beginning with the date of business reorganisation and ending on the last day of the financial year; and
- C = the total number of days in the financial year in which the business reorganisation has taken place.

Example:

Let us take a case where the deduction allowable under section 32 to the predecessor co-operative bank is, say, ₹ 1,20,000 and the business re-organisation took place on 1.11.2023. Then, the deduction allowable to the predecessor co-operative bank under section 32 would be ₹ 70,164 i.e., ₹ 1,20,000 x 214/366. The deduction allowable to the successor co-operative bank or to the converted banking company would be ₹ 49,836 i.e., ₹ 1,20,000 x 152/366.

- (4) **Manner for computing deduction:** In a case where an undertaking of the predecessor co-operative bank entitled to the deduction under sections 35D, 35DD or 35DDA is transferred before the expiry of the period specified therein to a successor co-operative bank or to a converted banking company on account of business reorganisation, the provisions of section 35D, section 35DD or section 35DDA shall apply to the successor co-operative bank or to converted banking company in the financial years subsequent to the year of business reorganisation as they would have applied to the predecessor co-operative bank, as if the business reorganisation had not taken place.
- (5) **Meaning of certain terms:**

Term	Meaning
Business reorganisation	The reorganisation of business involving the amalgamation or demerger of a co-operative bank or conversion of a primary co-operative bank.
Conversion	Transition of a primary co-operative bank to a banking company under the scheme of the RBI as notified vide its circular no. DCBR. CO. LS. PCB. Cir. No. 5/07.01.000/2018-19, dated 27.09.2018.
Converted banking company	A banking company formed as a result of conversion from primary co-operative bank.
Co-operative bank	The meaning assigned to it in clause (cci) of section 5 of the Banking Regulation Act, 1949 i.e., a primary co-operative bank or Central Co-operative bank or a State co-operative bank.
Banking company	The meaning assigned to it in clause (c) of section 5 of the Banking Regulation Act, 1949 i.e., any company which transacts the business of banking in India.
Predecessor co-operative bank	The amalgamating co-operative bank or the demerged co-operative bank or primary co-operative bank which has been succeeded as a result of conversion, as the case may be.
Primary co-operative bank	The meaning assigned to it in clause (ccv) of section 5 of the Banking Regulation Act, 1949 i.e., a co-operative society, other than a primary agricultural credit society – (i) the primary object or principal business of which is the transaction of banking business; (ii) the paid-up share capital and reserves of which are not less than ₹ 1 lakh; and (iii) The bye-laws of which do not permit admission of any other co-operative society as a member. However, it shall not apply to the admission of a co-operative bank as a member by reason of such co-operative bank subscribing to the

	share capital of such co-operative society out of funds provided by the State Government for this purpose.
Successor co-operative bank	the amalgamated co-operative bank or the resulting bank, as the case may be.
Amalgamated co-operative bank	(1) a co-operative bank with which one or more amalgamating co-operative banks merge; or (2) a co-operative bank formed as a result of merger of two or more amalgamating co-operative banks.
Amalgamating co-operative bank	(1) a co-operative bank which merges with another co-operative bank; or (2) every co-operative bank merging to form a new co-operative bank.
Amalgamation	the merger of an amalgamating co-operative bank or banks with an amalgamated co-operative bank, in such a manner that – (1) all the assets and liabilities of the amalgamating co-operative bank or banks immediately before the merger (other than the assets transferred, by sale or distribution on winding up, to the amalgamated co-operative bank) become the assets and liabilities of the amalgamated co-operative bank; (2) the members holding 75% or more voting rights in the amalgamating co-operative bank become members of the amalgamated co-operative bank; and (3) the shareholders holding 75% or more in value of the shares in the amalgamating co-operative bank (other than the shares held by the amalgamated co-operative bank or its nominee or its subsidiary, immediately before the merger) become shareholders of the amalgamated co-operative bank.
Demerger	The transfer by a demerged co-operative bank of one or more of its undertakings to any resulting co-operative bank, in such manner that- (1) all the assets and liabilities of the undertaking or undertakings immediately before the transfer become the assets and liabilities of the resulting co-operative bank; (2) the assets and the liabilities are transferred to the resulting co-operative bank at values (other than change in the value of assets consequent to their revaluation) appearing in its books of account immediately before the transfer; (3) the resulting co-operative bank issues, in consideration of the transfer, its membership to the members of the demerged co-operative bank on a proportionate basis;

	(4) the shareholders holding 75% or more in value of the shares in the demerged co-operative bank (other than shares already held by the resulting bank or its nominee or its subsidiary immediately before the transfer), become shareholders of the resulting co-operative bank, otherwise than as a result of the acquisition of the assets of the demerged co-operative bank or any undertaking thereof by the resulting co-operative bank; (5) the transfer of the undertaking is on a going concern basis; and (6) the transfer is in accordance with the conditions specified by the Central Government, by notification in the Official Gazette, having regard to the necessity to ensure that the transfer is for genuine business purposes.
Demerged co-operative bank	the co-operative bank whose undertaking is transferred, pursuant to a demerger, to a resulting bank.
Resulting co-operative bank	(1) one or more co-operative banks to which the undertaking of the demerged co-operative bank is transferred in a demerger; or (2) any co-operative bank formed as a result of demerger.

ILLUSTRATION 20

Alpha Co-operative Bank amalgamated with Beta Co-operative Bank on 1.12.2023. The depreciation for the year ended 31.3.2024 calculated as per Income-tax Rules, 1962, allowable to Alpha Co-operative Bank had the amalgamation had not taken place amounts to ₹ 2,40,000. Compute the deduction on account of depreciation allowable in the hands of Alpha Co-operative Bank and Beta Co-operative Bank for A.Y. 2024-25.

SOLUTION

- (i) The amount of deduction allowable to the amalgamating co-operative bank (i.e. Alpha Co-operative bank, in this case) under section 32 has to be determined in accordance with the following formula -

$$A \times \frac{B}{C}$$

A = the amount of deduction allowable to the predecessor co-operative bank (i.e. Alpha Co-operative bank, in this case) if the business reorganisation had not taken place. In this case, the amount of deduction is ₹ 2,40,000.

B = the number of days comprised in the period beginning with the 1st day of the financial year (i.e., 1.4.2023, in this case) and ending on the day immediately preceding the date of business reorganization (i.e., 30.11.2023, in this case); and

C = the total number of days in the financial year in which the business reorganisation has taken place (i.e., 366 days).

- (ii) The amount of deduction allowable to the amalgamated co-operative bank (i.e. Beta Co-operative bank, in this case) under section 32 has to be determined in accordance with the formula -

$$A \times \frac{B}{C}$$

A = the amount of deduction allowable to the predecessor co-operative bank (i.e. Alpha Co-operative bank, in this case) if the business reorganisation had not taken place. In this case, the amount of deduction is ₹ 2,40,000.

B = the number of days comprised in the period beginning with the date of business reorganisation (i.e. 1.12.2023, in this case) and ending on the last day of the financial year (i.e. 31.3.2024); and

C = the total number of days in the financial year in which the business reorganisation has taken place (i.e. 366 days).

- (iii) In this case, the deduction that would have been allowable under section 32 to Alpha co-operative bank had the business reorganization had not taken place is ₹ 2,40,000 and the business re-organisation took place on 1.12.2023. Therefore, the deduction allowable to Alpha co-operative bank under section 32 would be ₹1,60,000 i.e., ₹ 2,40,000 x 244/366. The deduction allowable to Beta co-operative bank would be ₹ 80,000 i.e., ₹ 2,40,000 x 122/366.



3.15 COMPUTATION OF BUSINESS INCOME IN CASES WHERE INCOME IS PARTLY AGRICULTURAL AND PARTLY BUSINESS IN NATURE

(1) Income from the manufacture of rubber [Rule 7A]

- (i) Income derived from the sale of centrifuged latex or cenex or latex based crepes or brown crepes or technically specified block rubbers manufactured or processed from field latex or coagulum obtained from rubber plants grown by the seller **in India** shall

be computed as if it were income derived from business, and 35% of such income shall be deemed to be income liable to tax.

- (ii) In computing such income, an allowance shall be made in respect of the cost of planting rubber plants in replacement of plants that have died or become permanently useless in an area already planted, if such area has not previously been abandoned, and for the purpose of determining such cost, no deduction shall be made in respect of the amount of any subsidy which, under the provisions of clause (31) of section 10, is not includible in the total income.

(2) Income from the manufacture of coffee [Rule 7B]

- (i) Income derived from the sale of coffee grown and cured by the seller in India shall be computed as if it were income derived from business, and 25% of such income shall be deemed to be income liable to tax.
- (ii) Income derived from the sale of coffee grown cured, roasted and grounded by the seller in India, with or without mixing of chicory or other flavouring ingredients, shall be computed as if it were income derived from business, and 40% of such income shall be deemed to be income liable to tax.
- (iii) In computing such income, an allowance shall be made in respect of the cost of planting coffee plants in such replacement of plants that have died or become permanently useless in an area already planted, if such area has not previously been abandoned, and for the purpose of determining such cost, no deduction shall be made in respect of the amount of any subsidy which, under the provisions of section 10(31), is not includible in the total income.

(3) Income from the manufacture of tea [Rule 8]

- (i) Income derived from the sale of tea grown and manufactured by the seller in India shall be computed as if it were income derived from business, and 40% of such income shall be deemed to be income liable to tax.
- (ii) In computing such income, an allowance shall be made in respect of the cost of planting bushes in replacement of bushes that have died or become permanently useless in an area already planted, if such area has not previously been abandoned, and for the purpose of determining such cost, no deduction shall be made in respect of the amount of any subsidy which, under the provision of section 10(30), is not includible in the total income.

Taxability in case of composite income: A Summary

Rule	Nature of composite income	Business income (Taxable)	Agricultural Income (Exempt)
7A	Income from sale of rubber products derived from rubber plants grown by the seller in India	35%	65%
7B	Income from sale of coffee		
	- grown and cured by the seller in India	25%	75%
	- grown, cured, roasted and grounded by the seller in India	40%	60%
8	Income from sale of tea grown and manufactured by the seller in India	40%	60%

ILLUSTRATION 21

Miss Vivitha, a resident and ordinarily resident in India, has derived the following income from various operations (relating to plantations and estates owned by her) during the year ended 31-3-2024:

S. No.	Particulars	₹
(i)	Income from sale of centrifuged latex processed from rubber plants grown in Darjeeling.	3,00,000
(ii)	Income from sale of coffee grown and cured in Yercaud, Tamil Nadu.	1,00,000
(iii)	Income from sale of coffee grown, cured, roasted and grounded, in Colombo. Sale consideration was received at Chennai.	2,50,000
(iv)	Income from sale of tea grown and manufactured in Shimla.	4,00,000
(v)	Income from sapling and seedling grown in a nursery at Cochin. Basic operations were not carried out by her on land.	80,000

You are required to compute the business income and agricultural income of Miss Vivitha for the assessment year 2024-25.

SOLUTION

Computation of business income and agricultural income of Ms. Vivitha for the A.Y.2024-25

Sr. No.	Source of income	Gross (₹)	Business income		Agricultural income
			%	₹	₹
(i)	Sale of centrifuged latex from rubber plants grown in India.	3,00,000	35%	1,05,000	1,95,000

(ii)	Sale of coffee grown and cured in India.	1,00,000	25%	25,000	75,000
(iii)	Sale of coffee grown, cured, roasted and grounded outside India. (See Note 1 below)	2,50,000	100%	2,50,000	-
(iv)	Sale of tea grown and manufactured in India	4,00,000	40%	1,60,000	2,40,000
(v)	Saplings and seedlings grown in nursery in India (See Note 2 below)	80,000		Nil	80,000
	Total			5,40,000	5,90,000

Notes:

- Where income is derived from sale of coffee grown, cured, roasted and grounded by the seller in India, 40% of such income is taken as business income and the balance as agricultural income. However, in this question, these operations are done in Colombo, Sri Lanka. Hence, there is no question of such apportionment and the whole income is taxable as business income. Receipt of sale proceeds in India does not make this agricultural income. In the case of an assessee, being a resident and ordinarily resident, the income arising outside India is also chargeable to tax.
- Explanation 3* to section 2(1A) provides that the income derived from saplings or seedlings grown in a nursery would be deemed to be agricultural income whether or not the basic operations were carried out on land.

SIGNIFICANT SELECT CASES

S.No.	Case Law	
1.	<i>Chennai Properties and Investments Ltd. v. CIT (2015) 373 ITR 673 (SC);</i> <i>Rayala Corporation (P) Ltd. v. Asstt. CIT (2016) 386 ITR 500 (SC); and</i> <i>Raj Dadarkar and Associates v. ACIT (2017) 394 ITR 592 (SC)</i>	
	Issue	Analysis & Decision
	Would rental income from the business of leasing out properties be taxable under the head “Income from house property” or “Profits and gains from business or profession”?	In <i>Chennai Properties and Investments Ltd. v. CIT (2015) 373 ITR 673</i> , the Supreme Court observed that holding of the properties and earning income by letting out of these properties is the main objective of the company. Further, in the return of income filed by the company and accepted by the Assessing Officer, the entire income of the company comprised of income from letting out of such properties. The Supreme Court, accordingly, held that such income was taxable as business income. Likewise, in <i>Rayala Corporation (P) Ltd. v. Asstt. CIT (2016) 386 ITR 500</i> , the Supreme Court noted that the assessee was engaged only in the business of renting its properties and earning rental income therefrom and accordingly, held that such income was taxable as business income. However, in <i>Raj Dadarkar and Associates v. ACIT (2017) 394 ITR 592</i> , on account of lack of sufficient material to prove that substantial income of the assessee was from letting out of property, the Supreme Court held that the rental income has to be assessed as “Income from house property”.
2.	<i>CIT v. K and Co. (2014) 364 ITR 93 (Del)</i>	
	Issue	Analysis & Decision
	Whether interest income on margin money deposited with bank for obtaining bank guarantee	The interest income from the deposits made by the assessee is inextricably linked to the business of the assessee and such income, therefore, cannot be treated as income under the head ‘Income from other sources’.

	to carry on business, taxable the head 'Profits and Gains from Business or Profession' or under the head 'Income from other sources?	The margin money requirement was an essential element for obtaining the bank guarantee. If the assessee had not furnished bank guarantee, it would not have got the contract. Therefore, the interest income received on funds kept as margin money for obtaining the bank guarantee would be taxable under the head "Profits and gains of business or profession".
3.	<i>I.C.D.S. Ltd. v. CIT (2013) 350 ITR 527 (SC)</i>	
	Issue	Analysis & Decision
	Can depreciation on leased vehicles be denied to the lessor on the ground that the vehicles are registered in the name of the lessee and that the lessor is not the actual user of the vehicles?	Section 32 imposes a twin requirement of "ownership" and "usage for business" as conditions for claim of depreciation thereunder. As far as usage of the asset is concerned, the section requires that the asset must be used in the course of business. It does not mandate actual usage by the assessee itself. In this case, the assessee did use the vehicles in the course of its leasing business. Hence, this requirement of section 32 has been fulfilled, notwithstanding the fact that the assessee was not the actual user of the vehicles. As long as the assessee-lessor has a right to retain the legal title against the rest of the world, he would be the owner of the asset in the eyes of law. In this regard, the following provisions of the lease agreement are noteworthy – • The assessee is the exclusive owner of the vehicle at all points of time; • The assessee is empowered to repossess the vehicle, in case the lessee committed a default; • At the end of the lease period, the lessee was obliged to return the vehicle to the assessee; • The assessee had a right of inspection of the vehicle at all times.

		The proof of ownership lies in the lease agreement itself, which clearly points in favour of the assessee. The assessee-lessor was, therefore, entitled to claim depreciation in respect of vehicles leased out since it has satisfied both the requirements of section 32, namely, ownership of the vehicles and its usage in the course of business.
4.	<i>CIT v. BSES Yamuna Powers Ltd (2013) 358 ITR 47 (Delhi)</i>	
	<i>CIT v. Orient Ceramics and Industries Ltd. (2013) 358 ITR 0049 (Delhi)</i>	
	<i>Federal Bank Ltd. v. ACIT (2011) 332 ITR 319 (Kerala)</i>	
	Issue	Analysis & Decision
	What is the eligible rate of depreciation in respect of computer accessories, peripherals and UPS under the Income-tax Act, 1961?	Computer accessories and peripherals such as printers, scanners and server etc. form an integral part of the computer system and they cannot be used without the computer. Since they are part of the computer system, they would be eligible for depreciation at the higher rate of 40% applicable to computers including computer software. Depreciation on UPS is allowable@40%, being the eligible rate of depreciation on computers including computer software, and not at the general rate of 15% applicable to plant and machinery.
	Can EPABX and mobile phones be treated as computers to be entitled to higher depreciation?	EPABX and mobile phones are <u>not</u> computers and therefore, are not entitled to higher depreciation@40%.
5.	<i>CIT v. Ceebros Hotels Private Limited [2018] 409 ITR 423 (Mad)</i>	
	Issue	Analysis & Decision
	Can an assessee setting up a hotel claim deduction under section 35AD for the relevant previous year, on the basis that it had	As the application for three star category classification was granted with no discrepancy during inspection, the assessee could not be penalised for the delay on the part of the concerned authority (the Hotel and Restaurant Approval and Classification Committee, in the instant case) to complete

	commenced its operations and made an application for three-star category classification in beginning of the said previous year, even though the same was granted by the authority only in the next year due to the requirement of completion of inspection?	inspection before the end of the financial year. Under section 35AD, deduction is available from the previous year in which the assessee commences operation of the specified business i.e., hotel business, in this case. Section 35AD does not mandate that the date of the certificate has to be with effect from a particular date. Thus, the assessee is entitled to claim the deduction under section 35AD for the relevant previous year, since the provision which was introduced to encourage the establishment of hotels of a particular category is a beneficial provision, and hence, should be read and interpreted liberally.
6.	<i>Berger Paints India Ltd v. CIT (2017) 393 ITR 113 (SC)</i>	
	Issue	Analysis & Decision
	Whether “premium” on subscribed share capital is “capital employed in the business of the company” u/s 35D to be eligible for a deduction?	Share premium collected by the assessee on its subscribed issued share capital could not be part of “capital employed in the business of the company” for the purpose of section 35D(3)(b). If it were the intention of the legislature to treat share premium as being “capital employed in the business of the company”, it would have been explicitly mentioned. Moreover, Sl. No. IV(i) in Form MGT- 7 read with section 92 of the Companies Act, 2013 dealing with capital structure of the company provides the break-up of “issued share capital” and “subscribed share capital” which does not include share premium at the time of subscription. Hence, in the absence of the reference in section 35D, share premium is not a part of the capital employed. Also, section 52 of the Companies Act, 2013 requires a company to transfer the premium amount to be kept in a separate account called “securities premium account”. The assessee is, therefore, not entitled to claim deduction u/s 35D in relation to the premium amount received from shareholders at the time of share subscription.

7.	<i>Shasun Chemicals & Drugs Ltd v. CIT (2016) 388 ITR 1 (SC)</i>	
	Issue	Analysis & Decision
	In a case where payment of bonus due to employees is paid to a trust and such amount is subsequently paid to the employees before the stipulated due date, would the same be allowable u/s 36(1)(ii) while computing business income?	The embargo contained in section 43B(b) or section 40A(9) does not come in the way of the assessee's claim, since the bonus was ultimately paid to the employees before the due date as per the statutory requirement. Therefore, the payment in respect of bonus is allowable as deduction.
8.	<i>CIT v. Orient Ceramics and Industries Ltd. (2013) 358 ITR 49 (Delhi)</i>	
	Issue	Analysis & Decision
	What is the nature of expenditure incurred on glow-sign boards displayed at dealer outlets - capital or revenue?	The expenditure on glow sign boards displayed at dealer outlets is revenue in nature due to the following reasons- (i) The expenditure incurred by the assessee on glow sign boards does not bring into existence an asset or advantage for the enduring benefit of the business, which is attributable to the capital. (ii) The glow sign board is not an asset of permanent nature. It has a short life. (iii) The materials used in the glow sign boards decay with the effect of weather. Therefore, it requires frequent replacement. Consequently, the assessee has to incur expenditure on glow sign boards regularly in almost each year. (iv) The assessee incurred expenditure on the glow sign boards with the object of facilitating the business operation and not with the object of acquiring asset of enduring nature.

9.	<i>CIT v. ITC Hotels Ltd. (2011) 334 ITR 109 (Kar.)</i>	
	Issue	Decision
	Would the expenditure incurred on issue and collection of convertible debentures be treated as revenue expenditure or capital expenditure?	The expenditure incurred on the issue and collection of debentures would be treated as revenue expenditure even in case of convertible debentures, i.e., the debentures which had to be converted into shares at a later date.
10.	<i>CIT v. Priya Village Roadshows Ltd. (2011) 332 ITR 594 (Delhi)</i>	
	Issue	Analysis & Decision
	Would expenditure incurred on feasibility study conducted for examining proposals for technological advancement relating to the existing business be classified as a revenue expenditure, where the project was abandoned without creating a new asset?	Since the feasibility studies were conducted by the assessee for the existing business with a common administration and common fund and the studies were abandoned without creating a new asset, the expenses were of revenue nature.
11.	<i>National Co-operative Development Corporation v. CIT (2020) 427 ITR 288 (SC)</i>	
	Issue	Analysis & Decision
	Is source of funds from which expenditure is incurred for the purpose of business relevant for the purpose of allowability of deduction u/s 37(1)?	In case of an assessee carrying on business, it is relevant to see whether an outlay constitutes an expenditure “for the purpose of business” as used in section 37(1), for the purpose of claiming deduction thereunder. The source of funds from which the expenditure is made is <u>not</u> relevant. Every application of income towards the business objective of the assessee is a business expenditure. There can

		be an amount treated as a capital receipt while the same amount expended may be a revenue expenditure.
12.	<i>CIT v. Kap Scan and Diagnostic Centre P. Ltd. (2012) 344 ITR 476 (P&H)</i>	
	Issue	Analysis & Decision
	Can the commission paid to doctors by a diagnostic centre for referring patients for diagnosis be allowed as a business expenditure u/s 37 or would it be treated as illegal and against public policy to attract disallowance?	As per the Indian Medical Council (Professional Conduct, Etiquette and Ethics) Regulations, 2002, no physician shall give, solicit, receive, or offer to give, solicit or receive, any gift, gratuity, commission or bonus in consideration of a return for referring any patient for medical treatment. The demanding as well as paying of such commission is bad in law. It is not a fair practice and is opposed to public policy and should be discouraged. Thus, the commission paid to doctors for referring patients for diagnosis is not allowable as business expenditure.
13.	<i>Shanti Bhushan v. CIT (2011) 336 ITR 26 (Delhi)</i>	
	Issue	Analysis & Decision
	Can the expenditure incurred on heart surgery of an assessee, being a lawyer by profession, be allowed as business expenditure u/s 31, by treating it as current repairs considering heart as plant and machinery, or u/s 37, by treating it as expenditure incurred wholly and exclusively for the purpose of business or profession?	Though the definition of “plant” as per the provisions of section 43(3) is inclusive in nature, such plant must have been used as a business tool which is not true in case of heart. Therefore, the heart cannot be said to be plant for the business or profession of the assessee. Therefore, the expenditure on heart surgery is not allowable as repairs to plant u/s 31. Also, there is no direct nexus between the expenses incurred by the assessee on the heart surgery and his efficiency in the professional field. Therefore, the claim for allowing the said expenditure u/s 37 is also not tenable. Hence, the heart surgery expenses shall not be allowed as a business expenditure of the assessee under the Income-tax Act, 1961.

14.	<i>CIT v. Neelavathi & Others (2010) 322 ITR 643 (Karn)</i>	
	Issue	Analysis & Decision
	Can payment to police personnel and gundas to keep away from the cinema theatres run by the assessee be allowed as deduction?	Any payment made to the police illegally amounts to bribe and such illegal gratification cannot be considered as an allowable deduction. Similarly, any payment to a gunda as a precautionary measure so that he shall not cause any disturbance in the theatre run by the assessee is an illegal payment for which no deduction is allowable under the Act.
15.	<i>Millennia Developers (P) Ltd. v. DCIT (2010) 322 ITR 401 (Karn.)</i>	
	Issue	Analysis & Decision
	Is the amount paid by a construction company as regularization fee for violating building bye-laws allowable as deduction?	The assessee, a private limited company carrying on business activity as a developer and builder, claimed the amount paid by way of regularization fee for the deviations made while constructing a structure and for violating the plan sanctioned in terms of the building bye-laws, approved by the municipal authorities as per the provisions of the Karnataka Municipal Corporations Act, 1976. As per the provisions of the Karnataka Municipal Corporations Act, 1976, the amount paid to compound an offence is obviously a penalty and hence, does not qualify for deduction u/s 37. Merely describing the payment as a compounding fee would not alter the character of the payment.
16.	<i>CIT v. Maruti Suzuki India Limited (2018) 407 ITR 165 (Del)</i>	
	Issue	Analysis & Decision
	Can payments made by an assessee to a non-resident agent who does not have any income	The non-resident agent who operated outside India did not have any income arising in India. Accordingly, the commission earned by a non- resident agent who was in the business of selling Indian goods abroad, did

	assessable in India be disallowed u/s 40(a)(i) for non-deduction of tax at source on the ground that no application was made by the assessee u/s 195(2) for making deduction of tax at source at Nil rate?	not accrue or arise in India, and hence, no tax was deductible on such commission payment to a non-resident agent. Since the assessee has made payment to a non-resident agent and such income is not chargeable to tax in India, section 40(a)(i) could not be invoked to disallow deduction of such payment for non-deduction of tax at source while computing the business income of the assessee.
17.	<i>CIT v. Great City Manufacturing Co. (2013) 351 ITR 156 (All)</i>	
	Issue	Analysis & Decision
	Can remuneration paid to working partners as per the partnership deed be considered as unreasonable and excessive for attracting disallowance u/s 40A(2)(a), even though the same is within the statutory limit prescribed u/s 40(b)(v)?	Section 40(b)(v) prescribes the limit of remuneration to working partners, and deduction is allowable up to such limit while computing the business income. If the remuneration paid is within the ceiling limit provided u/s 40(b)(v), then, recourse to provisions of section 40A(2)(a) cannot be taken. The Assessing Officer is only required to ensure that the remuneration is paid to the working partners mentioned in the partnership deed, the terms and conditions of the partnership deed provide for payment of remuneration to the working partners and the remuneration is within the limits prescribed u/s 40(b)(v). If these conditions are complied with, then, the Assessing Officer cannot disallow any part of the remuneration on the ground that it is excessive by invoking the provisions of section 40A(2)(a).

TEST YOUR KNOWLEDGE**Questions**

1. *Examine critically the following cases in the context of provisions contained in the Income-tax Act, 1961 relevant for Assessment Year 2024-25. Support the answers with relevant case laws and workings.*
 - (a) *Mr. Janak is proprietor of M/s. Yash Texnit which is engaged in garment manufacturing business. The entire block of Plant & Machinery chargeable to depreciation @ 15%, has 20 different machinery items as at 31-03-2024. One of the machineries used for packing had become obsolete and was discarded by Mr. Janak in July' 23.*

Assessee filed its return for A.Y. 2024-25 claiming total depreciation of ₹ 40 lakhs which includes ₹ 4 lakhs being the depreciation claimed on the machinery item discarded by Mr. Janak. The A.O. disallowed the claim of depreciation of ₹ 4 lakhs during the course of scrutiny assessment.

Comment on the validity of action taken by A.O.
 - (b) *X. Ltd. issued debentures in the previous year 2023-24, which were to be matured at the end of 5 years. The debenture holder was given an option of one time upfront payment of ₹ 60 per debenture on account of interest which was to be immediately paid by the company. As per the option exercised by the debenture holders, company paid interest upfront to them in the first year itself and the same was claimed as deduction in the return of the company. But in the accounts, the interest expenditure was shown as deferred expenditure to be written off over a period of 5 years. During the course of assessment, the Assessing Officer spread the upfront interest paid over a period of five year term of debentures and allowed only one-fifth of the amount in the previous year 2023-24. Examine the correctness of the action of Assessing Officer.*
2. *Compute the quantum of depreciation available under section 32 of the Income-tax Act, 1961 in respect of the following items of Plant and Machinery purchased by PQR Textile Ltd., by paying through account payee cheque, which is engaged in the manufacture of textile fabrics, for the year ended 31-3-2024. Assume company does not opt for the provisions of section 115BAA or section 115BAB:*

	(₹ in crores)
New machinery installed on 1-5-2023	84
New Windmill purchased and installed on 18-6-2023	22
Lorries for transporting goods to sales depots (purchased and put to use in July, 2023)	3
<u>Items purchased after 30th November 2023:</u>	
Fork-lift-trucks, used inside factory	4
Computers installed in office premises	1
Computers installed in factory	2
New imported machinery	12

The new imported machinery arrived at Chennai port on 30-03-2024 and was installed on 3-4-2024. All other items were installed during the year ended 31-3-2024.

The company was newly started during the year.

Also, compute the WDV of the various blocks of assets as on 1.4.2024 after charging depreciation for P.Y. 2023-24.

3. (A) Examine the taxability and/ or allowability of the following receipts or expenditures under the provisions of the Income-tax Act, 1961, for the assessment year 2024-25:
 - (i) Secret commission was paid during the previous year 2023-24.
 - (ii) P Ltd. paid dollars equivalent to ₹ 50 lakhs as sales commission for the year ended 31.03.2024, without deducting tax at source, to Mr. Rodrigues, a citizen of UK and non-resident who acted as agent for booking orders, from various customers who are outside India.
- (B) Can the following transactions be covered under section 43B for disallowance?
 - (i) A bank guarantee given by a company towards disputed tax liabilities.
 - (ii) Interest payable to Goods and Services Tax Department but not paid before the due date specified in section 139(1).
4. ILT Limited is engaged in manufacturing of pipes and tubes. The profit and loss account of the company for the year ended 31st March, 2024 shows a net profit of ₹ 405 lakhs. The following information and particulars are furnished to you. You are required to compute total income of the company for Assessment Year 2024-25 indicating reasons for treatment of each item, assuming that the company has not opted for special provisions under section 115BAA or 115BAB.

- (i) A group free air ticket was provided by a supplier for reaching a certain volume of purchase during the financial year 2023-24. The same is encashed by the company for ₹ 10 lakhs in April 2023 and credited to General Reserve Account.
 - (ii) A regular supplier of raw materials agreed for settlement of ₹ 8 lakhs instead of ₹ 10 lakhs for poor quality of material supplied during the previous year which was not given effect in the running account of the supplier.
 - (iii) Andhra Bank sanctioned and disbursed a term loan in the financial year 2020-21 for a sum of ₹ 50 lakhs. Interest of ₹ 8 lakhs was in arrears. The bank has converted the arrear interest into a new loan repayable in 10 equal instalments. During the year, the company has paid 2 instalments and the amount so paid has been reduced from Funded Interest in the Balance Sheet.
 - (iv) The company remitted ₹ 5 lakhs as interest to a company incorporated in USA on a loan taken 2 years ago. Tax deducted under section 195 from such interest has been deposited by the company on 15th July, 2024. The said interest was debited to profit and loss account.
 - (v) Sandeep, a sales executive stationed at HO at Delhi, was on official tour in Bangalore from 31st May, 2023 to 18th June, 2023 and 28th September, 2023 to 15th October, 2023 for the business development. The company has paid Sandeep's salary in cash, from its local office at Bangalore for the month of May, 2023 (payable on 1st June) and September 2023 (payable on 1st October), amounting to ₹ 45,000 and ₹ 47,000 respectively (net of TDS and other deduction), as Sandeep has no bank account at Bangalore. These were included in the amount of "salary" debited to Profit and Loss Account.
 - (vi) The company has contributed ₹ 50,000 by account payee cheque to an electoral trust and the same stands included under the head "General Expenses".
5. G Ltd., a company in which public are substantially interest, is engaged in the business of growing and manufacturing tea in India. For the previous year ended 31.03.2023, its composite business profits before allowing deduction u/s 33AB is ₹ 60,00,000. On 01.09.2023, it deposited a sum of ₹ 11,00,000 in the Tea Development Account. During the previous year 2021-22, G Ltd. had incurred a business loss of ₹ 14,00,000 which has been carried forward. On 25.01.2024, it withdrew ₹ 10 lakhs, from deposit account which is utilized as under:
- ₹ 6,00,000 for purchase on non-depreciable asset as per the scheme specified.

₹ 3,00,000 for purchase of machinery to be installed in the office premises.

₹ 1,00,000 was spent for the purpose of scheme on 5.4.2024.

- (i) You are required to determine business income of G Ltd. and the tax consequences that may arise from the above transactions in the A.Y. 2024-25.
 - (ii) What will be the consequence if the asset which was purchased for ₹ 6,00,000 is sold for ₹ 8,00,000 in April, 2024.
6. The trading and profit and loss account of Pingu Trading Pvt. Ltd. having business of agricultural produce, consumer items and other products for the year ended 31.03.2024 is as under:

Trading Account

Particulars	₹	Particulars	₹
Opening Stock	3,75,000	Sales	1,55,50,000
Purchases	1,25,75,000	Closing Stock	4,50,000
Freight & Cartage	1,26,000		
Gross profit	29,24,000		
	1,60,00,000		1,60,00,000

Profit and Loss Account

Particulars	₹	Particulars	₹
Bonus to staff	47,500	Gross profit	29,24,000
Rent of premises	53,500	Income-tax refund	20,000
Advertisement	5,000	Warehousing charges	15,00,000
Bad Debts	75,000		
Interest on loans	1,67,500		
Depreciation	71,500		
Goods and Services tax demand paid	1,08,350		
Miscellaneous expenses	5,25,650		
Net profit of the year	33,90,000		
	44,44,000		44,44,000

On scrutiny of records, the following further information and details were extracted/ gathered:

- (i) *There was a survey under section 133A on the business premises on 31.3.2024 in which it was revealed that the value of closing stocks of 31.3.2023 was ₹ 8,75,000 and a sale of ₹ 75,000 made on 13.3.2024 was not recorded in the books. The value of closing stocks after considering these facts and on the basis of inventory prepared by the department as on 31.3.2024 worked out at ₹ 12,50,000, which was accepted to be correct and not disputed.*
- (ii) *Income-tax refund includes amount of ₹ 4,570 of interest allowed thereon.*
- (iii) *Bonus to staff includes an amount of ₹ 7,500 paid in the month of December 2023, which was provided in the books on 31.03.2023.*
- (iv) *Rent of premises includes an amount of ₹ 5,500 incurred on repairs. The assessee was under no obligation to incur such expenses as per rent agreement.*
- (v) *Advertisement expenses include an amount of ₹ 2,500 paid for advertisement published in the souvenir issued by a political party. The payment is made by way of an account payee cheque.*
- (vi) *Miscellaneous expenses include:*
 - (a) *amount of ₹ 15,000 paid towards penalty for non-fulfillment of delivery conditions of a contract of sale for the reasons beyond control,*
 - (b) *amount of ₹ 1,00,000 paid to the wife of a director, who is working as junior lawyer for taking an opinion on a disputed matter. The junior advocate of High Courts normally charge only ₹ 25,000 for the same opinion,*
 - (c) *amount of ₹ 1,00,000 paid to an Electoral Trust by cheque.*
- (vii) *Goods and Services Tax demand paid includes an amount of ₹ 5,300 charged as penalty for delayed filing of returns and ₹ 12,750 towards interest for delay in deposit of tax.*
- (viii) *The company had made an investment of ₹ 25 lakhs on the construction of a warehouse in rural area for the purpose of storage of agricultural produce. This was made available for use from 15.09.2023 and the income from this activity is credited in the Profit and Loss account under the head "Warehousing charges".*
- (ix) *Depreciation under the Income-tax Act, 1961 works out at ₹ 65,000.*
- (x) *Interest on loans includes an amount of ₹ 80,000 paid to Mr. X, a resident, on which tax was not deducted.*

Compute the income chargeable to tax for assessment year 2024-25 of Pingu Trading Pvt. Ltd, ignoring MAT and provisions of section 115BAA. Support your answer with working notes.

7. (a) A Ltd. paid IDBI (a public financial institution) a lump sum pre-payment premium of ₹ 1.2 lakhs on 7.4.2023 for restructuring its debts and reducing its rate of interest. It claimed the entire sum as business expenditure for the P.Y.2023-24. The Assessing Officer, however, held that the pre-payment premium should be amortised over a period of 10 years (being the tenure of the restructured loan), and thus, allowed only 10% of the pre-payment premium in the P.Y.2023-24. Discuss, with reasons, whether the contention of A Ltd. is correct or that of the Assessing Officer.
- (b) Explain the tax treatment of emergency spares (of plant and machinery) acquired during the year which, even though kept ready for use, have not actually been used during the relevant previous year.
8. "Easy Call Ltd.", to provide telecom services in Mumbai, obtained a licence on 1.4.2021 for a period of 10 years ending on 31.3.2031 against a fee of ₹ 27 lakhs to be paid in 3 installments of ₹ 9 lakhs each by April, 2021, April, 2022 and April, 2023, respectively. The company has commenced business on 1.4.2022.
- Explain, how the payment made for licence fee shall be dealt with under the Income-tax Act, 1961 and the amount, if any, deductible for A.Y. 2024-25.
9. Alpha Ltd., a manufacturing company, has disclosed a net profit of ₹ 12.50 lakhs for the year ended 31st March, 2024. You are required to compute the taxable income (ignore the provisions of section 115BAA) of the company for the Assessment year 2024-25, after considering the following information, duly explaining the reasons for each item of adjustment:
- (i) Advertisement expenditure debited to profit and loss account includes the sum of ₹ 60,000 paid in cash to the sister concern of a director, the market value of which is ₹ 52,000.
- (ii) Repairs of plant and machinery debited to profit and loss account includes ₹ 1.80 lakhs towards replacement of worn out parts of machineries. Such expenditure does not increase the future benefit from the asset beyond its previously assessed standard of performance.

- (iii) A sum of ₹ 6,000 on account of liability foregone by a creditor has been taken to general reserve. The original purchases was debited to the Profit & Loss Account in the A.Y.2019-20.
- (iv) Sale proceeds of import entitlements amounting to ₹ 1 lakh has been credited to Profit & Loss Account, which the company claims as capital receipt not chargeable to income-tax.
- (v) Being also engaged in the biotechnology business, the company incurred the following expenditure on in-house research and development as approved by the prescribed authority:
- (a) Research equipments purchased ₹ 1,50,000.
- (b) Remuneration paid to scientists ₹ 50,000.
- The total amount of ₹ 2,00,000 is debited to the profit and loss account.
10. (i) A corporation was set up by the State Government transferring all the buses owned by it for a consideration of ₹ 75 lakhs, which was discharged by the Corporation by issue of equity shares. The Corporation in its assessment claimed depreciation. Can the depreciation be denied in the Corporation's hands on the ground that there was no registration of the buses in favour of the Corporation?
- (ii) Ravi succeeded to his father's business in the year 2021. In the previous year ended 31.3.2024, Ravi has written off the balance in the name of 'Y' which relates to supply made by his father, when he carried on business. Ravi desires to know whether the write off could be eligible for deduction.

Answers

1. (a) The issue under consideration is whether disallowance of depreciation made by the Assessing Officer with regard to the discarded asset, in arriving at the written down value of the block of assets, is justified.

One of the conditions for claim of depreciation under section 32 is that the eligible asset must have been put to use for the purpose of business or profession.

The other aspect to considered is whether merely discarding an obsolete machinery, which is physically available, will attract the expression "moneys payable" appearing in section 43(6), so as to deduct its value from the written down value of the block.

The facts in the present case are similar to facts in the case of *CIT v. Yamaha Motor India Pvt. Ltd.* (2010) 328 ITR 297, wherein the Delhi High Court observed that the expression "used for the purposes of the business" in section 32 when used with respect to discarded machinery would mean the use in the business, not only in the relevant financial year/previous year, but also in the earlier financial years.

The discarded machinery may not be actually used in the relevant previous year but depreciation can be claimed as long as it was used for the purposes of business in the earlier years provided the block continues to exist in the relevant previous year. Therefore, the condition for claiming depreciation in respect of the discarded machine would be satisfied if it was used in the earlier previous years for the business.

For the purpose of section 43(6), "moneys payable" means the sale price, in case of sale, or the insurance, salvage or compensation moneys payable in respect of the asset. In this case, the machinery has not been sold as machinery or scrap or disposed off, and it continues to exist. Hence, there is no "moneys payable" in this case, which alone is deductible while computing the WDV of the block to which it belongs.

Applying the rationale of the above case, the action of the Assessing Officer in disallowing ₹ 4 lakhs, being the depreciation claim attributable to discarded machinery, on the ground that the same was not put to use in the relevant previous year, is invalid, since the said machinery was put to use in the earlier previous years.

- (b) The issue under consideration is whether, in a case where debentures are issued with maturity at the end of five years, and the debenture holders are given an option of upfront payment of interest in the first year itself, can the entire upfront interest paid, be claimed as deduction by the company in the first year or should the same be deferred over a period of five years; and would the treatment of such interest as deferred revenue expenditure in the books of account have any impact on the tax treatment.

The facts of the case are similar to the facts in *Taparia Tools Ltd. v. JCIT* (2015) 372 ITR 605, wherein the above issue came up before the Supreme Court. In that case, it was observed that under section 36(1)(iii), the amount of interest paid in respect of capital borrowed for the purposes of business or profession, is allowable as deduction.

The moment the option for upfront payment was exercised by the subscriber, the liability of X Ltd. to make the payment in that year had arisen. Not only had the liability arisen in the previous year in question, it was even quantified and discharged as well in that very year.

As per the rationale of the Supreme Court ruling in *Taparia Tools Ltd.*'s case, when the deduction of entire upfront payment of interest is allowable as per the Income-tax Act, 1961, the fact that a different treatment was given in the books of account could not be a factor which would bar the company from claiming the entire expenditure as a deduction.

Accordingly, the action of the Assessing Officer in spreading the upfront interest paid over the five year term of debentures and restricting the deduction in the P.Y.2023-24 to one-fifth of the upfront interest paid is **not** correct. The company is eligible to claim the entire amount of interest paid upfront as deduction under section 36(1)(iii) in the P.Y.2023-24.

2. Computation of depreciation allowance under section 32 for the A.Y. 2024-25

Particulars	Normal Depreciation [u/s 32(1)(ii)]	Additional Depreciation [u/s 32(1)(ia)]
	(₹ in crores)	
(A) Plant and Machinery (15% block) (Put to use for 180 days or more)		
- New machinery installed on 01.05.2023	84.00	84.00
- Lorries for transporting goods to depots	3.00	-
	87.00	84.00
Normal Depreciation @15% & additional depreciation @20%	13.05	16.80
(B) Plant and Machinery (15% block) (Put to use for less than 180 days – hence, depreciation is restricted to 7.5%, being 50% of 15%)		
- Fork-lift trucks, used inside a factory	4.00	4.00
Normal Depreciation @ 7.5% & additional depreciation @10%	0.30	0.40

(C) Plant and Machinery (40% block) (Put to use for less than 180 days, hence depreciation restricted to 20%, i.e., 50% of 40%)		
- Computers installed in office premises	1.00	-
- Computers installed in factory	2.00	2.00
	3.00	2.00
Normal depreciation @20% & additional depreciation@10%	0.60	0.20
(D) Plant and Machinery (40% block) (Put to use for 180 days or more) (See Note 1)		
- New windmill purchased and installed on 18.06.2023	22.00	22.00
Normal Depreciation @ 40% & additional depreciation @ 20%	8.80	4.40
Total depreciation and additional depreciation		
- Plant and Machinery (15% block) (A +B)	13.35	17.20
- Plant and Machinery (40% block) (C + D)	9.40	4.60
Depreciation available under section 32 = ₹ 44.55 crores		

**Computation of Written Down Value (WDV)
after charging depreciation for P.Y. 2023-24**

Particulars	Plant & Machinery	
	15%	40%
	(₹ in crores)	
WDV as on 01.04.2023 (The company was started during the year – as given in question)	Nil	Nil
Add: Plant and Machinery acquired during the year		
- New Machinery installed on 01.05.2023	84.00	
- Lorries for transporting goods to sales depots	3.00	
- Fork-lift trucks, used inside factory	4.00	

- New imported machinery	12.00	103.00	-
- New Windmill purchased and installed on 18.6.2023		-	22.00
- Computers installed in office premises		-	1.00
- Computers installed in factory		-	2.00
		103.00	25.00
Less: Asset sold during the year		Nil	Nil
WDV as on 31.3.2024 (before charging depreciation)		103.00	25.00
Less: Depreciation for the P.Y.2023-24			
- Normal depreciation		13.35	9.40
- Additional depreciation		17.20	4.60
WDV as on 1.4.2024 (after charging depreciation for P.Y. 2023-24)		72.45	11.00

Notes:

- (1) Windmills and any specially designed devices which run on windmills installed on or after 1.4.2014 would be eligible for depreciation @ 40%.
- (2) New imported machinery was not installed during the previous year 2023-24. Hence, it would not be eligible for additional depreciation for A.Y. 2024-25. It would also not be eligible for normal depreciation for A.Y 2024-25, since it was not put to use in the P.Y.2023-24 being the year of acquisition.
- (3) It may be noted that investment in the following plant and machinery would not be eligible for additional depreciation under section 32(1)(iia):
 - (a) Lorries for transporting goods to sales depots, being vehicles/road transport vehicles; and
 - (b) Computers installed in office premises.
- (4) As per section 2(28) of the Motor Vehicles Act, 1988, the definition of a "vehicle" excludes, *inter alia*, a vehicle of special type adopted for use only in a factory or in any enclosed premises. Therefore, fork-lift trucks used inside the factory would not fall within the definition of "vehicle". Hence, it is eligible for additional depreciation under section 32(1)(iia).

3. (A) (i) Secret commission is one of the forms of commission payment generally made by business organizations. Secret commission is a payment for obtaining business orders or contracts from parties and /or customers and paid to employees and / or officials of those parties and / or customers or companies from whom business orders are obtained by the assessee.

Explanation 1 below section 37(1) of Income-tax Act, 1961 provides that any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law, shall not be deemed to have been incurred for the purpose of business and no deduction or allowance shall be made in respect of such expenditure. In view of the *Explanation*, any expenditure incurred for a purpose which is an offence and prohibited by law cannot be allowed as expenditure. Therefore, since secret commission payment is a payment for an offence prohibited by law, the same cannot be allowed as deduction.

- (ii) A foreign agent of an Indian exporter operates in his own country and no part of his income accrues or arises in India. His commission is usually remitted directly to him and is, therefore, not received by him or on his behalf in India. The commission paid to the non-resident agent for services rendered outside India is, thus, not chargeable to tax in India.

Since commission income for booking orders by non-resident who remains outside India is not subject to tax in India, disallowance under section 40(a)(i) is not attracted in respect of payment of commission to such non-resident outside India even though tax has not been deducted at source. Thus, the amount of ₹ 50 lakhs remitted to Mr. Rodrigues outside India in foreign currency towards commission would not attract disallowance under section 40(a)(i) for non-deduction of tax at source.

- (B) (i) For claiming deduction of any expense enumerated under section 43B, the requirement is, the actual payment and not deemed payment. Furnishing of bank guarantee cannot be equated with actual payment. Actual payment requires that money must flow from the assessee to the public exchequer as specified in section 43B. Therefore, deduction of an expense covered under section 43B cannot be claimed by merely furnishing a bank guarantee [*CIT v. McDowell & Co Ltd* (2009) 314 ITR 167 (SC)]
- (ii) Interest payable to Goods and Services Tax department is part of Goods and Services Tax.

Therefore, interest payable to Goods and Services Tax department, which is not paid before the “due date” of filing of return of income, would attract disallowance under section 43B [*Mewar Motors v. CIT (2003) 260 ITR 218 (Raj)*]

4. **Computation of total income of ILT Ltd. for the A.Y.2024-25**

Particulars	₹ (in lakhs)	
Profits and gains from business or profession		
Net profit as per profit and loss account		405.00
Add : Items debited to profit and loss account, but to be disallowed and items not considered in accounts but to be taxed		
Value of group free air ticket provided by a supplier is taxable as business income under section 28(iv), as the value of any benefit, whether convertible into money or not, arising from business is taxable as business income.	10	
Amount waived by the supplier of raw materials is a deemed income under section 41(1), as the expenditure was allowed as deduction in the last year and there is a benefit by way of remission or cessation of a trading liability. The fact that effect was not given in the running account of supplier is not relevant.	2	
Interest payable outside India to a foreign company is allowable [See Note 1 below]	-	
Contribution to electoral trust is not an allowable expenditure while computing business income. Hence, the same has to be added back, since it is included in general expenses.	0.50	
Salary paid to employee Sandeep is eligible for deduction. Disallowance under section 40A(3) will not apply [See Note 2 below]	-	12.50
		417.50
Less: Amount of deduction allowable		
Under section 43B, interest on loan due to any scheduled bank, etc. is allowed as deduction, if such interest is actually paid irrespective of the method of accounting followed by the assessee. Conversion of arrear interest into a fresh loan by a bank cannot be considered as actual payment of interest. However, the amount of funded interest		

(i.e., converted loan) actually paid is allowable as deduction. Hence, ₹ 1,60,000, being two instalments of ₹ 80,000 each, actually paid is deductible.		1.60
Business Income		415.90
Gross total income		415.90
Less: Deduction under Chapter VI-A		
Deduction under section 80GGB in respect of contribution by the assessee company to an electoral trust.		0.50
Total Income		415.40

Notes:

1. Since tax has been deducted on interest payable outside India to a foreign company during the previous year 2023-24 and the same has been deposited before the due date of filing return of income under section 139(1), disallowance under section 40(a)(i) is not attracted. Since the interest has already been debited to profit and loss account, no further adjustment is required.
2. In respect of payment of salary to sales executive in cash, no disallowance under section 40A(3) is to be made as the payments fall within the scope of Rule 6DD(i). Salary paid to him in cash is allowable as the executive was temporarily posted for a continuous period of more than 15 days in Bangalore which is not the place of his normal duty. Further tax was deducted from such salary under section 192 and he does not maintain any bank account in Bangalore. No disallowance under section 40A(3) is attracted in respect of such salary.

5. (i) **Computation of Business Income of G Ltd.
and tax consequences for the A.Y. 2024-25**

Particulars	₹
₹ 10,00,000 being the amount withdrawn from Tea Development Account has to be utilized in the prescribed manner, otherwise, the withdrawn amount would be chargeable to tax as business income. In the given case, the taxability of withdrawal amount based on their utilization is as follows:	
- ₹ 6,00,000, out of the amount withdrawn from the deposit account, utilised for purchase of non-depreciable asset as per the specified scheme.	Not taxable
[As per section 33AB(6), no deduction would be allowed under section 33AB since amount is spent out of ₹ 11 lakh	

deposited in Tea Development Account, which has already been allowed as deduction in A.Y.2023-24 (See Working Note below)).	
- ₹ 3,00,000, being the amount utilized for purchase of machinery to be installed in the office premises is not a permissible utilization. Hence, the amount would be deemed as profits and gains of business of the previous year 2023-24 as per section 33AB(4).	3,00,000
- ₹ 1,00,000 was spent for the purpose of scheme on 05.04.2024. As per section 33AB(7), this amount would be taxable since the same is not utilized during the same previous year (i.e., P.Y. 2023-24) in which the amount is withdrawn from the deposit account.	1,00,000
When any part of withdrawal amount becomes taxable, the agricultural and non-agricultural portions of income must be segregated. Accordingly, ₹ 1,60,000, being 40% of ₹ 4,00,000 (₹ 3,00,000 + ₹ 1,00,000) would be chargeable to tax as business income and the balance ₹ 2,40,000, being 60% of ₹ 4,00,000 would be agricultural income exempt from tax.	

Working Note:**Computation of Business Income of G Ltd. for the A.Y. 2023-24**

Particulars	₹
Composite business profits before allowing deduction under section 33AB	60,00,000
Less: Deduction under section 33AB(1) would be the lower of:	
- Amount deposited in Tea Development Account on or before 30.9.2022 [i.e., ₹ 11,00,000]	
- 40% of profits of such business [i.e., ₹ 24,00,000, being 40% of ₹ 60,00,000]	11,00,000
	49,00,000
Less: 60% of ₹ 49,00,000, being agricultural income [as per Rule 8]	29,40,000
Business income	19,60,000
Less: Brought forward business loss of A.Y.2022-23 set-off as per section 72	14,00,000
Business income chargeable to tax	5,60,000

(ii) **Consequences, if asset purchased out of deposit account is sold during the previous year 2024-25**

As per section 33AB(8), if the asset is sold before the expiry of eight years from the end of the previous year in which it was acquired, then, the cost of such asset shall be deemed to be the profits and gains from business or profession of the previous year in which asset is sold.

Therefore, ₹ 6,00,000 would be deemed to be the business income (composite) for the A.Y.2025-26. However, since the full cost of the asset was deducted in the assessment year 2023-24 (being part of ₹ 11 lakh deposited in Tea Development Account) before segregation of agricultural income and non-agricultural income, the agricultural and non-agricultural portions of income should be segregated in the year in which such amount becomes taxable on account of sale of asset before the expiry of eight years. Therefore, ₹ 3,60,000, being 60% of ₹ 6,00,000 would represent agricultural income. The balance ₹ 2,40,000 being 40% of ₹ 6,00,000 would be chargeable to tax as business income.

Moreover, the difference between the sale consideration and purchase price of the asset would be chargeable to tax as “Short term capital gains”, which is computed as follows:

Sales consideration	8,00,000
Less: Cost of acquisition	<u>6,00,000</u>
Short term capital gain	<u>2,00,000</u>

6.

**Computation of Income of Pingu Trading Pvt. Ltd.
chargeable to tax for the A.Y.2024-25**

Particulars		₹
Net profit as per profit and loss account		33,90,000
Less:	Income-tax refund credited in the profit and loss account, out of which interest is to be considered separately under the head “Income from other sources”	20,000
		33,70,000
Add:	Expenses either not allowable or to be considered separately but charged in the profit & loss account	
	Repair expenses on rented premises where assessee is under	-

no obligation to incur such expenses are not allowable as per section 30(a)(i). However, if such expenses are required for carrying on the business efficiently, the same are allowable under section 37. In this case, assuming that such expenses are required for carrying on business efficiently, the same are allowable under section 37.	
Advertisement in the souvenir of political party not allowable as per section 37(2B) (See Note 2)	2,500
Payment made to the wife of a director examined as per section 40A(2) and the excess payment made to be disallowed (See Note 4)	75,000
Payment made to electoral trust by cheque (See Note 5)	1,00,000
Penalty levied by the Goods and Services tax department for delayed filing of returns not allowable as being paid for infraction of law (See Note 6)	5,300
Depreciation as per books	71,500
30% of interest paid on loan paid to Mr. X, a resident, without deduction of tax at source not allowable as per section 40(a)(ia)	24,000
	36,48,300
Less: Depreciation allowable as per Income-tax Act, 1961	65,000
	35,83,300
Less: Income from specified business (warehousing charges) credited to profit and loss account, to be considered separately (See Note 7)	15,00,000
Income from business (other than specified business)	20,83,300
Add: Difference in the value of stocks detected on survey under section 133A on 31.03.2024 chargeable as income (See Note 8)	3,75,000
	24,58,300
Computation of income/ loss from specified business (See Note 7)	
Income from specified business	₹ 15,00,000
Less: Deduction under section 35AD @ 100% of ₹25 lakhs	₹ 25,00,000
Loss from specified business to be carried forward as per section 73A	₹ (10,00,000)

Income from Other Sources		
Interest on income-tax refund		4,570
Gross Total Income		24,62,870
Less: Deduction under section 80GGB		
Contribution to political party (See Note 2)	₹ 2,500	
Contribution to an Electoral trust (See Note 5)	₹ 1,00,000	1,02,500
Total Income		23,60,370

Notes:

- (1) Bonus for the previous year 2022-23 paid after the due date for filing return for that year would have been disallowed under section 43B for the P.Y.2022-23. However, when the same has been paid in December 2023, it should be allowed as deduction in the P.Y.2023-24 (A.Y.2024-25). Since it is already included in the figure of bonus to staff debited to profit and loss account of this year, no further adjustment is required.
- (2) The amount of ₹ 2,500 paid for advertisement in the souvenir issued by a political party attracts disallowance under section 37(2B). However, such expenditure falls within the meaning assigned to “contribute” under section 293A of the Companies Act, 1956, and is hence, eligible for deduction under section 80GGB. Any contribution to the political party or electoral trust made by way of cash is not allowed as deduction under section 80GGB. Since in the present case, the payment to the political party is made by way of an account payee cheque, it is allowed as deduction under section 80GGB.
- (3) The penalty of ₹ 15,000 paid for non-fulfilment of delivery conditions of a contract for reasons beyond control is not for the breach of law but was paid for breach of contractual obligations and therefore, is an allowable expense.
- (4) It has been assumed that ₹ 25,000 is the reasonable payment for the wife of Director, working as a junior lawyer, since junior advocates of High Courts normally charge only ₹ 25,000 for the same opinion and therefore, the balance ₹ 75,000 has been disallowed.

- (5) Payment to an electoral trust qualifies for deduction under section 80GGB since the payment is made by way of a cheque. However, since the amount has been debited to profit and loss account, the same has to be added back for computing business income.
- (6) The interest of ₹ 12,750 paid on the delayed deposit of goods and services tax is for breach of contract and hence, is allowable as deduction. However, penalty of ₹ 5,300 for delay in filing of returns is not allowable since it is for breach of law.
- (7) Deduction @ 100% of the capital expenditure is available under section 35AD in respect of specified business of setting up and operating a warehouse facility for storage of agricultural produce which commences operation on or after 1.04.2012. It is presumed that ₹ 25 lakhs does not include expenditure on acquisition of any land.

The loss from specified business under section 35AD (warehousing) should be segregated from the income from other businesses, since, as per section 73A(1), any loss computed in respect of any specified business referred to in section 35AD shall not be set off except against profits and gains, if any, of any other specified business.

In view of the provisions of section 73A(1), the loss of ₹ 10 lakhs from the specified business cannot be set-off against income from other businesses. Such loss has to be carried forward to be set-off against profit from specified business in the next assessment year. The return should be filed on or before the due date under section 139(1) for carry forward of such losses.

- (8) The business premises were surveyed and differences in the figures of opening and closing stocks and sales were found which have not been disputed and accepted by the assessee. Therefore, the trading account for the year is to be re-cast to arrive at the correct amount of the gross profit/ net profit for the purpose of return of income to be filed for the previous year ended on 31.3.2024.

Revised Trading Account

Particular	₹	Particular	₹
Opening Stock	8,75,000	Sales (₹ 1,55,50,000 + ₹ 75,000)	1,56,25,000
Purchases	1,25,75,000	Closing Stock	12,50,000
Freight and Cartage	1,26,000		
Gross Profit	32,99,000		
	1,68,75,000		1,68,75,000

The difference of gross profit of ₹ 32,99,000 - ₹ 29,24,000 = ₹ 3,75,000 is to be added as income of the business for the year as undisclosed income¹⁶.

7. (a) This issue came up before the Delhi High Court in *CIT v. Gujarat Guardian Ltd (2009) 177 Taxman 434*. The Court observed that the assessee company's claim for deduction has to be allowed in one lump sum keeping in view the provisions of section 43B(d), which provide that any sum payable by the assessee as interest on any loan or borrowing from any financial institution shall be allowed to the assessee in the year in which the same is paid, irrespective of the periods, in which the liability to pay such sum is incurred by the assessee according to the method of accounting regularly followed by the assessee. The High Court concurred with the Tribunal's view supporting the assessee that in terms of section 36(1)(iii) read with section 2(28A), the deduction for pre-payment premium was allowable. Since there was no dispute that the pre-payment premium was nothing but interest and that it was paid to a public financial institution i.e. IDBI, the Court held that, in terms of section 43B(d), the assessee's claim for deduction has to be allowed in the year in which the payment has actually been made.

Therefore, applying the ratio of the above case, the contention of A Ltd. is correct and not that of the Assessing Officer.

Note – Section 36(1)(iii) provides for deduction of interest paid in respect of capital borrowed for the purposes of business or profession. Section 2(28A) defines interest to include, inter alia, any other charge in respect of the moneys borrowed or debt incurred. Section 43B provides for certain deductions to be allowed only on actual payment. From a combined reading of these three sections, it can be inferred that –

- (i) pre-payment premium represents interest as per section 2(28A);
 - (ii) such interest is deductible as business expenditure as per section 36(1)(iii);
 - (iii) such interest is deductible in one lump-sum on actual payment as per section 43B(d).
- (b) As per ICDS V on Tangible Fixed Assets, machinery spares shall be charged to the revenue as and when consumed. When such spares can be used only in connection with an item of tangible fixed asset and their use is expected to be irregular, they

¹⁶ No loss (whether brought forward or otherwise) or unabsorbed depreciation under section 32(2) can be set-off against undisclosed income.

shall be capitalised. Where the spares are capitalised as per the above requirement, the issue as to provision of depreciation arises – whether depreciation can be provided where such spares are kept ready for use or is it necessary that they are actually put to use. This issue was dealt with by the Delhi High Court in *CIT v. Insilco Ltd (2010) 320 ITR 322*. The Court observed that the expression “used for the purposes of business” appearing in section 32 also takes into account emergency spares, which, even though ready for use, yet are not consumed or used during the relevant period. This is because these spares are specific to a fixed asset, namely plant and machinery, and form an integral part of the fixed asset. These spares will, in all probability, be useless once the asset is discarded and will also have to be disposed of. In this sense, the concept of passive use which applies to standby machinery will also apply to emergency spares. Therefore, once the spares are considered as emergency spares required for plant and machinery, the assessee would be entitled to capitalize the entire cost of such spares and claim depreciation thereon.

Note – *One of the conditions for claim of depreciation is that the asset must be “used for the purpose of business or profession”. In the past, courts have held that, in certain circumstances, an asset can be said to be in use even when it is “kept ready for use”. For example, depreciation can be claimed by a transport company on spare engines kept in store in case of need, though they have not actually been used by the company. Hence, in such cases, the term “use” embraces both active use and passive use for business purposes.*

8. The payment made for acquiring the licence to operate telecom services in Mumbai shall be subject to deduction as per the scheme in section 35ABB. As per section 35ABB, any amount actually paid for obtaining licence to operate telecommunication services shall be allowed as deduction in equal instalments during the number of years for which the license is in force.

If the payment is made before the commencement of business: The deduction shall be allowed beginning with the year of commencement of business.

In any other case: It will be allowed commencing from the year of payment. Deduction shall be allowed up to the year in which the license shall cease to be in force.

The amount of deduction available for A.Y. 2024-25 is worked out below:-

(1)	(2)	(3)	(4) = (3)/(2)
Previous year of payment	Unexpired period of license	Instalment paid (₹)	Deduction in respect of each instalment (₹)
2021-22	9 years	9,00,000	1,00,000
2022-23	9 years	9,00,000	1,00,000
2023-24	8 years	9,00,000	1,12,500
		27,00,000	3,12,500

The deduction under section 35ABB from assessment year 2024-25 shall be ₹ 3,12,500.

9. **Computation of taxable income of Alpha Ltd. for the A.Y.2024-25**

Particulars	₹
Net profit as per profit and loss account	12,50,000
Add: Items debited to profit and loss A/c but not deductible or income to be taxed	
1. Payment of advertisement expenditure of ₹60,000	
(i) ₹ 8,000, being the excess payment to a relative disallowed under section 40A(2)	8,000
(ii) As the payment is made in cash and since the remaining amount of ₹ 52,000 exceeds ₹ 10,000, 100% shall be disallowed under section 40A(3)	52,000
2. Under section 31, expenditure relatable to current repairs regarding plant, machinery or furniture is allowed as deduction. The test to determine whether replacement of parts of machinery amounts to repair or renewal is whether the replacement is one which is in substance replacement of defective parts or replacement of the entire machinery or substantial part of the entire machinery [<i>CIT v. Darbhanga Sugar Co. Ltd. [1956] 29 ITR 21 (Pat)</i>]. Here expenditure on repairs does not bring in any new asset into existence. Such replacement can only be considered as current repairs. Hence, no adjustment is required. Further, as per ICDS V on Tangible Fixed Assets, only an expenditure that increases the future benefits from the existing asset beyond its previously assessed standard of performance has to be added to the actual cost.	
3. Liability foregone by creditor chargeable as business income but not credited to profit and loss account [taxable under section 41(1)]	6,000

4. Sale proceeds of import entitlements. The sale of the rights gives rise to profits or gains taxable under section 28(iia). As the amount has already been credited to profit and loss account, no further adjustment is necessary.	-
5. Expenditure on in-house research and development is entitled to a weighted deduction of 100% of the expenditure (both capital and revenue) so incurred under section 35(2AB)(1). As the amount has already been debited to profit and loss account, no further adjustment is necessary	-
Taxable Income	13,16,000

10. (i) The decision of the Supreme Court in *Mysore Minerals Ltd v. CIT* (1999) 239 ITR 775 is relevant in the context of the facts stated. The term “asset used” in section 32 must be assigned a wider meaning and anyone in possession of property in his own title, exercising dominion over the property, to the exclusion of others and having the right to use and enjoy it, must be taken to be the owner.

Registration of the buses is only a formality to perfect the title and does not bar enjoyment. The Corporation cannot, therefore, be denied depreciation on the buses. A similar decision was also taken in *CIT v. J & K Tourism Development Corporation* (2001) 248 ITR 94 (J&K).

- (ii) The deduction of bad debt is allowed if it is written off in the books of account of the assessee. In this case, Ravi has succeeded to the business carried on by his father. Under clause (vii) of section 36(1) the amount has been written off in the books of account as irrecoverable is eligible for deduction provided the debt has been taken into account in computing the income of the business in an earlier previous year [vide section 36(2)].

Therefore, Ravi is eligible for deduction in respect of the amount due in the name of Y which is written off in the books of account as bad debt, even though the debt represents the amount due for the supplies made by previous owner viz. deceased father of Ravi. [*CIT v. T. Veerabhadra Rao, K. Koteswara Rao and Co* (1985) 155 ITR 152 (SC)].

CAPITAL GAINS



LEARNING OUTCOMES

After studying this chapter, you would be able to -

- ☐ **appreciate** the scope of income chargeable under this head;
- ☐ **examine** the provisions of section 2(42A), relating to period of holding, for classification of a capital asset as short-term capital asset and long-term capital asset;
- ☐ **analyse and apply** the provisions of section 47 to determine whether a particular transaction would be considered/not be considered as transfer for the purpose of capital gains taxation;
- ☐ **determine** the cost of acquisition/ improvement and indexed cost of acquisition/ improvement, in case of a short-term capital asset and long-term capital asset, respectively for the purpose of computing the capital gains;
- ☐ **compute** capital gains on transfer of depreciable assets;
- ☐ **compute** capital gains in case of market linked debenture and units of a specified mutual fund;
- ☐ **compute** capital gains in case of slump sale;
- ☐ **determine** the quantum of exemption available on investment of capital gains/ net consideration arising on transfer of certain assets and appreciate the conditions to be satisfied to avail such exemption;
- ☐ **compute** the capital gains chargeable to tax applying the charging and deeming provisions and giving effect to the exemptions available in respect of capital gains;
- ☐ **identify** the cases where an Assessing Officer can make a reference to the Valuation Officer;
- ☐ **appreciate** the concessional tax treatment available for short-term capital gains and for long term capital gains on transfer of listed equity shares/ units of an equity oriented fund/ units of a business trust;
- ☐ **compute** the tax liability applying the special rates of tax on long-term capital gains and short-term capital gains arising on transfer of listed equity shares/ units of an equity oriented fund and the normal rates of tax on capital gains arising on transfer of other short-term capital assets and other long-term capital assets.



4.1 INTRODUCTION

Section 45 provides that any profits or gains arising from the **transfer** of a **capital asset** effected in the previous year will be chargeable to income-tax under the head 'Capital Gains'. Such capital gains will be deemed to be the income of the previous year in which the transfer took place. In this charging section, two terms are important. One is "capital asset" and the other is "transfer".

Hence, in this chapter on capital gains, we begin our discussion with the definition of "capital asset" and "transfer". Thereafter, we will proceed to discuss the various circumstances under which capital gains tax is levied. There are certain transactions which are not to be regarded as transfer for the purposes of capital gains. These transactions have also been discussed in this chapter. For computing long-term capital gains, application of cost inflation index is necessary. Again, there is a separate method of computation of capital gains in respect of depreciable assets. Also, there are exemptions in cases where capital gains/net sales consideration are invested in specified assets. All these aspects are being discussed in this chapter.



4.2 CAPITAL ASSET

Definition: According to section 2(14), a capital asset means –

- (a) property of any kind held by an assessee, whether or not connected with his business or profession;
- (b) any securities held by a Foreign Institutional Investor which has invested in such securities in accordance with the SEBI regulations.
- (c) any unit linked insurance policy (ULIP) issued on or after 1.2.2021, to which exemption under section 10(10D) does not apply on account of applicability of the fourth and fifth provisos thereof.

A ULIP which is issued on or after 1.2.2021 whose premium payable exceeds ₹ 2,50,000 for any of the previous years during the term of such policy would be a capital asset [Forth proviso to section 10(10D)].

In a case where premium is payable by a person for **more than one ULIP** issued on or after 1.2.2021 and the aggregate of premium payable on such ULIPs exceed ₹ 2,50,000 for any of the previous years during the term of any such ULIP(s), the exemption under section 10(10D) would be available in respect of any of those ULIPs (at the option of the assessee) whose aggregate premium payable does not exceed ₹ 2,50,000 for any of the previous years during their term. All other ULIPs would be capital assets [Fifth proviso to section 10(10D)].

However, it **does not include**—

- (i) **Stock-in trade:** Any stock-in-trade [other than securities referred to in (b) above], consumable stores or raw materials held for the purpose of the business or profession of the assessee;

Whether a particular asset is stock-in-trade or capital asset does not depend upon the nature of the item, but the manner in which the same is held. The item would be stock-in-trade in the hands of the assessee who deals or trades in that item; however, the same item would be capital asset for the assessee who holds it as an investment.

Example: *A dealer in real estate holds a piece of land as stock-in-trade. But the same will be capital asset for an assessee who holds it as an investment.*

The exclusion of stock-in-trade from the definition of capital asset is only in respect of sub-clause (a) above and not sub-clause (b). This implies that even if the nature of such security in the hands of the Foreign Portfolio Investor is stock in trade, the same would be treated as a capital asset and the profit on transfer would be taxable as capital gains.

Further, the Explanatory Memorandum to the Finance (No.2) Bill, 2014 clarifies that the income arising from transfer of such security by a Foreign Portfolio Investor (FPI) would be in the nature of capital gain, irrespective of the presence or otherwise in India, of the Fund manager managing the investments of the assessee.

- (ii) **Personal effects:** Personal effects, that is to say, movable property (including wearing apparel and furniture) held for personal use by the assessee or any member of his family dependent on him.

EXCLUSIONS:

- (a) jewellery;
- (b) archaeological collections;
- (c) drawings;
- (d) paintings;
- (e) sculptures; or
- (f) any work of art.

Definition of Jewellery - Jewellery is a capital asset and the profits or gains arising from the transfer of jewellery held for personal use are chargeable to tax

under the head “capital gains”. For this purpose, the expression ‘jewellery’ includes the following:

- (i) Ornaments made of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals, whether or not containing any precious or semi-precious stones and whether or not worked or sewn into any wearing apparel;
- (ii) Precious or semi-precious stones, whether or not set in any furniture, utensil or other article or worked or sewn into any wearing apparel.

- (iii) **Rural agricultural land** in India i.e., agricultural land in India which is not situated in any specified area.

As per the definition that only rural agricultural lands in India are excluded from the purview of the term ‘capital asset’. Hence urban agricultural lands constitute capital assets. Accordingly, the agricultural land described in (a) and (b) below, being land situated within the specified urban limits, would fall within the definition of “capital asset”, and transfer of such land would attract capital gains tax -

- (a) agricultural land situated in any area within the jurisdiction of a municipality or cantonment board having population of not less than ten thousand, or
- (b) agricultural land situated in any area within such distance, measured aerially, in relation to the range of population as shown hereunder -

	Shortest aerial distance from the local limits of a municipality or cantonment board referred to in item (a)	Population according to the last preceding census of which the relevant figures have been published before the first day of the previous year.
(i)	≤ 2 kms	> 10,000
(ii)	> 2 kms ≤ 6 kms	> 1,00,000
(iii)	> 6 kms ≤ 8 kms	> 10,00,000

Example

	Area	Shortest aerial distance from the local limits of a municipality or cantonment board referred to in item (a)	Population according to the last preceding census of which the relevant figures have been published before the first day of the previous year.	Is the land situated in this area a capital asset?
(i)	A	1 km	9,000	No

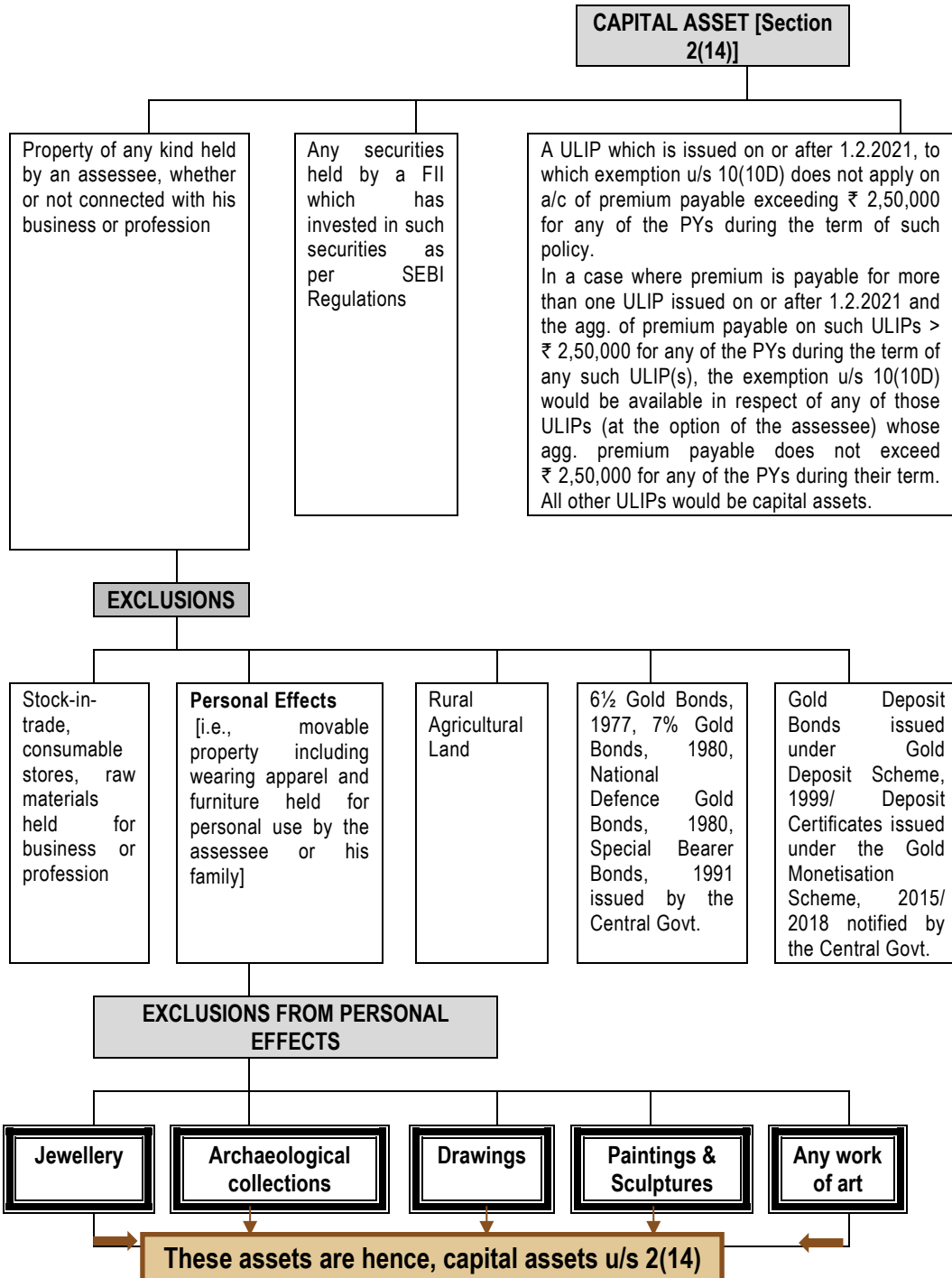
(ii)	B	1.5 kms	12,000	Yes
(iii)	C	2 kms	11,00,000	Yes
(iv)	D	3 kms	80,000	No
(v)	E	4 kms	3,00,000	Yes
(vi)	F	5 kms	12,00,000	Yes
(vii)	G	6 kms	8,000	No
(viii)	H	7 kms	4,00,000	No
(ix)	I	8 kms	10,50,000	Yes
(x)	J	9 kms	15,00,000	No

Explanation regarding gains arising on the transfer of urban agricultural land -
Explanation 1 to section 2(1A) clarifies that capital gains arising from transfer of any agricultural land situated in any non-rural area (as explained above) will not constitute agricultural revenue within the meaning of section 2(1A).

In other words, the capital gains arising from the transfer of such urban agricultural lands would not be treated as agricultural income for the purpose of exemption under section 10(1). Hence, such gains would be exigible to tax under section 45.

- (iv) **Specified Gold Bonds:** 6½% Gold Bonds, 1977, or 7% Gold Bonds, 1980, or National Defence Gold Bonds, 1980, issued by the Central Government;
- (v) **Special Bearer Bonds, 1991** issued by the Central Government;
- (vi) **Gold Deposit Bonds** issued under the Gold Deposit Scheme, 1999 or deposit certificates issued under the Gold Monetisation Scheme, 2015 and Gold Monetisation Scheme, 2018 notified by the Central Government.

Note – ‘Property’ includes and shall be deemed to have always included any rights in or in relation to an Indian company, including rights of management or control or any other rights whatsoever.





4.3 SHORT TERM AND LONG TERM CAPITAL ASSETS

- **Definition** – As per section 2(42A), short-term capital asset means a capital asset held by an assessee for not more than 36 months immediately preceding the date of its transfer.

As per section 2(29A), long-term capital asset means a capital asset which is not a short-term capital asset.

Thus, a capital asset held by an assessee for more than 36 months immediately preceding the date of its transfer is a long-term capital asset.

- **Exception** - A security (other than a unit) listed in a recognized stock exchange, or a unit of an equity oriented fund or a unit of the Unit Trust of India or a Zero Coupon Bond will, however, be considered as a long-term capital asset if the same is held for **more than 12 months** immediately preceding the date of its transfer.

Further, a share of a company (not being a share listed in a recognized stock exchange in India) or an immovable property, being land or building or both would be treated as a short-term capital asset if it was held by an assessee for not more than 24 months immediately preceding the date of its transfer.

Thus, the period of holding of unlisted shares or an immovable property, being land or building or both, for being treated as a long-term capital asset would be “more than 24 months” instead of “more than 36 months”.

However, capital gains arising from transfer of units of a specified mutual fund acquired on or after 1.4.2023 and market linked debentures would always be deemed as arising from transfer of short term capital assets irrespective of the period of holding of such assets. This is provided in section 50AA.

- **Meaning of certain terms:**

Term	Meaning
Equity oriented fund [Clause (a) of Explanation to section 112A]	A fund set up under a scheme of a mutual fund specified under section 10(23D) or under a scheme of an insurance company comprising ULIPs issued on or after 1.2.2021, to which exemption under section 10(10D) does not apply on account of applicability of the fourth and fifth provisos thereof and (i) in a case where the fund invested in the units of another fund which is traded on a recognised stock exchange –

	I. a minimum of 90% of the total proceeds of such fund is invested in the units of such other fund; and II. such other fund also invests a minimum of 90% of its total proceeds in the equity shares of domestic companies listed on a recognised stock exchange; and (ii) in any other case, a minimum of 65% of the total proceeds of such fund is invested in the equity shares of domestic companies listed on a recognised stock exchange. However, the percentage of equity shareholding or unit held in respect of the fund, as the case may be, shall be computed with reference to the annual average of the monthly averages of the opening and closing figures. In case of a scheme of an insurance company comprising ULIPs issued on or after 1.2.2021, to which exemption u/s 10(10D) does not apply on account of applicability of the fourth and fifth provisos thereof, the minimum requirement of 90% or 65%, as the case may be, mentioned in (i) and (ii) above, is required to be satisfied throughout the term of such insurance policy.
Zero Coupon Bond [Section 2(48)]	a bond - issued by any infrastructure capital company or infrastructure capital fund or infrastructure debt fund notified by the Central Government under section 10(47) or a public sector company or a scheduled bank on or after 1st June, 2005, - in respect of which no payment and benefit is received or receivable before maturity or redemption from such issuing entity and - which the Central Government may notify in this behalf.

Note: The income from transfer of a Zero coupon bond (not being held as stock-in-trade) is to be treated as capital gains. Section 2(47)(iva) provides that maturity or redemption of a Zero coupon bond shall be treated as a transfer for the purposes of capital gains tax.

The definitions of the terms “infrastructure capital company” and “infrastructure capital fund” have already been discussed in Chapter 3 – “Profits and gains from business and profession”.

Period of holding: A summary

STCA, if held for $\leq$ 12 month	}	• Security (other than unit) listed in a recognized stock exchange • Unit of equity oriented fund/ unit of UTI • Zero Coupon bond
LTCA, if held for $>$ 12 months		
STCA, if held for $\leq$ 24 month	}	• Unlisted shares • Land or building or both
LTCA, if held for $>$ 24 months		
STCA, if held for $\leq$ 36 month	}	• Unlisted securities other than shares • Other capital assets
LTCA, if held for $>$ 36 months		

Note – Capital gains arising from transfer of units of a specified mutual fund acquired on or after 1.4.2023 and market linked debentures would always be deemed as arising from transfer of short term capital assets irrespective of the period of holding of such assets. This is provided in section 50AA

Applicability of tax on capital gains in the hands of the unit holders where the term of the units of Mutual Funds under the Fixed Maturity Plans has been extended [Circular No. 6/2015, dated 09-04-2015]

Fixed Maturity Plans (FMPs) are closed ended funds having a fixed maturity date wherein the duration of investment is decided upfront. Prior to amendment by the Finance (No. 2) Act, 2014, units of a mutual fund under the FMPs held for a period of more than twelve months qualified as long-term capital asset. The amendment in sub-section (42A) of section 2 by the Finance (No. 2) Act, 2014 required the period of holding in case of units of a mutual fund [other than an equity oriented fund] to be more than thirty-six months to qualify as long term capital asset.

As a result, gains arising out of any investment in the units of FMPs made earlier and sold/ redeemed after 10.07.2014 would be taxed as short-term capital gains if the unit was held for a period of thirty-six months or less. To enable the FMPs to qualify as a long-term capital asset, some Asset Management Companies (AMCs) administering mutual funds have offered extension of the duration of the FMPs to a date beyond thirty-six months from the date of the original investment by providing to the investor an option of roll-over of FMPs in accordance with the provisions of Regulation 33(4) of the SEBI (Mutual Funds) Regulation, 1996.

The CBDT has, vide this Circular, clarified that the roll over in accordance with the aforesaid regulation will not amount to transfer as the scheme remains the same.

Accordingly, no capital gains will arise at the time of exercise of the option by the investor to continue in the same scheme. The capital gains will, however, arise at the time of redemption of the units or opting out of the scheme, as the case may be.

- **Determination of period of holding [Clause (i) of *Explanation 1* to section 2(42A)]:** In determining period of holding of any capital asset by the assessee in the circumstances stated in column (1), the period shall be determined by considering the period specified in Column (2).

Determination of period of holding

S. No.	Circumstances (Column 1)	Period to be reckoned/included/excluded, as the case may be (Column 2)
1	Where shares held in a company in liquidation	The period subsequent to the date of liquidation of company shall be excluded .
2	Where asset becomes the property of an assessee by virtue of section 49(1)	The period for which the capital asset was held by the previous owner shall be included .
3	Where inventory of business is converted into or treated as a capital asset by the assessee	Period from the date of conversion or treatment as a capital asset shall be considered .
4	Where share(s) in the Indian company (amalgamated company) , becomes the property of an assessee in lieu of share(s) held by him in the amalgamating company at the time of transfer referred under section 47(vii).	The period for which the share(s) was held by the assessee in the amalgamating company shall be included .
5	Where the share or any other security is subscribed by the assessee on the basis of right to subscribe to any share or security or by the person in whose favour such right is renounced by the assessee	Period from the date of allotment of such share or security shall be reckoned .
6	Where the right to subscribe to any share or security, which is renounced in favour of any other person	Period from the date of offer of such right by the company or institution shall be reckoned .

7	Where any financial asset is allotted without any payment and on the basis of holding of any other financial asset	Period from the date of allotment of such financial asset shall be reckoned .
8	Where share(s) in the Indian company being a resulting company becomes the property of an assessee in consideration of demerger	The period for which the share(s) were held by the assessee in demerged company shall be included .
9	Where trading or clearing rights of a recognised stock exchange in India is acquired by a person pursuant to demutualisation or corporation of a recognised stock exchange in India as referred to in section 47(xiii)	The period for which the person was a member of the recognised stock exchange immediately prior to such demutualisation or corporatisation shall be included .
10	Where equity share(s) in a company allotted pursuant to demutualisation or corporation of a recognised stock exchange in India as referred to in section 47(xiii)	The period for which the person was a member of the recognised stock exchange immediately prior to such demutualisation or corporatisation shall be included .
11	Where unit of a business trust , allotted pursuant to transfer of share(s) as referred to in section 47(xvii)	The holding period for which the share(s) held by the assessee shall be included .
12	Where unit(s) becomes the property of the assessee in consideration of transfer of unit(s) in the consolidated scheme of the mutual fund referred to in section 47(xviii)	The period for which the unit(s) in the consolidating scheme of the mutual fund were held by the assessee shall be included .
13	Where share(s) of a company is acquired by the non-resident assessee on redemption of Global Depository Receipts referred to in section 115AC(1)(b) held by such assessee	Period from the date on which a request for such redemption was made shall be reckoned .
14	Where equity share in a company becomes the property of the assessee by way of	The period for which the preference shares were held by the assessee shall be included .

	conversion of preference shares into equity shares referred under section 47(xb)	
15	Where unit(s) becomes the property of the assessee in consideration of transfer of unit(s) in the consolidated plan of a mutual fund scheme as referred to in section 47(xix)	The period for which the unit(s) in the consolidating plan of a mutual fund scheme was held by the assessee shall be included .
16	In case of a unit or units in a segregated portfolio referred under section 49(2AG)	Period for which the original unit or units in the main portfolio were held by the assessee shall also be reckoned .
17	<i>(i) Electronic Gold Receipt [EGR] issued by a Vault Manager in respect of gold deposited as referred to in section 47(viid) [Conversion of gold into EGR not regarded as transfer by virtue of section 47(viid)]</i>	<i>The period for which such gold was held by the assessee prior to conversion into the Electronic Gold Receipt</i>
	<i>(ii) Gold released in respect of an Electronic Gold Receipt as referred to in section 47(viid) [Conversion of EGR into Gold not regarded as transfer by virtue of section 47(viid)]</i>	<i>The period for which such Electronic Gold Receipt was held by the assessee prior to its conversion into gold.</i>
18	Where any specified security or sweat equity shares allotted or transferred, directly or indirectly, by the employer free of cost or at concessional rate to his employees (including former employees)	Period from the date of allotment or transfer of such specified security or sweat equity shares shall be reckoned .
	“Specified security” means the securities as defined in section 2(h) of the Securities Contracts (Regulation) Act, 1956 and, where employees’ stock option has been granted under any plan or scheme therefor, includes the securities offered under such plan or scheme. “Sweat equity shares” means equity shares issued by a company to its employees or directors at a discount or for consideration other than cash for providing know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.	

- **Period of holding in respect of other capital assets [Clause (ii) of Explanation 1 to section 2(42A)]** - The period for which any capital asset is held by the assessee shall be determined in accordance with any rules made by the CBDT in this behalf.

Accordingly, the CBDT has inserted Rule 8AA in the Income-tax Rules, 1962 to provide for method of determination of period of holding of capital assets, other than the capital assets mentioned in clause (i) of Explanation 1 to section 2(42A).

- In the case of a capital asset, **being a share or debenture of a company**, which **becomes the property** of the assessee in the circumstances mentioned in **section 47(x)**, there shall be **included the period** for which the bond, debenture, debenture-stock or deposit certificate, as the case may be, was held by the assessee **prior to the conversion**.

Note: Section 47(x) provides that any transfer by way of conversion of bonds or debentures, debenture-stock or deposit certificates in any form, of a company into shares or debentures of that company shall not be regarded as transfer for the purposes of levy of capital gains tax.

- In case of a capital asset which became the property of the Indian subsidiary company in consequence to conversion of a branch of a foreign company referred to in section 115JG(1), the period for which the asset was held by the said branch of the foreign company and by the previous owner, if any, who has acquired the capital asset by a mode of acquisition referred to in clause (i)/(ii)/(iii)/(iv) of section 49(1) or section 115JG(1) shall be included. Section 115JG has been discussed in detail in Chapter 21: Non-resident Taxation in Module 4.
- In case of the amount which is chargeable to tax as income of specified entity under section 45(4) under the head - "Capital gains", the amount or a part of it shall be deemed to be from transfer of short-term capital asset or long term capital asset, as the case may be, mentioned in column (2), if it is attributed to capital asset mentioned in the corresponding row in column (3) –

	Deemed capital gains from transfer of capital asset	Type of capital asset of specified entity
	(2)	(3)
1.	Capital gains from transfer of a short term capital asset	(a) capital asset which is short term capital asset at the time of taxation of amount under section 45(4); or

		(b) capital asset forming part of block of asset; or (c) capital asset being self-generated asset and self-generated goodwill as defined in section 45(4)
2.	Capital gains from transfer of a long term capital asset(s)	Capital asset which is not covered in 1. above and is long term capital asset at the time of taxation of amount under section 45(4).



4.4 TRANSFER: WHAT IT MEANS? [SECTION 2(47)]

The Act contains an inclusive definition of the term 'transfer'. Accordingly, transfer in relation to a capital asset includes the following types of transactions:—

- (i) the sale, exchange or relinquishment of the asset; or
- (ii) the extinguishment of any rights therein; or
- (iii) the compulsory acquisition thereof under any law; or

Example: Acquisition of industrial undertaking under the Industries (Development and Regulation) Act, 1951.

- (iv) the owner of a capital asset may convert/treated the same into/as the stock-in-trade of a business carried on by him. Such conversion/treatment is treated as transfer; or

Example: Where an investor in shares starts a business of dealing in shares and treats existing investments as stock-in-trade of the newly set up business, such conversion shall be regarded as transfer for the purpose of capital gains.

- (v) the maturity or redemption of a zero coupon bond; or
- (vi) possession of an immovable property in consideration of part-performance of a contract referred to in section 53A of the Transfer of Property Act, 1882.

Example: A enters into an agreement for the sale of his house. The purchaser gives the entire sale consideration to A. A hands over complete rights of possession to the purchaser since he has received the entire sale consideration though house is not yet registered in the name of the buyer. Under the Income-tax Act, the above transaction is considered as transfer.

- (vii) transactions which have the effect of transferring or enabling the enjoyment of an immovable property.

Example: A person may become a member of a co-operative society, company or other association of persons which may be building houses/ flats. When he pays an agreed amount, the society etc. hands over possession of the house to the person concerned. No conveyance deed is registered. For the purpose of income-tax, the above transaction is a transfer.

Note – Section 2(47) provides an inclusive definition of “transfer”, in relation to a capital asset. Explanation 2 to section 2(47) clarifies that ‘transfer’ includes and shall be deemed to have always included –

(1) disposing of or parting with an asset or any interest therein, or	} -	directly or indirectly,
		absolutely or conditionally,
(2) creating any interest in any asset in any manner whatsoever	} -	voluntarily or involuntarily

by way of an agreement (whether entered into in India or outside India) or otherwise.

The above transactions would be deemed as a transfer notwithstanding that such transfer of rights has been characterised as being effected or dependent upon or flowing from the transfer of a share or shares of a company registered or incorporated outside India.



4.5 SCOPE AND YEAR OF CHARGEABILITY [SECTION 45]

(1) General Provision [Section 45(1)]

Any profits or gains arising from the transfer of a capital asset effected in the previous year (other than exemptions covered under this chapter) shall be chargeable to income-tax under this head **in the previous year in which the transfer took place.**

Year of chargeability - Capital gains are chargeable as the income of the previous year in which the sale or transfer takes place. In other words, for determining the year of chargeability, the relevant date of transfer is not the date of the agreement to sell, but the actual date of sale *i.e.*, the date on which the effect of transfer of title to the property as contemplated by the parties has taken place [*Alapati Venkataramiah v. CIT* [1965] 57 ITR 185 (SC)].

However, as already noted, Income-tax Act has recognised certain transactions as transfer in spite of the fact that conveyance deed might not have been executed and registered.

(2) Insurance receipts [Section 45(1A)]

Where any person receives any money or other assets under any insurance from an insurer on account of damage to or destruction of any capital asset, as a result of -

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

any profits or gains arising from receipt of such money or other assets shall be chargeable to income-tax under the head "Capital gains" and shall be deemed to be the income of the **such person for the previous year in which such money or other asset was received.**

Full value of consideration: In order to compute capital gains, the value of any money or the fair market value of other assets on the date of such receipt shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of such capital assets.

(3) Unit Linked Insurance Policy Receipts [Section 45(1B)]

Where any person receives, at any time during any previous year, any amount, including the amount allocated by way of bonus, on such policy under a unit linked insurance policy (ULIP) issued on or after 1.2.2021, to which exemption under section 10(10D) does not apply on account of the applicability of the fourth and fifth provisos thereof, then, any profits or gains arising from receipt of such amount by such person shall be chargeable to income-tax under the head "Capital gains" and shall be deemed to be the income of such person of the previous year in which such amount was received.

Any ULIP which is issued on or after 1.2.2021 whose premium payable exceeds ₹ 2,50,000 for any of the previous years during the term of such policy would be a capital asset [Forth proviso to section 10(10D)].

In a case where premium is payable by a person for more than one ULIP issued on or after 1.2.2021 and the aggregate of premium payable on such ULIPs exceed ₹ 2,50,000 for any of the previous years during the term of any such ULIP(s), the exemption under section 10(10D)¹ would be available in respect of any of those ULIPs (at the option of the assessee) whose aggregate

¹ Subject to fulfilment of other conditions under section 10(10D).

premium payable does not exceed ₹ 2,50,000 for any of the previous years during their term [Fifth proviso to section 10(10D)].

Thus, the amount received under any other ULIP(s) issued on or after 1.2.2021 (referred to as specified ULIPs) to which exemption under section 10(10D) does not apply on account of applicability of the fourth and fifth provisos thereof, would be taxable under section 45(1B). The income from such specified ULIPs taxable is to be calculated in such manner as may be prescribed.

Accordingly, Rule 8AD prescribes the following manner to compute capital gains on receipt of amount under such specified ULIPs. Where any person receives at any time during any previous year any amount under such specified ULIP, including the amount allocated by way of bonus on such policy, then, —

	Situation	Capital gains arising from receipt of amount during the previous year in which such amount is received
(i)	Where the <u>amount is received for the first time under such specified ULIP</u> during the previous year,	A-B, where A = the amount received for the first time under such specified ULIP during the previous year, including the amount allocated by way of bonus on such specified policy; and B = the aggregate of the premium paid during the term of such specified ULIP till the date of receipt of the amount as referred to in "A"
(ii)	Where the <u>amount is received</u> under such specified ULIP during the previous year, at any time <u>after the receipt of the amount as referred to in (i)</u>	C-D, where C = the amount received under such specified ULIP during the previous year, at any time after the receipt of the amount as referred to in (i) above, including the amount allocated by way of bonus on such policy. Note - The amount which has already been considered for calculation of taxable amount during the earlier previous year(s) would not be included in "C". D = the aggregate of the premium paid during the term of such specified ULIP till the date of receipt of the amount as referred to in "C" as reduced by "B" i.e., the premium that has already been considered for calculation of taxable amount during the earlier previous year(s).

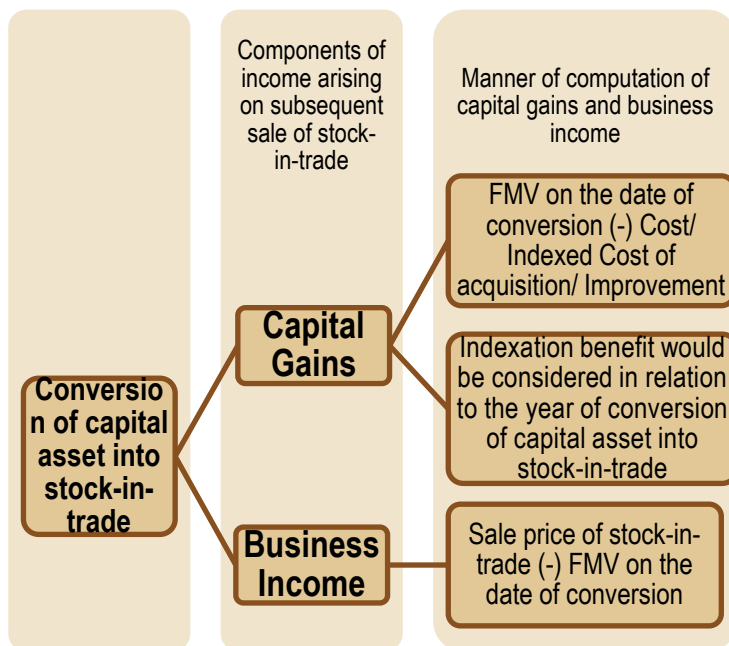
The capital gains as computed in above table would be deemed to be the capital gains arising from the transfer of a unit of an equity-oriented fund set up under a scheme of an insurance company comprising unit linked insurance policies.

(4) Conversion or treatment of a capital asset as stock-in-trade [Section 45(2)]

A person who is the owner of a capital asset may convert the same or treat it as stock-in-trade of the business carried on by him. As noted above, the conversion/treatment is a transfer.

As per section 45(2), notwithstanding anything contained in section 45(1), being the charging section, the profits or gains arising from the above conversion or treatment will be chargeable to income-tax as **his income of the previous year in which such stock-in-trade is sold or otherwise transferred by him.**

Full value of consideration: In order to compute the capital gains, the fair market value of the asset on the date of such conversion or treatment shall be deemed to be the full value of the consideration received as a result of the transfer of the capital asset.



Note – Both Capital Gains and Business income are chargeable to tax in the year in which stock-in-trade is sold or otherwise transferred.

ILLUSTRATION 1

X converts his capital asset (acquired on June 10, 2005 for ₹ 60,000) into stock-in-trade on March 10, 2023. The fair market value on the date of the above conversion was ₹ 5,50,000. He subsequently sells the stock-in-trade so converted for ₹ 6,00,000 on June 10, 2023. Examine the tax implication.

Cost Inflation Index - F.Y. 2005-06: 117; F.Y. 2022-23: 331; F.Y. 2023-24: 348.

SOLUTION

Since the capital asset is converted into stock-in-trade during the previous year relevant to the A.Y. 2023-24, it will be a transfer under section 2(47) during the P.Y. 2022-23. However, the profits or gains arising from the above conversion will be chargeable to tax during the A.Y. 2024-25, since the stock-in-trade has been sold only on June 10, 2023. For this purpose, the fair market value on the date of such conversion (i.e. 10th March, 2023) will be the full value of consideration.

The capital gains will be computed after deducting the indexed cost of acquisition from the full value of consideration. The cost inflation index for 2005-06 i.e., the year of acquisition is 117 and the index for the year of transfer i.e., 2022-23 is 331. The indexed cost of acquisition is ₹ 60,000 × 331/117 = ₹ 1,69,744. Hence, ₹ 3,80,256 (i.e., ₹ 5,50,000 – ₹ 1,69,744) will be treated as long-term capital gains chargeable to tax during the A.Y. 2024-25. During the same assessment year, ₹ 50,000 (₹ 6,00,000 - ₹ 5,50,000) will be chargeable to tax as business profits.

(5) Transfer of beneficial interest in securities [Section 45(2A)]

As per section 45(2A), where any person has had at any time during the previous year any beneficial interest in any securities, then, any profits or gains arising from the transfer made by the depository or participant of such beneficial interest in respect of securities shall be chargeable to tax as the income of the beneficial owner of the previous year in which such transfer took place and shall not be regarded as income of the depository who is deemed to be the registered owner of the securities by virtue of section 10(1) of the Depositories Act, 1996.

Full value of consideration and period of holding: For the purposes of section 48 and proviso to section 2(42A), the cost of acquisition and the period of holding of securities shall be determined on the basis of the first-in-first-out (FIFO) method.

When the securities are transacted through stock exchanges, it is the established procedure that the brokers first enter into contracts for purchase/ sale of securities and thereafter, follow it up with delivery of shares, accompanied by transfer deeds duly signed by the registered holders.

- ◆ The seller is entitled to receive the consideration agreed to as on the date of contract.
- ◆ Thus, it is the date of broker's note that should be treated as the date of transfer in case of sale transactions of securities provided such transactions are followed up by delivery of shares and also the transfer deeds.
- ◆ Similarly, in respect of the purchasers of the securities, the holding period shall be reckoned to take place directly between the parties and not through stock exchanges.
- ◆ The date of contract of sale as declared by the parties shall be treated as the date of transfer provided it is followed up by actual delivery of shares and the transfer deeds.

Where securities are acquired in several lots at different points of time, the First-In-First-Out (FIFO) method shall be adopted to reckon the period of the holding of the security, in cases where the dates of purchase and sale could not be correlated through specific numbers of the scrips.

In other words, the assets acquired last will be taken to be remaining with the assessee while assets acquired first will be treated as sold. Indexation, wherever applicable, for long-term assets will be regulated on the basis of the holding period determined in this manner - *CBDT Circular No. 704, dated 28.4.1995*.

Meaning of certain terms:

Term	Meaning
Beneficial owner	A person whose name is recorded as such with a depository.
Depository	A company formed and registered under the Companies Act, 1956 ² and which has been granted a certificate of registration under section 12(1A) of the Securities and Exchange Board of India Act, 1992.
Security	Such security as may be specified by SEBI.

(6) Introduction of capital asset as capital contribution [Section 45(3)]

Where a person transfers a capital asset to a firm, AOP or BOI in which he is already a partner/ member or is to become a partner/ member by way of capital contribution or otherwise, the profits or gains arising from such transfer will be **chargeable to tax as income of the previous year in which such transfer takes place**.

Full value of consideration: For this purpose, the full value of the consideration will be deemed to be the amount recorded in the books of account of the firm, AOP or BOI as the value of the capital asset.

(7) Tax implications on receipt of money or capital asset or stock-in trade by a partner or a member on dissolution or reconstitution of firm/AOPs/BOIs [Section 9B and 45(4)]

Tax implications on receipt of capital assets or stock in trade or both on dissolution or reconstitution of firm/AOP or BOI [Section 9B]

(i) **Deemed transfer in the hands of specified entity** - Where a **specified person (partner of a firm/member of AoP/Bol) receives** during the previous year **any capital asset or stock in trade or both** from a specified entity (firm/AoP/Bol, as the case may be) in connection with the **dissolution or reconstruction** of such specified entity, then **such specified entity** would be **deemed to have transferred** such capital asset or stock in trade or both, as the case may be, to

² Now Companies Act, 2013

the specified person in the year in which such capital asset or stock in trade or both are received by the specified person.

(ii) **Year of taxability** – Any profits and gains from such deemed transfer of capital asset or stock in trade or both, as the case may be, by the specified entity shall be deemed to be the **income of such specified entity of the previous year in which such capital asset or stock in trade or both were received by the specified person**

(iii) **Head of income** – Any profit and gains from such deemed transfer of capital asset would be chargeable to income-tax as income of such specified entity under the head “Capital gains”. Any profits and gains from such deemed transfer of stock in trade would be chargeable to tax under the head “Profits and gains from business or profession”, in accordance with the provisions of this Act.

(iv) **Full value of consideration** - In order to compute the capital gains, the fair market value of the capital asset or stock in trade or both on the date of its receipt by the specified person shall be deemed to be the full value of the consideration received or accruing as a result of such deemed transfer of the capital asset or stock in trade or both by the specified entity.

Tax implications on receipt of money or capital assets or both on reconstitution of firm/AOP or BOI [Section 45(4)]

(i) **Deemed income in the hands of specified entity** – Where a specified person receives during the previous year any money or capital asset or both from a specified entity in connection with the reconstitution of such specified entity, then any profits or gains arising from such receipt by the specified person shall be chargeable to income-tax as income of such specified entity under the head “Capital gains”.

(ii) **Year of taxability** – Such profits and gains shall be deemed to be the **income of specified entity of the previous year in which such money or capital asset or both were received by the specified person**.

(iii) **Computation of such profits and gains from such receipt** – Notwithstanding anything to the contrary contained in this Act, such profits or gains shall be determined in accordance with the following formula –

$$A^{**} = B + C - D$$

A = Income chargeable to income-tax u/s 45(4) as income of the specified entity under the head "Capital gains"

B = Value of any money received by the specified person from the specified entity on the date of such receipt;

C = The amount of fair market value of the capital asset received by the specified person from the specified entity on the date of such receipt; and

D = The amount of balance in the capital account (represented in any manner) of the specified person in the books of account of the specified entity at the time of its reconstitution.

Balance in the capital account of the specified person in the books of account of the specified entity is to be calculated without taking into account the increase in the capital account of the specified person due to the following

- revaluation of any asset or
- self-generated goodwill or
- any other self-generated asset.

"self-generated goodwill" and "self-generated asset" mean goodwill or asset, as the case may be, which has been acquired without incurring any cost for purchase or which has been generated during the course of the business or profession.

**** If the value of "A" in the above formula is negative, its value shall be deemed to be zero.**

(iv) **Taxability u/s 45(4) is in addition to taxability under section 9B** – When a capital asset is received by a specified person from a specified entity in connection with the reconstitution of such specified entity, the provisions of this section shall operate in addition to the provisions of section 9B and the taxation under section 9B shall be worked out independently.

(v) **Definition of certain terms commonly used under both section 9B and 45(4):**

Terms	Meaning
Specified person	a person, who is a partner of a firm or member of AOPs or BOIs (not being a company or a co-operative society) in any previous year.
Specified entity	a firm or other AOPs or BOIs (not being a company or a co-operative society)
Reconstitution of the specified entity	Where (a) one or more of its partners or members, as the case may be, of such specified entity <u>ceases</u> to be partners or members; <u>or</u> (b) one or more new partners or members, as the case may be, are <u>admitted</u> in such specified entity in such circumstances that <u>one or more of the persons who were partners or members</u>, as the case may be, of the specified entity, before the change, <u>continue as partner or partners or member or members after the change; or</u>

	(c) <u>all the partners or members</u> , as the case may be, of such specified entity <u>continue with a change in their respective share or in the shares of some of them</u>

Note: The case of dissolution of specified entity which is dealt in section 9B is not covered under section 45(4). The taxability of receipt of money by a partner of a firm/ member of AoP/Bol on reconstitution of firm/AoP/Bol, as the case may be, is dealt with only in section 45(4) and not in section 9B. The taxability of receipt of stock-in-trade by a partner of a firm/member of AoP/Bol on reconstitution is dealt with in section 9B. Therefore, it is only receipt of capital asset by a partner of a firm/member of an AoP/Bol on reconstitution of the firm/AoP/Bol which is taxable under section 9B and under section 45(4).

(vi) **Type of capital gain from capital asset received by specified person from specified entity in connection with its reconstitution [Section 2(42A) Rule 8AA]:** In case of the amount which is chargeable to tax as income of specified entity under section 45(4) under the head - "Capital gains", the amount or a part of it shall be deemed to be from transfer of short-term capital asset or long term capital asset, as the case may be, mentioned in column (2), if it is attributed to capital asset mentioned in the corresponding row in column (3) -

	Deemed capital gains from transfer of capital asset	Type of capital asset of specified entity
	(2)	(3)
1.	Capital gains from transfer of a short term capital asset	(a) capital asset which is short term capital asset at the time of taxation of amount under section 45(4); or (b) capital asset forming part of block of asset; or (c) capital asset being self-generated asset and self-generated goodwill as defined in section 45(4)
2.	Capital gains from transfer of a long term capital asset(s)	Capital asset which is not covered in 1. above and is long term capital asset at the time of taxation of amount under section 45(4).

(vii) **Attribution of capital gains:** For the purpose of section 48(iii), where the amount is chargeable to income-tax as income of specified entity under section 45(4), the specified entity shall attribute such amount to capital asset remaining with the specified entity in the prescribed manner:

Accordingly, Rule 8AB provides that the specified entity shall attribute such amount to capital asset remaining with the specified entity in the following manner:

S. No.	Particulars	Attribution to the capital assets remaining with the specified entity
Where the aggregate of the value of money and the fair market value of the capital asset received by the specified person from the specified entity, in excess of the balance in his capital account, chargeable to tax under section 45(4) -		
(i)	relates to revaluation of any capital asset or valuation of self-generated asset or self-generated goodwill, of the specified entity. The revaluation should be based on a valuation report obtained from a registered valuer.	$\frac{\text{the amount charged u/s 45(4)}}{\text{increase in, or recognition of, value of that asset because of revaluation or valuation}}$
(ii)	does not relate to revaluation of any capital asset or valuation of self generated asset or self-generated goodwill, of the specified entity	the amount charged to tax under section 45(4) shall not be attributed to any capital asset
(iii)	relate only to the capital asset received by the specified person from the specified entity	the amount charged to tax under section 45(4) shall not be attributed to any capital asset

The specified entity shall furnish the details of amount attributed to capital asset remaining with the specified entity in Form No. 5C.

Form No. 5C shall be furnished on or before the due date referred to in the *Explanation 2* below section 139(1) for the assessment year in which the amount is chargeable to tax under section 45(4).

It is clarified that revaluation of an asset or valuation of self-generated asset or self-generated goodwill does not entitle the specified entity for the depreciation on the increase in value of that asset on account of its revaluation or recognition of the value of self-generated asset or self-generated goodwill due to its valuation.

(viii) Power of CBDT to issue guidelines [Section 9B(4) and 9B(5)] - If any difficulty arises in giving effect to the provisions of section 9B and section 45(4), the CBDT may issue guidelines for the purpose of removing the difficulty with the approval of the Central Government.

Every guideline issued by the CBDT shall be laid before each House of Parliament, and shall be binding on the income-tax authorities and on the assessee.

Guidelines under section 9B and section 45(4) of the Income-tax Act, 1961 [Circular No. 14/2021 dated 2.7.2021]

The amount taxed under section 45(4) is required to be attributed to the remaining capital assets of the specified entity, so that when such capital assets get transferred in the future, the amount attributed to such capital assets gets reduced from the full value of the consideration and to that extent the specified entity does not pay tax again on the same amount.

This attribution is given only for the purposes of section 48. Section 48 only applies to capital assets which are not forming block of assets. For capital assets forming block of assets there is section 43(6)(c) to determine written down value of the block of asset and section 50 to determine the capital gains arising on transfer of such assets.

However, the Act has not yet provided that amount taxed under section 45(4) can also be attributed to capital assets forming part of block of assets and which are covered by these two provisions.

The CBDT has, vide this circular, clarified that Rule 8AB also applies to capital assets forming part of block of assets. Wherever the terms capital asset is appearing in the Rule 8AB, it refers to capital asset whose capital gains is computed under section 48 as well as capital asset forming part of block of assets. Further, wherever reference is made for the purposes of section 48, such reference may be deemed to include reference for the purposes of section 43(6)(c) and section 50.

It is further clarified that in case the capital asset remaining with the specified entity is forming part of a block of asset, the amount attributed to such capital asset under rule 8AB shall be reduced from the full value of the consideration received or accruing as a result of subsequent transfer of such asset by the specified entity, and the net value of such consideration shall be considered for reduction from the written down value of such block under section 43(6)(c) or for calculation of capital gains, as the case may be, under section 50.

For the purposes of understanding and for removing difficulties, if any, the application of section 9B and section 45(4) is explained with the help of the following examples:

Example 1: There are three partners "A", "B" and "C" in a firm "FR", having one third share each. Each partner has a capital balance of ₹ 10 lakh in the firm. There are three pieces of lands "S", "T" and "U" in that firm and there is no other capital asset in that firm. Book value of each of the land is ₹ 10 lakh. All these three lands were acquired by the firm more than two years ago.

Partner "A" wishes to exit. The firm revalues its lands based on valuation report from a registered valuer, as defined in rule 11U, and as per that valuation report fair market value of lands "S" and "T" is ₹ 70 lakh each, while fair market value of land "U" is ₹ 50 lakh. On the exit of partner "A", the firm decides to give him ₹ 11 lakh of money and land "U" to settle his capital balance.

In accordance with the provisions of section 9B, it would be deemed that the firm "FR" has transferred land "U" to the partner "A" at its fair market value of ₹ 50 lakh. Let us assume that the indexed cost of acquisition of land "U" is ₹ 15 lakh.

Now on account of the deeming provisions of section 9B, it is deemed that the firm "FR" has transferred land "U" to partner "A". Thus, an amount of ₹ 50 lakh less ₹ 15 lakh would be charged to tax in the hands of firm "FR" under the head "Capital gains". For partner "A", the cost of acquisition of this land would be ₹ 50 lakh. Hence, the amount of ₹ 35 lakh is charged to long term capital gains and let us assume that the tax is ₹ 7 lakh (assume no surcharge or cess just for ease of calculation and illustration purposes).

This, net book profit after tax of ₹ 33 lakh (capital gains of ₹ 40 lakh without indexation less tax of ₹ 7 lakh) is to be credited in the capital account of each of the three partners, i.e. ₹ 11 lakh each. Thus partner "A" capital account would increase to ₹ 21 lakh. This exercise is required to be carried out since section 9B mandates that it is to be deemed that the firm "FR" has transferred the land "U" to partner "A" and the long term capital gains of ₹ 35 lakh is chargeable to tax in the hands of the firm "FR".

As against capital balance of ₹ 21 lakh, partner "A" has received ₹ 61 lakh (₹ 11 lakh of money plus land "U" of fair market value of ₹ 50 lakh). Thus ₹ 40 lakh is required to be charged to tax under section 45(4). This shall be in addition to an amount of ₹ 35 lakh charged to tax under section 9B.

On account of clause (iii) of section 48, read with rule 8AB, this ₹ 40 lakh is to be attributed to the remaining assets of the firm "FR" on the basis of increase in their value due to revaluation based on the valuation report of registered valuer. In this case as per revaluation there are only two capital assets remaining; lands "S" and "T". In both cases the value has increased by ₹ 60 lakh each. Thus, out of ₹ 40 lakh, ₹ 20 lakh shall be attributed to land "S" and ₹ 20 lakh to land "T". When either of these lands gets sold, this amount attributed to them would be reduced from sales consideration under clause (iii) of section 48.

The amount of ₹ 40 lakh which is charged to tax under section 45(4) shall be charged as long term capital gains in view of rule 8AA(5), since the amount of ₹ 40 lakh is attributed to land "S" and land "T" which are both long term capital assets at the time of taxation of ₹ 40 lakh under section 45(4).

Example 2: There are three partners "A", "B" and "C" in a firm "FR", having one third share each. Each partner has a capital balance of ₹ 10 lakh in the firm. There are three pieces of lands "S", "T" and "U" in that firm and there is no other capital asset in that firm. All these three lands were acquired by the firm more than two years ago.

Book value of each of the land is ₹ 10 lakh. Partner "A" wishes to exit. The firm sells land "U" for its fair market value of ₹ 50 lakh. Let us assume that the indexed cost of acquisition of land "U" is ₹ 15 lakh. Thus, an amount of ₹ 50 lakh less ₹ 15 lakh would be charged to tax in the hands of firm "FR" under the head "Capital gains". Hence, the amount of ₹ 35 lakh is charged to long term capital gains and let us assume that the tax is ₹ 7 lakh (assume no surcharge or cess just for ease of calculation and illustration purposes).

This, net book profit after tax of ₹ 33 lakh (capital gains of ₹ 40 lakh without indexation less tax of ₹ 7 lakh) is to be credited in the capital account of each of the three partners, i.e. ₹ 11 lakh each. Thus, partner "A" capital account would increase to ₹ 21 lakh.

Partner "A" decides to exit the firm "FR". The firm revalues its lands "S" and "T" based on valuation report from a registered valuer, as defined in Rule 11U, and as per that valuation report fair market value of lands "S" and "T" is ₹ 70 lakh each. On the exit of partner "A", the firm decides to give him ₹ 61 lakh of money to settle his capital balance. Thus, as against capital balance of ₹ 21 lakh, partner "A" has received ₹ 61 lakh of money. Thus ₹ 40 lakh is required to be charged to tax section 45(4). This will be in addition to ₹ 35 lakh already charged to capital gains.

On account of section 48(iii), read with rule 8AB, this ₹ 40 lakh is to be attributed to the remaining assets of the firm "FR" on the basis of increase in their value due to revaluation based on the valuation report of registered valuer. In this case, as per revaluation, there are only two capital assets remaining: lands "S" and "T". In both cases, the value has increased by ₹ 60 lakh each. Thus, out of ₹ 40 lakh, ₹ 20 lakh shall be attributed to land "S" and ₹ 20 Lakh to land "T". When either of these lands gets sold, this amount attributed to them would be reduced from sales consideration under section 48(iii).

The amount of ₹ 40 lakh which is charged to tax under section 45(4) shall be charged as long term capital gains in view of rule 8AA(5), since the amount of ₹ 40 lakh is attributed to land "S" and land "T" which are both long term capital assets at the time of taxation of ₹ 40 lakh under section 45(4).

Note: The final result in both example 1 and 2 is same due to the operation of section 9B.

Example 3: There are three partners "A", "B" and "C" in a firm "FR", having one third share each. Each partner has a capital balance of ₹ 100 lakh in the firm. There is a piece of land "S" of book value of ₹ 30 lakh. There is patent "T" of written down value of ₹ 45 lakh. And there is cash of

₹ 225 lakh. The land was acquired by the firm more than two years ago. The patent was acquired/ developed/ registered one year back.

Partner "A" wishes to exit. The firm revalues its land and patent based on valuation report from a registered valuer, as defined in rule 11U, and as per that valuation report, fair market value of land "S" is ₹ 45 lakh and fair market value of patent "T" is ₹ 60 lakh. As per the valuation report, there is also self-generated goodwill of ₹ 30 lakh. On the exit of partner "A", the firm decides to give him ₹ 75 lakh in money and land "S" to settle his capital balance.

In accordance with the provisions of section 9B, it would be deemed that the firm "FR" has transferred land "S" to the partner "A" at its fair market value of ₹ 45 lakh. Let us assume that the indexed cost of acquisition of land "S" is ₹ 45 lakh.

Now, on account of the deeming provisions of section 9B, it is deemed that the firm "FR" has transferred land "S" to partner "A". However, since the sale consideration is equal to indexed cost of acquisition, there will not be any capital gains tax. For partner "A", the cost of acquisition of this land would be ₹ 45 lakh.

The net book profit of ₹ 15 lakh (capital gains of ₹ 15 lakh without indexation) is to be credited in the capital account of each of the three partners, i.e., ₹ 5 lakh each. Thus, partner "A" capital account would increase to ₹ 105 lakh. This exercise is required to be carried out since section 9B mandates that it is to be deemed that the firm "FR" has transferred the land "S" to partner "A". Thus, any gain in the books is to be apportioned to partners' capital accounts.

As against capital balance of ₹ 105 lakh, partner "A" has received ₹ 120 lakh (money of ₹ 75 Lakh plus land "S" of fair market value of ₹ 45 lakh). Thus, ₹ 15 lakh is required to be charged to tax under section 45(4).

On account of section 48(iii), read with rule 8AB and this guidance note, this ₹ 15 lakh is to be attributed to the remaining capital assets of the firm "FR" on the basis of increase in the value due to revaluation of existing capital assets, or due to recognition of the value of self-generated goodwill, based on the valuation report of registered valuer. In this case, as per this report, the value of patent "T" has increased by ₹ 15 lakh and the self-generated goodwill value has been recognised at ₹ 30 lakh. Thus, one third of ₹ 15 lakh (i.e. ₹ 5 lakh) would be attributed to patent "T", while two third of ₹ 15 lakh (i.e. ₹ 10 lakh) would be attributed to self-generated goodwill. ₹ 5 lakh attributed to patent "T" shall not be added to the block of the assets and no depreciation shall be available on the same. When patent "T" gets transferred subsequently, this ₹ 5 lakh attributed shall be reduced from the full value of the consideration received or accruing as a result of transfer of patent "T" by the firm "FR", and the net value shall be considered for reduction from the written

down value of the intangible block under section 43(6)(c) or for calculation of capital gains, as the case may be, under section 50. (Refer guidance in paragraph 5 of this circular). Let us say that Patent T is sold for ₹ 25 lakh. ₹ 5 lakh shall be reduced from ₹ 25 lakh and only net amount of ₹ 20 lakh shall be considered for reduction from the written down value of the intangible block under section 43(6)(c) or for calculation of capital gains, as the case may be, under section 50. Similarly, when goodwill gets sold subsequently, ₹ 10 lakh would be reduced from its sales consideration under section 48(iii).

The amount ₹ 15 lakh which is charged to tax under section 45(4) shall be charged as short term capital gains, as ₹ 5 lakh is attributed to the Patent "T" which is part of block of assets and ₹ 10 lakh is attributed to self-generated goodwill. In accordance with rule 8AA(5), both of these are to be characterised as short term capital gains.

Note: For the purpose of calculation of depreciation under section 32, the written down value of the block of asset "intangible" of which Patent "T" is part, would remain ₹ 45 lakh and would not be increased to ₹ 60 lakh due to revaluation during the year. In this regard it may be highlighted that the following provisions are relevant in determining the amount on which depreciation is allowable under the Act:

- *Explanation 2* of section 32(1) provides that the term "written down value of the block of assets" shall have the same meaning as in section 43(6)(c).
- Section 43(6)(c), with respect to block of assets, inter alia, provides that the aggregate of the written down values of all the assets falling within that block of assets at the beginning of the previous year is to be increased by the actual cost of any asset falling within that block, acquired during the previous year. This clause does not allow any increase on account of revaluation.
- Section 43(1) which defines "Actual cost" as actual cost of the assets to the assessee. In revaluation, there is no actual cost to the assessee.

Further, section 32 does not allow depreciation on goodwill. If in the given example "self-generated goodwill" is replaced by "self-generated asset", even then, the depreciation will not be admissible on the amount of ₹ 30 lakh recognised in valuation. In this regard it may be highlighted that the above mentioned provisions, in the immediate preceding paragraph, are also applicable to "self-generated asset" and since there is no actual cost to assessee in case of "self-generated asset", depreciation is not allowable under section 32 on an asset whose actual cost is nil.

(8) Compensation on compulsory acquisition [Section 45(5)]

Sometimes, a building or some other capital asset belonging to a person is taken over by the Central Government by way of compulsory acquisition. In that case, the consideration for the transfer is determined by the Central Government or RBI. When the Central Government pays the above compensation, capital gains may arise. Such capital gains are **chargeable as income of the previous year in which such compensation or part thereof, was first received.**

Enhanced Compensation- Many times, persons whose capital assets have been taken over by the Central Government and who get compensation from the government go to the court of law for enhancement of compensation. If the court awards a compensation which is higher than the original compensation, the difference thereof will be chargeable to capital gains in the year in which the same is received from the government.

Cost of acquisition in case of enhanced compensation - For this purpose, the cost of acquisition and cost of improvement shall be taken to be *nil*.

Compensation received in pursuance of an interim order deemed as income chargeable to tax in the year of final order - In order to remove the uncertainty regarding the year in which the amount of compensation received in pursuance of an interim order of the court is to be charged to tax, a proviso has been inserted after clause (b) to provide that such compensation shall be deemed to be income chargeable under the head 'Capital gains' in the previous year in which the final order of such court, Tribunal or other authority is made.

Reduction of enhanced compensation - Where capital gain has been charged on the compensation received by the assessee for the compulsory acquisition of any capital asset or enhanced compensation received by the assessee and subsequently such compensation is reduced by any court, tribunal or any authority, the assessed capital gain of that year shall be recomputed by taking into consideration the reduced amount. This re-computation shall be done by way of rectification under section 155.

Death of the transferor- It is possible that the transferor may die before he receives the enhanced compensation. In that case, the enhanced compensation or consideration will be chargeable to tax in the hands of the person who receives the same.

(9) Taxability of capital gains in case of Specified Agreement [Section 45(5A)]

Genuine hardship on account of taxability of capital gains in the year of transfer of property to developer: The definition of 'transfer', *inter alia*, includes any arrangement or transaction where any rights are handed over in execution of part performance of contract, even though the legal title has not been transferred.

Applying the definition of transfer, under these development agreements, the transfer took place in the year in which the owner of the immovable property, being land or building or both handed over the immovable property to the developer.

Consequently, the capital gains tax liability in the hands of the owner would arise in the year in which the possession of immovable property is handed over to the developer for development of a project, in spite of the fact that the consideration thereof (i.e. the actual constructed property) will be received only after a couple of years.

Deferment of taxability of capital gains: With a view to minimise the genuine hardship which the owner of land or building may face in paying capital gains tax in the year of transfer, section 45(5A) provides that

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

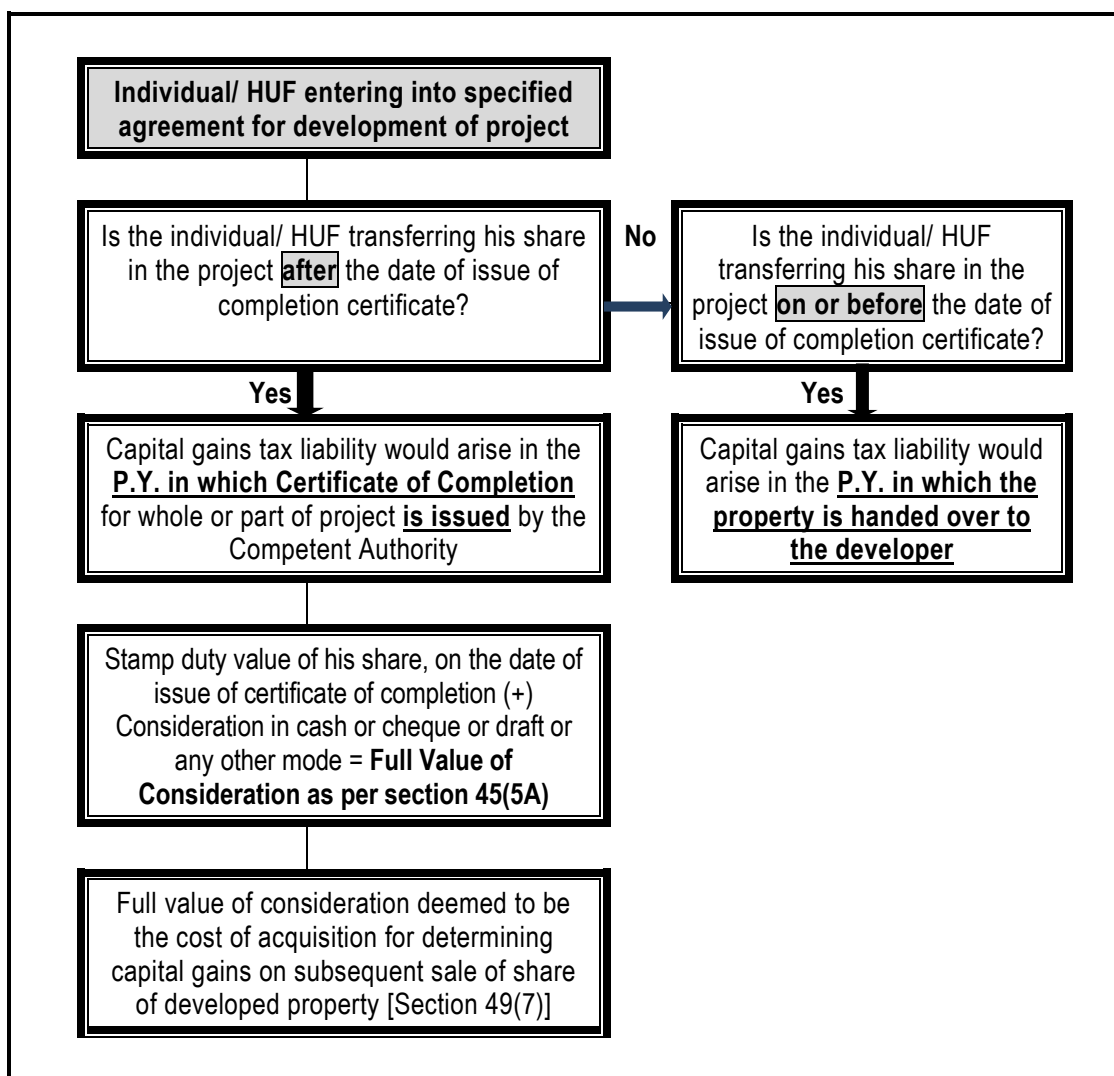
Meaning of Specified Agreement: Specified agreement means the registered agreement in which a person owning land or building or both, agrees to allow another person to develop a real estate project on such land or building or both, in consideration of a share, being land or building or both in such project, whether with or without payment of part of the consideration in cash.

Full value of consideration: For the purpose of section 48, the stamp duty value of his share, being land or building or both, in the project on the date of issuing of said certificate of completion as increased by ***any consideration received in cash or by a cheque or draft or by any other mode***, if any, shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset.

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

Meaning of certain terms:

Term	Meaning
Competent authority	The authority empowered to approve the building plan by or under any law for the time being in force
Stamp duty value	The value adopted or assessed or reassessable by any authority of Government for the purpose of payment of stamp duty in respect of an immovable property being land or building or both.

Taxability of capital gains in case of Specified Agreement: At a Glance

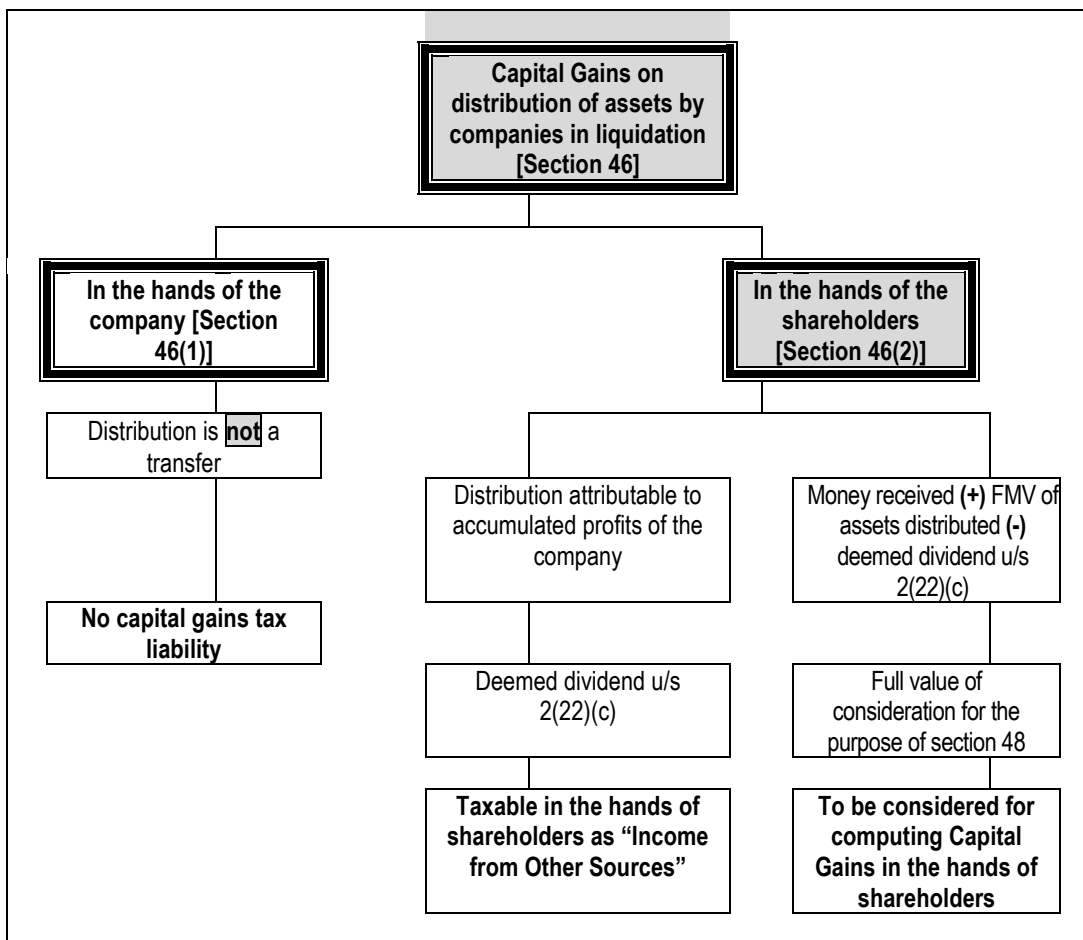


4.6 CAPITAL GAINS ON DISTRIBUTION OF ASSETS BY COMPANIES IN LIQUIDATION [SECTION 46]

- (1) **In the hands of liquidated company:** Where the assets of a company are distributed to its shareholders on its liquidation, such distribution shall **not** be regarded as a transfer by the company for the purposes of section 45 [Section 46(1)].

The above section is restricted in its application to the circumstances mentioned therein *i.e.*, the assets of the company must be distributed to shareholders on the liquidation of the company. If, however, the liquidator sells the assets of the company resulting in a capital gain and distributes the funds so collected, the company will be liable to pay tax on such gains.

- (2) **In the hands of shareholders:** Shareholders receive money or other assets from the company on its liquidation. They will be chargeable to income-tax under the head 'capital gains' in respect of the market value of the assets received on the date of distribution, or the moneys so received by them. The portion of the distribution which is attributable to the accumulated profits of the company is to be treated as dividend income of the shareholder under section 2(22)(c), which would be taxable in the hands of shareholders under the head "Income from other sources". The same will be deducted from the amount received/ fair market value for the purpose of determining the full value of consideration for computation of capital gains.
- (3) **Capital gains tax on subsequent sale by the shareholders:** If the shareholder, after receipt of any such asset on liquidation of the company, transfers it, then Fair Market Value on the date of distribution would be treated as cost of acquisition of such asset.



4.7 CAPITAL GAINS ON BUYBACK OF SHARES OR OTHER SECURITIES [SECTION 46A]

- (1) **In case of specified securities other than shares:** Any consideration received by a holder of specified securities (other than shares) from any company on purchase of its specified securities is chargeable to tax in the hands of the holder of specified securities. The difference between the cost of acquisition and the value of consideration received by the holder of securities is chargeable to tax as capital gains in his hands. The computation of capital gains shall be made in accordance with the provisions of section 48.

Such capital gains shall be chargeable in the year in which such securities were purchased by the company. For this purpose, "specified securities" shall have the same meaning as given in *Explanation* to section 77A of the Companies Act, 1956³.

As per Section 68 of the Companies Act, 2013, "specified securities" includes employees' stock option or other securities as may be notified by the Central Government from time to time.

Note – As far as shares are concerned, this provision would be attracted in the hands of the shareholder only if the shares are bought back by a company, other than a domestic company.

- (2) **In case of shares (whether listed or unlisted):** In case of buyback of shares (whether listed or unlisted) by domestic companies, additional income-tax @20% (plus surcharge@12% and cess@4%) is leviable in the hands of the company under section 115QA.

Consequently, the income arising to the shareholders in respect of such buyback of shares by the domestic company would be exempt under section 10(34A), since the domestic company is liable to pay additional income-tax on the buyback of shares.

Taxation provisions in respect of buyback

(1)	(2)	(3)	(4)
Taxability in the hands of	Buyback of shares by domestic companies	Buyback of shares by a company, other than a domestic company	Buyback of specified securities by any company
Company	Subject to additional income-tax@23.296%.	Not subject to tax in the hands of the company.	Not subject to tax in the hands of the company.
Shareholder/holder of specified securities	Income arising to shareholders exempt under section 10(34A)	Income arising to shareholder taxable as capital gains u/s 46A.	Income arising to holder of specified securities taxable as capital gains u/s 46A.



4.8 IMPORTANT DEFINITIONS

- (a) **Amalgamation [Section 2(1B)]** - "Amalgamation", in relation to companies, means
- the merger of one or more companies with another company or
 - the merger of two or more companies to form one company

³ Now section 68 of the Companies Act, 2013

(the company or companies which so merge being referred to as the amalgamating company or companies and the company with which they merge or which is formed as a result of the merger, as the amalgamated company) in such a manner that -

- (i) all the property of the amalgamating company or companies immediately before the amalgamation becomes the property of the amalgamated company by virtue of the amalgamation;
- (ii) all the liabilities of the amalgamating company or companies immediately before the amalgamation become the liabilities of the amalgamated company by virtue of the amalgamation;
- (iii) shareholders holding not less than three-fourth in value of the shares in the amalgamating company or companies (other than shares already held therein immediately before the amalgamation by, or by a nominee for, the amalgamated company or its subsidiary) become shareholders of the amalgamated company by virtue of the amalgamation,

otherwise than as a result of the acquisition of the property of one company by another company pursuant to the purchase of such property by the other company or as a result of the distribution of such property to the other company after the winding up of the first mentioned company.

(b) Demerger [Section 2(19AA)] - "Demerger", in relation to companies, means the transfer, pursuant to a scheme of arrangement under sections 230 to 232 of the Companies Act, 2013, by a demerged company of its one or more undertaking to any resulting company in such a manner that -

- (i) all the property of the undertaking, being transferred by the demerged company, immediately before the demerger, becomes the property of the resulting company by virtue of the demerger;
- (ii) all the liabilities relatable to the undertaking, being transferred by the demerged company, immediately before the demerger, become the liabilities of the resulting company by virtue of the demerger;
- (iii) the property and the liabilities of the undertaking or undertakings being transferred by the demerged company are transferred at values appearing in its books of account immediately before the demerger;

However, this provision does not apply where, in compliance to the Indian Accounting Standards specified in Annexure to the Companies (Indian Accounting Standards) Rules, 2015, the resulting company records the value of the property and the liabilities of the undertaking or undertakings at a value different from the value appearing in the books of account of the demerged company, immediately before the demerger.

- (iv) the resulting company issues, in consideration of the demerger, its shares to the shareholders of the demerged company on a proportionate basis except where the resulting company itself is a shareholder of the demerged company;

Note - *If the resulting company is a shareholder of the demerged company, it cannot issue shares to itself. However, the resulting company has to issue shares to the other shareholders of the demerged company.*

- (v) the shareholders holding not less than three-fourths in value of the shares in the demerged company (other than shares already held therein immediately before the demerger, or by a nominee for, the resulting company or, its subsidiary) become shareholders of the resulting company or companies by virtue of the demerger, otherwise than as a result of the acquisition of the property or assets of the demerged company or any undertaking thereof by the resulting company;
- (vi) the transfer of the undertaking is on a going concern basis;
- (vii) the demerger is in accordance with the conditions, if any, notified under section 72A(5) by the Central Government in this behalf.

Explanation in respect of Certain Terms:

Explanation	Term	Particulars
1	Undertaking	Includes - any part of an undertaking or a unit or division of an undertaking or - a business activity taken as a whole, However, it does not include individual assets or liabilities or any combination thereof not constituting a business activity.
2	Liabilities	Includes (a) the liabilities which arise out of the activities or operations of the undertaking; (b) the specific loans or borrowings (including

		debentures) raised, incurred and utilised solely for the activities or operations of the undertaking; and (c) in cases, other than those referred to in clause (a) or clause (b), so much of the amounts of general or multipurpose borrowings, if any, of the demerged company as stand in the same proportion which the value of the assets transferred in a demerger bears to the total value of the assets of such demerged company immediately before the demerger.
3	Property	For the purpose of determining the value of the property, any change in the value of assets consequent to their revaluation shall be ignored.
4 & 5	Splitting up or reconstruction	(i) Splitting up or the reconstruction of - any authority or - a body constituted or established under a Central, State or Provincial Act, or - a local authority or - a public sector company, into separate authorities or bodies or local authorities or companies, as the case may be, shall be deemed to be a demerger if such split up or reconstruction fulfils such conditions as may be notified by the Central Government in the Official Gazette. (ii) The reconstruction or splitting up of a company, which ceased to be a public sector company as a result of transfer of its shares by the Central Government, into separate companies, shall be deemed to be a demerger, if such reconstruction or splitting up has been made to give effect to any condition attached to the said transfer of shares and also fulfils such other conditions as may be notified by the Central Government.
6	Reconstruction or splitting up of a public sector company	The reconstruction or splitting up of a public sector company into separate companies shall be deemed to be a demerger, if such reconstruction or splitting up has been made to transfer any asset of the demerged company to the resulting company and the resulting company —

		(i) is a public sector company on the appointed day indicated in such scheme, as may be approved by the Central Government or any other body authorised under the provisions of the Companies Act, 2013 or any other law for the time being in force governing such public sector companies in this behalf; and (ii) fulfils such other conditions as may be notified by the Central Government.

- (c) **Demerged company [Section 2(19AAA)]** - Demerged company means the company whose undertaking is transferred, pursuant to a demerger, to a resulting company.
- (d) **Resulting company [Section 2(41A)]** - Resulting company means one or more companies (including a wholly owned subsidiary thereof) to which the undertaking of the demerged company is transferred in a demerger and, the resulting company in consideration of such transfer of undertaking, issues shares to the shareholders of the demerged company and includes any authority or body or local authority or public sector company or a company established, constituted or formed as a result of demerger.



4.9 TRANSACTIONS NOT REGARDED AS TRANSFER [SECTION 47]

Section 47 specifies certain transactions which will not be regarded as transfer for the purpose of capital gains tax:

(1)	(2)	(3)	(4)
Clause of section 47	Particulars of transfer of capital asset referred to in column (3)	Asset transferred	Conditions to be fulfilled
47(i)	Any distribution on the total or partial partition of a HUF	Any capital asset	-
47(iii)	Any transfer under a gift or will or an irrevocable trust	Any capital asset. However, it shall not include transfer under a gift or an irrevocable trust of a capital asset being shares, debentures or warrants allotted by a company	-

		directly or indirectly to its employees under the Employees' Stock Option Plan or Scheme offered to its employees in accordance with the guidelines issued in this behalf by the Central Government	
47(iv)	Any transfer by a company to its subsidiary company	Any capital asset	(a) The parent company or its nominees must hold the whole of the shares of the subsidiary company; and (b) The subsidiary company must be an Indian company.
47(v)	Any transfer by a subsidiary company to the holding company	Any capital asset	(a) The whole of share capital of the subsidiary company must be held by the holding company; and (b) The holding company must be an Indian company. The exemption mentioned in section 47(iv) or (v) will not apply if a capital asset is transferred as stock-in-trade.
47(vi)	Any transfer by the amalgamating company to the amalgamated company, in a scheme of amalgamation.	Any capital asset	The amalgamated company should be an Indian company
47(via)	Any transfer by the amalgamating foreign company to the amalgamated foreign company, in a scheme of amalgamation of two foreign companies.	Capital asset, being shares held in an Indian company	(a) At least 25% of the shareholders of the amalgamating foreign company must continue to remain shareholders of the

			amalgamated foreign company; (b) Such transfer should not attract capital gains in the country in which the amalgamating company is incorporated.
47(viaa)	Any transfer by a banking company to banking institution, in a scheme of amalgamation of the banking company with the banking institution, sanctioned and brought into force by the Central Government under section 45(7) of the Banking Regulation Act, 1949.	Any capital asset	-
47(viab)	Any transfer by the amalgamating foreign company to the amalgamated foreign company, in a scheme of amalgamation of two foreign companies.	Capital asset, being share of a foreign company, referred to in <i>Explanation 5</i> to section 9(1)(i), which derives, directly or indirectly, its value substantially from the share or shares of an Indian company	(a) At least 25% of the shareholders of the amalgamating foreign company must continue to remain shareholders of the amalgamated foreign company; (b) Such transfer should not attract capital gains in the country in which the amalgamating company is incorporated.
47(vib)	Any transfer, in a demerger, by the demerged company to the resulting company	Any capital asset	The resulting company should be an Indian company.
47(vic)	Any transfer by the demerged foreign company to the resulting foreign company, in a scheme of demerger of a foreign company.	Capital asset, being a share or shares held in an Indian company	(a) The shareholders holding at least three-fourths in value of the shares of the demerged foreign company continue to

			remain shareholders of the resulting foreign company; (b) Such transfer should not attract tax on capital gains in the country, in which the demerged foreign company is incorporated. However, the provisions of sections 391 to 394 of the Companies Act, 1956⁴, shall not apply in case of demergers referred to in this clause.
47(vica)	Any transfer by the predecessor co-operative bank to the successor co-operative bank or to the converted banking company, in a business reorganization of co-operative bank.	Any capital asset	-
47(vicb)	Any transfer by a shareholder of predecessor co-operative bank, in a business reorganization.	Capital asset, being a share or shares held by him in the predecessor co-operative bank	If the transfer is made in consideration of the allotment to him of any share or shares in the successor co-operative bank or the converted banking company. Note – Refer to section 44DB for the meanings of “business reorganisation”, “converted banking company”, “predecessor co-operative bank” and “successor co-operative bank”.

⁴Sections 230 to 232 of the Companies Act, 2013

47(vicc)	Any transfer by the demerged foreign company to the resulting foreign company, in a scheme of demerger of a foreign company	Capital asset, being a share of a foreign company referred to in <i>Explanation 5</i> to section 9(1)(i), which derives, directly or indirectly, its value substantially from the share or shares of an Indian company	(a) The shareholders holding at least three-fourths in value of the shares of the demerged foreign company continue to remain shareholders of the resulting foreign company; (b) Such transfer should not attract capital gains in the country in which the demerged foreign company is incorporated. However, the provisions of sections 391 to 394 of the Companies Act, 1956³, shall not apply in case of demergers referred to in this clause.
47(vid)	Any transfer or issue of shares by the resulting company, in a scheme of demerger to the shareholders of the demerged company.	Capital asset, being shares	The transfer or issue should be made in consideration of demerger of the undertaking.
47(vii)	Any transfer by a shareholder of amalgamating company, in a scheme of amalgamation of companies	Capital asset, being shares held in the amalgamating company	(a) The transfer is made in consideration of the allotment to him of any share in the amalgamated company, except where the shareholder itself is the amalgamated company; and (b) The amalgamated company should be an Indian company.

Example:

Let us take a case where A Ltd., an Indian company, holds 60% of shares in B Ltd. B Ltd. amalgamates with A Ltd. Since A Ltd. itself is the shareholder of B Ltd., A Ltd., being the amalgamated company, cannot issue shares to itself. However, A Ltd. has to issue shares to the other shareholders of B Ltd.

47(via)	Any transfer by a non-resident to another non-resident outside India.	Capital asset, being bonds or Global Depository Receipts (GDRs) referred to in section 115AC(1)	Conditions laid down in section 115AC(1) should be fulfilled: (a) Bonds should be of: (i) an Indian company (issued in accordance with Notified scheme of Central Government); or (ii) a public sector company sold by the Government and purchased by the non-resident in foreign currency (b) GDRs should be issued: (i) in accordance with notified scheme of Central Government against initial issue of shares of an Indian company and purchased by the non-resident in foreign currency; or (ii) against the shares of a public sector company sold by the

			Government and purchased by him in foreign currency through an approved intermediary; or (iii) issued or reissued in accordance with Notified Scheme of Central Government against the existing shares of an Indian company purchased by him in foreign currency through an approved intermediary.
47(viiaa)	Any transfer, made outside India, by a non-resident to another non-resident.	Capital asset, being a rupee denominated bond of an Indian company issued outside India	-
47(viiab)	Any transfer of specified capital assets by a non-resident on a recognised stock exchange located in any International Financial Services Centre (IFSC)	Capital asset, being - A bond or GDR referred to in section 115AC(1) (or) - A rupee denominated bond of an Indian company (or) - A derivative (or) - Any other security notified by the Central Government.	The consideration for such transaction is paid or payable in foreign currency.

		Accordingly, the Central Government has, vide Notification No. 16/2020, dated 5.3.2020 and Notification No. 89/2022 dated 3.8.2022, specified the following securities: (i) foreign currency denominated bond; (ii) unit of a Mutual Fund; (iii) unit of a business trust; (iv) foreign currency denominated equity share of a company; (v) unit of Alternative Investment Fund; (vi) Bullion Depository Receipt with underlying bullion which are listed on a recognised stock exchange located in any IFSC in accordance with the regulations made by the SEBI under the SEBI Act 1992 or the IFSC Authority under the IFSC Authority Act 2019, as the case may be.	
47(viiac)	Any transfer, in a relocation, of a capital asset by the original fund to the resulting fund	Any capital asset	-
47(viiad)	Any transfer by a shareholder or unit holder or interest holder of original fund, in a relocation of fund.	Capital asset, being share or unit or interest held by the shareholder in the original fund	Transfer of capital asset should be in consideration for the share or unit or interest in the resultant fund.

Original fund – Original Fund means

(A) a fund established or incorporated or registered outside India, which collects funds from its members for investing it for their benefit and fulfils the following conditions, namely-

- (i) the fund is not a person resident in India;
- (ii) the fund is a resident of a country or a specified territory with which an agreement referred to in section 90(1) or 90A(1) has been entered into; or is established or incorporated or registered in a country or a specified territory as may be notified by the Central Government in this behalf;
- (iii) the fund and its activities are subject to applicable investor protection regulations in the country or specified territory where it is established or incorporated or is a resident; and
- (iv) fulfils such other conditions as may be prescribed;

Accordingly, vide Notification No. 80/2022 dated 8.7.2022, Rule 21AL prescribes that the aggregate participation or investment in the original fund, directly or indirectly, by persons resident in India shall not exceed 5% of the corpus of such fund at the time of transfer of a capital asset to a resultant fund being a Category III AIF.

(B) an investment vehicle, in which Abu Dhabi Investment Authority is the direct or indirect sole shareholder or unit holder or beneficiary or interest holder and such investment vehicle is wholly owned and controlled, directly or indirectly, by the Abu Dhabi Investment Authority or the Government of Abu Dhabi; or

(C) a fund notified by the Central Government subject to the conditions specified.

Relocation - Transfer of assets of the original fund, or of its wholly owned special purpose vehicle, to a resultant fund **on or before 31.3.2025**, where consideration for such transfer is discharged in the form of share or unit or interest in the resulting fund to –

- (i) shareholder or unit holder or interest holder of the original fund, in the same proportion in which the share or unit or interest was held by such shareholder or unit holder or interest holder in such original fund, in lieu of their shares or units or interests in the original fund; or
- (ii) the original fund, in the same proportion as referred to in (i), in respect of which the share or unit or interest is not issued by resultant fund to its shareholder or unit holder or interest holder.

Resultant fund - A fund established or incorporated in India in the form of a trust or a company or a limited liability partnership, which

- (i) has been granted a certificate of registration as a Category I or Category II or Category III AIF, and is regulated under the SEBI (Alternative Investment Fund) Regulations, 2012 made under the SEBI Act, 1992 **or regulated under the IFSC Authority (Fund Management) Regulations, 2022 made under the IFSC Authority Act, 2019**; and
- (ii) is located in any IFSC as referred to in section 80LA(1A).

47(viaae)	Any transfer by India Infrastructure Finance Company Limited to an institution established for financing the infrastructure and development.	Any capital asset	The institution should be set up under an Act of Parliament and notified by the Central Government.
47(viaf)	Any transfer by a public sector company to another public sector company notified by the Central Government for this purpose or to the Central Government or to a State Government.	Any capital asset	Transfer should be under a plan approved by the Central Government.
47(viib)	Any transfer of a capital asset made outside India by a non-resident to another non-resident.	Capital asset, being a Government Security carrying a periodic payment of interest.	The transfer should be through an intermediary dealing in settlement of securities.
47(viic)	Any transfer by way of redemption by an individual	Capital asset, being Sovereign Gold Bond issued by the RBI under the Sovereign Gold Bond Scheme, 2015	-

Sovereign Gold Bond Scheme, 2015

This scheme of the Government of India is intended to reduce the demand for physical gold and consequently, reduce the foreign exchange outflow due to import of gold. The two-fold benefits of this scheme are:

- (1) The gold bond would serve as a substitute for physical gold; and
- (2) The gold bond would provide security to the individual investor investing in gold for meeting their social obligation.

47(viid)	<i>Any transfer of a capital asset</i>	<i>Capital asset, being conversion of gold into Electronic Gold Receipt issued by a Vault Manager, or conversion of Electronic Gold Receipts into gold.</i>	<i>Vault Manger – Any person who carries on or intends to carry on the business of providing vaulting services.</i> <i>Vaulting service” in relation to gold means the storage and safekeeping of gold deposited with the Vault</i>

			<i>Manager, by the depositor, for the purpose of trading in Electronic Gold Receipt and providing services incidental thereto, and includes—(i)utilizing the services of assayers empanelled with the Stock Exchanges for testing as per the gold standard, wherever required; (ii) coordination with depositories for creation, transfer and extinguishment of Electronic Gold Receipt; and (iii) providing deposit, storage and withdrawal services to the beneficial owners</i>
47(ix)	Any transfer to the Government or to a University or the National Museum, National Art Gallery, National Archives or any other public museum or institution notified by the Central Government to be of national importance or to be of renown throughout any State	(i) work of art (ii) archaeological, scientific or art collection (iii) book (iv) manuscript (v) drawing (vi) painting (vii) photograph or (viii) print.	-
47(x)	Any transfer by way of conversion of bonds or debentures, debenture-stock or deposit certificates in any form, of a company into shares or debentures of that company	Capital asset, being bonds or debentures, debenture-stock or deposit certificates in any form, of a company	-

47(xa)	Any transfer by way of conversion of bonds into shares or debentures of any company	Capital asset, being bonds referred to in section 115AC(1)(a)	Conditions laid down in section 115AC(1) should be fulfilled i.e., Bonds should be of: (i) an Indian company (issued in accordance with Notified scheme of Central Government); or (ii) a public sector company sold by the Government and purchased by the non-resident in foreign currency
47(xb)	Any transfer by way of conversion of preference shares of a company into equity shares of that company	Conversion of preference shares of a company	-
47(xii)	Any transfer under a scheme prepared and sanctioned under section 18 of the Sick Industrial Companies (Special Provisions) Act, 1985, by a sick industrial company which is managed by its workers' co-operative	Land of a sick industrial company	Such transfer is made in the period commencing from the previous year in which the said company has become a sick industrial company and ending with the previous year during which the entire net worth of such company becomes equal to or exceeds the accumulated losses.
47(xiii)	- Transfer of a capital asset or intangible asset by a firm to a company on succession of the firm by a company in the business carried on by the firm - Transfer of a capital asset by AOP/BOI to company consequent to demutualisation or	- Any capital asset or intangible asset - Capital Asset	Discussed in detail at the end of this table

	corporatisation of a recognised stock exchange in India		
47(xiiia)	Any transfer of a membership right by a member of recognised stock exchange in India for acquisition of shares and trading or clearing rights acquired by such member in that recognised stock exchange in accordance with a scheme for demutualisation or corporatisation approved by SEBI	Capital asset, being membership right	-
47(xiiib)	- Transfer of capital asset or intangible asset by private company or unlisted public company to LLP - Transfer of shares held in the company by the shareholder as a result of conversion of the company into a LLP	- Any Capital asset or intangible asset - Capital asset, being shares in the company	Discussed in detail at the end of this table
47(xiv)	Transfer of capital asset or intangible asset by sole proprietary concern to a company on succession of the sole proprietary concern by the company	Capital asset or intangible asset	(i) All assets and liabilities of the sole proprietary concern relating to the business immediately before the succession should become the assets and liabilities of the company; (ii) The sole proprietor should hold not less than 50% of the total voting power in the company, and his shareholding should continue in such manner for a period of 5 years from the date of succession; (iii) The sole proprietor should not receive any consideration or

			benefit in any form, directly or indirectly, other than by way of allotment of shares in the company.
47(xv)	Any transfer in a scheme for lending of any securities under an agreement or arrangement which the assessee has entered into with the borrower of such securities and which is subject to the guidelines issued by SEBI or the RBI	-	-
47(xvi)	Transfer of capital asset under Reverse Mortgage		Discussed in detail at the end of this table
47(xvii)	Any transfer of a capital asset to a business trust	Capital asset, being share of a special purpose vehicle	Capital asset should be transferred in exchange of units allotted by that trust to the transferor
47(xviii)	Any transfer by a unit holder in the consolidating scheme of a mutual fund	A unit or units, held by him in the consolidating scheme of a mutual fund	Transfer is made in consideration of the allotment to unit holder of a capital asset, being a unit or units, in the consolidated scheme of the mutual fund. However, this exemption would be available only if, the consolidation takes place of two or more schemes of equity oriented fund or of two or more schemes of a fund other than equity oriented fund.
47(xix)	Any transfer by a unit holder in the consolidating plan of a mutual fund scheme	A unit or units, held by him in the consolidating plan of a mutual fund scheme	Transfer should be made in consideration of the allotment to unit holder of a capital asset, being a unit or units, in the consolidated plan of that scheme of the mutual fund.

Consolidating scheme - The scheme of a mutual fund which merges under the process of consolidation of the schemes of mutual fund in accordance with the SEBI (Mutual Funds) Regulations, 1996 made under SEBI Act, 1992.

Consolidated scheme - The scheme with which the consolidating scheme merges or which is formed as a result of such merger.

Consolidating plan - The plan within a scheme of a mutual fund which merges under the process of consolidation of the plans within a scheme of mutual fund in accordance with the SEBI (Mutual Funds) Regulations, 1996 made under SEBI Act, 1992.

Consolidated plan - The plan with which the consolidating plan merges or which is formed as a result of such merger.

Mutual Fund - A mutual fund specified under section 10(23D), i.e.,

- (i) a Mutual Fund registered under the SEBI Act, 1992 or regulations made thereunder;
- (ii) such other Mutual Fund set up by a public sector bank or a public financial institution or authorised by the Reserve Bank of India and subject to conditions notified by the Central Government.

47(xx)	Any transfer of a capital asset held by a public sector company	Capital asset, being an interest in a joint venture.	Transfer should be in exchange of shares of a company incorporated outside India by the Government of a foreign State, in accordance with the laws of that foreign State. Joint venture" means a business entity, as may be notified by the Central Government.

ILLUSTRATION 2

M held 2000 shares in a company ABC Ltd. This company amalgamated with another company during the previous year ending 31-3-2024. Under the scheme of amalgamation, M was allotted 1000 shares in the new company. The market value of shares allotted is higher by ₹ 50,000 than the value of holding in ABC Ltd.

The Assessing Officer proposes to treat the transaction as an exchange and to tax ₹ 50,000 as capital gain. Is he justified?

SOLUTION

In the above example, assuming that the amalgamated company is an Indian company, the transaction is squarely covered by the exemption under section 47(vii) and the proposal of the Assessing Officer to treat the transaction as an exchange is not justified.

Transfer of capital asset or intangible asset on succession of the firm by a company or by AOP/ BOI to company consequent to demutualisation or corporatisation of a recognised stock exchange [Section 47(xiii)]:

Any transfer of a capital asset or intangible asset (in the case of a firm) –

- (i) by a firm to a company where such firm is succeeded by that company; or
- (ii) to a company in the course of demutualisation or corporatisation of a recognised stock exchange in India as a result of which an AOP or BOI is succeeded by that company.

Conditions –

- (i) All assets and liabilities of the firm or AOP or BOI relating to the business immediately before the succession become the assets and liabilities of the company;
- (ii) All the partners of the firm immediately before the succession become the shareholders of the company in the same the proportion in which their capital accounts stood in the books of the firm on the date of succession;
- (iii) The partners of the firm do not receive any consideration or benefit in any form, directly or indirectly, other than by way of allotment of shares in the company;
- (iv) The partners of the firm together hold not less than 50% of the total voting power in the company, and their shareholding continues in such manner for a period of 5 years from the date of succession;
- (v) The demutualisation or corporatisation of a recognised stock exchange in India is carried out in accordance with a scheme for demutualisation or corporatisation approved by SEBI.

Transfer of capital asset or intangible asset by private company and share held by shareholder to LLP in a conversion of private company into a LLP [Section 47(xiiib)]:

- (i) Any transfer of a capital asset or intangible asset by a private company or unlisted public company to a LLP or
- (ii) Any transfer of a share or shares held in a company by a shareholder on conversion of a company into a LLP

in accordance with section 56 and section 57 of the Limited Liability Partnership Act, 2008.

Conditions –

- (i) All assets and liabilities of the company immediately before the conversion become the assets and liabilities of the LLP;
- (ii) all the shareholders of the company immediately before the conversion become partners of the LLP and their capital contribution and profit sharing ratio in the LLP are in the same proportion as their shareholding in the company on the date of conversion;
- (iii) No consideration other than share in profit and capital contribution in the LLP arises to the shareholders;
- (iv) The erstwhile shareholders of the company continue to be entitled to receive at least 50% of the profits of the LLP for a period of 5 years from the date of conversion;
- (v) The total sales, turnover or gross receipts in business of the company should not exceed ₹ 60 lakh in any of the three preceding previous years;
- (vi) The total value of assets as appearing in the books of account of the company in any of the three previous years preceding the previous year in which the conversion takes place, should not exceed ₹ 5 crore; and
- (vii) No amount is paid, either directly or indirectly, to any partner out of the accumulated profit of the company for a period of 3 years from the date of conversion.

Transfer of capital asset under Reverse Mortgage [Section 47(xvi)]:

Any transfer of a capital asset in a transaction of reverse mortgage under a scheme made and notified by the Central Government.

The Reverse Mortgage scheme is for the benefit of senior citizens, who own a residential house property. In order to supplement their existing income, they can mortgage their house property with a scheduled bank or housing finance company, in return for a lump-sum amount or for a regular monthly/ quarterly/ annual income. The senior citizens can continue to live in the house and receive regular income, without the botheration of having to pay back the loan.

The loan will be given up to, say, 60% of the value of residential house property mortgaged. Also, the bank/housing finance company would undertake a revaluation of the property once every 5 years. The borrower can use the loan amount for renovation and extension of residential property, family's medical and emergency expenditure etc., amongst others. However, he cannot use the amount for speculative or trading purposes.

The Reverse Mortgage Scheme, 2008, includes within its scope, disbursement of loan by an approved lending institution, in part or in full, to the annuity sourcing institution, for the purposes of periodic payments by way of annuity to the reverse mortgagor. This would be an additional mode of disbursement i.e., in addition to direct disbursements by the approved lending institution to the Reverse Mortgagor by way of periodic payments or lump sum payment in one or more tranches.

An annuity sourcing institution has been defined to mean Life Insurance Corporation of India or any other insurer registered with the Insurance Regulatory and Development Authority.

Maximum Period of Reverse Mortgage Loan:

	Mode of disbursement	Maximum period of loan
(a)	Where the loan is disbursed directly to the Reverse Mortgagor	20 years from the date of signing the agreement by the reverse mortgagor and the approved lending institution.
(b)	Where the loan is disbursed, in part or in full, to the annuity sourcing institution for the purposes of periodic payments by way of annuity to the Reverse Mortgagor	The residual life time of the borrower.

The bank will recover the loan along with the accumulated interest by selling the house after the death of the borrower. The excess amount will be given to the legal heirs. However, before resorting to sale of the house, preference will be given to the legal heirs to repay the loan and interest and get the mortgaged property released.

Therefore, section 47(xvi) clarifies that any transfer of a capital asset in a transaction of reverse mortgage under a scheme made and notified by the Central Government would not amount to a transfer for the purpose of capital gains.

Exemption of income received in a transaction of reverse mortgage [Section 10(43)]: Section 10(43), further, provides that the amount received by the senior citizen as a loan, either in lump sum or in instalments, in a transaction of reverse mortgage would be exempt from income-tax.

Capital gains tax liability would be attracted only at the stage of alienation of the mortgaged property by the bank/ housing finance company for the purposes of recovering the loan.

ILLUSTRATION 3

In which of the following situations capital gains tax liability does not arise?

- (i) *Mr. A purchased gold in 1970 for ₹ 25,000. In the P.Y. 2023-24, he gifted it to his son at the time of marriage. Fair market value (FMV) of the gold on the day the gift was made was ₹ 1,00,000.*
- (ii) *A house property is purchased by a Hindu undivided family in 1945 for ₹ 20,000. It is given to one of the family members in the P.Y. 2023-24 at the time of partition of the family. FMV on the day of partition was ₹ 12,00,000.*
- (iii) *Mr. B purchased 50 convertible debentures for ₹ 40,000 in 1995 which are converted into 500 shares worth ₹ 85,000 in November 2023 by the company.*

SOLUTION

We know that capital gains arise only when we transfer a capital asset. The liability of capital gains tax in the situations given above is discussed as follows:

- (i) As per the provisions of section 47(iii), transfer of a capital asset under a gift is **not** regarded as transfer for the purpose of capital gains. Therefore, capital gains tax liability does not arise in the given situation.
- (ii) As per the provisions of section 47(i), transfer of a capital asset (being in kind) on the total or partial partition of Hindu undivided family is **not** regarded as transfer for the purpose of capital gains. Therefore, capital gains tax liability does not arise in the given situation.
- (iii) As per the provisions of section 47(x), transfer by way of conversion of bonds or debentures, debenture stock or deposit certificates in any form of a company into shares or debentures of that company is **not** regarded as transfer for the purpose of capital gains. Therefore, capital gains tax liability does not arise in the given situation.

ILLUSTRATION 4

Mr. Abhishek a senior citizen, mortgaged his residential house with a bank, under a notified reverse mortgage scheme. He was getting loan from bank in monthly installments. Mr. Abhishek did not repay the loan on maturity and hence gave possession of the house to the bank, to discharge his loan. How will the treatment of long-term capital gain be on such reverse mortgage transaction?

SOLUTION

Section 47(xvi) provides that any transfer of a capital asset in a transaction of reverse mortgage under a scheme made and notified by the Central Government shall not be considered as a transfer for the purpose of capital gain.

Accordingly, the mortgaging of residential house with bank by Mr. Abhishek will not be regarded as a transfer. Therefore, no capital gain will be charged on such transaction.

Further, section 10(43) provides that the amount received by the senior citizen as a loan, either in lump sum or in instalment, in a transaction of reverse mortgage would be exempt from income-tax. Therefore, the monthly instalment amounts received by Mr. Abhishek would not be taxable.

However, capital gains tax liability would be attracted at the stage of alienation of the mortgaged property by the bank for the purposes of recovering the loan.



4.10 WITHDRAWAL OF EXEMPTION IN CERTAIN CASES

Section 47A provides for withdrawal of the benefit of exemption given by section 47 in certain cases.

- (1) **Conditions for transfer of capital asset by holding to its wholly owned subsidiary and vice versa [Section 47(iv) or 47(v)]:** As noted above, capital gains arising from the transfer of a capital asset by a company to its wholly owned subsidiary company is exempt from tax.

Similarly, capital gains arising from the transfer of a capital asset by the subsidiary company to its 100% holding company is also exempt from tax, provided under both circumstances the transferee is an Indian company.

Section 47A provides that the above exemption will be withdrawn if at any time before the expiry of 8 years from the date of transfer of a capital asset referred to above

- (1) such capital asset is converted by the transferee company or is treated by it as stock-in-trade of its business; or
- (2) the parent company or its nominees ceases to hold the whole of the share capital of the subsidiary company.

In the above two cases, the amount of capital gains exempt from tax by virtue of the provisions contained in section 47 will be deemed to be the income of the transferor company chargeable under the head 'capital gains' of the year in which such transfer took place.

- (2) **Transfer of membership of a recognised stock exchange for shares [Section 47(xi)]:** Capital gains not charged to tax under clause (xi) of section 47 shall be deemed to be the income chargeable under the head “capital gains” of the previous year in which such transfer took place if the shares of the company received in exchange for transfer of membership in a recognised stock exchange, are transferred at any time before the expiry of 3 years from the date of such transfer.
- (3) **Transfer of capital asset or intangible asset on succession of firm/ sole proprietary concern by a company [Section 47(xiii) or 47(xiv)]:** Where any of the conditions laid down in section 47(xiii) or (xvi), as the case may be, for succession of a firm or sole proprietary concern by a company are not complied with, the amount of profits or gains arising from the transfer of such capital asset or intangible asset shall be deemed to be the profits and gains **chargeable to tax of the successor company** for the previous year in which the conditions are not complied with.
- (4) **Transfer of capital asset or intangible asset by private company or unlisted public company and share held by shareholder to LLP in a conversion of private company or unlisted public company by a LLP [Section 47(xiiib)]:** If subsequent to the conversion of a private company or unlisted company into an LLP, any of the conditions laid down in section 47(xiiib) are not complied with, the capital gains not charged under section 45 would be deemed to be chargeable to tax in the previous year in which the conditions are not complied with, **in the hands of the LLP or the shareholder of the predecessor company**, as the case may be.



4.11 MODE OF COMPUTATION OF CAPITAL GAINS [SECTION 48]

- (1) **Computation of capital gains:** The income chargeable under the head ‘capital gains’ shall be computed by deducting the following items from the full value of the consideration received or accruing as a result of the transfer of the capital asset:
- (i) Expenditure incurred wholly and exclusively in connection with such transfer like, brokerage, stamp duty, registration fee, legal expenses etc.
 - (ii) The cost of acquisition and cost of any improvement thereto.

However, the cost of acquisition of the asset or the cost of improvement thereto would not include the deductions claimed in respect of interest u/s 24(b) or under the provisions of Chapter VI-A.

Deduction from cost of acquisition of a unit of a business trust - The cost of acquisition of a unit of a business trust **has to be reduced** -

- by any sum received by a unit holder from the business trust with respect to such unit, **which is not in the nature of interest and dividend** referred to in section 10(23FC) or **rental income** referred to in section 10(23FCA) and
- which **is not chargeable to tax in the hands of unit holders** under section 56(2)(xii) and **in the hands of business trust** under section 115UA(2).

However, where transaction of transfer of a unit is not considered as transfer under section 47 and cost of acquisition of such unit is determined under section 49, sum received with respect to such unit before such transaction as well as after such transaction has to be reduced from the cost of acquisition.

- (iii) in case of value of any money or capital asset received by a specified person from a specified entity referred to in section 45(4), **the amount chargeable to income-tax as income of such specified entity** under that section **which is attributable to the capital asset being transferred by the specified entity**, calculated in the prescribed manner **[The manner of attribution is prescribed under Rule 8AB, which was discussed in earlier paras along with section 45(4)]**.

(2) **No deduction in respect of STT paid:** No deduction, however, shall be allowed in computing the income chargeable under the head "Capital Gains" in respect of any amount paid on account of securities transaction tax under Chapter VII of the Finance (No.2) Act, 2004.

(3) **Cost inflation index:** As per second proviso to section 48, for computation of long term capital gains, the cost of acquisition and cost of improvement increased by applying the Cost Inflation Index (CII). Once the CII is applied to the cost of acquisition and cost of improvement, it becomes indexed cost of acquisition and indexed cost of improvement.

This means an amount which bears to the cost of acquisition, the same proportion as CII for the year in which the asset is transferred bears to the CII for the first year in which the asset was held by the assessee or for the year beginning on 1st April, 2001, whichever is later.

Similarly, indexed cost of any improvement means an amount which bears to the cost of improvement, the same proportion as CII for the year in which the asset is transferred bears to the CII for the year in which the improvement to the asset took place.

“Cost Inflation Index” in relation to a previous year means such index as may be notified by the Central Government having regard to 75% of average rise in the Consumer Price Index (Urban) for the immediately preceding previous year to such previous year.

Note – The benefit of indexation will not apply to the long-term capital gains arising from the transfer of bonds or debentures other than –

- (1) Capital indexed bonds issued by the Government; or
- (2) Sovereign Gold Bond issued by the RBI under the Sovereign Gold Bond Scheme, 2015.

In case of depreciable assets, unit of a specified mutual fund and marked linked debenture (discussed later), there will be no indexation and the capital gains will always be short-term capital gains.

The cost inflation indices for the financial years so far have been notified as under:

Financial Year	Cost Inflation Index
2001-02	100
2002-03	105
2003-04	109
2004-05	113
2005-06	117
2006-07	122
2007-08	129
2008-09	137
2009-10	148
2010-11	167
2011-12	184
2012-13	200
2013-14	220
2014-15	240
2015-16	254

2016-17	264
2017-18	272
2018-19	280
2019-20	289
2020-21	301
2021-22	317
2022-23	331
2023-24	348

- (4) **Full value of consideration of shares, debentures or warrants issued under ESOP in case of transfer under a gift etc.** - In case where shares, debentures or warrants allotted by a company directly or indirectly to its employees under the Employees' Stock Option Plan or Scheme in accordance with the guidelines issued in this behalf by the Central Government are transferred under a gift or irrecoverable trust, then the market value on the date of such transfer shall be deemed to be the full value of consideration received or accruing as a result of transfer of such asset.
- (5) **Special provision for non-residents** - In case of non-residents who invest foreign exchange to acquire capital assets, capital gains arising from the transfer of shares or debentures of an Indian company is to be computed in the following manner:
- The cost of acquisition, the expenditure incurred wholly and exclusively in connection with the transfer and the full value of the consideration are to be converted into the same foreign currency with which such shares were acquired.
 - The resulting capital gains shall be reconverted into Indian currency.

The aforesaid manner of computation of capital gains shall be applied for every purchase and sale of shares or debentures of an Indian company. Rule 115A is relevant for this purpose. Benefit of indexation will not be applied in this case.

Note – Refer to Chapter 21: Non-resident Taxation of Module 4 where Rule 115A is detailed.

Non-corporate non-residents and foreign companies to be subject to tax at a concessional rate of 10% (without indexation benefit or currency fluctuation) on long-term capital gains arising from transfer of unlisted securities or shares of a company in which public are not substantially interested [Section 112]

Rupee Denominated Bonds (RDBs)

As a measure to enable Indian companies to raise funds from outside India, the RBI has permitted them to issue rupee denominated bonds outside India. Accordingly, in case of non-resident assessee, any gains arising on account of appreciation of rupee between the date of purchase and the date of redemption of rupee denominated bond of an Indian company held by him against foreign currency in which investment is made shall not be included in computation of full value of consideration. This would provide relief to the non-resident investor who bears the risk of currency fluctuation.

Note – The benefit of indexation and currency fluctuation would not be applicable to the long-term capital gains arising from the transfer of the following assets referred to in section 112A –

- (i) equity share in a company on which STT is paid both at the time of acquisition and transfer
- (ii) unit of equity oriented fund or unit of business trust on which STT is paid at the time of transfer.



4.12 ASCERTAINMENT OF COST IN SPECIFIED CIRCUMSTANCES [SECTION 49]

A person becomes the owner of a capital asset not only by purchase but also by several other methods. Section 49 gives guidelines as to how to compute the cost under different circumstances.

Section	Circumstance	Cost of acquisition
49(1)	Cost to previous owner deemed as cost of acquisition of asset:	
	Where the capital asset became the property of the assessee: (i) on any distribution of assets on the total or partition of a HUF; (ii) under a gift or will; (iii) by succession, inheritance or devolution; (iv) on any distribution of assets on the liquidation of a company; (v) under a transfer to revocable or an irrevocable trust; (vi) under any transfer of capital asset	Cost for which the previous owner of the property acquired it. Notes – Cost of improvement – To the cost of acquisition, the cost of improvement to the asset, incurred by the previous owner or the assessee on or after 1.4.2001 must be added. Period of holding - It may be noted that section 2(42A) provides that in all such cases, for determining the period for which the capital asset is held by the

	by a holding company to its wholly owned subsidiary Indian company or by a subsidiary company to its 100% holding Indian company, referred to in section 47(iv) and 47(v), respectively; (vii) under any transfer referred to in section 47(vi) of a capital asset by amalgamating company to the amalgamated Indian company, in a scheme of amalgamation; (viii) under any transfer referred to in section 47(via) of shares held in an Indian company, in a scheme of amalgamation, by amalgamating foreign company to the amalgamated foreign company; (ix) under any transfer referred to in section 47(viaa) by a banking company to the banking institution, in a scheme of amalgamation of the banking company with a banking institution; (x) under any transfer of a capital asset, being a share of a foreign company, which derives directly or indirectly its value substantially from the share(s) of an Indian company, held by the amalgamating foreign company to the amalgamated foreign company, in the scheme of amalgamation referred to under section 47(viab); (xi) under any transfer referred to in section 47(vib), of a capital asset by the demerged company to the resulting Indian company, in a scheme of demerger; (xii) by any transfer of a capital asset, being share(s) held in an Indian company, by the demerged foreign company to the resulting foreign company, in a scheme of	<i>transferee, the period of holding of the asset by the previous owner shall also be considered.</i> Benefit of indexation - The Bombay High Court, in CIT v. Manjula J. Shah 16 Taxman 42, held that the indexed cost of acquisition in case of gifted asset has to be computed with reference to the year in which the previous owner first held the asset and not the year in which the assessee became the owner of the asset. <i>As per the plain reading of the provisions of section 48, however, the indexed cost of acquisition would be determined by taking CII for the year in which asset is first held by the assessee.</i>

	demerger referred to in section 47(vic); (xiii) by any transfer of a capital asset in a business reorganization under section 47(vica), by the predecessor co-operative bank to the successor co-operative bank; (xiv) by any transfer by a shareholder, in a business reorganisation referred to under section 47(vicb), of a capital asset being a share or shares held by him in the predecessor co-operative bank, if the transfer is made in consideration of the allotment to him of any share or shares in the successor co-operative bank; (xv) by transfer of a capital asset, being a share in a foreign company, which derives, directly or indirectly, its value substantially from the share or shares of an Indian company, held by the demerged foreign company to the resulting foreign company in the scheme of demerger referred under section 47(vicc); (xvi) by any transfer referred to in section 47(viiac), in a relocation, of a capital asset by the original fund to the resulting fund; (xvii) under any transfer referred to in section 47(viiad) by a shareholder or unit holder or interest holder, in a relocation, of a capital asset being a share or unit or interest held by him in the original fund in consideration for the share or unit or interest in the resultant fund; (xviii) under any transfer referred to in section 47(vii ae) of capital asset by India Infrastructure Finance Company Limited to an institution established for financing the	

	infrastructure and development, set up under any Act of Parliament and notified by the Central Government; (xix) under any transfer referred to in section 47(viiaf) of a capital asset, under a plan approved by the Central Government, by a public sector company to another public sector company notified by the Central Government for this purpose or to the Central Government or to a State Government; (xx) by any transfer of capital asset or intangible asset on succession of a firm by a company in a business carried on by it or any transfer of a capital asset on succession of an AOP/BOI by a company on demutualisation or corporatisation of a recognized stock exchange referred to in section 47(xiii); (xxi) under any transfer under section 47(xiiib) of a capital asset or intangible asset by a private company or unlisted public company to a LLP; (xxii) by any transfer of capital asset or intangible asset on succession of a sole proprietorship concern by a company in a business carried on by it, fulfilling the conditions mentioned in section 47(xiv); (xxiii) by conversion by an individual of his separate property into a HUF property, by the mode referred to in section 64(2).	
49(2)	Shares received under the scheme of amalgamation	
	Where shares in an amalgamated company which is an Indian company become the property of the assessee in consideration of the transfer of shares	The cost of acquisition to him of the shares in the amalgamated company shall be taken as the cost of acquisition of the shares in the amalgamating company.

	referred to in section 47(vii) held by him in the amalgamating company under a scheme of amalgamation	This also applies in relation to business reorganization of a co-operative bank as referred to in section 44DB [Section 49(2E)].
49(2A)	Shares or debentures received during the process of conversion of bonds or debentures, debenture stock or deposit certificates	
	Where a person becomes the owner of shares or debentures in a company during the process of conversion of bonds or debentures, debenture stock or deposit certificates referred under section 47(x).	That part of the cost of debentures, debenture stock, bond or deposit certificate in relation to which such asset (shares or debentures) is acquired by that person.
49(2AA)	Specified security or sweat equity shares	
	Where the capital gain arises from the transfer of specified security or sweat equity shares referred to in section 17(2)(vi)	Fair market value which has been taken into account for perquisite valuation.
49(2AAA)	Rights received in a firm by shareholders on conversion of private or unlisted public company into LLP	
	Where a shareholder of a company receives rights in a partnership firm as consideration for transfer of shares on conversion of a company into a LLP referred to in section 47(xiiib)	The cost of acquisition of the capital asset being rights of a partner referred to in section 42 of the LLP Act, 2008 shall be deemed to be the cost of acquisition to him of the shares in the predecessor company, immediately before its conversion.
49(2ABB)	Shares acquired on redemption of Global Depository Receipts	
	Where the capital asset, being share or shares of a company is acquired by a non-resident on redemption of GDR referred to in section 115AC(1)(b) held by such assessee	The cost of acquisition of the share or shares would be the price of such share or shares prevailing on any recognized stock exchange on the date on which a request for such redemption was made.
49(2AC)	Unit of business trust in consideration of shares of a special purpose vehicle	
	Where the capital asset, being unit of a business trust, became the property of the assessee in consideration of transfer of shares of a special purpose vehicle as referred to in section 47(xvii)	The cost of acquisition of the unit would be deemed to be the cost of acquisition of the shares to him.

49(2AD)	Units acquired under consolidated scheme of Mutual Fund	
	Where the capital asset, being a unit or units in a consolidated scheme of a mutual fund, became the property of the assessee in consideration of a transfer referred to in section 47(xviii)	The cost of acquisition of the asset shall be deemed to be the cost of acquisition to him of the unit or units in the consolidating scheme of the mutual fund.
49(2AE)	Equity shares received at the time of conversion of preference shares	
	Where equity shares of a company, became the property of the assessee in consideration of transfer by way of conversion of preference shares of the company [Section 47(xb)]	That part of the cost of the preference share in relation to which such equity shares are acquired by the assessee.
49(2AF)	Units acquired under consolidated plan of Mutual Fund scheme	
	Where the capital asset, being a unit or units in a consolidated plan of a mutual fund scheme, became the property of the assessee in consideration of a transfer referred to in section 47(xix)	The cost of acquisition of the asset shall be deemed to be the cost of acquisition to him of the unit or units in the consolidating plan of the scheme of the mutual fund.
49(2AG)/ 49(2AH)	A unit or units in the segregated portfolio	
	In case of segregated portfolio	The cost of acquisition of a unit or units in the segregated portfolio shall be the amount which bears, to the cost of acquisition of a unit or units held by the assessee in the total portfolio, the same proportion as the net asset value of the asset transferred to the segregated portfolio bears to the net asset value of the total portfolio immediately before the segregation of portfolios. The cost of the acquisition of the original units held by the unit holder in the main portfolio shall be deemed to have been reduced by the amount as so arrived at under sub-section (2AG)

	Term	Meaning
	Main portfolio	the scheme portfolio excluding the segregated portfolio
	Segregated portfolio	a portfolio, comprising of debt or money market instrument affected by a credit event, that has been segregated in a mutual fund scheme
	Total portfolio	the scheme portfolio including the securities affected by the credit event
	SEBI has, vide circular SEBI/HO/IMD/DF2/CIR/P/2018/160 dated December 28, 2018, permitted creation of segregated portfolio of debt and money market instruments by Mutual Fund schemes. As per the SEBI circular, all the existing unit holders in the affected scheme as on the day of the credit event i.e. downgrade in credit rating by a SEBI registered Credit Rating Agency (CRA), shall be allotted equal number of units in the segregated portfolio as held in the main portfolio. On segregation, the unit holders come to hold same number of units in two schemes – the main scheme and segregated scheme.	
49(2A)	<i>Shares of a company incorporated outside India by the Government of a foreign State, in accordance with the laws of that foreign State</i>	
	<i>Where the capital asset, being shares of a company incorporated outside India by the Government of a foreign State, in accordance with the laws of that foreign State as referred to in section 47(xx), became the property of the assessee</i>	<i>The cost of acquisition of such asset would be deemed to be the cost of acquisition to it of the interest in the joint venture.</i>
49(2C)	Shares received in the resulting company in the scheme of demerger	
	In case of demerger	The cost of acquisition of the shares in the resulting company shall be the amount which bears to the cost of acquisition of shares held by the assessee in the demerged company the same proportion as the net book value of the assets transferred in a demerger bears to the net worth of the demerged company immediately before such demerger. Cost of acquisition of shares in the resulting company = $A \times \frac{B}{C}$ A = Cost of acquisition of shares held in the demerged company B = Net book value of the assets transferred in a demerger

		C = Net worth of the demerged company i.e., the aggregate of the paid up share capital and general reserves as appearing in the books of account of the demerged company immediately before the demerger.
	“Net worth” means the aggregate of the paid up share capital and general reserves as appearing in the books of account of the demerged company immediately before the demerger.	
49(2D)	Shares held in the demerged company	
	In case of demerger	The cost of acquisition of the original shares held by the shareholder in the demerged company shall be deemed to have been reduced by the amount as so arrived under the sub-section (2C) The provisions of section 49(2C) and 49(2D) also applies in relation to business reorganization of a co-operative bank as referred to in section 44DB.
49(3)	Capital asset transferred by holding company to its wholly owned subsidiary Indian company or vice a versa, in case of attraction of section 47A	
	Where the capital gain arising from the transfer of a capital asset referred to in section 47(iv) or section 47(v) is deemed to be income chargeable under the head "Capital gains" by virtue of the provisions contained in section 47A	The cost of acquisition of such asset to the transferee-company shall be the cost for which such asset was acquired by it.
49(4)	Property subject to tax under section 56(2)(x)	
	Where the capital gain arises from the transfer of such property which has been subject to tax under section 56(2)(x)	The value taken into account for the purposes of section 56(2)(x).
49(6)	Specified capital asset referred under clause (c) of the <i>Explanation</i> to section 10(37A) [Refer diagram at the end of this table]	
	Where the capital gain arises from the transfer of a reconstituted plot or land, (received by the assessee in lieu of land or building or both transferred under the Land Pooling Scheme of Andhra Pradesh) which has been	The cost of acquisition of such reconstituted plot or land shall be deemed to be its stamp duty value as on the last day of the second financial year after the end of the financial year in which the possession of the said plot or

	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 assessee	land was handed over to the assessee.
	<u>Exemption in respect of capital gains arising on transfer of Specified Capital Assets under the Land Pooling Scheme notified under the provisions of Andhra Pradesh Capital Region Development Authority Act, 2014 [Section 10(37A)]</u> ◆ As per section 96 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2014, the specified compensation received by the landowner in lieu of acquisition of land is exempt from income tax. The Land Pooling Scheme is an alternative form of arrangement made by the Government of Andhra Pradesh for formation of new capital city of Amaravati to avoid land acquisition disputes and lessen the financial burden associated with payment of compensation under that Act. ◆ In Land Pooling Scheme, the compensation in the form of reconstituted plot or land is provided to land owners. However, the existing provisions of the Act do not provide for exemption from tax on transfer of land under the land pooling scheme as well as on transfer of Land Pooling Ownership Certificates (LPOCs) or reconstituted plot or land. ◆ With a view to provide relief to an individual or Hindu undivided family who was the owner of such land as on 2nd June, 2014, and has transferred their land under the Land Pooling Scheme notified under the provisions of Andhra Pradesh Capital Region Development Authority Act, 2014, clause (37A) of section 10 provides that in respect of said persons, capital gains arising from the transfer of the specified capital assets shall not be chargeable to tax under the Act: Meaning of Specified Capital Asset: Specified Capital Assets means - the land or building or both owned by the assessee as on 2nd June, 2014 and which has been transferred under the land pooling scheme; or - the land pooling ownership certificate (LPOC) issued to the assessee in lieu of transferred land or building or both or - the reconstituted plot or land, as the case may be received by the assessee in lieu of land or building or both in accordance with the scheme, if such plot or land, as the case may be, so received is transferred within two years from the end of the financial year in which the possession of such plot or land was handed over to him.	

49(7)	Capital asset, being share in the project referred under section 45(5A)	
49(8)	Capital assets of entities in case of levy of tax on accreted income under section 115TD	
49(9)	Capital asset which was used by the assessee as an inventory before its conversion into capital asset	
49(10)	Capital asset, being an Electronic Gold Receipt or Gold	

Where the capital gain arises from the transfer of a capital asset, being share in the project, in the form of land or building or both, referred to in section 45(5A) which is chargeable to tax in the previous year in which the completion of certificate for the whole or part of the project is issued by the competent authority)	The cost of acquisition of such asset, would be the amount which is deemed as full value of consideration in that sub-section i.e., stamp duty value on the date of issue of certificate of completion plus cash consideration. However, this does not apply to a capital asset, being share in the project which is transferred on or before the date of issue of said completion certificate.
Where the capital gain arises from the transfer of an asset, being the asset held by a trust or an institution in respect of which accreted income has been computed, and the tax has been paid thereon in accordance with the provisions relating to tax on accreted income of certain trusts and institutions under Chapter XII-EB	The cost of acquisition of such asset shall be deemed to be the fair market value of the asset which has been taken into account for computation of accreted income as on the specified date referred to in section 115TD(2). Note: Refer to Chapter 10 on “Assessment of Trusts and Institutions, Political Parties and Other Special Entities” for understanding the concept of related income.
Where the capital gain arises from the transfer of a capital asset which was used by the assessee as inventory earlier before its conversion into capital asset	The fair market value of the inventory as on the date on such conversion determined in the prescribed manner
Where a capital asset, being an Electronic Gold Receipt issued by a Vault Manager became the property of the person as consideration for transfer of gold [Section 47(viid)]	The cost of gold in the hands of the person in whose name Electronic Gold Receipt is issued.

	Where gold is released against an Electronic Gold Receipt, which became the property of the person as consideration for transfer of Electronic Gold Receipt [Section 47(viid)]	The cost of the Electronic Gold Receipt in the hands of such person.

Taxability/ Exemption of Capital Gains arising on transfer of Specified Capital Assets

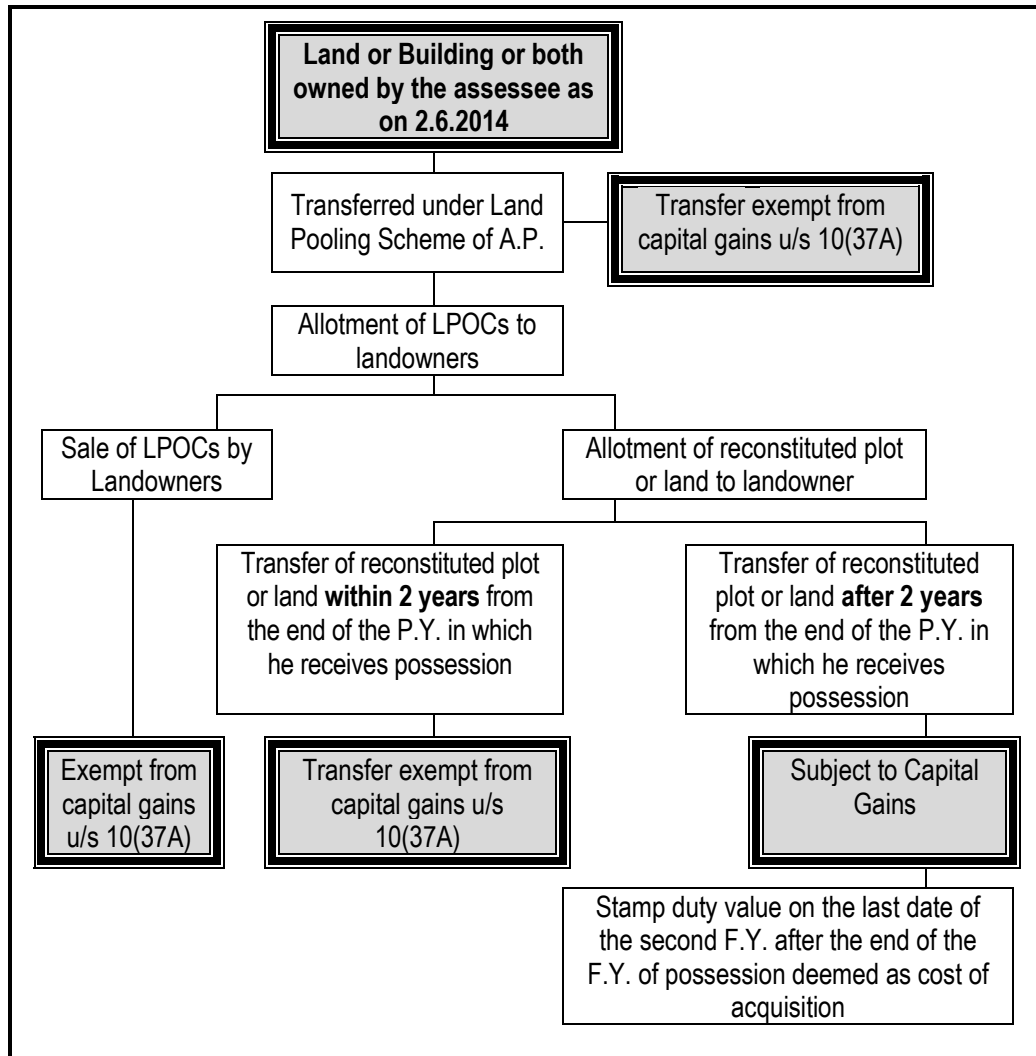


ILLUSTRATION 5

Neerja was carrying on the textile business under a proprietorship concern, Neerja Textiles. On 30.12.2023 the business of Neerja Textiles was succeeded by New Look Textile Private Limited and all the assets and liabilities of Neerja Textiles on that date became the assets and liabilities of

New Look Textile Private Limited and Neerja was given 52% share in the share capital of the company. No other consideration was given to Neerja on account of this succession.

The assets and liabilities of Neerja Textiles transferred to the company include an urban land which was acquired by Neerja on 19.7.2013 for ₹ 9,80,000. The company sold the same on 30.03.2024 for ₹ 16,00,000.

Examine the tax implication of the above-mentioned transaction and compute the income chargeable to tax in such case(s).

Cost Inflation Index: F.Y. 2013-14: 220; F.Y. 2023-24: 348

SOLUTION

Taxability in case of succession of Neerja Textiles by New Look Textile Private Limited

As per provisions of section 47(xiv), in case a proprietorship concern is succeeded by a company in the business carried by it and as a result of which any capital asset or intangible asset is transferred to the company, then the same shall not be treated as transfer and will not be chargeable to capital gain tax in case the following conditions are satisfied:

- (1) all the assets and liabilities of sole proprietary concern becomes the assets and liabilities of the company.
- (2) the shareholding of the sole proprietor in the company is not less than 50% of the total voting power of the company and continues to remain as such for a period of 5 years from the date of succession.
- (3) the sole proprietor does not receive any consideration or benefit in any form from the company other than by way of allotment of shares in the company.

In the present case, all the conditions mentioned above are satisfied therefore, the transfer of capital asset by Neerja Textiles to New Look Textile Private Limited shall not attract capital gain tax provided Neerja continues to hold 50% or more of voting power of New Look Textiles Private Limited for a minimum period of 5 years.

Taxability in case of transfer of land by New Look Textile Private Limited

As per the provisions of section 49(1) and *Explanation 1* to section 2(42A), in case a capital asset is transferred in the circumstances mentioned in section 47(xiv), the cost of the asset in the hands of the company shall be the cost of the asset in the hands of the sole proprietor. Consequently, for the determining the period of holding of the asset, the period for which the asset is held by the sole proprietor shall also be considered.

Therefore, in the present case, the urban land shall be a long-term capital asset since it is held for more than 24 months by New Look Textile Private Limited and Neerja Textiles taken together. Cost of acquisition of land in the hands of the company shall be ₹ 9,80,000 i.e., the purchase cost of the land in the hands of Neerja.

Computation of capital gain chargeable to tax in the hands of New Look Textile Private Ltd.

Particulars	₹
Net Sale Consideration	16,00,000
Less: Indexed cost of acquisition $9,80,000 \times 348/348$ (Refer Note below)	9,80,000
Long-term capital gain	6,20,000

Note: The year of transfer and the year in which the company first held the asset are the same in this case, which is the reason why the numerator and the denominator for calculating the indexed cost of acquisition would remain the same. Therefore, in effect, there is no benefit of indexation in this case. However, as per the view expressed by Bombay High Court in CIT v. Manjula J. Shah 16 Taxman 42, in case the cost of acquisition of the capital asset in the hands of the assessee is taken to be cost of such asset in the hands of the previous owner, the indexation benefit would be available from the year in which the capital asset is acquired by the previous owner. If this view is considered, the indexed cost of acquisition would have to be calculated by taking the CII of F.Y.2013-14 i.e., 220, being the year in which the capital asset was acquired by the previous owner, Neerja, as the denominator, in which case, the capital gains chargeable to tax would undergo a change. The long-term capital gains in such a case would be ₹ 49,818 [$₹ 16,00,000 - ₹ 15,50,182 (9,80,000 \times ₹ 348/220)$].



4.13 COST OF ACQUISITION [SECTION 55(2)]

Cost of acquisition is the price that the assessee has paid, or the amount that the assessee has incurred, for acquisition of the asset. Expenses incurred for completing the title are a part of the cost of acquisition. For eg: Stamp duty.

- (1) **Goodwill of a business or profession or a trademark or brand name associated with a business or profession or any other intangible asset or a right to manufacture, produce or process any article or thing, or right to carry on any business or profession, tenancy rights, stage carriage permits and loom hours, or any other right**
 - (i) **In case of acquisition from previous owner:** In the case of the above capital assets, if the assessee has purchased them from a previous owner, the cost of acquisition means the amount of the purchase price.

If A purchases a stage carriage permit from B for ₹ 2 lakhs, ₹ 2 lakhs will be the cost of acquisition for A.

(ii) **In case of circumstances mentioned under section 49(1)(i)/(ii)/(iii)/(iv):** In cases where the capital asset became the property of the assessee by any of the following modes from the previous owner, and such capital assets were acquired by the previous owner by purchase, cost of acquisition to the assessee will be the amount of the purchase price for such previous owner:-

- However, in case of a capital asset, being goodwill of a business or profession, in respect of which depreciation under section 32(1) has been obtained by the **assessee** in any previous year (upto P.Y.2019-20), the cost of acquisition of such goodwill would be the amount of the purchase price for such previous owner as reduced by the total amount of depreciation (upto P.Y.2019-20) obtained by the **assessee** under section 32(1).

- (iii) **In any other case [i.e., in case of self-generated assets]:** In case of self-generated assets namely, goodwill of a business or profession or a trademark or brand name associated with a business or profession **or any other intangible asset** or a right to manufacture, produce or process any article or thing, or right to carry on any business or profession, tenancy rights, stage carriage permits, or loom hours, **or any other right**, the cost of acquisition will be taken to be Nil.
- (2) **Financial assets** - Many a time, persons who own shares or other securities become entitled to subscribe to any additional shares or securities. Further, they are also allotted additional shares or securities without any payment. Such shares or securities are referred to as financial assets in Income-tax Act. Section 55 provides the basis for ascertaining the cost of acquisition of such financial assets.
- (i) **Original shares (which form the basis of entitlement of rights shares):** In relation to the original financial asset on the basis of which the assessee becomes entitled to any additional financial assets, cost of acquisition means the amount actually paid for acquiring the original financial assets.
- (ii) **Rights entitlement (which is renounced by the assessee in favour of a person):** In relation to any right to renounce the said entitlement to subscribe to the financial asset, when such a right is renounced by the assessee in favour of any person, cost of acquisition shall be taken to be *nil* in the case of such assessee.
- (iii) **Rights shares acquired by the assessee:** In relation to the financial asset, to which the assessee has subscribed on the basis of the said entitlement, cost of acquisition means the amount actually paid by him for acquiring such asset.
- (iv) **Rights shares which are purchased by the person in whose favour the assessee has renounced the rights entitlement:** In the case of any financial asset purchased by the person in whose favour the right to subscribe to such assets has been renounced, cost of acquisition means the aggregate of the amount of the purchase price paid by him to the person renouncing such right and the amount paid by him to the company or institution for acquiring such financial asset.
- (v) **Bonus Shares:** In relation to the financial asset allotted to the assessee without any payment and on the basis of holding of any other financial assets, **cost of acquisition shall be taken to be nil in the case of such assessee.**

In other words, where bonus shares are allotted without any payment on the basis of holding of original shares, the cost of such bonus shares will be nil in the hands of the original shareholder.

Bonus shares allotted before 01.04.2001: However, in respect of bonus shares allotted before 1.4.2001, although the cost of acquisition of the shares is nil, the assessee may opt for the fair market value as on 1.4.2001 as the cost of acquisition of such bonus shares.

Bonus shares allotted before 1.2.2018, on which STT has been paid at the time of transfer – In case of transfer of bonus shares allotted before 1.2.2018 on which STT has been paid at the time of transfer, the cost would be the higher of –

- (i) **Actual cost of acquisition** (i.e., Nil, in case of bonus shares allotted on or after 1.4.2001; and FMV on 1.4.2001, in case of business shares allotted before 1.4.2001)
- (ii) **Lower of –**
 - (a) FMV as on 31.1.2018; and
 - (b) Actual sale consideration

(3) **Equity shares received on demutualisation or corporatisation of a recognised stock exchange** – In relation to equity shares allotted to a shareholder of a recognised stock exchange in India under a scheme for demutualisation or corporatisation approved by SEBI, the cost of acquisition of such shares shall be the cost of acquiring his original membership of the exchange.

(4) **Clearing or trading right acquired on demutualisation or corporatisation of a recognised stock exchange** – The cost of a capital asset, being trading or clearing rights of a recognised stock exchange acquired by a shareholder (who has been allotted equity share or shares under such scheme of demutualisation or corporatisation), shall be deemed to be nil.

(5) **Long-term capital assets referred to in section 112A**

The cost of acquisition in relation to the long-term capital assets being,

- equity shares in a company on which STT is paid both at the time of purchase and transfer or
- unit of equity oriented fund or unit of business trust on which STT is paid at the time of transfer.

acquired before 1st February, 2018 shall be the higher of

- (i) cost of acquisition of such asset; and
- (ii) lower of
 - (a) the fair market value of such asset; and
 - (b) the full value of consideration received or accruing as a result of the transfer of the capital asset.

Meaning of Fair Market Value:

S.No.	Circumstance	Fair Market Value
(i)	In a case where the capital asset is listed on any recognised stock exchange as on 31.01.2018	<u>If there is trading in such asset on such exchange on 31.01.2018</u> The highest price of the capital asset quoted on such exchange on the said date <u>If there is no trading in such asset on such exchange on 31.01.2018</u> The highest price of such asset on such exchange on a date immediately preceding 31.01.2018 when such asset was traded on such exchange.
(ii)	In a case where the capital asset is a unit which is not listed on any recognised stock exchange as on 31.01.2018	The net asset value of such unit as on the said date
(iii)	In a case where the capital asset is an equity share in a company which is - not listed on a recognised stock exchange as on 31.01.2018 but listed on such exchange on the date of transfer - listed on a recognised stock exchange on the date of transfer and which became the property of the assessee in	An amount which bears to the cost of acquisition the same proportion as CII for the financial year 2017-18 bears to the CII for the first year in which the asset was held by the assessee or on 01.04.2001, whichever is later.

	consideration of share which is not listed on such exchange as on 31.01.2018 by way of transaction not regarded as transfer under section 47	

(6) Any other capital asset–

- (i) **Where the capital asset become the property of the assessee before 1-4-2001,** cost of acquisition means the cost of acquisition of the asset to the assessee or the fair market value of the asset on 1-4-2001 at the option of the assessee.

However, in case of capital asset, being land or building or both, the fair market value of such asset on 1-4-2001 shall not exceed the stamp duty value, wherever available, of such asset as on 1-4-2001.

- (ii) **Where the capital asset became the property of the assessee by any of the modes specified in section 49(1):** The cost of acquisition to the assessee will be the cost of acquisition to the previous owner. Even in such cases, where the capital asset became the property of the previous owner before 1-4-2001, the assessee has got a right to opt for the fair market value as on 1-4-2001.

However, in case of capital asset, being land or building or both, the fair market value of such asset on 1-4-2001 shall not exceed the stamp duty value, wherever available, of such asset as on 1-4-2001.

Note: The provisions contained in (i) & (ii) of (6) above shall also apply to the financial assets mentioned in (i) to (v) of (2) and long term capital assets referred to in section 112A of (5) above.

- (iii) **Where the capital asset became the property of the assessee on the distribution of the capital assets of a company on its liquidation** and the assessee has been assessed to capital gains in respect of that asset under section 46, the cost of acquisition means the fair market value of the asset on the date of distribution.
- (iv) **A share or a stock of a company** may become the property of an assessee under the following circumstances:
- (a) the consolidation and division of all or any of the share capital of the company into shares of larger amount than its existing shares.

- (b) the conversion of any shares of the company into stock,
- (c) the re-conversion of any stock of the company into shares,
- (d) the sub-division of any of the shares of the company into shares of smaller amount, or
- (e) the conversion of one kind of shares of the company into another kind.

In the above circumstances the cost of acquisition to the assessee will mean the cost of acquisition of the asset calculated with reference to the cost of acquisition of the shares or stock from which such asset is derived.

- (7) **Where the cost for which the previous owner acquired the property cannot be ascertained**, the cost of acquisition to the previous owner means the fair market value on the date on which the capital asset became the property of the previous owner.

Cost of Acquisition of assets: At a Glance

Sl. No.	Nature of asset	Cost of acquisition
1	Goodwill of business or profession, trademark, brand name or any other intangible asset etc., - - Self generated - Acquired from previous owner However, in case of capital asset, being goodwill of a business or profession, in respect of which depreciation u/s 32(1) has been obtained by the assessee in any P.Y. (upto P.Y.2019-20)	Nil Purchase price Purchase price as reduced by the total amount of depreciation obtained by the assessee under section 32(1).
	- became the property of the assessee by way of distribution of assets on total or partial partition of HUF, under a gift or will, by succession, inheritance, distribution of assets on liquidation of a company, etc. and previous owner has acquired it by purchase However, in case of capital asset, being goodwill of a business or profession which was acquired by the previous owner by purchase and in respect of which depreciation u/s 32(1) has been obtained by the assessee in any P.Y. (upto P.Y.2019-20)	Purchase price for such previous owner Purchase price for such previous owner as reduced by the total amount of depreciation obtained by the assessee u/s 32(1).

2.	Bonus Shares: Allotted before 1.4.2001 Allotted on or after 1.4.2001 Bonus shares allotted before 1.2.2018, on which STT has been paid at the time of transfer	FMV as on 1.4.2001 Nil The higher of – (i) Actual cost of acquisition (i.e., Nil, in case of bonus shares allotted on or after 1.4.2001; and FMV on 1.4.2001, in case of bonus shares allotted before 1.4.2001) (ii) Lower of – (a) FMV as on 31.1.2018; and (b) Actual sale consideration
3	Right Shares: Original shares (which form the basis of entitlement of rights shares) Rights entitlement (which is renounced by the assessee in favour of a person) Rights shares acquired by the assessee Rights shares which are purchased by the person in whose favour the assessee has renounced the rights entitlement	Amount actually paid for acquiring the original shares Nil Amount actually paid for acquiring the rights shares Purchase price paid to the renouncer of rights entitlement as well as the amount paid to the company which has allotted the rights shares.
4.	Equity shares received on demutualisation or corporatisation of a recognised stock exchange	Cost of acquisition of such shares shall be the cost of acquiring his original membership of the exchange.
5.	Clearing or trading right acquired on demutualisation or corporatisation of a recognised stock exchange	NIL
6.	Long term capital assets being, - equity shares in a company on which STT is paid both at the time of purchase and transfer or - unit of equity oriented fund or unit of business trust on which STT is	Cost of acquisition shall be the higher of (i) cost of acquisition of such asset; and (ii) lower of - the fair market value of such asset; and

	paid at the time of transfer, acquired before 1st February, 2018	- the full value of consideration received or accruing as a result of the transfer of the capital asset.
7.	Any other capital asset Where such capital asset became the property of the assessee before 1.4.2001	Cost of the asset to the assessee, or FMV as on 1.4.2001, at the option of the assessee. However, in case of capital asset being land or building, FMV as on 1.4.2001 shall not exceed stamp duty value as on 1.4.2001.
	Where capital assets became the property of the assessee by way of distribution of assets on total or partial partition of HUF, under a gift or will, by succession, inheritance, distribution of assets on liquidation of a company, etc. and the capital asset became the property of the previous owner before 1.4.2001	Cost to the previous owner or FMV as on 1.4.2001, at the option of the assessee. However, in case of capital asset being land or building, FMV as on 1.4.2001 shall not exceed stamp duty value as on 1.4.2001.
	<i>The provisions contained in (7) above shall also apply to the assets mentioned in (2), (3) and (6) above.</i>	
8.	Where cost of the property in the hands of previous owner cannot be ascertained	The FMV on the date on which the capital asset become the property of the previous owner would be considered as cost of acquisition.

ILLUSTRATION 6

ABC Ltd. converts its capital asset acquired for an amount of ₹ 50,000 in June, 2003 into stock-in-trade in the month of November, 2022. The fair market value of the asset on the date of conversion is ₹ 4,50,000. The stock-in-trade was sold for an amount of ₹ 6,50,000 in the month of September, 2023. What will be the tax treatment?

Financial year	Cost Inflation Index
2003-04	109
2022-23	331
2023-24	348

SOLUTION

The capital gains on the sale of the capital asset converted to stock-in-trade is taxable in the given case. It arises in the year of conversion (i.e. P.Y. 2022-23) but will be taxable only in the year in which the stock-in-trade is sold (i.e. P.Y. 2023-24). Profits from business will also be taxable in the year of sale of the stock-in-trade (P.Y. 2023-24).

The long-term capital gains and business income for the A.Y.2024-25 are calculated as under:

Particulars	₹	₹
Profits and Gains from Business or Profession		
Sale proceeds of the stock-in-trade	6,50,000	
Less: Cost of the stock-in-trade (FMV on the date of conversion)	4,50,000	2,00,000
Long Term Capital Gains		
Full value of the consideration (FMV on the date of the conversion)	4,50,000	
Less: Indexed cost of acquisition (₹ 50,000 x 331/109)	1,51,835	2,98,165

Note: For the purpose of indexation, the cost inflation index of the year in which the asset is converted into stock-in-trade should be considered.

ILLUSTRATION 7

Ms. Usha purchases 1,000 equity shares in X (P) Ltd., an unlisted company, at a cost of ₹ 30 per share (brokerage 1%) in January 1996. She gets 100 bonus shares in August 2000. She again gets 1,100 bonus shares by virtue of her holding in February 2006. Fair market value of the shares of X (P) Ltd. on April 1, 2001 is ₹ 80.

On 1st January 2024, she transfers all her shares @ ₹ 200 per share (brokerage 2%).

Compute the capital gains taxable in the hands of Ms. Usha for the A.Y. 2024-25

Cost Inflation Index for F.Y. 2001-02: 100, F.Y.2005-06: 117 & F.Y.2023-24: 348.

SOLUTION**Computation of capital gains for the A.Y. 2024-25**

Particulars	₹
1000 Original shares	
Sale proceeds (1000 × ₹ 200)	2,00,000
Less : Brokerage paid (2% of ₹ 2,00,000)	4,000

Net sale consideration	1,96,000
Less : Indexed cost of acquisition [$\text{₹ } 80 \times 1000 \times 348/100$]	2,78,400
Long term capital loss (A)	(82,400)
100 Bonus shares	
Sale proceeds ($100 \times \text{₹ } 200$)	20,000
Less: Brokerage paid (2% of ₹ 20,000)	400
Net sale consideration	19,600
Less: Indexed cost of acquisition [$\text{₹ } 80 \times 100 \times 348/100$] [See Note below]	27,840
Long term capital loss (B)	(8,240)
1100 Bonus shares	
Sale proceeds ($1100 \times \text{₹ } 200$)	2,20,000
Less: Brokerage paid (2% of ₹ 2,20,000)	4,400
Net sale consideration	2,15,600
Less: Cost of acquisition	NIL
Long term capital gain (C)	2,15,600
∴ Long term capital gain (A+B+C)	1,24,960

Note: Cost of acquisition of bonus shares acquired before 1.4.2001 is the FMV as on 1.4.2001 (being the higher of the cost or the FMV as on 1.4.2001).

ILLUSTRATION 8

Mr. R holds 1,000 shares in Star Minus Ltd., an unlisted company, acquired in the year 2001-02 at a cost of ₹ 75,000. He has been offered right shares by the company in the month of August, 2023 at ₹ 160 per share, in the ratio of 2 for every 5 held. He retains 50% of the rights and renounces the balance right shares in favour of Mr. Q for ₹ 30 per share in September 2023. All the shares are sold by Mr. R for ₹ 300 per share in January 2024 and Mr. Q sells his shares in December 2023 at ₹ 280 per share. What are the capital gains taxable in the hands of Mr. R and Mr. Q?

Financial year	Cost Inflation Index
2001-02	100
2023-24	348

SOLUTION

Computation of capital gains in the hands of Mr. R for the A.Y.2024-25

Particulars	₹
1000 Original shares	
Sale proceeds (1000 × ₹ 300)	3,00,000
Less: Indexed cost of acquisition [₹ 75,000 × 348/100]	2,61,000
Long-term capital gain (A)	39,000
200 Right shares	
Sale proceeds (200 × ₹ 300)	60,000
Less: Cost of acquisition [₹ 160 × 200] [Note 1]	32,000
Short-term capital gain (B)	28,000
Sale of Right Entitlement	
Sale proceeds (200 × ₹ 30)	6,000
Less: Cost of acquisition [Note 2]	NIL
Short-term capital gain (C)	6,000
Capital Gains (A+B+C)	73,000

Note 1: Since the holding period of these shares is less than 24 months, they are short term capital assets and hence cost of acquisition will not be indexed.

Note 2: The cost of the rights renounced in favour of another person for a consideration is taken to be nil. The consideration so received is taxed as short-term capital gains in full. The period of holding is taken from the date of the rights offer to the date of the renouncement.

Computation of capital gains in the hands of Mr. Q for the A.Y.2024-25

Particulars	₹
Sale proceeds (200 shares × ₹ 280)	56,000
Less: Cost of acquisition [200 shares × (₹ 30 + ₹ 160)] [See Note below]	38,000
Short-term capital gain	18,000

Note: The cost of the rights is the amount paid to Mr. R as well as the amount paid to the company. Since the holding period of these shares is less than 24 months, they are short term capital assets.



4.14 COST OF IMPROVEMENT [SECTION 55(1)]

- (1) Goodwill **or any other intangible asset** of a business, etc. [Section 55(1)(b)(1)]: In relation to a capital asset being goodwill **or any other intangible asset** of a business or a right to manufacture, produce or process any article or thing, or right to carry on any business or profession **or any other right**, the cost of improvement shall be taken to be **Nil**.
- (2) Any other capital asset [Section 55(1)(b)(2)]:

Circumstance		Cost of improvement	
(i)	Where the capital asset became the property of the previous owner or the assessee before 1.4.2001		
	(a)	In a case covered u/s 49(1), where the capital asset became the property of the previous owner and the assessee before 1.4.2001	All expenditure of a capital nature incurred in making any addition or alteration to the capital asset on or after 1.4.2001 by the assessee.
	(b)	In a case covered u/s 49(1), where the capital asset became the property of the previous owner before 1.4.2001 but became the property of the assessee on or after 1.4.2001	All expenditure of a capital nature incurred in making any addition or alteration to the capital asset on or after 1.4.2001 by the previous owner and the assessee.
	(c)	In a case <u>not</u> covered u/s 49(1)	All expenditure of a capital nature incurred in making any addition or alteration to the capital asset on or after 1.4.2001 by the assessee.
(ii)	Where the capital asset became the property of the previous owner and the assessee on or after 1.4.2001		
	(a)	In a case covered u/s 49(1)	All expenditure of a capital nature incurred in making any addition or alteration to the capital asset by the previous owner and the assessee.
	(b)	In a case not covered u/s 49(1)	All expenditure of a capital nature incurred in making any addition or alteration to the capital asset by the assessee after it became the assessee's property.

In a nutshell, in a case covered under section 49(1), cost of improvement would include expenditure of a capital nature on addition or alteration to the capital asset by the previous

owner or the assessee or both on or after 1.4.2001. In a case not covered under section 49(1), cost of improvement would include expenditure of a capital nature on addition or alteration to the capital asset by the assessee on or after 1.4.2001.

However, cost of improvement does not include any expenditure which is deductible in computing the income chargeable under the head "Income from house property", "Profits and gains of business or profession" or "Income from other sources". Routine expenses on repairs and maintenance do not form part of cost of improvement.

ILLUSTRATION 9

X & sons, HUF, purchased a land for ₹ 1,20,000 in the P.Y. 2002-03. In the P.Y. 2006-07, a partition took place when Mr. A, a coparcener, is allotted this plot valued at ₹ 1,50,000. In P.Y. 2007-08, he had incurred expenses of ₹ 2,35,000 towards fencing of the plot. Mr. A sells this plot of land for ₹ 15,00,000 in P.Y. 2023-24 after incurring expenses to the extent of ₹ 20,000. You are required to compute the capital gain for the A.Y.2024-25.

Financial year	Cost Inflation Index
2002-03	105
2006-07	122
2007-08	129
2023-24	348

SOLUTION

Computation of taxable capital gains for the A.Y.2024-25

Particulars	₹	₹
Sale consideration		15,00,000
Less: Expenses incurred for transfer		20,000
		14,80,000
Less: (i) Indexed cost of acquisition ($₹ 1,20,000 \times 348/122$)	3,42,295	
(ii) Indexed cost of improvement ($₹ 2,35,000 \times 348/129$)	6,33,953	9,76,248
Long term capital gains		5,03,752

Note - As per the view expressed by Bombay High Court in *CIT v. Manjula J. Shah* 16 Taxman 42, in case the cost of acquisition of the capital asset in the hands of the assessee is taken to be cost of such asset in the hands of the previous owner, the indexation benefit would be available from

the year in which the capital asset is acquired by the previous owner. If this view is considered, the indexed cost of acquisition would have to be calculated by considering the Cost Inflation Index of F.Y.2002-03.

ILLUSTRATION 10

Mr. C purchases a house property for ₹ 1,06,000 on May 15, 1975. The following expenses are incurred by him for making addition/alternation to the house property:

	Particulars	₹
a.	Cost of construction of first floor in 1982-83	3,10,000
b.	Cost of construction of the second floor in 2002-03	7,35,000
c.	Reconstruction of the property in 2012-13	5,50,000

Fair market value of the property on April 1, 2001 is ₹ 8,50,000 and stamp duty value on the said date was ₹ 8,10,000. The house property is sold by Mr. C on August 10, 2023 for ₹ 68,00,000 (expenses incurred on transfer: ₹ 50,000). Compute the capital gain for the assessment year 2024-25.

Cost Inflation Index: F.Y. 2001-02: 100, F.Y. 2002-03: 105, F.Y. 2012-13: 200, F.Y. 2023-24: 348

SOLUTION

Computation of capital gain of Mr. C for the A.Y.2024-25

Particulars	₹	₹
Gross sale consideration		68,00,000
Less: Expenses on transfer		50,000
Net sale consideration		67,50,000
Less: Indexed cost of acquisition (Note 1)	28,18,800	
Less: Indexed cost of improvement (Note 2)	33,93,000	62,11,800
Long-term capital gain		5,38,200

Notes:

Indexed cost of acquisition: ₹ 8,10,000 × 348/100 = ₹ 28,18,800

Fair market value on April 1, 2001 (actual cost of acquisition is ignored as it is lower than market value on April 1, 2001) however, it should not exceed ₹ 8,10,000, being the stamp duty value on 1.4.2001.

Indexed cost of improvement is determined as under:

Particulars	₹
Construction of first floor in 1982-83 (expenses incurred prior to April 1, 2001 are not considered)	Nil
Construction of second floor in 2002-03 (i.e., ₹ 7,35,000 × 348/105)	24,36,000
Alternation/reconstruction in 2012-13 (i.e., ₹ 5,50,000 × 348/200)	9,57,000
Indexed cost of improvement	33,93,000



4.15 COMPUTATION OF CAPITAL GAINS IN CASE OF DEPRECIABLE ASSETS [SECTIONS 50 & 50A]

- (1) **Transfer of depreciable assets [Section 50]:** Section 50 provides for the computation of capital gains in case of depreciable assets. It may be noted that where the capital asset is a depreciable asset forming part of a block of assets, section 50 will have overriding effect in spite of anything contained in section 2(42A) which defines a short-term capital asset.

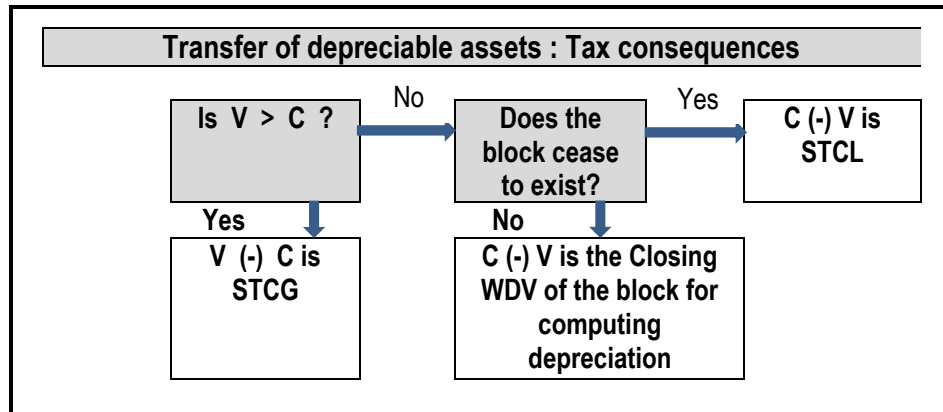
Accordingly, where the capital asset is an asset forming part of a block of assets in respect of which depreciation has been allowed, the provisions of sections 48 and 49 shall be subject to the following modifications:

- Where the full value of consideration received or accruing for the transfer of the asset **plus** the full value of such consideration for the transfer of any other capital asset falling with the block of assets during previous year exceeds the aggregate of the following amounts namely:
 - (1) expenditure incurred wholly and exclusively in connection with such transfer(s);
 - (2) WDV of the block of assets at the beginning of the previous year;
 - (3) the actual cost of any asset falling within the block of assets acquired during the previous year

such excess shall be deemed to be the capital gains arising from the transfer of short-term capital assets.

- Where all assets in a block are transferred during the previous year, the block itself will cease to exist. In such a situation, the difference between the sale value of the assets and the WDV of the block of assets at the beginning of the previous year

together with the actual cost of any asset falling within that block of assets acquired by the assessee during the previous year will be deemed to be the capital gains arising from the transfer of short- term capital assets.



Symbol	Description
V	Full value of consideration
C	Opening WDV of Block (+) Actual Cost of Asset acquired in the Block during the P.Y. (+) Expenses in connection with transfer of asset
STCG	Short Term Capital Gain
STCL	Short Term Capital Loss
WDV	Written Down Value

- (2) **Transfer of power sector assets [Section 50A]:** With respect to the power sector, in case of depreciable assets referred to in section 32(1)(i), the provisions of sections 48 and 49 shall apply subject to the modification that the WDV of the asset [as defined in section 43(6)], as adjusted, shall be taken to be the cost of acquisition.

ILLUSTRATION 11

Rajawat & Co., a sole proprietorship owns six machines, put in use for business in March, 2022. The depreciation on these machines is charged @15%. The opening balance of these machines after providing depreciation for P.Y. 2022-23 was ₹ 8,50,000. Three of the old machines were sold on 10th June, 2023 for ₹ 11,00,000. A second hand plant was bought for ₹ 8,50,000 on 30th November, 2023.

You are required to:

- (i) determine the claim of depreciation for Assessment Year 2024-25.

- (ii) compute the capital gains liable to tax for Assessment Year 2024-25.
- (iii) If Rajawat & Co. had sold the three machines in June, 2023 for ₹ 21,00,000, will there be any difference in your above workings? Examine.

SOLUTION

(i) **Computation of depreciation for A.Y.2024-25**

Particulars	₹
Opening balance of the block as on 1.4.2023 [i.e., W.D.V. as on 31.3.2023 after providing depreciation for P.Y. 2022-23]	8,50,000
Add: Purchase of second hand plant during the year in November, 2023	8,50,000
	17,00,000
Less: Sale consideration of old machinery during the year	11,00,000
W.D.V of the block as on 31.03.2024	6,00,000

Since the value of the block as on 31.3.2024 comprises of a new asset which has been put to use for less than 180 days, depreciation is restricted to 50% of the prescribed percentage of 15% i.e. depreciation is restricted to 7½%. Therefore, the depreciation allowable for the year is ₹ 45,000, being 7½% of ₹ 6,00,000.

- (ii) The provisions under section 50 for computation of capital gains in the case of depreciable assets can be invoked only under the following circumstances:
- When one or some of the assets in the block are sold for consideration more than the value of the block.
 - When all the assets are transferred for a consideration more than the value of the block.
 - When all the assets are transferred for a consideration less than the value of the block.

Since in the first two cases, the sale consideration is more than the written down value of the block, the computation would result in short term capital gains.

In the third case, since the written down value exceeds the sale consideration, the resultant figure would be a short-term capital loss.

In the given case, capital gains will not arise as the block of asset continues to exist, and some of the assets are sold for a price which is lesser than the written down value of the block.

- (iii) If the three machines are sold in June, 2023 for ₹ 21,00,000, then short term capital gains would arise, since the sale consideration is more than the aggregate of the written down value of the block at the beginning of the year and the additions made during the year.

Particulars	₹	₹
Sale consideration		21,00,000
Less: Opening balance of the block as on 1.4.2023 [i.e., W.D.V. as on 31.3.2023 after providing depreciation for P.Y. 2022-23]	8,50,000	
Purchase of second hand plant during the year	8,50,000	17,00,000
Short term capital gains		4,00,000



4.16 COMPUTATION OF CAPITAL GAINS IN CASE OF MARKET LINKED DEBENTURES [SECTION 50AA]

- (1) **Transfer of unit of a Specified Mutual Fund or Market Linked Debenture:** Section 50AA provides for the computation of capital gains in case of transfer of unit(s) of

- a Specified Mutual Fund acquired on or after 1.4.2023 or
- a Market Linked Debenture.

Section 50AA will have an over-riding effect in spite of anything contained in section 2(42A) which defines a short-term capital asset.

Accordingly, capital gain arising from the transfer or redemption or maturity of unit of a Specified Mutual Fund acquired on or after 1.4.2023 or Market Linked Debenture would be deemed to be short term capital gains and chargeable to tax at normal rate of tax.

- (2) **Computation of capital gains:** The full value of consideration received or accruing as a result of the transfer or redemption or maturity of unit of a Specified Mutual Fund or Market Linked Debenture as reduced by the cost of acquisition of the debenture or unit and the expenditure incurred wholly and exclusively in connection with such transfer or redemption or maturity would be deemed to be the capital gains.
- (3) **No deduction in respect of STT:** No deduction would be allowed in computing the income chargeable under the head "Capital Gains" in respect of any sum paid on account of securities transaction tax (STT).

(4) **Meaning of certain terms:**

Term	Meaning
Market Linked Debenture	A security (i) which has an underlying principal component in the form of debt security; and (ii) where the returns are linked to market returns on other underlying securities or indices. It includes any security classified or regulated as a market linked debenture by the SEBI.
Specified Mutual Fund	A Mutual Fund where not more than 35% of its total proceeds is invested in the equity shares of domestic companies. However, the percentage of equity shareholding held in respect of the Specified Mutual Fund shall be computed with reference to the annual average of the daily closing figures.



4.17 CAPITAL GAINS IN RESPECT OF SLUMP SALE [SECTION 50B]

- (1) **Meaning of slump sale [Section 2(42C)]** – Slump sale means transfer of one or more undertakings, by any means, for a lump sum consideration without values being assigned to the individual assets and liabilities in such transfer.

Term	Meaning
Undertaking [Explanation 1]	It includes any part of an undertaking, or a unit or division of an undertaking or a business activity taken as a whole, but does not include individual assets or liabilities or any combination thereof not constituting a business activity.
Transfer [Explanation 3]	Meaning assigned to it in section 2(47) [It would include sale, exchange, relinquishment of capital asset, extinguishment of any rights therein, compulsory acquisition under any law etc. – See detailed definition in page 7.12]

Note - The determination of the value of an asset or liability for the sole purpose of payment of stamp duty, registration fees or other similar taxes or fees shall not be regarded as assignment of values to individual assets or liabilities.

- (2) **Capital gains – Whether long-term or short-term? [Section 50B(1)]** - Any profits or gains arising from the slump sale of one or more undertakings held for more than 36 months, shall be chargeable to income-tax as capital gains arising from the transfer of long-term capital assets and shall be deemed to be the income of the previous year in which the transfer took place.

Any profits and gains arising from such transfer of one or more undertakings held by the assessee for not more than 36 months shall be deemed to be short-term capital gains.

- (3) **Deemed cost of acquisition and cost of improvement [Section 50B(2)(i)]** - The net worth of the undertaking or the division, as the case may be, shall be deemed to be the cost of acquisition and the cost of improvement for the purposes of sections 48 and 49 in relation to capital assets of such undertaking or division transferred. No indexation benefit would, however, be available, even if the slump sale has taken place of an undertaking held for more than 36 months, resulting in a long-term capital gain.

- (4) **Deemed full value of consideration [Section 50B(2)(ii)]** – Fair market value of the capital assets as on the date of transfer, calculated in the prescribed manner, shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of such capital asset.

Accordingly, the CBDT has inserted Rule 11UAE to determine fair market value of the capital assets.

The fair market value of the capital assets shall be the FMV1 or FMV2, whichever is higher.

FMV1 = The fair market value of the capital assets transferred by way of slump sale determined in accordance with the formula

$A+B+C+D - L$, where,

A = Book value of all the assets (other than jewellery, artistic work, shares, securities and immovable property) as appearing in the books of accounts of the undertaking or the division transferred by way of slump sale as reduced by the following amount which relate to such undertaking or the division, —

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

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

- C = Fair market value of shares and securities as determined in the manner provided in rule 11UA(1);
- D = The value adopted or assessed or assessable by any authority of the Government for the purpose of payment of stamp duty in respect of the immovable property;
- L = Book value of liabilities as appearing in the books of accounts of the undertaking or the division transferred by way of slump sale, but not including the following amounts which relates to such undertaking or division, namely: —
 - (i) the paid-up capital in respect of equity shares;
 - (ii) the amount set apart for payment of dividends on preference shares and equity shares where such dividends have not been declared before the date of transfer at a general body meeting of the company;
 - (iii) reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation;
 - (iv) any amount representing provision for taxation, other than amount of income-tax paid, if any, less the amount of income-tax claimed as refund, if any, to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto;
 - (v) any amount representing provisions made for meeting liabilities, other than ascertained liabilities;
 - (vi) any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares

FMV2 = The fair market value of the consideration received or accruing as a result of transfer by way of slump sale determined in accordance with the formula –

E+F+G+H, where,

- E = value of the monetary consideration received or accruing as a result of the transfer;
- F = fair market value of non-monetary consideration received or accruing as a result of the transfer represented by property referred to in rule 11UA(1) determined in the manner provided in rule 11UA(1) for the property covered in that sub-rule;
- G = the price which the non-monetary consideration received or accruing as a result of the transfer represented by property, other than immovable property, which is not referred to in rule 11UA(1) would fetch if sold in the open market on the basis of the valuation report obtained from a registered valuer, in respect of property;
- H = the value adopted or assessed or assessable by any authority of the Government for the purpose of payment of stamp duty in respect of the immovable property (i.e., Stamp duty value) in case the non-monetary consideration received or accruing as a result of the transfer is represented by the immovable property.

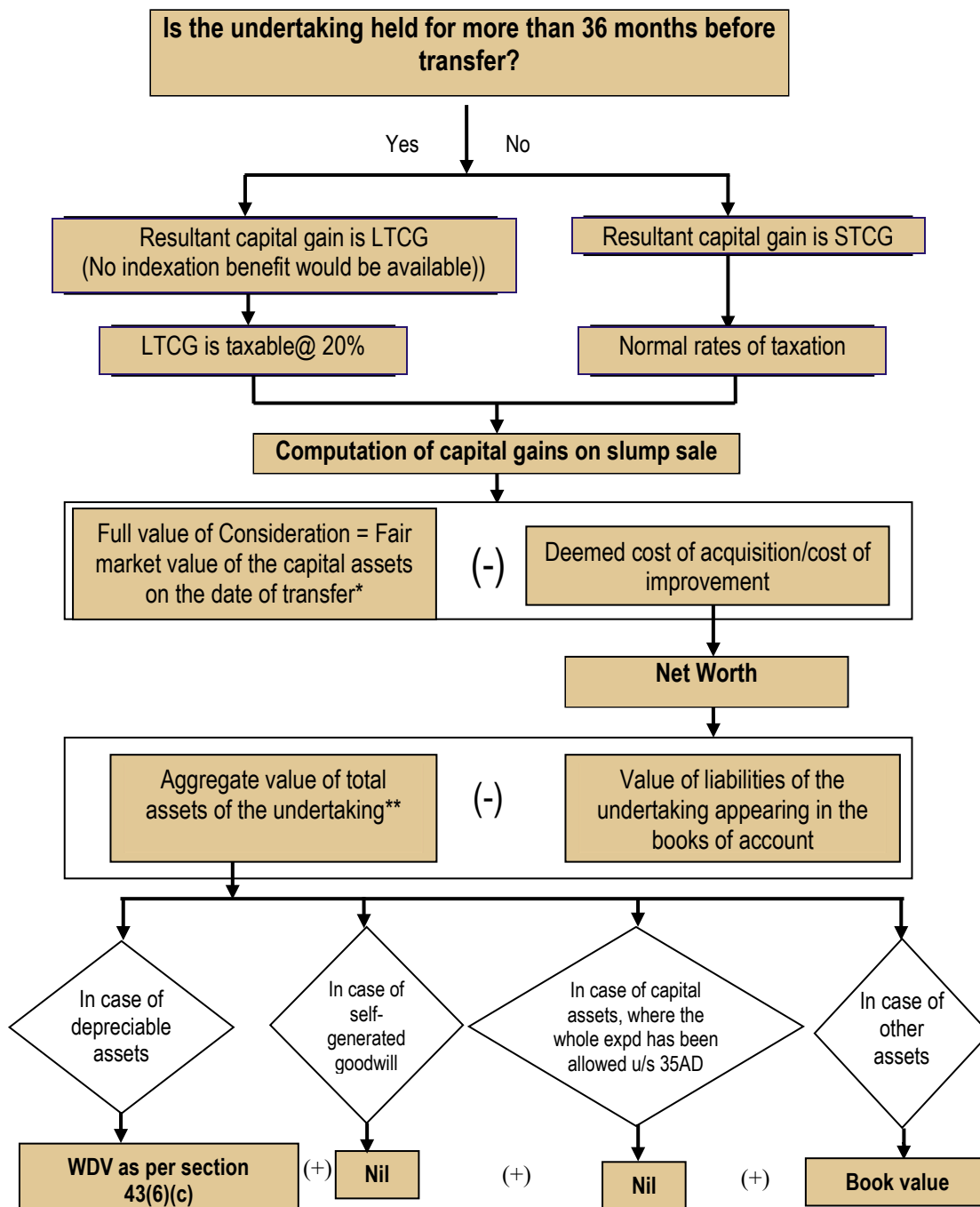
The **fair market value of the capital assets** shall be determined **on the date of slump sale** and for this purpose, **valuation date** shall also mean the **date of slump sale**.

- (3) **Report of a Chartered Accountant** - Every assessee in the case of slump sale shall furnish in the prescribed form on or before the specified date referred under section 44AB i.e., the date one month prior to the due date for filing return of income under section 139(1), a report of a chartered accountant indicating the computation of net worth of the undertaking or division, as the case may be, and certifying that the net worth of the undertaking or division has been correctly arrived at in accordance with the provisions of this section [Sub-section (3)].

Meaning of Certain Terms:

Explanation	Term	Particulars
1	Net worth	Aggregate value of total assets of the undertaking or division as reduced by the value of liabilities of such undertaking or division as appearing in the books of account. However, any change in the value of assets on account of revaluation of assets shall not be considered for this purpose.
2	Aggregate value of total assets of undertaking or division	In the case of depreciable assets: The written down value of block of assets determined in accordance with the provisions contained in sub-item (C) of item (i) of section 43(6)(c); In case of capital asset, being goodwill of a business or profession, which has not been acquired by the assessee by purchase from a previous owner [self-generated goodwill]: Nil Capital asset in respect of which 100% deduction is claimed: In case of capital assets in respect of which the whole of the expenditure has been allowed or is allowable as a deduction under section 35AD: Nil ; For all other assets: Book value

Capital Gains on Slump Sale of an Undertaking [Section 50B]



* Higher of FMV1 and FMV2

**Ignore revaluation effect

ILLUSTRATION 12

M/s Sriram Enterprises, a proprietorship having 2 units. Unit 1 is transferred on 1.4.2023 by way of slump sale for a total consideration of ₹ 14 lakhs. Unit 1 was started in the year 2005-06. The expenses incurred for this transfer were ₹ 38,000. Balance Sheet as on 31.3.2023 is as under:

Liabilities	Total (₹)	Assets	Unit 1 (₹)	Unit 2 (₹)	Total (₹)
Own Capital	17,00,000	Building	13,00,000	3,00,000	16,00,000
Revaluation Reserve (for building of unit 1)	5,00,000	Machinery	4,00,000	2,00,000	6,00,000
Bank loan (70% for unit 1)	4,00,000	Debtors	2,00,000	1,40,000	3,40,000
Trade creditors (25% for unit 1)	3,50,000	Patents	2,50,000	1,60,000	4,10,000
Total	29,50,000	Total	21,50,000	8,00,000	29,50,000

Other information:

- (i) Revaluation reserve is created by revising upward the value of the building of Unit 1. The stamp duty value on 1.4.2023 is ₹ 10 lakhs.
- (ii) No individual value of any asset is considered in the transfer deed.
- (iii) Patents were acquired on 1.7.2021 on which no depreciation has been charged.

Compute the capital gain for the assessment year 2024-25.

SOLUTION**Computation of capital gains on slump sale of Unit 1**

Particulars	₹
Full value of consideration [Fair market value on 1.4.2023]	14,82,500
Less: Expenses on sale	38,000
Net sale consideration	14,44,500
Less: Net worth (See Note 1 below)	11,73,125
Long-term capital gain	2,71,375

Notes:**1. Computation of Full value of consideration**

Particulars	₹
Fair market value of the capital assets transferred by way of slump sale	
Building, being an immovable property [stamp duty value on 1.4.2023, being the date of slump sale] [A]	10,00,000
Machinery [Book value as appearing in the books of accounts] [B]	4,00,000
Debtors [Book value as appearing in the books of accounts] [C]	2,00,000
Patents [Book value as appearing in the books of accounts] [D]	2,50,000
	18,50,000
Less: Liabilities of Unit 1 [₹ 29,50,000 - ₹ 1,20,000 - ₹ 2,62,500] [L]	25,67,500
Excluding	
(i) Own Capital 17,00,000	
(ii) Revaluation reserve <u>5,00,000</u> <u>22,00,000</u>	3,67,500
Fair market value of the capital assets transferred by way of slump sale [A+B+C+D- L] [FMV1]	14,82,500
Fair market value of the consideration received or accruing as a result of transfer by way of slump sale [value of the monetary consideration received] [FMV2]	14,00,000
Full value of consideration [Higher of FMV1 or FMV2]	14,82,500

2. Computation of net worth of Unit 1 of Akash Enterprises

Particulars	₹	₹
Building (excluding ₹ 5 lakhs on account of revaluation)		8,00,000
Machinery		4,00,000
Debtors		2,00,000
Patents (See Note 2 below)		1,40,625
Total assets		15,40,625
Less: Creditors [₹ 3,50,000 x 25%]	87,500	
Bank Loan [₹ 4,00,000 x 70%]	2,80,000	3,67,500
Net worth		11,73,125

3. Written down value of patents as on 1.4.2023

Value of patents	₹
Cost as on 1.7.2021	2,50,000
Less: Depreciation @ 25% for Financial Year 2021-22	62,500
WDV as on 1.4.2022	1,87,500
Less: Depreciation for Financial Year 2022-23	46,875
WDV as on 1.4.2023	1,40,625

For the purposes of computation of net worth, the written down value determined as per section 43(6) has to be considered in the case of depreciable assets. The problem has been solved assuming that the Balance Sheet values of ₹ 4 lakh and ₹ 8 lakh (₹ 13 lakh – ₹ 5 lakh) represent the written down value of machinery and building, respectively, of Unit 1.

4. Since the Unit is held for more than 36 months, capital gain arising would be long-term capital gain. However, indexation benefit is not available in case of slump sale.



4.18 DEEMED FULL VALUE OF CONSIDERATION FOR COMPUTING CAPITAL GAINS [SECTION 50C, 50CA & 50D]

S. No.	Capital Asset	Section	Circumstance		Deemed Full Value of consideration for computing Capital Gains
1.	Land or Building or both	50C	(1)	If Stamp Duty Value > 110% of consideration received or accruing as a result of transfer	Stamp Duty Value
			(a)	If date of agreement is different from the date of transfer and whole or part of the consideration is received by way of account payee cheque or bank draft or ECS or through such other prescribed electronic mode (IMPS, UPI, RTGS, NEFT, Net banking, debit card, credit	Stamp Duty Value on the date of agreement

				card or BHIM Aadhar Pay) on or before the date of agreement	
			(b)	If date of agreement is different from the date of transfer but the whole or part of the consideration has not been received by way of account payee cheque or bank draft or ECS or through such other prescribed electronic mode (IMPS, UPI, RTGS, NEFT, Net banking, debit card, credit card or BHIM Aadhar Pay) on or before the date of agreement	Stamp Duty Value on the date of transfer
				However, if the stamp duty value on the date of agreement or the date of transfer, as the case may be $\leq 110\%$ of the sale consideration received.	Actual consideration so received
				Example: Let us take a case where for transfer of building – - the actual consideration is ₹ 100 lakh; - the stamp duty value on the date of agreement is ₹ 109 lakh; and - the stamp duty value on the date of transfer is ₹ 112 lakh (i) If any part of the consideration is paid by prescribed electronic mode on or before the date of agreement	

				The actual consideration of ₹ 100 lakh would be the full value of consideration, since stamp duty value of ₹ 109 lakhs on the date of agreement does not exceed 110% of actual consideration of ₹ 100 lakhs. (ii) If no part of the consideration is paid by prescribed electronic mode on or before the date of agreement Stamp duty value of ₹ 112 lakhs on the date of transfer would be the full value of consideration, since the same exceeds 110% of actual consideration of ₹ 100 lakhs.	
			(2)	Where the Assessing Officer refers the valuation to a Valuation Officer, on the assessee's claim that the stamp duty value exceeds the FMV of the property on the date of transfer and the stamp duty value has not been disputed in any appeal or revision or no reference has been made before any other authority, court or High Court	
			(a)	If Valuation by Valuation Officer > Stamp Duty Value	Stamp Duty Value
			(b)	If Valuation by Valuation Officer < Stamp Duty Value	Valuation by Valuation Officer
		155(15)	(3)	If stamp duty value has been adopted as full value of consideration, and subsequently the value is revised in any appeal or revision	Value so revised in such appeal or revision

2.	Shares other than quoted shares	50CA	If consideration received or accruing as a result of transfer < FMV of such share determined in the prescribed manner The provisions of this section would not, however, be applicable to any consideration received or accruing as a result of transfer by such class of persons and subject to such conditions as may be prescribed.	FMV of such share determined in the prescribed manner
<u>Prescribed class of persons for the purpose of section 50CA</u> Rule 11UAD provides that the provisions of section 50CA shall not apply to transfer of any movable property, being unquoted shares, of a company and its subsidiary and the subsidiary of such subsidiary by an assessee, where - (i) the Tribunal, on an application moved by the Central Government under section 241 of the Companies Act, 2013, has suspended the Board of Directors of such company and has appointed new directors nominated by the Central Government under section 242 of the said Act; and (ii) share of such company and its subsidiary and the subsidiary of such subsidiary has been transferred pursuant to a resolution plan approved by the Tribunal under section 242 of the Companies Act, 2013 after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner. Meaning of certain terms (1) A company shall be a subsidiary of another company, if such other company holds more than half in nominal value of the equity share capital of the company. (2) Tribunal shall have the same meaning assigned to it in section 2(90) of the Companies Act, 2013 i.e., National Company Law Tribunal constituted under section 408 of the said Act.				
Note: The fair market value of the shares other than quoted shares would be determined in the manner provided in sub-clause (b) or sub-clause (c), as the case may be, of Rule 11UA(1)(c) and for this purpose the reference to valuation date in the Rule 11U and 11UA shall mean the date on which the capital asset, being share other than quoted shares of a company is transferred (Rule 11UAA) ⁵.				
3.	Any Capital asset	50D	Where the consideration received or accruing as a result of the transfer of a capital asset by an assessee is not ascertainable or cannot be determined	FMV of the said asset on the date of transfer

⁵ For detailed reading of Rule 11U to 11UAA of the Income-tax Rules, 1962, refer to Annexure 3 at the end of this module

Meaning of certain terms:

S. No.	Term	Section	Meaning
(i)	Stamp Duty Value	50C	The value adopted or assessed or assessable by any authority of a State Government (Stamp Valuation Authority) for the purpose of payment of stamp duty
(ii)	Assessable	50C	The term 'assessable' has been defined to mean the price which the stamp valuation authority would have, notwithstanding anything to the contrary contained in any other law for the time being in force, adopted or assessed, if it were referred to such authority for the purposes of the payment of stamp duty. The term "assessable" has been added to cover transfers executed through power of attorney.
(iii)	Quoted Shares	50CA	The share quoted on any recognised stock exchange with regularity from time to time, where the quotation of such share is based on current transaction made in the ordinary course of business.



4.19 ADVANCE MONEY RECEIVED [SECTION 51]

It is possible for an assessee to receive some advance in regard to the transfer of capital asset. Due to the break-down of the negotiation, the assessee may have retained the advance.

Section 51 provides that while calculating capital gains, the above advance retained by the assessee must go to reduce the cost of acquisition. However, if advance has been received and retained by the previous owner and not the assessee himself, then the same will not go to reduce the cost of acquisition of the assessee.

Section 56(2)(ix) provides for the taxability of any sum of money, received as an advance or otherwise in the course of negotiations for transfer of a capital asset. Consequently, such sum shall be chargeable to income-tax under the head 'Income from other sources', if such sum is forfeited on or after 1st April, 2014 and the negotiations do not result in transfer of such capital asset.

In order to avoid double taxation of the advance received and retained, section 51 provides that where any sum of money received as an advance or otherwise in the course of negotiations for transfer of a capital asset has been included in the total income of the assessee for any previous

year in accordance with section 56(2)(ix), then, such amount shall not be deducted from the cost for which the asset was acquired or the written down value or the fair market value, as the case may be, in computing the cost of acquisition.

However, any such sum of money forfeited before 1st April, 2014, will be deducted from the cost of acquisition before applying indexation, if any, for computing capital gains.

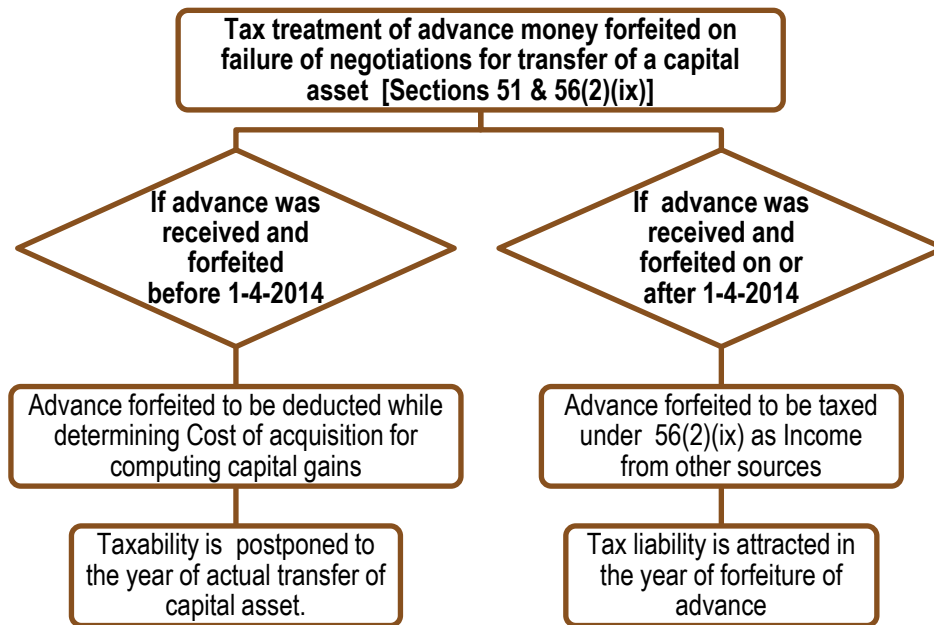


ILLUSTRATION 13

Mr. Kay purchases a house property on April 10, 1992 for ₹ 65,000. The fair market value of the house property on April 1, 2001 was ₹ 2,70,000 and Stamp duty value was ₹ 2,20,000. On August 31, 2004, Mr. Kay enters into an agreement with Mr. Jay for sale of such property for ₹ 3,70,000 and received an amount of ₹ 60,000 as advance. However, as Mr. Jay did not pay the balance amount, Mr. Kay forfeited the advance. In May 2008, Mr. Kay constructed the first floor by incurring a cost of ₹ 2,35,000. Subsequently, in January 2009, Mr. Kay gifted the house to his brother

Mr. Dee. On February 10, 2024, Mr. Dee sold the house for ₹ 12,00,000.

CII for F.Y.2001-02: 100; 2004-05: 113; 2008-09: 137; 2023-24: 348.

Compute the capital gains in the hands of Mr. Dee for A.Y.2024-25.

SOLUTION**Computation of taxable capital gains of Mr. Dee for A.Y.2024-25**

Particulars	₹	₹
Sale consideration		12,00,000
Less: Indexed cost of acquisition (See Note below)	5,58,832	
Indexed cost of improvement (See Note below)	5,96,934	11,55,766
Long-term capital gain		44,234

Note: For the purpose of capital gains, holding period is considered from the date on which the house was purchased by Mr. Kay, till the date of sale. However, indexation of cost of acquisition is considered from the date on which the house was gifted by Mr. Kay to Mr. Dee, till the date of sale i.e., from January 2009 (P.Y. 2008-09) to February, 2024 (P.Y. 2023-24). Since house property was acquired before 1st April, 2001, higher of fair market value on 1.4.2001 or actual cost of acquisition can be considered as cost of acquisition. However, fair market value cannot exceed stamp duty value on 1.4.2001.

Indexed cost of acquisition = (₹ 2,20,000 × 348/137) = ₹ 5,58,832

Indexed cost of improvement = (₹ 2,35,000 × 348/137) = ₹ 5,96,934

Amount forfeited by previous owner, Mr. Kay, shall not be deducted from cost of acquisition.

Alternative view - As per the view expressed by Bombay High Court in CIT v. Manjula J. Shah 16 Taxman 42, in case the cost of acquisition of the capital asset in the hands of the assessee is taken to be cost of such asset in the hands of the previous owner, the indexation benefit would be available from the year in which the capital asset is acquired by the previous owner. If this view is considered, the indexed cost of acquisition would have to be calculated by taking the CII of F.Y.2001-02, since the Fair Market Value as on 1.4.2001 has been taken as the cost of acquisition.

Note - Since the property was gifted prior to 1.10.2009, it is a case falling u/s 49(1) and not 49(4). Accordingly, the cost of acquisition of the previous owner, Mr. Kay, or the FMV as on 1.4.2001 (since the asset was acquired by the previous owner, Mr. Kay, before 1.4.2001), has to be considered.

ILLUSTRATION 14

Mr. X purchases a house property in December 1993 for ₹ 5,25,000 and an amount of ₹ 1,75,000 was spent on the improvement and repairs of the property in March, 1997. The property was proposed to be sold to Mr. Z in the month of May, 2007 and an advance of ₹ 40,000 was taken

from him. As the entire money was not paid in time, Mr. X forfeited the advance and subsequently sold the property to Mr. Y in the month of March, 2024 for ₹ 52,00,000. The fair value of the property on April 1, 2001 was ₹ 11,90,000 and Stamp duty value on the said date was ₹ 10,20,000. What is the capital gain chargeable in the hands of Mr. X for the A.Y. 2024-25?

Financial year	Cost Inflation Index
2001-02	100
2007-08	129
2023-24	348

SOLUTION

Capital gains in the hands of Mr. X for the A.Y.2024-25 is computed as under

Particulars	₹
Sale proceeds	52,00,000
Less: Indexed cost of acquisition [Note 1]	34,10,400
Indexed cost of improvement [Note 2]	-
Long term capital gains	17,89,600

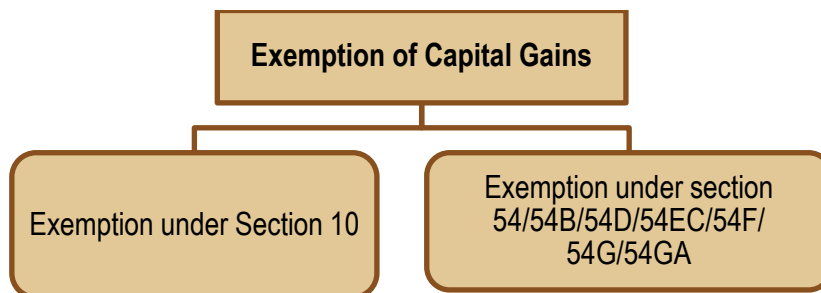
Note 1: Computation of indexed cost of acquisition

Cost of acquisition (higher of fair market value as on April 1, 2001 and the actual cost of acquisition. Fair market value, however, should not exceed ₹ 10,20,000, being the stamp duty value on 1.4.2001)	10,20,000
Less: Advance taken and forfeited before 1.4.2014	40,000
Cost for the purposes of indexation	9,80,000
Indexed cost of acquisition (₹ 9,80,000 x 348/100)	34,10,400

Note 2: Any improvement cost incurred prior to 1.4.2001 is to be ignored.



4.20 EXEMPTION OF CAPITAL GAINS



(1) Exemption under section 10

The following are the exemption in respect of capital gains under section 10:

(i) Exemption of capital gain on transfer of a unit of Unit Scheme, 1964 (US 64) [Section 10(33)]

This clause provides that any income arising from the transfer of unit of US 64, shall be exempt from tax. Such transfer should take place on or after 1.4.2002.

(ii) Exemption of capital gains on compulsory acquisition of agricultural land situated within specified urban limits [Section 10(37)]

With a view to mitigate the hardship faced by the farmers whose agricultural land situated in specified urban limits has been compulsorily acquired, clause (37) provide to exempt the capital gains arising to an individual or a HUF from transfer of urban agricultural land by way of compulsory acquisition.

Such exemption is available where the compensation or the enhanced compensation or consideration, as the case may be, is received on or after 1.4.2004.

The exemption is available only when such land has been **used for agricultural purposes** during the **immediately preceding two years from the date of transfer** by such individual or a parent of his or by such HUF.

Clarification on taxability of the compensation received by the land owners for the land acquired under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (RFCTLARR Act) [Circular No. 36/2016, dated 25-10-2016]

The RFCTLARR Act which came into effect from 1st January, 2014, in section 96, *inter alia* provides that income-tax shall not be levied on any award or agreement made (except those made under section 46) under the RFCTLARR Act. Therefore, compensation received for compulsory acquisition of land under the RFCTLARR Act (except those made under section 46 of RFCTLARR Act), is exempted from the levy of income-tax.

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

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

ILLUSTRATION 15

Mr. Kumar has an agricultural land costing ₹ 6 lakh in Lucknow on 1.4.2003 and has been using it for agricultural purposes till 1.8.2012 when the Government took over compulsory acquisition of this land. A compensation of ₹ 12 lakhs was settled. The compensation was received by Mr. Kumar on 1.7.2023. Compute the amount of capital gains taxable in the hands of Mr. Kumar.

Cost Inflation Index: 2003-04: 109, 2012-13: 200, 2023-24: 348

SOLUTION

In the given problem, compulsory acquisition of an urban agricultural land has taken place and the compensation is received after 1.4.2004. This land had also been used for at least 2 years by the assessee himself for agricultural purposes. Thus, as per section 10(37), entire capital gains arising on such compulsory acquisition will be fully exempt and nothing is taxable in the hands of Mr. Kumar in the year of receipt of compensation i.e., A.Y.2024-25.

ILLUSTRATION 16

Will your answer be different if Mr. Kumar had by his own will sold this land to his friend Mr. Sharma? Examine.

SOLUTION

As per section 10(37), exemption is available if compulsory acquisition of urban agricultural land takes place. Since the sale is out of own will and desire, the provisions of this section are not attracted and the capital gains arising on such sale will be taxable in the hands of Mr. Kumar.

ILLUSTRATION 17

Will your answer be different if Mr. Kumar had not used this land for agricultural activities? Examine and compute the amount of capital gains taxable in the hands of Mr. Kumar, if any.

SOLUTION

As per section 10(37), exemption is available only when such land has been used for agricultural purposes during the preceding two years by such individual or his parent or by such HUF. Since the assessee has not used it for agricultural activities, the provisions of this section are not attracted and the capital gains arising on such compulsory acquisition will be taxable in the hands of Mr. Kumar in the year of receipt of compensation i.e., A.Y. 2024-25.

Computation of capital gains

Particulars	Amount (₹)
Sales consideration	12,00,000
Less: Cost of acquisition (₹ 6,00,000 x 200/109)	11,00,917
Long term capital Gains	99,083

ILLUSTRATION 18

Will your answer be different if the land belonged to ABC Ltd. and not Mr. Kumar and compensation on compulsory acquisition was received by the company? Examine.

SOLUTION

Section 10(37) exempts capital gains arising to an individual or a HUF from transfer of agricultural land by way of compulsory acquisition. If the land belongs to ABC Ltd., a company, the provisions of this section are not attracted and the capital gains arising on such compulsory acquisition will be taxable in the hands of ABC Ltd.

(2) Exemption of Capital Gains under section 54/54B/54D/54EC/54F/54G/54GA**(i) Capital Gains on sale of residential house [Section 54]**

Eligible assessee – Individual & HUF

Conditions to be fulfilled

- There should be a transfer of residential house (buildings or lands appurtenant thereto)
- It must be a long-term capital asset
- Income from such house should be chargeable under the head “Income from house property”

- **Where the amount of capital gains exceeds ₹ 2 crore**

Where the amount of capital gain exceeds ₹ 2 crore, **one residential house in India** should be –

- purchased within 1 year before or 2 years after the date of transfer (or)
- constructed within a period of 3 years after the date of transfer.

- **Where the amount of capital gains does not exceed ₹ 2 crore**

Where the amount of capital gains does not exceed ₹ 2 crore, the assessee i.e., individual or HUF, may at his option,

- purchase **two residential houses in India** within 1 year before or 2 years after the date of transfer (or)
- construct **two residential houses in India** within a period of 3 years after the date of transfer.

Where during any assessment year, the assessee has exercised the option to purchase or construct two residential houses in India, he shall not be subsequently entitled to exercise the option for the same or any other assessment year.

This implies that if an assessee has availed the option of claiming benefit of section 54 in respect of purchase of two residential houses in Jaipur and Jodhpur, say, in respect of capital gains of ₹ 1.50 crores arising from transfer of residential house at Mumbai in the P.Y.2023-24 then, he will not be entitled to avail the benefit of section 54 again in respect of purchase of two residential houses in, say, Pune and Baroda, in respect of capital gains of ₹ 1.20 crores arising from transfer of residential house in Jaipur in the P.Y.2026-27, even though the capital gains arising on transfer of the residential house at Jaipur does not exceed ₹ 2 crore.

- If such investment is not made before the date of filing of return of income, then the capital gain has to be deposited under the Capital Gains Account Scheme (CGAS) [Refer points (viii) and (ix) of this sub-heading (2)]. **However, the capital gain in excess of ₹ 10 crore would not be taken into account for the purpose of deposit in CGAS.**
- Amount utilised by the assessee for purchase or construction of new asset and the amount so deposited shall be deemed to be the cost of new asset. **The deemed cost of the new asset would be restricted to ₹ 10 crores for the purpose of exemption under section 54.**

Quantum of Exemption

- If cost of new residential house or houses, as the case may be $\geq$ long-term capital gains, entire long-term capital gains is exempt.
- If cost of new residential house or houses, as the case may be $<$ long-term capital gains, long-term capital gains to the extent of cost of new residential house is exempt

However, if the cost of new residential house(s) exceeds ₹ 10 crores, the amount exceeding ₹ 10 crore would not be taken into account for exemption. It means the maximum exemption that can be claimed by the assessee u/s 54 is ₹ 10 crore.

Examples

1. If the long-term capital gains is ₹ 2.05 crores and the cost of the new house is ₹ 3 crores, then, the entire long-term capital gains of ₹ 2.05 crores is exempt.
2. If long-term capital gains is ₹ 2.05 crores and cost of new house is ₹ 1.55 crores, then, long-term capital gains is exempt only upto ₹ 1.55 crores. Balance ₹ 50 lakhs is taxable @ 20%.

Example

(1)	(2)	(3)	(4)	(5)
S.No.	LTCG computed	Cost of new residential house	Amount in column (3) or ₹ 10 crore, whichever is lower	Exempt LTCG [Lower of column (2) and column (4)]
(1)	₹ 7 crore	₹ 12 crore	₹ 10 crore	₹ 7 crore
(2)	₹ 12 crore	₹ 14 crore	₹ 10 crore	₹ 10 crore
(3)	₹ 11 crore	₹ 9 crore	₹ 9 crore	₹ 9 crore
(4)	₹ 15 crore	₹ 13 crore	₹ 10 crore	₹ 10 crore

Examples

1. If the LTCG is ₹ 8 crore and the assessee has incurred ₹ 5 crore in construction of new residential house upto the due date u/s 139(1) i.e., 31.7.2024/ 31.10.2024, as the case may be, then, as per section 54(2), he can deposit the amount of ₹ 3 crore not appropriated by him towards construction of house upto 31.7.2024/31.10.2024, as the case may be, in Capital Gains Account Scheme (CGAS) for claiming exemption under section 54. If he deposits, say, ₹ 2 crore, in CGAS on or before the

due date u/s 139(1), the deemed cost of the new residential house would be ₹ 7 crore (₹ 5 crore + ₹ 2 crore). The amount exempt u/s 54 would be ₹ 7 crore.

2. If the LTCG is ₹ 14 crore and the assessee has already incurred ₹ 7 crore in construction of new residential house upto 31.7.2024/31.10.2024, as the case may be, then, as per section 54(2), he can deposit the difference of ₹ 3 crore (₹ 10 crore - ₹ 7 crore) in CGAS for claiming exemption u/s 54. If he deposits, say, ₹ 2 crore in CGAS on or before the due date u/s 139(1), the deemed cost of the new residential house would be ₹ 9 crore (₹ 7 crore + ₹ 2 crore). The amount exempt under section 54 would be ₹ 9 crore.

Consequences of transfer of new asset before 3 years

- If the new asset is transferred before 3 years from the date of its acquisition or construction, then, cost of the asset will be reduced by capital gains exempted earlier for computing capital gains.
- **Example:** The long-term capital gains is ₹ 2.05 crore and the cost of the new house is ₹ 3 crore, the entire long-term capital gains of ₹ 2.05 crore will be exempt. If the new house was sold after 18 months for ₹ 5 crore, then, short term capital gain chargeable to tax would be –

Particulars	₹
Net Consideration	5,00,00,000
Less: Cost of acquisition minus capital gains exempt earlier (₹ 3,00,00,000 – ₹ 2,05,00,000)	95,00,000
Short term capital gains chargeable to tax	4,05,00,000

ILLUSTRATION 19

Mr. Cee purchased a residential house on July 20, 2021 for ₹ 10,00,000 and made some additions to the house incurring ₹ 2,00,000 in August 2021. He sold the house property in April, 2023 for ₹ 20,00,000. Out of the sale proceeds, he spent ₹ 5,00,000 to purchase another house property in September, 2023.

What is the amount of capital gains taxable in the hands of Mr. Cee for the A.Y. 2024-25?

SOLUTION

The house is sold before 24 months from the date of purchase. Hence, the house is a short-term capital asset and no benefit of indexation would be available.

Particulars	₹
Sale consideration	20,00,000
Less: Cost of acquisition	10,00,000
Cost of improvement	2,00,000
Short-term capital gains	8,00,000

Note: The exemption of capital gains under section 54 is available only in case of long-term capital asset. As the house is short-term capital asset, Mr. Cee cannot claim exemption under section 54. Thus, the amount of taxable short-term capital gains is ₹ 8,00,000.

(ii) **Capital Gains on transfer of agricultural land [Section 54B]**

Eligible assessee – Individual & HUF

Conditions to be fulfilled

- There should be a transfer of urban agricultural land.
- Such land must have been used for agricultural purposes by the assessee, being an individual or his parent, or a HUF in the 2 years immediately preceding the date of transfer.
- He should purchase another agricultural land (urban or rural) within 2 years from the date of transfer.
- If such investment is not made before the date of filing of return of income, then the capital gain has to be deposited under the CGAS [Refer points (viii) and (ix) of this sub-heading (2)]. Amount utilised by the assessee for purchase of new asset and the amount so deposited shall be deemed to be the cost of new asset.

Quantum of exemption

- If cost of new agricultural land $\geq$ capital gains, entire capital gains is exempt.
- If cost of new agricultural land $<$ capital gains, capital gains to the extent of cost of new agricultural land is exempt.

Examples

1. If the capital gains is ₹ 3 lakhs and the cost of the new agricultural land is ₹ 4 lakhs, then the entire capital gains of ₹ 3 lakhs is exempt.
2. If capital gains is ₹ 3 lakhs and cost of new agricultural land is ₹ 2 lakhs, then capital gains is exempt only upto ₹ 2 lakhs.

Consequences of transfer of new agricultural land before 3 years

- If the new agricultural land is transferred before 3 years from the date of its acquisition, then cost of the land will be reduced by capital gains exempted earlier for computing capital gains of new agricultural land.
- However, if the new agricultural land is a rural agricultural land, there would be no capital gains on transfer of such land.
- Continuing in the above example, if the new agricultural land (urban land) is sold after, say, 1 year for ₹ 6 lakhs, then short-term capital gain chargeable to tax would be –

Particulars	₹
Net consideration	6,00,000
Less: Cost of acquisition minus capital gains exempt earlier (₹ 4,00,000 – ₹ 3,00,000)	1,00,000
Short-term capital gains chargeable to tax	5,00,000

(iii) Capital Gains on transfer by way of compulsory acquisition of land and building of an industrial undertaking [Section 54D]

Eligible assessee – Any assessee

Conditions to be fulfilled

- There must be compulsory acquisition of land and building or any right in land or building forming part of an industrial undertaking.
- The land and building should have been used by the assessee for purposes of the business of the industrial undertaking in the 2 years immediately preceding the date of transfer.
- The assessee must purchase any other land or building or any right in land or building or construct any building (for shifting or re-establishing the existing undertaking or setting up a new industrial undertaking) within 3 years from the date of transfer.
- If such investment is not made before the date of filing of return of income, then the capital gain has to be deposited under the CGAS [Refer points (viii) and (ix) of this sub-heading (2)]. Amount utilised by the assessee for purchase of new asset and the amount so deposited shall be deemed to be the cost of new asset.

Quantum of exemption

- If cost of new asset $\geq$ Capital gains, entire capital gains is exempt.
- If cost of new asset $<$ Capital gains, capital gains to the extent of cost of new asset is exempt.

Note: The exemption in respect of capital gains from transfer of capital asset would be available even in respect of short-term capital asset, being land or building or any right in any land or building, provided such capital asset is used by assessee for the industrial undertaking belonging to him, even if he was not the owner for the said period of 2 years.

Consequences of transfer of new asset before 3 years

- If the new asset is transferred before 3 years from the date of its purchase or construction, then cost of the asset will be reduced by capital gains exempted earlier for computing capital gains.

ILLUSTRATION 20

PQR Ltd., purchased a land for industrial undertaking in May 2004, at a cost of ₹ 3,50,000. The above property was compulsorily acquired by the State Government at a compensation of ₹ 13,00,000 in the month of January, 2024. The compensation was received in February, 2024. The company purchased another land for its industrial undertaking at a cost of ₹ 2,00,000 in the month of March, 2024. What is the amount of the capital gains chargeable to tax in the hands of the company for the A.Y. 2024-25?

Financial year	Cost Inflation Index
2004-05	113
2023-24	348

SOLUTION**Computation of capital gains in the hands of PQR Ltd. for the A.Y.2024-25**

Particulars	₹
Sale proceeds (Compensation received)	13,00,000
Less: Indexed cost of acquisition [₹ 3,50,000 $\times$ 348/113]	10,77,876
	2,22,124
Less: Exemption under section 54D (Cost of acquisition of land for its undertaking)	2,00,000
Taxable long-term capital gain	22,124

(iv) **Capital Gains not chargeable on investment in certain bonds [Section 54EC]**

Eligible assessee – Any assessee

Conditions to be fulfilled

- There should be transfer of a long-term capital asset being land or building or both.
- Such asset can also be a depreciable asset being a building held for more than 24 months. [*CIT v. Dempo Company Ltd (2016) 387 ITR 354 (SC)*]
- The capital gains arising from such transfer should be invested in a long-term specified asset within 6 months from the date of transfer.
- Long-term specified asset means specified bonds, redeemable after 5 years, issued on or after 1.4.2018 by the National Highways Authority of India (NHAI) or the Rural Electrification Corporation Limited (RECL) or any other bond notified by the Central Government in this behalf.
- The assessee should not transfer or convert or avail loan or advance on the security of such bonds for a period of **5 years** from the date of acquisition of such bonds.

Note - In case of conversion of capital asset into stock in trade and subsequent sale of stock in trade - Period of 6 months to be reckoned from the date of sale of stock in trade for the purpose of section 54EC exemption [*CBDT Circular No.791 dated 2-6-2000*].

Quantum of exemption

Capital gains or amount invested in specified bonds, whichever is lower.

Ceiling limit for investment in long-term specified asset

The maximum investment which can be made in notified bonds or bonds of NHAI and RECL, out of capital gains arising from transfer of one or more assets, during the previous year in which the original asset is transferred and in the subsequent financial year cannot exceed ₹ 50 lakhs.

Violation of condition

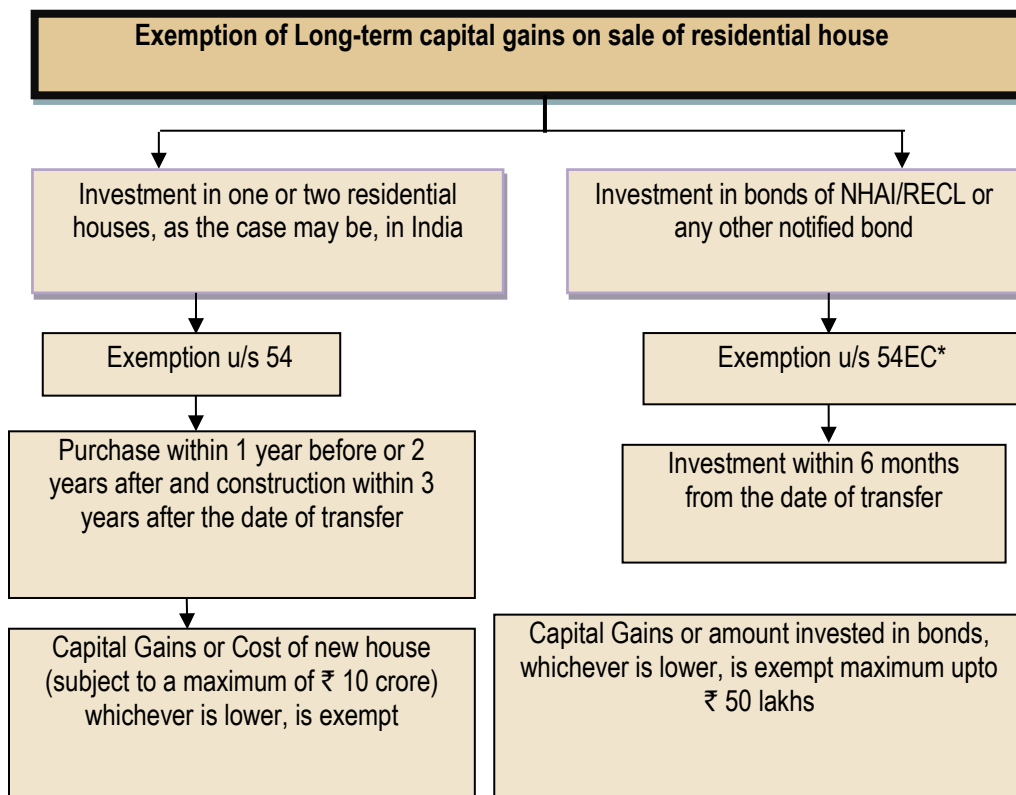
In case of transfer or conversion of such bonds or availing loan or advance on security of such bonds before the expiry of 5 years, the capital gain exempted earlier shall be taxed as long-term capital gain in the year of violation of condition.

ILLUSTRATION 21

Long-term capital gain of ₹ 75 lakh arising from transfer of building on 1.5.2023 will be fully exempt from tax if such capital gain is invested in the bonds redeemable after five years, issued by NHAI under section 54EC. Examine with reasons whether the given statement is true or false having regard to the provisions of the Income-tax Act, 1961.

SOLUTION

False: The exemption under section 54EC has been restricted, by limiting the maximum investment in long term specified assets (i.e., bonds of NHAI or RECL or any other bond notified by Central Government in this behalf, redeemable after 5 years) to ₹ 50 lakh, whether such investment is made during the relevant previous year or the subsequent previous year, or both. Therefore, in this case, the exemption under section 54EC can be availed only to the extent of ₹ 50 lakh, provided the investment is made before 1.11.2023 (i.e., within six months from the date of transfer).



*The exemption under section 54EC is available in respect of capital gains on transfer of capital asset being land or building or both.

(v) **Capital gains in cases of investment in residential house [Section 54F]**

Eligible assessee: Individuals/ HUF

Conditions to be fulfilled

- There must be transfer of a **long-term capital asset, not being a residential house**.
- Transfer of plot of land is also eligible for exemption
- The assessee should -
 - ◆ Purchase **one residential house situated in India** within a period of 1 year before or 2 years after the date of transfer; or
 - ◆ Construct one residential house in India within 3 years from the date of transfer.
- If such investment is not made before the date of filing of return of income, then the net sale consideration has to be deposited under the CGAS [*Refer points (viii) and (ix) of this sub-heading (2)*]. **However, the net consideration in excess of ₹ 10 crore would not be taken into account for the purpose of deposit in CGAS.**
- Amount utilised by the assessee for purchase or construction of new asset and the amount so deposited shall be deemed to be the cost of new asset. **The deemed cost of new asset would be restricted to ₹ 10 crores for the purpose of exemption under section 54F.**
- The assessee should not own more than one residential house on the date of transfer.
- The assessee should not –
 - ◆ purchase any other residential house within a period of 2 years or
 - ◆ construct any other residential house within a period of 3 yearsfrom the date of transfer of the original asset.

Quantum of exemption

- If cost of new residential house $\geq$ Net sale consideration of original asset, entire capital gains is exempt.

- If cost of new residential house < Net sale consideration of original asset, only proportionate capital gains is exempt i.e.

$$\text{LTCG} \times \frac{\text{Amount invested in new residential house}}{\text{Net sale consideration}}$$

However, if the cost of new residential house/ amount invested in new residential house exceeds ₹ 10 crore, the amount exceeding ₹ 10 crore would not be taken into account for exemption.

Example

(1)		(2)	(3)	(4)	(5)
	Net Consideration	LTCG computed	Cost of new residential house	Amount in column (3) or ₹10 crores, whichever is lower	Exempt LTCG
(1)	₹ 15 crore	₹ 7.5 crore	₹ 12 crore	₹ 10 crore	₹ 7.5 crore x 10/15 = ₹ 5 crore
(2)	₹ 20 crore	₹ 12 crore	₹ 15 crore	₹ 10 crore	₹ 12 crore x 10/20 = ₹ 6 crore
(3)	₹ 16 crore	₹ 12 crore	₹ 8 crore	₹ 8 crore	₹ 12 crore x 8/16 = ₹ 6 crore
(4)	₹ 10 crore	₹ 6 crore	₹ 10 crore	₹ 10 crore	₹ 6 crore x 10/10 = ₹ 6 crore
(5)	₹ 12 crore	₹ 6 crore	₹ 12 crore	₹ 10 crore	₹ 6 crore x 10/12 = ₹ 5 crore

Examples

1. If the net consideration is ₹ 9 crore, the capital gain is ₹ 4.50 crore and the amount incurred for construction of new residential house upto 31.7.2024/31.10.2024, as the case may be, is ₹ 5 crore, then, as per section 54F(4), the assessee can deposit the amount of ₹ 4 crore (i.e., ₹ 9 crore – ₹ 5 crore) not appropriated towards construction upto 31.7.2024/ 31.10.2024, as the case may be, in CGAS for claiming exemption u/s 54F. If the assessee has deposited, say, ₹ 3 crore on or before 31.7.2024/ 31.10.2024, as the case may be, the deemed cost of new residential house would be ₹ 8 crore (₹ 5 crore + ₹ 3 crore). The exemption u/s 54F would be ₹ 4 crore [i.e., ₹ 4.50 crore x ₹ 8 crore/₹ 9 crore].

2. If the net consideration is ₹ 15 crore, the capital gain is ₹ 7.50 crore and the amount incurred for construction of new residential house upto 31.7.2024/31.10.2024, as the case may be, is ₹ 6 crore, the assessee can deposit ₹ 4 crore [i.e., ₹ 10 crore – ₹ 6 crore] on or before 31.7.2024/31.10.2024, as the case may be, in CGAS for claiming exemption u/s 54F. If the assessee has deposited, say, ₹ 3 crore on or before the due date of filing return u/s 139(1), the deemed cost of new residential house would be ₹ 9 crore (₹ 6 crore + ₹ 3 crore). The exemption u/s 54F would be ₹ 4.50 crore [i.e., ₹ 7.50 crore x ₹ 9 crore/₹ 15 crore].

ILLUSTRATION 22

From the following particulars, compute the taxable capital gains of Mr. D for A.Y.2024-25 -

Particulars	Amount (₹)
Cost of jewellery [Purchased in F.Y.2005-06]	4,52,000
Sale price of jewellery sold in January 2024	14,50,000
Expenses on transfer	7,000
Residential house purchased in March 2024	5,00,000

The Cost Inflation Index are as follows:

Financial Year	Cost Inflation Index
2005-06	117
2023-24	348

SOLUTION

Computation of taxable capital gains for A.Y.2024-25

Particulars	₹
Gross consideration	14,50,000
Less: Expenses on transfer	7,000
Net consideration	14,43,000
Less: Indexed cost of acquisition (₹ 4,52,000 × 348/117)	13,44,410
	98,590
Less: Exemption under section 54F (₹ 98,590 × ₹ 5,00,000/ ₹ 14,43,000)	34,161
Taxable long-term capital gains	64,429

Consequences if the new house is transferred within 3 years from the date of its purchase

If the new asset is transferred before the expiry of 3 years from the date of its purchase or construction, as the case may be, then capital gains arises on transfer of the new house and the capital gains exempted earlier under section 54F would be taxable as long-term capital gains.

Note – In case the new residential house is sold after 2 years, the capital gains would be long-term capital gains and indexation benefit would be available.

Consequences where assessee purchases any other residential house within 2 years or constructs within 3 years from the date of transfer of original asset

The capital gain exempted earlier under section 54F would be deemed to be long-term capital gains and chargeable to tax in the previous year in which such residential house is purchased or constructed.

(vi) **Exemption of capital gains for shifting of industrial undertaking from urban areas [Section 54G]**

Eligible assessee: Any assessee

Conditions to be fulfilled

- There should be a shifting of the industrial undertaking from an urban area to any other area other than an urban area.
- There should be a transfer of machinery, plant, building or land or any right in building or land used for the business of an industrial undertaking situated in an urban area.
- Such transfer should be in the course of, or in consequence of, shifting the industrial undertaking from an urban area to any other area other than an urban area.
- The capital gain (short-term or long-term) should be utilised for any of the following purposes within 1 year before or 3 years after the date of transfer –
 - ♦ purchase of new plant and machinery for the purposes of business of the industrial undertaking in the area to which the said undertaking is shifted;
 - ♦ acquisition of building or land or construction of building for the purposes of his business in the said area;

- ◆ shifted the original asset and transferred the establishment of such industrial undertaking from the urban area to the other area;
- ◆ incurred expenses on such other purpose as may be specified in a scheme framed by the Central Government.
- If such investment is not made before the date of filing of return of income, then the capital gain has to be deposited under the CGAS. [Refer points (viii) at the end of this sub-heading (2)]. Amount utilised by the assessee for purchase of new asset and expenses of shifting and the amount so deposited shall be deemed to be the cost of new asset.

Quantum of exemption

- If cost of new assets plus expenses incurred for the specified purpose $\geq$ Capital gains, entire capital gains (short-term or long-term) is exempt.
- If cost of new assets plus expenses incurred for the specified purpose $<$ Capital gains, capital gains (short-term or long-term) to the extent of such cost and expenses is exempt.

Consequences if the new asset is transferred within a period of 3 years

If the new asset is transferred within a period of 3 years of its purchase or construction, then the capital gain, which was exempt earlier under section 54G would be deducted from the cost of acquisition of the new asset for the purpose of computation of capital gains in respect of the transfer of the new asset.

(vii) Exemption of capital gains on transfer of certain capital assets in case of shifting of an industrial undertaking from an urban area to any SEZ [Section 54GA]

Eligible assesses – Any assessee

Conditions to be fulfilled

- There must be transfer of capital assets
- Such transfer must be effected in the course of, or in consequence of the shifting of an industrial undertaking from an urban area to any SEZ, whether developed in an urban area or not.
- The capital asset should be either machinery or plant or building or land or any rights in building or land used for the purposes of the business of an industrial undertaking situated in an urban area.

- The assessee should, within a period of 1 year before or 3 years after the date of transfer,
 - ◆ purchase machinery or plant for the purposes of business of the industrial undertaking in the SEZ;
 - ◆ acquire building or land or construct building for the purposes of his business in the SEZ;
 - ◆ shifted the original asset and transferred the establishment of such industrial undertaking from the urban area to the SEZ; and
 - ◆ incurred expenses for such other purposes as may be specified in a scheme framed by the Central Government.
- If such investment is not made before the date of filing of return of income, then the capital gain has to be deposited under the CGAS [Refer points (viii) at the end of this sub-heading (2)]. Amount utilised by the assessee for purchase of new asset and expenses of shifting and the amount so deposited shall be deemed to be the cost of new asset.

Quantum of exemption

- If cost of new assets plus expenses incurred for shifting $\geq$ Capital gains, entire capital gains (short-term or long-term) is exempt.
- If cost of new assets plus expenses incurred for shifting $<$ Capital gains, capital gains (short-term or long-term) to the extent of such cost and expenses is exempt.

Consequences if the new asset is transferred within a period of 3 years

- If the new asset is transferred within a period of 3 years of its purchase or construction, then the capital gain, which was exempt earlier under section 54GA would be deducted from the cost of acquisition of the new asset for the purpose of computation of capital gains in respect of the transfer of the new asset.

(viii) Capital Gains Account Scheme (CGAS)

Under sections 54, 54B, 54D, 54F, 54G and 54GA, capital gains is exempt to the extent of investment of such gains/ net consideration (in the case of section 54F) in specified assets within the specified time. If such investment is not made before the date of filing of return of income, then the capital gain or net consideration (in case of exemption under section 54F & 54GB) has to be deposited under the CGAS. **However, the capital gain in excess of ₹10**

crore would not be taken into account for the purpose of deposit in CGAS in case of section 54 and the net consideration in excess of ₹ 10 crore would not be taken into account for the purpose of deposit in CGAS in case of section 54F.

Time limit

Such deposit in CGAS should be made before filing the return of income or on or before the due date of filing the return of income, whichever is earlier. In such cases, the amount already utilized for purchase or construction of new asset plus the amount deposited under the CGAS on or before due date u/s 139(1) would be deemed to be the cost of new asset. *However, for the purpose of sections 54 and 54F, the amount so deemed to be the cost of the new asset cannot exceed ₹ 10 crore.*

Proof of such deposit should be attached with the return. The deposit can be withdrawn for utilization for the specified purposes in accordance with the scheme.

Consequences if the amount deposited in CGAS is not utilized within the stipulated time of 2 years / 3 years

If the amount deposited is not utilized for the specified purpose within the stipulated period, then the **unutilized amount shall be charged as capital gain** of the previous year in which the specified period expires. In the case of section 54F and 54GB, proportionate amount will be taxable.

CBDT Circular No.743 dated 6.5.96 clarifies that in the event of death of an individual before the stipulated period, the unutilized amount is not chargeable to tax in the hands of the legal heirs of the deceased individual. Such unutilized amount is not income but is a part of the estate devolving upon them.

(ix) Extension of time for acquiring new asset or depositing or investing amount of Capital Gain [Section 54H]

In case of compulsory acquisition of the original asset, where the compensation is not received on the date of transfer, the period available for acquiring a new asset or making investment in CGAS under sections 54, 54B, 54D, 54EC and 54F would be considered from the date of receipt of such compensation and not from the date of the transfer.



4.21 REFERENCE TO VALUATION OFFICER [SECTION 55A]

Section 55A provides that the Assessing Officer may refer the valuation of a capital asset to a Valuation Officer in the following circumstances with a view to ascertaining the fair market value of the capital asset for the purposes of capital gains -

- (i) In a case where the value of the asset as claimed by the assessee is in accordance with the estimate made by a registered valuer, if the Assessing Officer is of the opinion that the value so claimed is at variance with its fair market value.

Under this provision, the Assessing Officer can make a reference to the Valuation Officer in cases where the fair market value is taken to be the sale consideration of the asset. An Assessing Officer can also make a reference to the Valuation Officer in a case where the fair market value of the asset as on 01.04.2001 is taken as the cost of the asset, if he is of the view that there is any variation between the value as on 01.04.2001 claimed by the assessee in accordance with the estimate made by a registered valuer and the fair market value of the asset on that date.

- (ii) If the Assessing Officer is of the opinion that the fair market value of the asset exceeds the value of the asset as claimed by the assessee by more than 15% of the value of asset as so claimed or by more than ₹ 25,000.
- (iii) The Assessing Officer is of the opinion that, having regard to the nature of asset and other relevant circumstances, it is necessary to make the reference.



4.22 TAX ON SHORT TERM CAPITAL GAINS IN RESPECT OF EQUITY SHARES/ UNITS OF AN EQUITY ORIENTED FUND/ UNITS OF A BUSINESS TRUST [SECTION 111A]

- (1) **Concessional rate of tax in respect of STCG on transfer of certain assets:** This section provides for a concessional rate of tax i.e. 15% on the short-term capital gains on transfer of -

- (i) an equity share in a company or
- (ii) a unit of an equity oriented fund or
- (iii) a unit of a business trust.

(2) **Conditions:** The conditions for availing the benefit of this concessional rate are –

- (i) the transaction of sale of such equity share or unit should be entered into on or after 1.10.2004, being the date on which Chapter VII of the Finance (No. 2) Act, 2004 came into force; and
- (ii) such transaction should be chargeable to securities transaction tax under the said Chapter.

However, short-term capital gains arising from transactions undertaken in foreign currency on a recognized stock exchange located in an International Financial Services Centre (IFSC) would be taxable at a concessional rate of 15% even though STT is not leviable in respect of such transaction.

(3) **Adjustment of Unexhausted Basic Exemption Limit:** In the case of resident individuals or HUF, if the basic exemption is not fully exhausted by any other income, then the short-term capital gain will be reduced by the unexhausted basic exemption limit and only the balance would be taxed at 15%. However, the benefit of availing the basic exemption limit is not available in the case of non-residents.

(4) **No deduction under Chapter VI-A against STCG taxable under section 111A:** Deductions under Chapter VI-A cannot be availed in respect of such short-term capital gains on equity shares of a company or units of an equity oriented fund or unit of a business trust included in the total income of the assessee.



4.23 TAX ON LONG TERM CAPITAL GAINS [SECTION 112]

(1) **Concessional rate of tax:** Where the total income of an assessee includes long-term capital gains, tax is payable by the assessee @20% on such long-term capital gains. The treatment of long-term capital gains in the hands of different types of assessee are as follows -

- (i) **Resident individual or Hindu undivided family:** Income-tax payable at normal rates on total income as reduced by long-term capital gains plus 20% on such long-term capital gains.

Adjustment of Unexhausted Basic Exemption Limit: However, where the total income as reduced by such long-term capital gains is below the maximum amount which is not chargeable to income-tax then such long-term capital gains shall be reduced by the amount by which the total income as so reduced falls short of the

maximum amount which is not chargeable to income-tax and the tax on the balance of such long-term capital gains will be calculated @20%.

(ii) **Domestic Company:** Long-term capital gains will be charged @ 20%.

(iii) **Non-corporate non-resident or foreign company:**

(a) Long-term capital gains arising from the transfer of a capital asset, being unlisted securities or shares of a company not being a company in which public are substantially interested, would be calculated at the rate of 10% on the capital gains in respect of such asset without giving effect to the indexation provision under second proviso to section 48 and currency fluctuation under first proviso to section 48.

(b) In respect of other long-term capital gains, the applicable rate of tax would be 20%.

(iv) **Residents (other than those included in (i) above):** Long-term capital gains will be charged @20%.

(2) **Lower rate of tax for transfer of listed securities and zero coupon bonds:** Where the tax payable in respect of any income arising from the transfer of a listed security (other than a unit) or a zero coupon bond, being a long-term capital asset, exceeds 10% of the amount of capital gains before indexation, then such excess shall be ignored while computing the tax payable by the assessee i.e. lower of the tax @10% without indexation or tax @20% with indexation benefit.

Consequently, long-term capital gains on transfer of units and unlisted securities are not eligible for concessional rate of tax@10% (without indexation benefit). Therefore, the long-term capital gains, in such cases, are taxable @20% (with indexation benefit).

However, in case of non-corporate non-residents and foreign companies, long-term capital gains arising from transfer of a capital asset, being unlisted securities or shares in a company in which public are not substantially interested are eligible for a concessional rate of tax @10% (without indexation benefit).

(3) **No deduction under Chapter VI-A against LTCG:** The provisions of section 112 make it clear that the deductions under Chapter VIA cannot be availed in respect of the long-term capital gains included in the total income of the assessee.

Tax on long-term capital gains [Section 112]

	Person	Rate of tax	Particulars
1.	Resident persons, other than companies		
	Resident Individuals and HUF	20%	Unexhausted basic exemption limit can be exhausted against LTCG taxable u/s 112
	Resident AOPs and BOIs	20%	Unexhausted basic exemption limit cannot be adjusted against LTCG taxable u/s 112
	Resident Firms and LLPs	20%	
2.	Domestic companies	20%	
3.	Non-corporate non-residents and foreign companies	20%	Capital assets, other than unlisted securities or shares of closely held companies
		10%	Unlisted securities or shares of closely held companies (without benefit of indexation or foreign currency fluctuation)

In case of transfer of listed securities (other than units) and Zero Coupon Bonds, LTCG would be taxable at the lower of the following rates –

- (1) 10% without indexation benefit; and
- (2) 20% with indexation benefit.



4.24 TAX ON LONG TERM CAPITAL GAINS ON CERTAIN ASSETS [SECTION 112A]

- (1) **Concessional rate of tax in respect of LTCG on transfer of certain assets:** In order to minimize economic distortions and curb erosion of tax base, section 112A provides that notwithstanding anything contained in section 112, a concessional rate of tax @10% will be leviable on the long-term capital gains exceeding ₹ 1,00,000 on transfer of –
- (a) an equity share in a company or
 - (b) a unit of an equity oriented fund or
 - (c) a unit of a business trust.

(2) **Conditions:** The conditions for availing the benefit of this concessional rate are–

- (a) In case of equity share in a company, STT has been paid on acquisition and transfer of such capital asset
- (b) In case of unit of an equity oriented fund or unit of business trust, STT has been paid on transfer of such capital asset.

However, the Central Government may, by notification in the Official Gazette, specify the nature of acquisition of equity share in a company on which the condition of payment of STT on acquisition would not be applicable.

Accordingly, the Central Government has, vide notification No. 60/2018, dated 1st October, 2018, notified that the condition of chargeability of STT shall not apply to the acquisition of equity shares entered into

- before 1st October, 2004 or
- on or after 1st October, 2004 which are not chargeable to STT, other than the following transactions.

In effect, only in respect of the following transactions mentioned in column (2), the requirement of paying STT at the time of acquisition for availing the benefit of concessional rate of tax under section 112A would apply. It may be noted that the exceptions are listed in column (3) against the transaction. The requirement of payment of STT at the time of acquisition for availing benefit of concessional tax rate under section 112A will not apply to acquisition transactions mentioned in column (3).

(1)	(2)	(3)
	Transaction	Non-applicability of condition of chargeability of STT
(a)	Where acquisition of existing listed equity share in a company whose equity shares are not frequently traded in a recognised stock exchange of India is made	Where acquisition of listed equity share in a company –
		(i) has been approved by the Supreme Court, High Court, National Company Law Tribunal, Securities and Exchange Board of India or Reserve Bank of India in this behalf;
		(ii) is by any non-resident in accordance with foreign direct investment guidelines issued by the Government of India;
		(iii) is by an investment fund referred to in clause (a) of Explanation 1 to section 115UB or a venture capital fund referred to in section 10(23FB) or a Qualified Institutional Buyer;

	through preferential issue	a	(iv)	is through preferential issue to which the provisions of chapter VII of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 does not apply.
(b)	Where transaction for acquisition of existing listed equity share in a company is not entered through a recognised stock exchange in India			Following acquisitions of listed equity share in a company made in accordance with the provisions of the Securities Contracts (Regulation) Act, 1956:
			(i)	acquisition through an issue of share by a company other than through preferential issue referred to in (a);
			(ii)	acquisition by scheduled banks, reconstruction or securitisation companies or public financial institutions during their ordinary course of business;
			(iii)	acquisition approved by the Supreme Court, High Courts, National Company Law Tribunal, Securities and Exchange Board of India or Reserve Bank of India in this behalf;
			(iv)	acquisition under employee stock option scheme or employee stock purchase scheme framed under the Securities and Exchange Board of India (Employee Stock Option Scheme and Employee Stock Purchase Scheme) Guidelines, 1999;
			(v)	acquisition by any non-resident in accordance with foreign direct investment guidelines of the Government of India;
			(vi)	acquisition in accordance with Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulation, 2011;
			(vii)	acquisition from the Government;
			(viii)	acquisition by an investment fund referred to in clause (a) to Explanation 1 to section 115UB or a venture capital fund referred to in section 10(23FB) or a Qualified Institutional Buyer;
			(ix)	acquisition by mode of transfer referred to in section 47 (e.g., transfer of capital asset under a gift, an irrevocable trust, transfer of capital asset between holding company and its subsidiary, transfer pursuant to amalgamation, demerger, etc.) or section 50B (slump sale) or section 45(3) (Introduction of capital asset as capital contribution in firm/ AOPs/ BOIs) or section 45(4) (Tax implications on receipt of money or capital assets or both on reconstitution of

			firm/AOP or BOI) of the Income-tax Act, if the previous owner or the transferor, as the case may be, of such shares has not acquired them by any mode referred to in (a), (b) or (c) listed in column (2) [other than the exceptions listed in column (3)]
(c)	acquisition of equity share of a company during the period beginning from the date on which the company is delisted from a recognised stock exchange and ending on the date immediately preceding the date on which the company is again listed on a recognised stock exchange in accordance with the Securities Contracts (Regulation) Act, 1956 read with SEBI Act, 1992 and the rules made thereunder.		

Further, long-term capital gains arising from transaction undertaken on a recognized stock exchange located in an International Financial Service Centre (IFSC) would be taxable at a concessional rate of 10%, where the consideration for transfer is received or receivable in foreign currency, even though STT is not leviable in respect of such transaction.

- (3) **Adjustment of Unexhausted Basic Exemption Limit:** In the case of resident individuals or HUF, if the basic exemption is not fully exhausted by any other income, then such long-term capital gain exceeding ₹ 1 lakh will be reduced by the unexhausted basic exemption limit and only the balance would be taxed at 10%.

However, the benefit of adjustment of unexhausted basic exemption limit is not available in the case of non-residents. It is also not available in case of resident AOPs and BOIs.

- (4) **No deduction under Chapter VI-A against LTCG taxable under section 112A:** Deductions under Chapter VI-A cannot be availed in respect of such long-term capital gains on equity shares of a company or units of an equity oriented fund or unit of a business trust included in the total income of the assessee.

- (5) **No benefit of rebate under section 87A against LTCG taxable under section 112A:** Rebate under section 87A is not available in respect of tax payable @10% on LTCG under section 112A.

Subsequent to insertion of section 112A, the CBDT has issued clarification F. No. 370149/20/2018-TPL dated 04.02.2018 in the form of a Question and Answer format to clarify certain issues raised in different fora relating to the new tax regime for taxation of long-term capital gains. The relevant questions raised and answers to such questions as per the said Circular are given hereunder:

Q 1. What is the meaning of long term capital gains under the new tax regime for long term capital gains?

Ans 1. Long term capital gains mean gains arising from the transfer of long-term capital asset.

It provides for a new long-term capital gains tax regime for the following assets –

- (i). Equity Shares in a company listed on a recognised stock exchange;
- (ii). Unit of an equity oriented fund; and
- (iii). Unit of a business trust.

The new tax regime applies to the above assets, if–

- a. the assets mentioned in (i) & (ii) are held for a minimum period of twelve months from the date of acquisition; and the asset mentioned in (iii) is held for a minimum period of thirty six months; and
- b. the Securities Transaction Tax (STT) is paid at the time of transfer. However, in the case of equity shares acquired after 1.10.2004, STT is required to be paid even at the time of acquisition (subject to notified exemptions).

Q 2. What is the point of chargeability of the tax?

Ans 2. The tax will be levied only upon transfer of the long-term capital asset on or after 1st April, 2018, as defined in section 2(47) of the Act.

Q 3. What is the method for calculation of long-term capital gains?

Ans 3. The long-term capital gains will be computed by deducting the cost of acquisition from the full value of consideration on transfer of the long-term capital asset.

Q 4. How do we determine the cost of acquisition for assets acquired on or before 31st January, 2018?

Ans 4. The cost of acquisition for the long-term capital asset acquired on or before 31st January, 2018 will be the actual cost.

However, if the actual cost is less than the fair market value of such asset as on 31st January, 2018, the fair market value will be deemed to be the cost of acquisition.

Further, if the full value of consideration on transfer is less than the fair market value, then such full value of consideration or the actual cost, whichever is higher, will be deemed to be the cost of acquisition.

Q 5. Please provide illustrations for computing long-term capital gains in different scenarios, in the light of answer to question 4.

Ans 5. The computation of long-term capital gains in different scenarios is illustrated as under

Scenario 1 – An equity share is acquired on 1st January, 2017 at ₹ 100, its fair market value is ₹ 200 on 31st January, 2018 and it is sold on 1st April, 2023 at ₹ 250. As the actual cost of acquisition is less than the fair market value as on 31st January, 2018, the fair market value of ₹ 200 will be taken as the cost of acquisition and the long-term capital gain will be ₹ 50 (₹ 250 – ₹ 200).

Scenario 2 – An equity share is acquired on 1st January, 2017 at ₹ 100, its fair market value is ₹ 200 on 31st January, 2018 and it is sold on 1st April, 2023 at ₹ 150. In this case, the actual cost of acquisition is less than the fair market value as on 31st January, 2018. However, the sale value is also less than the fair market value as on 31st January, 2018. Accordingly, the sale value of ₹ 150 will be taken as the cost of acquisition and the long-term capital gain will be NIL (₹ 150 – ₹ 150).

Scenario 3 – An equity share is acquired on 1st January, 2017 at ₹ 100, its fair market value is ₹ 50 on 31st January, 2018 and it is sold on 1st April, 2023 at ₹ 150. In this case, the fair market value as on 31st January, 2018 is less than the actual cost of acquisition, and therefore, the actual cost of ₹ 100 will be taken as actual cost of acquisition and the long-term capital gain will be ₹ 50 (₹ 150 – ₹ 100).

Scenario 4 – An equity share is acquired on 1st January, 2017 at ₹ 100, its fair market value is ₹ 200 on 31st January, 2018 and it is sold on 1st April, 2023 at ₹ 50. In this case, the actual cost of acquisition is less than the fair market value as on 31st January, 2018. The sale value is less than the fair market value as on 31st January, 2018 and also the actual cost of acquisition. Therefore, the actual cost of ₹ 100 will be taken as the cost of acquisition in this case. Hence, the long-term capital loss will be ₹ 50 (₹ 50 – ₹ 100) in this case.

Q 6. Whether the cost of acquisition will be inflation indexed?

Ans 6. Third proviso to section 48, provides that the long-term capital gain will be computed without giving effect to the provisions of the second proviso of section 48. Accordingly, it is clarified that the benefit of inflation indexation of the cost of acquisition would not be available for computing long-term capital gains under the new tax regime.

Q 7. What will be the tax treatment of transfer made on or after 1st April 2018?

Ans 7. The long-term capital gains exceeding ₹ 1 lakh arising from transfer of these assets made on or after 1st April, 2018 will be taxed at 10 per cent. However, there will be no tax on gains accrued upto 31st January, 2018.

Q 8. What is the date from which the holding period will be counted?

Ans 8. The holding period will be counted from the date of acquisition.

Q 9. Whether tax will be deducted at source in case of gains by resident tax payer?

Ans 9. No. There will be no deduction of tax at source from the payment of long-term capital gains to a resident tax payer.

Q 10. What will be the cost of acquisition in the case of bonus shares acquired before 1st February 2018?

Ans 10. The cost of acquisition of bonus shares acquired before 31st January, 2018 will be determined as per section 55(2)(ac). Therefore, the fair market value of the bonus shares as on 31st January, 2018 will be taken as cost of acquisition (except in some typical situations explained in Ans 5), and hence, the gains accrued upto 31st January, 2018 will continue to be exempt⁶.

Q 11. What will be the cost of acquisition in the case of right share acquired before 1st February 2018?

Ans 11. The cost of acquisition of right share acquired before 31st January, 2018 will be determined as per section 55(2)(ac). Therefore, the fair market value of right share as on 31st January, 2018 will be taken as cost of acquisition (except in some typical situations explained in Ans 5), and hence, the gains accrued upto 31st January, 2018 will continue to be exempt.

Q 12. What will be the treatment of long-term capital loss arising from transfer made on or after 1st April, 2018?

Ans 12. Long-term capital loss arising from transfer made on or after 1st April, 2018 will be allowed to be set-off and carried forward in accordance with existing provisions of the Act. Therefore, it can be set-off against any other long-term capital gains and unabsorbed loss can be carried forward to subsequent eight years for set-off against long-term capital gains.

⁶ Subject to the notification issued by the Central Government to specify the nature of acquisition of equity share in a company on which the condition of payment of STT on acquisition would not be applicable.

ILLUSTRATION 23

Calculate the income-tax liability for the assessment year 2024-25 in the following cases:

	Mr. A (age 45)	Mrs. B (age 62)	Mr. C (age 81)	Mr. D (age 82)
Status	Resident	Non-resident	Resident	Non-resident
Total income other than long-term capital gain	2,40,000	3,10,000	5,90,000	4,80,000
Long-term capital gain	85,000 from sale of vacant site	10,000 from sale of listed equity shares (STT paid on sale and purchase of shares)	60,000 from sale of agricultural land in rural area	Nil

- (i) If Mr. A, Mrs. B, Mr. C and Mr. D pay tax under default tax regime u/s 115BAC.
- (ii) If Mr. A, Mrs. B, Mr. C and Mr. D exercise the option to shift out of the default tax regime and pay tax under the optional tax regime as per the normal provisions of the Act.

SOLUTION

- (i) If Mr. A, Mrs. B, Mr. C and Mr. D pay tax under default tax regime u/s 115BAC.

Computation of income-tax liability for the A.Y. 2024-25

Particulars	Mr. A (age 45)	Mrs. B (age 62)	Mr. C (age 81)	Mr. D (age 82)
Residential Status	Resident	Non-resident	Resident	Non-resident
Applicable basic exemption limit	₹ 3,00,000	₹ 3,00,000	₹ 3,00,000	₹ 3,00,000
Asset sold	Vacant site	Listed equity shares (STT paid on both sale and purchase of shares)	Rural agricultural land	-
Long-term capital gain (on sale of above asset)	₹ 85,000 [Taxable @20% u/s 112]	₹ 10,000 [exempt u/s 112A since it is less than ₹ 1,00,000]	₹ 60,000 (Exempt – not a capital asset)	-

Other income	₹ 2,40,000	₹ 3,10,000	₹ 5,90,000	₹ 4,80,000
Tax liability				
On LTCG (after adjusting unexhausted basic exemption limit of ₹ 60,000)	₹ 5,000	-	-	-
On Other income	Nil	₹ 500	₹ 14,500	₹ 9,000
	₹ 5,000	₹ 500	₹ 14,500	₹ 9,000
Less: Rebate u/s 87A	₹ 5,000	-	₹ 14,500	-
	Nil	₹ 500	Nil	₹ 9,000
Add: Health & education cess (HEC) @4%	Nil	₹ 20	Nil	₹ 360
Total tax liability	Nil	₹ 520	Nil	₹ 9,360

Note: Since Mr. A and Mr. C are residents whose total income does not exceed ₹ 7 lakhs, they are eligible for rebate of ₹ 25,000 or the actual tax payable, whichever is lower, under section 87A.

- (ii) If Mr. A, Mrs. B, Mr. C and Mr. D exercise the option to shift out of the default tax regime and pay tax under the optional tax regime as per the normal provisions of the Act

Computation of income-tax liability for the A.Y.2024-25

Particulars	Mr. A (age 45)	Mrs. B (age 62)	Mr. C (age 81)	Mr. D (age 82)
Residential Status	Resident	Non-resident	Resident	Non-resident
Applicable basic exemption limit	₹ 2,50,000	₹ 2,50,000	₹ 5,00,000	₹ 2,50,000
Asset sold	Vacant site	Listed equity shares (STT paid on both sale and purchase of shares)	Rural agricultural land	-
Long-term capital gain (on sale of	₹ 85,000 [Taxable	₹ 10,000 [exempt u/s 112A	₹ 60,000 (Exempt –	-

above asset)	@20% u/s 112]	since it is less than ₹ 1,00,000]	not a capital asset)	
Other income	₹ 2,40,000	₹ 3,10,000	₹ 5,90,000	₹ 4,80,000
Tax liability				
On LTCG (after adjusting unexhausted basic exemption limit of ₹ 10,000)	₹ 15,000	-	-	-
On Other income	Nil	₹ 3,000	₹ 18,000	₹ 11,500
	₹ 15,000	₹ 3,000	₹ 18,000	₹ 11,500
Less: Rebate u/s 87A	₹ 12,500	-	-	-
	₹ 2,500	₹ 3,000	₹ 18,000	₹ 11,500
Add: Health & education cess (HEC) @4%	₹ 100	₹ 120	₹ 720	₹ 460
Total tax liability	₹ 2,600	₹ 3,120	₹ 18,720	₹ 11,960

Notes:

1. Since Mrs. B and Mr. D are non-residents, they cannot avail the higher basic exemption limit of ₹ 3,00,000 and ₹ 5,00,000 for persons over the age of 60 years and 80 years, respectively. Also, they are not eligible for rebate under section 87A even though their total income does not exceed ₹ 5 lakh.
2. Since Mr. A is a resident whose total income does not exceed ₹ 5 lakh, he is eligible for rebate of ₹ 12,500 or the actual tax payable, whichever is lower, under section 87A.



4.25 SURPLUS ON SALE OF SHARES AND SECURITIES - WHETHER TAXABLE AS CAPITAL GAINS OR BUSINESS INCOME? [CIRCULAR NO. 06/2016, DATED 29-2-2016]

Section 2(14) defines the term "capital asset" to include property of any kind held by an assessee, whether or not connected with his business or profession, but does not include any stock-in-trade

or personal assets subject to certain exceptions. As regards shares and other securities, the same can be held either as capital assets or stock-in-trade/trading assets or both.

Determination of the character of a particular investment in shares or other securities, whether the same is in the nature of a capital asset or stock-in-trade, is essentially a fact-specific determination and has led to a lot of uncertainty and litigation in the past.

Parameters laid down by CBDT and Courts to distinguish shares held as investments and shares held as stock in trade

Over the years, the courts have laid down different parameters to distinguish the shares held as investments from the shares held as stock-in-trade. The CBDT has also, through Instruction No. 1827, dated August 31, 1989 and Circular No. 4 of 2007 dated June 15, 2007, summarized the said principles for guidance of the field formations.

Principles to determine whether gains on sale of listed shares and other securities would constitute capital gains or business income

Disputes, however, continue to exist on the application of these principles to the facts of an individual case since the taxpayers find it difficult to prove the intention in acquiring such shares/securities. In this background, while recognizing that no universal principle in absolute terms can be laid down to decide the character of income from sale of shares and securities (i.e. whether the same is in the nature of capital gain or business income), CBDT realizing that major part of shares/securities transactions takes place in respect of the listed ones and with a view to reduce litigation and uncertainty in the matter, in partial modification to the aforesaid Circulars, further instructs the Assessing Officers to take into account the following while deciding whether the surplus generated from sale of listed shares or other securities would be treated as Capital Gain or Business Income—

- a) **Where assessee opts to treat such shares and securities as stock-in-trade:** Where the assessee itself, irrespective of the period of holding the listed shares and securities, opts to treat them as stock-in-trade, the income arising from transfer of such shares/securities would be treated as its business income,
- b) **Listed shares and securities held for a period of more than 12 months:** In respect of listed shares and securities held for a period of more than 12 months immediately preceding the date of its transfer, if the assessee desires to treat the income arising from the transfer thereof as Capital Gain, the same shall not be put to dispute by the Assessing Officer. However, this stand, once taken by the assessee in a particular Assessment Year,

shall remain applicable in subsequent Assessment Years also and the taxpayers shall not be allowed to adopt a different/contrary stand in this regard in subsequent years;

- c) **Other cases:** In all other cases, the nature of transaction (i.e. whether the same is in the nature of capital gain or business income) shall continue to be decided keeping in view the aforesaid Circulars issued by the CBDT.

Principles listed above not to apply in case of sham transactions

It is, however, clarified that the above shall not apply in respect of such transactions in shares/securities where the genuineness of the transaction itself is questionable, such as bogus claims of Long-term Capital Gain/Short Term Capital Loss or any other sham transactions.

Objective of formulation of principles: Reducing litigation and ensuring consistency

It is reiterated that the above principles have been formulated with the sole objective of reducing litigation and maintaining consistency in approach on the issue of treatment of income derived from transfer of shares and securities. All the relevant provisions of the Act shall continue to apply on the transactions involving transfer of shares and securities.

SIGNIFICANT SELECT CASES

S.No.	Case Law	
1.	Seshasayee Steels P. Ltd. v. ACIT (2020) 421 ITR 46 (SC)	
	Issue	Analysis & Decision
	Can any transaction which enables the enjoyment of immovable property be considered as enjoyment as a purported owner thereof for being treated as a “transfer” of a capital asset u/s 2(47)(vi) and levy of tax on capital gains arising therefrom?	Any transaction which has the effect of transferring or enabling the enjoyment of any immovable property would come within the of purview u/s 2(47)(vi). Section 2(47)(vi) appears to be to bring within its tax net, a <i>de facto</i> transfer of any immovable property. The expression 'enabling the enjoyment of' takes colour from the earlier expression 'transferring', so that it is clear that any transaction which enables the enjoyment of immovable property must be enjoyment as a purported owner thereof. The idea is to bring within the tax net, transactions, where, though title may not be transferred in law, there is, in substance, a transfer of title in fact. In this case, the assessee's rights in the immovable property were extinguished on the receipt of the last cheque. Further, the compromise deed could be stated to be a transaction which had the effect of transferring the immovable property in question. Accordingly, the transaction fell u/s 2(47)(ii) and (vi). Hence, it is a transfer in relation to the capital asset and capital gains tax liability would be attracted.
2.	Balakrishnan v. Union of India & Others (2017) 391 ITR 178 (SC)	
	Issue	Analysis & Decision
	Would receipt of higher compensation after notification of compulsory acquisition change the character of transaction into a voluntary sale, so as to deny exemption u/s 10(37)(iii)?	When proceedings were initiated under the Land Acquisition Act, 1894, even if the compensation is negotiated and fixed, it would continue to remain as compulsory acquisition. Merely because the compensation amount is agreed upon, the character of acquisition will not change from compulsory acquisition to a voluntary sale. The claim of exemption from capital gains u/s 10(37)(iii) is, therefore, tenable in law.

3.	<i>CIT v. V.S. Dempo Company Ltd (2016) 387 ITR 354 (SC)</i>	
	Issue	Analysis & Decision
	In a case where a depreciable asset (building) held for more than 24 months is transferred, can benefit of exemption u/s 54EC be claimed, if the capital gains on sale of such asset are reinvested in long-term specified assets within the specified time?	The assessee cannot be denied exemption u/s 54EC, because firstly, there is nothing in section 50 to suggest that the fiction created therein is not restricted to only sections 48 and 49. Secondly, fiction created by the legislature has to be confined for the purpose for which is created. Thirdly, section 54EC does not make any distinction between depreciable and non-depreciable asset for the purpose of re-investment of capital gains in long term specified assets for availing the exemption thereunder. Further, section 54EC specifically provides that when the capital gain arising on the transfer a long-term capital asset (being land or building or both) is invested or deposited in long-term specified assets, the assessee shall not be subject to capital gains to that extent. Therefore, the exemption u/s 54EC cannot be denied to the assessee on account of the fiction created in section 50.
4.	<i>Fibre Boards (P) Ltd v. CIT (2015) 376 ITR 596 (SC)</i>	
	Issue	Analysis & Decision
	Can advance given for purchase of land, building, plant and machinery tantamount to utilization of capital gain for purchase and acquisition of new machinery or plant and building or land, for claim of exemption u/s 54G?	For the purpose of availing exemption, all that was required for the assessee is to “utilise” the amount of capital gain for purchase and acquisition of new machinery or plant and building or land. Since the entire amount of capital gain, in this case, was utilized by the assessee by way of advance for acquisition of land, building, plant and machinery, the assessee is entitled to avail exemption/deduction u/s 54G.
5.	<i>CIT v. Aditya Kumar Jajodia (2018) 407 ITR 107 (Cal)</i>	
	Issue	Analysis & Decision
	Can the amount incurred by the assessee towards	The assessee had inherited the immovable property under a will and the costs incurred by him for perfection of the title

	perfecting title of property acquired through will, for making further sale, be included in the cost of acquisition for computing capital gains?	from perpetual leasehold rights to the complete ownership had to be regarded as a cost of acquisition within the meaning of sections 48 and 55, as the assessee was transferring the complete ownership rights to the transferee, and not the leasehold rights.
6.	<i>CIT v. Manjula J. Shah (2013) 355 ITR 474 (Bom.)</i>	
	Issue	Decision
	Would indexation benefit in respect of the gifted asset apply from the year in which the asset was first held by the assessee or from the year in which the same was first acquired by the previous owner?	The indexed cost of acquisition in case of gifted asset has to be computed with reference to the year in which the previous owner first held the asset and not the year in which the assessee became the owner of the asset.
7.	<i>Sakthi Metal Depot v. CIT [2021] 436 ITR 1 (SC)</i>	
	Issue	Analysis & Decision
	Would the depreciable asset forming part of block of assets on which depreciation is being allowed since its acquisition change its character if it is not used for business purpose for the last two years, to the effect that gain arising from its transfer be considered as long term capital gain instead of short-term capital gains?	The depreciable asset forming a part of block of assets within the meaning section 2(11) would not cease to be a part of the block of assets so long as the assessee continued business. In this case, the building forming part of the block of assets would retain its character as such, even if one or two of the assets in the block were not used for the business purposes in the last couple of years. Consequently, the profits arising on sale of such asset would be short-term capital gains.

8.	CIT v. Syed Ali Adil (2013) 352 ITR 0418 (A.P.) CIT v. Ananda Basappa (2009) 309 ITR 329 CIT v. K.G. Rukminiamma (2011) 331 ITR 211	
	Issue	Decision
	Would an assessee be entitled to exemption under section 54 in respect of purchase of two flats, adjacent to each other and having a common meeting point?	The assessee is entitled to investment in both the flats purchased by him, since they were adjacent to each other and had a common meeting point, thus, making it a single residential unit. Note – Section 54 has been amended by the Finance Act, 2019 to permit claim of deduction in respect of two residential houses purchased/constructed, where long-term capital gains on sale of residential house does not exceed ₹ 2 crores. However, this case law will still hold good since the exemption for investment in two residential houses cannot be availed - - where long term capital gains > ₹ 2 crores; and - where long term capital gains ≤ ₹ 2 crores and exemption of acquiring two properties was already availed once Even in these cases, the benefit of treating adjacent flats as one residential house for the purpose of exemption under section 54 would be available as per this High Court ruling. Furthermore, even in cases where long term capital gains ≤ ₹ 2 crores, the benefit of this case law can be availed and benefit of one time exemption under section 54 can be deferred and availed at a later point of time.
9.	CIT v. Gurnam Singh (2010) 327 ITR 278 (P&H)	
	Issue	Analysis & Decision
	Can exemption u/s 54B be denied solely on the ground that the new agricultural land	The agricultural land sold belonged to the assessee and the sale proceeds were also used for purchasing agricultural land. The possession of the said land was also taken by the

	purchased is not wholly owned by the assessee, as the assessee's son is a co-owner as per the sale deed?	assessee. Merely because the assessee's son was shown in the sale deed as co-owner, deduction u/s 54B cannot be denied. Therefore, the assessee was entitled to deduction u/s 54B.
10.	<i>CIT v. Kamal Wahal (2013) 351 ITR 4 (Delhi)</i>	
	Issue	Analysis & Decision
	Can exemption u/s 54F be denied solely on the ground that the new residential house is purchased by the assessee exclusively in the name of his wife?	For the purpose of section 54F, a new residential house need not necessarily be purchased by the assessee in his own name nor is it necessary that it should be purchased exclusively in his name. Having regard to the rule of purposive construction and the object of enactment of section 54F, the assessee is entitled to claim exemption u/s 54F in respect of utilization of sale proceeds of capital asset for investment in residential house property in the name of his wife.
11.	<i>CIT v. Ravinder Kumar Arora (2012) 342 ITR 38 (Delhi)</i>	
	Issue	Analysis & Decision
	In case of a house property registered in joint names, can exemption u/s 54F be allowed fully to the co-owner who has paid whole of the purchase consideration of the house property or will it be restricted to his share in the house property?	The inclusion of his wife's name in the sale deed was just to avoid any litigation after his death. All the funds invested in the said house were provided by the assessee, including the stamp duty and corporation tax paid at the time of the registration of the sale deed of the said house. This fact was also clearly evident from the bank statement of the assessee. Section 54F mandates that the house should be purchased by the assessee but it does not stipulate that the house should be purchased only in the name of the assessee. In this case, the house was purchased by the assessee in his name and his wife's name was also included additionally. Therefore, the conditions stipulated in section 54F stand fulfilled and the entire exemption claimed in respect of the purchase price of the house property shall be allowed to the assessee.

12.	<i>CIT v. Sambandam Udaykumar (2012) 345 ITR 389 (Kar.)</i>	
	Issue	Analysis & Decision
	Can exemption u/s 54F be denied to an assessee in respect of investment made in construction of a residential house, on the ground that the construction was not completed within 3 years after the date on which transfer took place, on account of pendency of certain finishing work like flooring, electrical fittings, fittings of door shutter etc.?	The condition precedent for claiming the benefit u/s 54F is that capital gains realized from sale of capital asset should have been invested either in purchasing a residential house or in constructing a residential house within the stipulated period. If the assessee has invested the money in the construction of a residential house, merely because the construction was not completed in all respects and possession could not be taken within the stipulated period, would not disentitle him from claiming exemption u/s 54F. In fact, in this case, the assessee has taken possession of the residential building and is living in the said premises despite the pendency of flooring work, electricity work, fitting of door and window shutters. Therefore, the assessee is entitled to exemption u/s 54F in respect of the amount invested in construction within the prescribed period.
13.	<i>Gouli Mahadevappa v. ITO (2013) 356 ITR 90 (Kar.)</i>	
	Issue	Analysis & Decision
	Where the stamp duty value under section 50C has been adopted as the full value of consideration, can the reinvestment made in acquiring a residential property, which is in excess of the actual net sale consideration, be considered for the purpose of computation of exemption under section 54F, irrespective of the source of funds for such reinvestment?	When capital gain is assessed on notional basis as per the provisions of section 50C, and the higher value i.e., the stamp duty value under section 50C has been adopted as the full value of consideration, the entire amount reinvested in the residential house within the prescribed period should be considered for the purpose of exemption under section 54F, irrespective of the source of funds for such reinvestment. For eg: if stamp duty value = ₹ 50 lakh, actual consideration = ₹ 40 lakh, capital gains = ₹ 12 lakh, if ₹ 47 lakh is re-invested in residential house, then exemption u/s 54F = ₹ 12 lakh x ₹ 47 lakh / ₹ 50 lakh = ₹ 11.28 lakh (assuming gross and net consideration are same), irrespective of the source of balance ₹ 7 lakh (₹ 47 lakh - ₹ 40 lakh) over and above actual consideration.

14.	<i>Hindustan Unilever Ltd. v. DCIT (2010) 325 ITR 102 (Bom.)</i>	
	Issue	Analysis & Decision
	Can exemption u/s 54EC be denied on account of the bonds being issued after six months of the date of transfer even though the payment for the bonds was made by the assessee within the six-month period?	In order to avail the exemption u/s 54EC, the capital gains have to be invested in a long-term specified asset within a period of six months from the date of transfer. Where the assessee has made the payment within the six month period, and the same is reflected in the bank account and a receipt has been issued as on that date, the exemption u/s 54EC cannot be denied merely because the bond was issued after the expiry of the six month period or the date of allotment specified therein was after the expiry of the six month period.
15.	<i>Principal CIT v. Gujarat State Fertilizers and Chemicals Limited (2018) 409 ITR 378 (Guj)</i>	
	Issue	Analysis & Decision
	Would sale of fertilizer bonds (issued in lieu of government subsidy) at loss be treated as a business loss or a loss under the head "Capital gains"?	Fertilizer subsidy given to an assessee to compensate the loss on sale of fertilisers should be treated as business income of the assessee. Due to cash crunch, the Government of India had discharged its dues of paying the subsidy by issue of fertilizer bonds. These bonds are saleable in the open market and the prices of such bonds are varying. In this case also, the assessee received fertilizer bonds (in lieu of subsidy) which were sold at a loss in the open market. Since the subsidy would have been treated as business income, loss on sale of fertilizer bonds issued is to be allowed as business loss.

TEST YOUR KNOWLEDGE**Questions**

1. *Hari has acquired a residential house property in Delhi on 15th April, 2002 for ₹ 9,00,000 and decided to sell the same on 3rd May, 2005 to Ms. Pari and an advance of ₹ 25,000 was taken from her. The balance money was not paid by Ms. Pari and Hari has forfeited the entire advance sum. On 3rd June, 2023, he has sold this house to Mr. Suri for ₹ 43,00,000. On 4th April, 2023, he had purchased a residential house in Delhi for ₹ 8,00,000, where he was staying with his family on rent for the last 5 years and paid the full amount as per the purchase agreement. However, Hari does not possess any legal title till 31st March, 2024, as such transfer was not registered with the registration authority.*

Hari has purchased another old house in Chennai on 14th October, 2023 from Mr. X, an Indian resident, by paying ₹ 5,00,000 and the purchase was registered with the appropriate authority.

Determine the taxable capital gain arising from above transactions in the hands of Hari for Assessment Year 2024-25.

[Cost inflation Index - 2002-03: 105; 2005-06: 117; 2023-24: 348]

2. *Mr. Ganesh sold his residential house in Mumbai and earned long term capital gain of ₹ 2.5 crores. He purchased two residential flats adjacent to each other on the same day vide two separate registered sale deeds from two different persons. The builder had certified that he had effected necessary modification to make it one residential apartment. Mr. Ganesh sought exemption under section 54 in respect of the investment made in purchase of the two residential flats. The Assessing Officer, however, gave exemption under section 54 to the extent of purchase of one residential flat only contending that since the long-term capital gain exceeds ₹ 2 crore, sub-section (1) of section 54 clearly restricts the benefit of exemption to purchase one residential house only and the two flats cannot be treated as one residential unit since –*

- (i) the flats were purchased through different sale deeds; and*
- (ii) it was found by the Inspector that, before its sale to the assessee, the residential flats were in occupation of two different tenants.*

Examine the correctness of the contention of the Assessing Officer.

3. Vijay, an individual, owned three residential houses which were let out. Besides, he and his four brothers co-owned a residential house in equal shares. He sold one residential house owned by him during the previous year relevant to the assessment year 2024-25. Within a month from the date of such sale, the four brothers executed a release deed in respect of their shares in the co-owned residential house in favour of Vijay for a monetary consideration.

Vijay utilised the entire long-term capital gain arising out of the sale of the residential house for payment of the said consideration to his four brothers. Vijay is not using the house, in respect of which his brothers executed a release deed, for his own residential purposes, but has let it out to another person, who is using it for his residential purposes.

Is Vijay eligible for exemption under section 54 of the Income-tax Act, 1961 for the assessment year 2024-25 in respect of the long-term capital gain arising from the sale of his residential house, which he utilised for acquiring the shares of his brothers in the co-owned residential house? Will the non-use of the new house for his own residential purposes disentitle him to exemption?

4. Aries Tubes Private Ltd. went into liquidation on 1.6.2023. The company possessed of the following funds prior to the distribution of assets to the shareholders:

	₹
Share Capital (issued on 1.4.2013)	5,00,000
Reserves prior to 1.6.2023	3,00,000
Excess realization in the course of liquidation	5,00,000
Total	13,00,000

There are 5 shareholders, each of whom received ₹ 2,60,000 from the liquidator in full settlement. The shareholders desire to invest the resultant element of capital gain in long term specified assets as defined in section 54EC. You are required to examine the various issues and advice the shareholders about their liability to income tax.

5. Xavier had taken a loan under registered mortgage deed against the house, which was purchased by him on 26.5.2002 for ₹ 5 lakhs. The said property was inherited by his son Abraham in financial year 2009-10 as per Will.

For obtaining a clear title thereof, Abraham paid the outstanding amount of loan on 12.2.2010 of ₹ 15 lakhs. The said house property was sold by Abraham on 16.3.2024 for ₹ 55 lakhs. Examine with reasons the amount chargeable to capital gains for A.Y. 2024-25

(Cost Inflation Index 2002-03: 105, 2009-10: 148 and 2023-24: 348).

6. Gama Ltd, located within the corporation limits decided in December, 2023 to shift its industrial undertaking to non-urban area. The company sold some of the assets and acquired new assets in the process of shifting. The relevant details are as follows:

(₹ in lakhs)					
	Particulars	Land	Building	Plant & Machinery	Furniture
(i)	Sale proceeds (sale effected in March, 2024)	8	18	16	3
(ii)	Indexed cost of acquisition	4	10	12	2
(iii)	WDV in terms of section 50	--	4	5	2
(iv)	Cost of new assets purchased in July, 2024 for the purpose of business in the new place	4	7	17	2

Compute the capital gains of Gama Ltd for the assessment year 2024-25.

7. The assessee was a company carrying on business of manufacture and sale of art-silk cloth. It purchased machinery worth ₹ 4 lakhs on 1.5.2020 and insured it with United India Assurance Ltd against fire, flood, earthquake etc., The written down value of the asset as on 01.04.2023 was ₹ 1,87,850. The insurance policy contained a reinstatement clause requiring the insurance company to pay the value of the machinery, as on the date of fire etc., in case of destruction of loss. A fire broke out in August, 2023 causing extensive damage to the machinery of the assessee rendering them totally useless. The assessee company received a sum of ₹ 4 lakhs from the insurance company on 15th March, 2024. Examine the issues arising on account on the transactions and their tax treatment.

(Cost inflation index for financial year 2020-21 and 2023-24 are 301 and 348, respectively)

8. Tani purchased a land at a cost of ₹ 35 lakhs in the financial year 2004-05 and held the same as her capital asset till 31st May, 2021. Tani started her real estate business on 1st June, 2021 and converted the said land into stock-in-trade of her business on the said date, when the fair market value of the land was ₹ 210 lakhs.

She constructed 15 flats of equal size, quality and dimension. Cost of construction of each flat is ₹ 10 lakhs. Construction was completed in January, 2024. She sold 10 flats at ₹ 30 lakhs per flat between January, 2024 and March, 2024. The remaining 5 flats were held in stock as on 31st March, 2024.

She invested ₹ 50 lakhs in bonds issued by National Highway Authority of India on 31st March, 2024 and another ₹ 50 lakhs in bonds of Rural Electrification Corporation Ltd. in April, 2024.

Compute the amount of chargeable capital gain and business income in the hands of Tani arising from the above transactions for Assessment Year 2024-25 indicating clearly the reasons for treatment of each item.

Cost Inflation Index: FY 2004-05: 113; FY 2021-22: 317; FY 2023-24: 348.

9. Following are the details of income provided by Mr. Singh, the assessee for the financial year ended 31st March, 2024:

- (i) Rental income from property at Bangalore - ₹ 3 lakhs, Standard Rent - ₹ 2,50,000, Fair Rent - ₹ 2,80,000.
- (ii) Municipal and water tax paid during 2023-24: Current year ₹ 35,000, Arrears - ₹ 1,50,000.
- (iii) Interest on loan borrowed towards major repairs to the property: ₹ 1,50,000.
- (iv) Arrears of rent of ₹ 30,000 received during the year, which was not charged to tax in earlier years.

Further, the assessee furnished following additional information regarding sale of property at Chennai:

- (i) Mr. Singh's father acquired a residential house in April 2006 for ₹ 1,25,000 and thereafter gifted this property to the assessee, Mr. Singh on 1st March, 2007.
- (ii) The property, so gifted, was sold by Mr. Singh on 10th June 2023. The consideration received was ₹ 25,00,000.
- (iii) Stamp duty charges paid by the purchaser at the time of registration @ 13% (as per statutory guidelines) was ₹ 3,90,000.
- (iv) Out of the sale consideration received:
 - (a) On 02/01/2024, the assessee had purchased two adjacent flats, in the same building, and made suitable modification to make it as one unit. The investment was made by separate sale deeds, amount being ₹ 8,00,000 and ₹ 7,00,000, respectively.

- (b) On 10/10/2023, ₹ 10 lakhs were invested in bonds issued by National Highways Authority of India, but the allotment of the bonds was made on 1.2.2024.

Compute Mr. Singh's taxable income for assessment year 2024-25 assuming he has exercised the option to shift out of the default tax regime under section 115BAC.

Cost inflation index: F.Y. 2006-07: 122; F.Y. 2023-24: 348

10. SS(P) Ltd., an Indian company having two undertakings engaged in manufacture of cement and steel, decided to hive off cement division to RV(P) Ltd., an Indian company, by way of demerger. The net worth of SS(P) Ltd. immediately before demerger was ₹ 40 crores. The net book value of assets transferred to RV(P) Ltd. was ₹ 10 crores. The demerger was made in January 2024. In the scheme of demerger, it was fixed that for each equity share of ₹ 10 each (fully paid up) of SS(P) Ltd., two equity shares of ₹ 10 each (fully paid up) were to be issued.

One Mr. N.K. held 25,000 equity shares in SS(P) Ltd. which were acquired in the financial year 2004-05 for ₹ 6,00,000. Mr. N.K. received 50,000 equity shares from RV(P) Ltd. consequent to demerger in January 2024. He sold all the shares of RV(P) Ltd. for ₹ 8,00,000 in March, 2024. In this background you are requested to answer the following:

- (i) Does the transaction of demerger attract any income tax liability in the hands of SS(P) Ltd. and RV(P) Ltd.?
- (ii) Compute the capital gain that could arise in the hands of Mr. N.K. on receipt of shares of RV(P) Ltd.
- (iii) Compute the capital gain that could arise in the hands of Mr. N.K. on sale of shares of RV(P) Ltd.
- (iv) Will the sale of shares by Mr. N.K. affect the tax benefits availed by SS(P) Ltd. and/or RV(P) Ltd.?
- (v) Is Mr. N.K. eligible to avail any tax exemption under any of the provisions of the Income-tax Act, 1961 on the sale of shares of RV(P) Ltd.? If so, mention in brief.

Note:	Financial Year	Cost inflation index
	2004-05	113
	2023-24	348

11. PQR Limited has two units - one engaged in manufacture of computer hardware and the other involved in developing software. As a restructuring drive, the company has decided to sell its software unit as a going concern by way of slump sale for ₹ 385 lakhs to a new company called S Limited, in which it holds 74% equity shares.

The balance sheet of PQR limited as on 31st March 2024, being the date on which software unit has been transferred, is given hereunder –

Balance Sheet as on 31.3.2024

Liabilities	₹ (in lakhs)	Assets	₹ (in lakhs)
Paid up Share Capital	300	<u>Fixed Assets</u>	
General Reserve	150	Hardware unit	170
Share Premium	50	Software unit	200
Revaluation Reserve	120	<u>Debtors</u>	
<u>Current Liabilities (Ascertained liabilities)</u>		Hardware unit	140
Hardware unit	40	Software unit	110
Software unit	90	<u>Inventories</u>	
		Hardware unit	95
		Software unit	35
	750		750

Following additional information are furnished by the management:

- (i) The Software unit is in existence since May, 2015.
 - (ii) Fixed assets of Software unit includes land which was purchased at ₹ 40 lakhs in the year 2016 and revalued at ₹ 60 lakhs as on March 31, 2024. The stamp duty value on 31.3.2024 is ₹ 55 lakhs.
 - (iii) Fixed assets of Software unit mirrored at ₹ 140 lakhs (₹ 200 lakhs minus land value ₹ 60 lakhs) is written down value of depreciable assets (Furniture and Plant & machinery) as per books of account. However, the written down value of these assets under section 43(6) of the Income-tax Act, 1961 is ₹ 90 lakhs.
- (a) Ascertain the tax liability, which would arise from slump sale to PQR Limited, assuming it does not opt for section 115BAA.
 - (b) What would be your advice as a tax-consultant to make the restructuring plan of the company more tax-savvy, without changing the amount of sale consideration?

12. Determine the capital gains/loss on transfer of listed equity shares (STT paid both at the time of acquisition and transfer of shares) and units of equity oriented mutual fund (STT paid at the time of transfer of units) for the A.Y.2024-25 and tax, if any, payable thereon, in the following cases, assuming that these are the only transactions covered under section 112A during the P.Y.2023-24 in respect of these assessees:

- (i) Mr. Prasun purchased 300 shares in A Ltd. on 20.5.2017 at a cost of ₹ 400 per share. He sold all the shares of A Ltd. on 31.5.2023 for ₹ 1200. The price at which these shares were traded in National Stock Exchange on 31.1.2018 is as follows –

Particulars	Amount in ₹
Highest Trading Price	700
Average Trading Price	680
Lowest Trading Price	660

- (ii) Mr. Raj purchased 200 units each of equity oriented funds, Fund A and Fund B on 1.2.2017 at a cost of ₹ 550 per unit. The units were not listed at the time of purchase. Subsequently, units of Fund A were listed on 1.1.2018 and units of Fund B were listed on 1.2.2018 on the National Stock Exchange. Mr. Raj sold all the units on 3.4.2023 for ₹ 900 each. The details relating to quoted price on National Stock Exchange and net asset value of the units are given hereunder:

Particulars	Fund A	Fund B
	Amount in ₹	Amount in ₹
Highest Trading Price	750 (on 31.1.2018)	800 (on 1.2.2018)
Average Trading Price	700 (on 31.1.2018)	750 (on 1.2.2018)
Lowest Trading Price	650 (on 31.1.2018)	700 (on 1.2.2018)
Net Asset Value on 31.1.2018	800	950

Answers

1. Computation of taxable capital gain of Mr. Hari for the A.Y.2024-25

Particulars	₹
Sale proceeds	43,00,000
Less: Indexed cost of acquisition [See Note (i)]	29,00,000
Long Term Capital Gain	14,00,000

Less: Exemption under section 54 in respect of investment in house at Delhi [See Note (ii)]	8,00,000
Exemption under section 54 in respect of investment in house at Chennai [See Note (iii)]	5,00,000
Taxable long-term capital gain	1,00,000

Notes:**(i) Computation of indexed cost of acquisition**

Particulars	₹
Cost of acquisition	9,00,000
Less: Advance taken and forfeited	25,000
Cost for the purpose of Indexation	8,75,000
Indexed cost of acquisition (₹ 8,75,000 x 348/105)	29,00,000

Advance received and forfeited on or after 01.04.2014 is taxable under section 56(2)(ix). Such amount would not be reduced to compute indexed cost of acquisition while determining capital gains on sale of such property.

However, in this case, since the advance was received and forfeited in the year 2005, such advance has to be reduced for calculating indexed cost of acquisition for the purpose of arriving at capital gains.

- (ii) In order to avail exemption of capital gains under section 54, residential house should be purchased within 1 year before or 2 years after the date of transfer or constructed within a period of 3 years after the date of transfer. In this case, Hari has purchased the residential house in Delhi within one year before the date of transfer and paid the full amount as per the purchase agreement, though he does not possess any legal title till 31.3.2024 since the transfer was not registered with the registration authority. However, for the purpose of claiming exemption under section 54, holding of legal title is not necessary. If the taxpayer pays the full consideration in terms of the purchase agreement within the stipulated period, the exemption under section 54 would be available. It was so held in *Balraj v. CIT*(2002) 254 ITR 22 (Del.) and *CIT v. Shahzada Begum* (1988) 173 ITR 397 (A.P.).
- (iii) As per section 54, since the amount of capital gain does not exceed ₹ 2 crore, Mr. Hari can claim exemption thereunder in respect of investment made in two residential houses situated in India.

However, if Mr. Hari exercises the option to claim exemption in respect of two residential houses in Delhi and Chennai in P.Y. 2023-24, he shall not be subsequently entitled to exercise the option for the same or any other assessment year.

2. This issue came up before the Karnataka High Court in *CIT v. D. Ananda Basappa (2009) 309 ITR 329*. The Court observed that the assessee had shown that the flats were situated side by side and the builder had also certified that he had effected modification of the flats to make them one unit by opening the door between the apartments. Therefore, it was immaterial that the flats were occupied by two different tenants prior to sale or that it was purchased through different sale deeds. The Court observed that these were not the grounds to hold that the assessee did not have the intention to purchase the two flats as one unit. The Court held that the assessee was entitled to exemption under section 54 in respect of purchase of both the flats to form one residential house.

Applying the ratio of the above decision to the case on hand, Mr. Ganesh is entitled to exemption under section 54 in respect of purchase of two flats to form **one residential house**. Therefore, the contention of the Assessing Officer is not correct.

3. The long-term capital gain arising on sale of residential house would be exempt under section 54 if it is utilized, *inter alia*, for purchase of one residential house situated in India within one year before or two years after the date of transfer. Release by the other co-owners of their share in co-owned property in favour of Vijay would amount to “purchase” by Vijay for the purpose of claiming exemption under section 54 [*CIT v. T.N. Arvinda Reddy (1979) 120 ITR 46 (SC)*]. Since such purchase is within the stipulated time of two years from the date of transfer of asset, Vijay is eligible for exemption under section 54. As Vijay has utilised the entire long-term capital gain arising out of the sale of the residential house for payment of consideration to the other co-owners who have released their share in his favour, he can claim full exemption under section 54.

There is no requirement in section 54 that the new house should be used by the assessee for his own residence. The condition stipulated is that the new house should be utilised for residential purposes and its income is chargeable under the head “Income from house property”. This requirement would be satisfied even when the new house is let out for residential purposes.

4. Under section 46(1), where the assets of a company are distributed to its shareholders on its liquidation, such distribution shall not be regarded as transfer in the hands of the company for the purpose of section 45.

However, under section 46(2), where the shareholder, on liquidation of a company, receives any money or other assets from the company, he shall be chargeable to income-tax under the head “capital gains”, in respect of the money so received or the market value of the other assets on the date of distribution as reduced by the amount of dividend deemed under section 2(22)(c) [chargeable to tax in the hands of shareholders under the head “Income from other sources”] and the sum so arrived at shall be deemed to be the full value of the consideration for the purposes of section 48.

As per section 2(22)(c), dividend includes any distribution made to the shareholders of a company on its liquidation, to the extent to which the distribution is attributable to the accumulated profits of the company immediately before its liquidation, whether capitalized or not.

In this case, the accumulated profits immediately before liquidation is ₹ 3,00,000. The share of each shareholder is ₹ 60,000 (being one-fifth of ₹ 3,00,000). An amount of ₹ 60,000 is the deemed dividend under section 2(22)(c). The same is taxable in the hands of the shareholder under the head “Income from other sources”.

Therefore, ₹ 2,00,000 [i.e. ₹ 2,60,000 minus ₹ 60,000, being the deemed dividend under section 2(22)(c)] is the full value of consideration in the hands of each shareholder as per section 46(2). Against this, the investment of ₹ 1,00,000 by each shareholder is to be deducted to arrive at the capital gains of ₹ 1,00,000 of each shareholder. The benefit of indexation is available to the shareholders (since the shares are held for more than 24 months and hence long-term capital asset), but could not be computed in the absence of required information. Since the equity shares are not listed, it would not be liable for securities transaction tax and hence, the capital gain (long term) would be taxable under section 112. The benefit of concessional rate of tax @10% without indexation would also not be available. Hence, such long-term capital gain would be taxable @20% with indexation benefit.

Exemption under section 54EC is available only where there is an actual transfer of capital assets and not in the case of deemed capital gain as per the decision rendered in the case of *CIT v. Ruby Trading Co (P) Ltd (2003) 259 ITR 54 (Raj)*. Therefore, exemption under section 54EC will not be available in this case since it is deemed transfer and not actual transfer. Furthermore, with effect from A.Y. 2019-20, exemption under section 54EC is available only on transfer of long-term capital asset, being land or building or both.

5. The cost of inherited property to Mr. Abraham shall be the cost to the previous owner as per provisions of section 49(1)(iiia) and therefore, ₹ 5 lakhs, being the cost to his father

(amount paid by his father on 26.5.2002 for acquiring the property) shall be the cost to Mr. Abraham, who is the new owner. Payment of outstanding loan of the predecessor by the successor for obtaining a clear title of the property by release of Mortgage Deed shall be the cost of acquisition of the successor under section 48 read with section 55(2) of the Act as held by the Apex Court in case of *RM. Arunachalam v. CIT* [1997] 227 ITR 222.

Computation of Taxable Capital Gain for the A.Y. 2024-25

Particulars		₹
Sale consideration of house property		55,00,000
Less: Indexed cost of acquisition (See Note below)		
(i) Cost to previous owner ($₹ 5,00,000 \times 348/148$)	11,75,676	
(ii) Loan amount paid by Mr. Abraham (Benefit of CII is available since the loan amount was paid in the financial year 2009-10) ($₹ 15,00,000 \times 348/148$)	35,27,027	47,02,703
Capital gains		7,97,297

Note: Since the property was acquired by Mr. Abraham through inheritance, the cost of acquisition will be cost to the previous owner.

As per the definition of indexation cost of acquisition under clause (iii) of *Explanation* below section 48, indexation benefit will be available only from the previous year in which Abraham first held the asset i.e. P.Y. 2009-10.

However, as per the view expressed by Bombay High Court, in the case of *CIT v. Manjula J. Shah* (2013) 355 ITR 474, in case the cost of acquisition of the capital asset in the hands of the assessee is taken to be cost of such asset in the hands of the previous owner, the indexation benefit would be available from the year in which the capital asset is acquired by the previous owner. If this view is considered, the indexed cost of acquisition would be ₹ 51,84,170 ($₹ 16,57,143 + ₹ 35,27,027$) and long-term capital gain would be ₹ 3,15,830.

6. Section 54G deals with deduction in respect of any capital gain that may arise from the transfer of an industrial undertaking situated in an urban area in the course of or in consequence of shifting to a non-urban area.

If the assessee purchases new machinery or plant or acquires a building or land or constructs a new building or shifts the original asset and transfers the establishment to the

new area, within 1 year before or 3 years after the date on which the transfer takes place, then, instead of the capital gain being charged to tax, it shall be dealt with as under:

1. If the capital gain is greater than the cost of the new asset, the difference between the capital gain and the cost of the new asset shall be chargeable as income 'under section 45'.
2. If the capital gain is equal to or less than the cost of the new asset, section 45 is not to be applied.

The capital assets referred to in section 54G are machinery or plant or land or building or any rights in building or land. Capital gain arising on transfer of furniture does not qualify for exemption under section 54G. No exemption is therefore available under section 54G in respect of investment of ₹ 2 lakhs in acquiring furniture.

The first step therefore is to determine the capital gain arising out of the transfer and thereafter apply the provisions of section 54G.

	Particulars	₹
(a)	Land – Sale proceeds (Non-depreciable asset)	8,00,000
	Less: Indexed cost of acquisition	4,00,000
	Long term capital gain	4,00,000
	Less: Cost of new assets purchased within three year after the date of transfer (under section 54G) (See Note below)	3,00,000
	Taxable Long-term capital gain	1,00,000
(b)	Building – sale proceeds (depreciable assets)	18,00,000
	Less: W.D.V. is deemed as cost of acquisition under section 50	4,00,000
	Short-term capital gain	14,00,000
(c)	Plant & machinery- sale proceeds (depreciable asset)	16,00,000
	Less: WDV is deemed cost under section 50	5,00,000
	Short-term capital gain	11,00,000
(d)	Furniture - sale proceeds (depreciable asset)	3,00,000
	Less: WDV is deemed cost under section 50	2,00,000
	Short-term capital gain (A)	1,00,000

Summary	₹
Short term capital gain : Building	14,00,000
Short term capital gain : Plant & machinery	11,00,000
	25,00,000
Less: Section 54G [New assets purchased] (See Note below)	25,00,000
Net short term capital gain (B)	Nil
Total short-term capital gain (A)+(B) = ₹ 1 lakh	

Note – Total exemption available under section 54G is ₹ 28 lakhs (₹ 4 lakhs + ₹ 7 lakhs + ₹ 17 lakhs). The exemption should first be exhausted against short term capital gain as the incidence of tax in case of short-term capital gain is more than in case of long-term capital gain. Therefore, ₹ 25 lakhs is exhausted against short term capital gain and the balance of ₹ 3 lakhs against long term capital gain.

The taxable capital gains would be:

Long-term capital gains	₹ 1,00,000 (taxable @20% under section 112)
Short-term capital gains (furniture)	<u>₹ 1,00,000</u> (taxable at applicable tax rates)
	<u>₹ 2,00,000</u>

- As per section 45(1A), where any person receives any money or other assets under an insurance from an insurer on account of damage to or destruction of capital asset as a result of, *inter alia*, accidental fire then, any profits and gains arising from the receipt of such money or other assets, shall be chargeable to income tax under the head “Capital Gains” and shall be deemed to be the income of such person of the previous year in which such money or asset was received.

For the purpose of section 48, the money received or the market value of the asset shall be deemed to be the full value of the consideration accruing as a result of the transfer of such capital asset. Since the asset was destroyed and the money from the insurance company was received in the previous year, there will be a liability to compute capital gains in respect of the insurance moneys received by the assessee.

Under section 45(1A) any profits and gains arising from receipt of insurance moneys is chargeable under the head “Capital gains”. For the purpose of section 48, the moneys received shall be deemed to be the full value of the consideration accruing or arising. Under section 50 the capital gains in respect of depreciable assets had to be computed in the following manner (**assuming it was the only asset in the block**).

The computation of capital gain and tax implication is given below:

Full value of the consideration	₹ 4,00,000
Less: Written down value as on April 1 st , 2023	₹ <u>1,87,850</u>
Short term capital gains	₹ <u>2,12,150</u>

8. **Computation of capital gains and business income of Tani for A.Y. 2024-25**

Particulars	₹
Capital Gains	
Fair market value of land on the date of conversion deemed as the full value of consideration for the purposes of section 45(2)	2,10,00,000
Less: Indexed cost of acquisition [₹ 35,00,000 × 317/113]	98,18,584
	1,11,81,416
Proportionate capital gains arising during A.Y.2024-25 [₹1,11,81,416 × 2/3]	74,54,277
Less: Exemption under section 54EC	50,00,000
Capital gains chargeable to tax for A.Y.2024-25	24,54,277
Business Income	
Sale price of flats [10 × ₹ 30 lakhs]	3,00,00,000
Less: Cost of flats	
Fair market value of land on the date of conversion [₹ 210 lakhs × 2/3]	1,40,00,000
Cost of construction of flats [10 × ₹ 10 lakhs]	1,00,00,000
Business income chargeable to tax for A.Y.2024-25	60,00,000

Notes:

- (i) The conversion of a capital asset into stock-in-trade is treated as a transfer under section 2(47). It would be treated as a transfer in the year in which the capital asset is converted into stock-in-trade.
- (ii) However, as per section 45(2), the capital gains arising from the transfer by way of conversion of capital assets into stock-in-trade will be chargeable to tax only in the year in which the stock-in-trade is sold.

- (iii) The indexation benefit for computing indexed cost of acquisition would, however, be available only up to the year of conversion of capital asset to stock-in-trade and not up to the year of sale of stock-in-trade.
- (iv) For the purpose of computing capital gains in such cases, the fair market value of the capital asset on the date on which it was converted into stock-in-trade shall be deemed to be the full value of consideration received or accruing as a result of the transfer of the capital asset.

In this case, since only 2/3rd of the stock-in-trade (10 flats out of 15 flats) is sold in the P.Y.2023-24, only proportionate capital gains (i.e., 2/3rd) would be chargeable in the A.Y.2024-25.

- (v) On sale of such stock-in-trade, business income would arise. The business income chargeable to tax would be computed after deducting the fair market value on the date of conversion of the capital asset into stock-in-trade and cost of construction of flats from the price at which the stock-in-trade is sold.
- (vi) In case of conversion of capital asset into stock-in-trade and subsequent sale of stock-in-trade, the period of 6 months is to be reckoned from the date of sale of stock-in-trade for the purpose of exemption under section 54EC [CBDT Circular No.791 dated 2.6.2000]. In this case, since the investment in bonds of NHAI has been made within 6 months of sale of flats, the same qualifies for exemption under section 54EC. With respect to long-term capital gains arising in any financial year, the maximum deduction under section 54EC would be ₹ 50 lakhs, whether the investment in bonds of NHAI or RECL are made in the same financial year or next financial year or partly in the same financial year and partly in the next financial year.

Therefore, even though investment of ₹ 50 lakhs has been made in bonds of NHAI during the P.Y.2023-24 and investment of ₹ 50 lakhs has been made in bonds of RECL during the P.Y.2024-25, both within the stipulated six month period, the maximum deduction allowable for A.Y.2024-25, in respect of long-term capital gain arising on sale of long-term capital asset(s) during the P.Y.2023-24, is only ₹ 50 lakhs.

9. Computation of taxable income of Mr. Singh for A.Y.2024-25

Particulars	₹	₹
Income from house property		
Gross Annual Value [Higher of Expected Rent & Actual Rent]		3,00,000

Expected Rent [lower of Fair Rent and Standard Rent]	2,50,000	
Actual Rent	3,00,000	
Less: Municipal taxes paid by Mr. Singh during the year (including arrears) [₹ 35,000 + ₹1,50,000]		1,85,000
Net Annual Value (NAV)		1,15,000
Less: Deductions under section 24		
(a) 30% of NAV	34,500	
(b) Interest on loan borrowed for major repairs	1,50,000	1,84,500
		(69,500)
Arrears of rent taxable under section 25A	30,000	
Less: Deduction@30%	9,000	21,000
		(48,500)
Capital Gains		
Full value of consideration		30,00,000
As per section 50C, the full value of consideration would be the higher of -		
Actual Consideration	25,00,000	
Stamp Duty Value [₹ 3,90,000/13%]	30,00,000	
Since stamp duty value > 110% of actual consideration		
Less: Indexed cost of acquisition [₹ 1,25,000 × 348/122]		
As per section 49(1), cost of acquisition of the residential house gifted by Mr. Singh's father to Mr. Singh would be the cost for which Mr. Singh's father acquired the asset		3,56,557
		26,43,443
Less: Exemption under section 54 (₹ 8,00,000 + ₹ 7,00,000)		
Purchase of residential house within the stipulated time (within one year before or two years after the date of sale) [Where the flats are situated side by side and the builder had effected the necessary modification to make it as one house, the assessee would be entitled to exemption under section 54 in respect of investment in both the flats, despite the fact that they were purchased by separate sale deeds]		
[CIT v. Ananda Basappa (2009) 331 ITR 211 (Kar.)]	15,00,000	

Note: Since two adjacent flats are treated as one residential house, Mr. Singh can defer availing exemption under section 54 in respect of two residential houses (where capital gains do not exceed ₹ 2 crores) to a later assessment year. Exemption under section 54EC Investment in bonds of NHAI within six months from the date of transfer. Where the payment for bonds has been made within the six months period, exemption under section 54EC would be available even if the allotment of bonds was made after the expiry of the six months [<i>Hindustan Unilever Ltd. v. DCIT (2010) 325 ITR 102 (Bom.)</i>] Long-term capital gains Total Income		
	10,00,000	25,00,000
		1,43,443
		94,943

10. (i) No, the transaction of demerger would not attract any income-tax liability in the hands of SS(P) Ltd. or RV(P) Ltd.

As per section 47(vib), any transfer in a demerger, of a capital asset, by the demerged company to the resulting company would not be regarded as “transfer” for levy of capital gains tax if the resulting company is an Indian company.

Hence, capital gains tax liability would not be attracted in the hands of SS(P) Ltd., the demerged company, in this case, since RV(P) Ltd. is an Indian company.

- (ii) There would be no capital gains tax liability in the hands of Mr. N.K. on receipt of shares of RV (P) Ltd., since as per section 47(vid), any issue of shares by the resulting company in a scheme of demerger to the shareholders of the demerged company will not be regarded as “transfer” for levy of capital gains tax, if the issue is made in consideration of demerger of the undertaking.
- (iii) Yes, capital gains would arise in the hands of Mr. N.K. on sale of shares of RV (P) Ltd.

Sale consideration 8,00,000

Less: Indexed cost of acquisition of shares of RV (P) Ltd.

Cost of acquisition of shares of RV(P) Ltd. as per section 49(2C):

$$\text{Cost of acquisition of shares of SS(P) Ltd.} \times \frac{\text{Net book value of assets transferred in a demerger}}{\text{Net worth of the demerged company immediately before demerger}}$$

$$₹6,00,000 \times \frac{10 \text{ crore}}{40 \text{ crore}} = ₹1,50,000$$

Indexed cost of acquisition of shares of RV (P) Ltd. [₹ 1,50,000 × 348/113] ₹ 4,61,947

Long-term capital gain (since period of holding of shares in demerged company is also to be considered) ₹ 3,38,053

- (iv) No, sale of shares by Mr. N.K. would not affect the tax benefits availed by SS(P) Ltd. or RV (P) Ltd.

One of the conditions to be satisfied is that the shareholders holding not less than three-fourths in value of the shares in the demerged company become shareholders of the resulting company by virtue of the demerger. It is presumed that the condition is satisfied in this case.

There is no stipulation that they continue to remain shareholders for any period of time thereafter.

- (v) Since the resultant capital gain on sale of shares of RV(P) Ltd. is a long-term capital gain (on account of the period of holding of shares in demerged company being considered by virtue of section 2(42A)(g)), Mr. N.K. can avail exemption under section 54F by investing the entire net consideration in purchase (within one year before and two years after the date of transfer) or construction (within three years after the date of transfer) of one residential house in India. If part of the net consideration is invested, only proportionate exemption would be available.

11. (a) As per section 50B, any profits and gains arising from the slump sale effected in the previous year shall be chargeable to income-tax as capital gains arising from the transfer of capital assets and shall be deemed to be the income of the previous year in which the transfer took place.

If the assessee owned and held the undertaking transferred under slump sale for more than 36 months before slump sale, the capital gain shall be deemed to be long-term capital gain. Indexation benefit is not available in case of slump sale as per section 50B(2).

Ascertainment of tax liability of PQR Limited from slump sale of Software unit

Particulars	₹ (in lakhs)
Full value of consideration for slump sale of Software Unit	385
Less: Cost of acquisition, being the net worth of Software Unit	185
Long term capital gains arising on slump sale	200
(The capital gains is long-term as the Software Unit is held for more than 36 months)	
<u>Tax liability on LTCG</u>	
Under section 112 @ 20% on ₹ 200 lakhs	40.00
Add: Surcharge@ 7%	2.80
	42.80
Add: Health and Education cess@4%	1.712
	44.512

Working Note:**Computation of Full value of consideration**

	₹ (in lakhs)
Fair market value of the capital assets transferred by way of slump sale	
Land, being an immovable property [stamp duty value on 31.3.2024, being the date of slump sale] [A]	55
Other Fixed assets (Furniture and Plant & machinery) [Book value as appearing in the books of accounts] [₹ 200 lakhs - ₹ 60 lakhs] [B]	140
Debtors [Book value as appearing in the books of accounts] [C]	110
Inventories [Book value as appearing in the books of accounts] [D]	35
	340
Less: Liabilities of Software Unit [₹ 750 - ₹ 40] [L]	710
Excluding	
(i) Paid up share capital	300
(ii) General Reserve	150
(ii) Share Premium	50
(iii) Revaluation reserve	120
	620
	90
Fair market value of the capital assets transferred by way of slump sale [A+B+C+D- L] [FMV1]	250

Fair market value of the consideration received or accruing as a result of transfer by way of slump sale [value of the monetary consideration received] [FMV2]	385
Full value of consideration [Higher of FMV1 or FMV2]	385

Computation of net worth of Software Unit

	₹ (in lakhs)
(1) Book value of non-depreciable assets	
(i) Land (Revaluation not to be considered)	40
(ii) Debtors	110
(iii) Inventories	35
(2) Written down value of depreciable assets under section 43(6) (See Note below)	90
Aggregate value of total assets	275
Less: Current liabilities of Software unit	90
Net worth of software unit	185

Note: For computing net worth, the aggregate value of total assets in the case of depreciable assets shall be the written down value of the block of assets as per section 43(6).

(b) Tax advice

- (i) Transfer of any capital asset by a holding company to its 100% Indian subsidiary company is exempt from capital gains under section 47(iv). Hence, PQR Limited should try to acquire the remaining 26% equity shares in S Limited then make the slump sale in the above said manner, in which case the slump sale shall be exempt from tax. For this exemption, PQR Limited will have to keep such 100% holding in S Limited for a period of 8 years from the date of slump sale, otherwise the amount exempt would be deemed to be income chargeable under the head "Capital Gains" of the previous year in which such transfer took place.
- (ii) Alternatively, if acquisition of 26% share is not feasible, PQR Limited may think about demerger plan of Software Unit to get benefit of section 47(vib) of the Income-tax Act, 1961.

12. (i) For the purpose of computation of long-term capital gains chargeable to tax under section 112A, the cost of acquisition in relation to the long-term capital asset, being an equity share in a company or a unit of an equity oriented fund or a unit of a business trust acquired before 1st February, 2018 shall be the higher of
- (a) cost of acquisition of such asset, i.e., actual cost; and
 - (b) lower of
 - (i) the fair market value of such asset as on 31.1.2018; and
 - (ii) the full value of consideration received or accruing as a result of the transfer of the capital asset.

The fair market value of listed equity shares as on 31.1.2018 is the highest price quoted on the recognized stock exchange as on that date.

Accordingly, long-term capital gain on transfer of STT paid listed equity shares by Mr. Prasun would be determined as follows:

The FMV of shares of A Ltd. would be ₹ 700, being the highest price quoted on National Stock Exchange on 31.1.2018. The cost of acquisition of each equity share in A Ltd. would be ₹ 700, being higher of actual cost i.e., ₹ 400 and ₹ 700 [being the lower of FMV of ₹ 700 as on 31.1.2018 (i.e., the highest trading price) and actual sale consideration of ₹ 1,200]. Thus, the long-term capital gain would be ₹ 1,50,000 i.e., $(₹ 1,200 - ₹ 700) \times 300$ shares. The long-term capital gain of ₹ 50,000 (i.e., the amount in excess of ₹ 1,00,000) would be subject to tax@10% under section 112A (plus cess@4%), without benefit of indexation. The tax on capital gain @10.4% would be ₹ 5,200 $(₹ 50,000 \times 10.4\%)$

- (ii) In the case of units listed on recognised stock exchange on the date of transfer, the FMV as on 31.1.2018 would be the highest trading price on recognised stock exchange as on 31.1.2018 (if units are listed on that date), else, it would be the net asset value as on 31.1.2018 (where units are unlisted on that date).

Accordingly, the FMV of units of Fund A as on 31.1.2018 would be ₹ 750 (being the highest trading price on 31.1.2018, since the units of Fund A are listed on that date) and the FMV of units of Fund B as on 31.1.2018 would be ₹ 950 (being the net asset value as on 31.1.2018, since the units of Fund B are unlisted on that date).

The cost of acquisition of a unit of Fund A would be ₹ 750, being higher of actual cost i.e., ₹ 550 and ₹ 750 (being the lower of FMV of ₹ 750 as on 31.1.2018 and

actual sale consideration of ₹ 900). Thus, the long-term capital gains on sale of units of Fund A would be ₹ 30,000 ($₹ 900 - ₹ 750$) x 200 units.

The cost of acquisition of a unit of Fund B would be ₹ 900, being higher of actual cost i.e., ₹ 550 and ₹ 900 (being the lower of FMV of ₹ 950 as on 31.1.2018 (net asset value) and actual sale consideration of ₹ 900). Thus, the long-term capital gains on sale of units of Fund B would be Nil ($₹ 900 - ₹ 900$) x 200 units.

Since the long-term capital gains on sale of units is ₹ 30,000, which is less than ₹ 1,00,000, the said sum is not chargeable to tax under section 112A.

INCOME FROM OTHER SOURCES



LEARNING OUTCOMES

After studying this chapter, you would be able to -

- ❑ **identify** the income which are chargeable to tax under the head “Income from other sources”;
- ❑ **identify** the admissible/ inadmissible deductions while computing income under this head;
- ❑ **examine** the circumstance(s) when amount paid or payable by a closely held company to the shareholder, being a beneficial owner or the concern in which such shareholder has the substantial interest would be deemed as dividend;
- ❑ **examine** the circumstances when any sum of money or property transferred without consideration or for inadequate consideration would be taxable in the hands of recipient and the exceptions thereto;
- ❑ **compute** the income under the head “Income from Other Sources” after allowing the deductions available thereunder.



5.1 INTRODUCTION

Any income, profits or gains includible in the total income of an assessee, which cannot be included under any of the preceding heads of income, is chargeable under the head 'Income from other sources'. Thus, this head is the **residuary head of income** and brings within its scope all the taxable income, profits or gains of an assessee which fall outside the scope of any other head. Therefore, when any income, profit or gain does not fall precisely under any of the other specific heads but is chargeable under the provisions of the Act, it would be charged under this head.



5.2 METHOD OF ACCOUNTING [SECTION 145]

Income chargeable under the head "Income from other sources" has to be computed in accordance with the cash or mercantile system of accounting regularly employed by the assessee.

Under section 145(2), the Central Government is empowered to notify in Gazette from time to time, income computation and disclosure standards to be followed by any class of assessee or in respect of any class of income.

Accordingly, Central Government has notified ten ICDSs to be followed by all assessee (other than an individual or a HUF who is not required to get his accounts of the previous year audited in accordance with the provisions of section 44AB) following the mercantile system of accounting, for the purpose of computation of income chargeable to income-tax under the head "Profits and gains from business or profession" or "Income from other sources".

Text of notified ICDSs is given as an Annexure at the end of this module.



5.3 INCOMES CHARGEABLE UNDER THIS HEAD [SECTION 56]

(1) Income chargeable only under the head 'Income from Other Sources':

(i) Dividend income [Section 56(2)(i)]

Dividend income is always taxable under the head "Income from other sources". The term 'dividend' as used in the Act has a wider scope and meaning than under the general law.

Dividend [covered by sections 2(22)(a) to (e)]:

According to section 2(22), the following receipts are deemed to be dividend:

- (a) **Distribution of accumulated profits, entailing the release of company's assets** - Any distribution of accumulated profits, whether capitalised or not, by a company to its shareholders is dividend if it entails the release of all or any part of its assets.

Note: If accumulated profits are distributed in cash, it is dividend in the hands of the shareholders. Where accumulated profits are distributed in kind, for example by delivery of shares etc. entailing the release of company's assets, the market value of such shares on the date of such distribution is deemed dividend in the hands of the shareholder.

- (b) **Distribution of debentures, deposit certificates to shareholders and bonus shares to preference shareholders** - Any distribution to its shareholders by a company of debenture, debenture stock or deposit certificate in any form, whether with or without interest, and any distribution of bonus shares to preference shareholders to the extent to which the company possesses accumulated profits, whether capitalised or not, will be deemed as dividend.

The market value of such bonus shares is deemed as dividend in the hands of the preference shareholder.

In the case of debentures, debenture stock etc., their value is to be taken at the market rate and if there is no market rate they should be valued according to accepted principles of valuation.

Note: Bonus shares given to equity shareholders are not treated as dividend.

- (c) **Distribution on liquidation** - Any distribution made to the shareholders of a company on its liquidation, to the extent to which the distribution is attributable to the accumulated profits of the company immediately before its liquidation, whether capitalised or not, is deemed to be dividend income.

Note: Any distribution made out of the profits of the company after the date of the liquidation cannot amount to dividend. It is a repayment towards capital.

- (d) **Distribution on reduction of capital** - Any distribution to its shareholders by a company on the reduction of its capital, to the extent to which the company possessed accumulated profits, whether capitalised or not, shall be deemed to be dividend.

- (e) **Advance or loan by a closely held company to its shareholder** – Any payment by a company in which the public are not substantially interested of any sum by way of advance or loan to any shareholder who is the beneficial owner of 10% or more of the voting power of the company will be deemed to be dividend to the extent of the accumulated profits. If the loan is not covered by the accumulated profits, it is not deemed to be dividend.

Advance or loan by a closely held company to a specified concern - Any payment by a company in which the public are not substantially interested, to any concern (i.e. HUF/ Firm/ AOP/ BOI/ Company) in which a shareholder, having the beneficial ownership of at least 10% of the equity shares is a member or a partner and in which he has a substantial interest (i.e. at least 20% share of the income of the concern) will be deemed to be dividend.

Also, any payments by such a closely held company on behalf of, or for the individual benefit of any such shareholder will also be deemed to be dividend. However, in both cases the ceiling limit of dividend is to the extent of accumulated profits.

Exceptions: The following payments or loan given would not be deemed as dividend:

- (i) **Loan granted in the ordinary course of business** - If the loan is granted in the ordinary course of its business and lending of money is a substantial part of the company's business, the loan or advance to a shareholder or to the specified concern is not deemed to be dividend.
- (ii) **Dividend paid is set off against the deemed dividend** - Where a loan had been treated as dividend and subsequently, the company declares and distributes dividend to all its shareholders including the borrowing shareholder, and the dividend so paid is set off by the company against the previous borrowing, the adjusted amount will not be again treated as a dividend.

Note: Subsequent repayment of loan or charge of interest at market rate does not make any difference in the applicability of section 2(22)(e).

Other exceptions

Apart from the exceptions cited above, the following also do not constitute "dividend" -

- (i) **Distribution in respect of non-participating shares issued for full cash consideration** – Any distribution made in accordance with (c) or (d) in respect of any share issued for full cash consideration and the holder of such share is not entitled to participate in the surplus asset in the event of liquidation.
- (ii) **Payment on buy back of shares** - Any payment made by a company on purchase of its own shares from a shareholder in accordance with the provisions of section 77A of the Companies Act, 1956¹;

¹ Now section 68 of the Companies Act, 2013

(iii) Distribution of shares to the shareholders on demerger by the resulting company -

Any distribution of shares on demerger by the resulting company to the shareholders of the demerged company (whether or not there is a reduction of capital in the demerged company).

Meaning of “accumulated profits”

Accumulated profits in point (a), (b), (d) and (e) above include all profits of the company up to the date of distribution or payment of dividend.

Building & Machinery Depreciation fund not to be included in accumulated profits. - *CIT v. Jaldurama Rao* (1983) 140 ITR 168 (Andhra Pradesh)

Accumulated profits include in point (c) all profits of the company up to the date of liquidation whether capitalised or not. But where liquidation is consequent to the compulsory acquisition of an undertaking by the Government or by any corporation owned or controlled by the Government, the accumulated profits do not include any profits of the company prior to the 3 successive previous years immediately preceding the previous year in which such acquisition took place.

In the case of an amalgamated company, the accumulated profits, whether capitalized or not, of the amalgamating company on the date of amalgamation shall be included in the accumulated profits, whether capitalized or not or loss, as the case may be, of the amalgamated company.

Clarification regarding trade advance not to be treated as deemed dividend under section 2(22)(e) – [Circular No. 19/2017, dated 12.06.2017]

Section 2(22)(e) provides that "dividend" includes any payment by a company in which public are not substantially interested, of any sum by way of advance or loan to a shareholder who is the beneficial owner of shares holding not less than 10% of the voting power, or to any concern in which such shareholder is a member or a partner and in which he has a substantial interest or any payment by any such company on behalf, or for the individual benefit, of any such shareholder, to the extent to which the company in either case possesses accumulated profits.

The CBDT observed that some Courts in the recent past have held that trade advances in the nature of commercial transactions would not fall within the ambit of the provisions of section 2(22)(e) and such views have attained finality. Some illustrations /examples of trade advances/commercial transactions held to be not covered under section 2(22)(e) are as follows:

- (i) Advances were made by a company to a sister concern and adjusted against the dues for job work done by the sister concern. It was held that amounts advanced for business transactions do not fall within the definition of deemed dividend under section 2(22)(e) [*CIT vs. Creative Dyeing & Printing Pvt. Ltd.* [NJRS] 2009-LL-0922-2, ITA No. 250 of 2009, Delhi High Court].

- (ii) Advance was made by a company to its shareholder to install plant and machinery at the shareholder's premises to enable him to do job work for the company so that the company could fulfil an export order. It was held that as the assessee proved business expediency, the advance was not covered by section 2(22)(e) [*CIT vs Amrik Singh, [NJRS] 2015-LL-0429-5, ITA No. 347 of 2013, P & H High Court*]
- (iii) A floating security deposit was given by a company to its sister concern against the use of electricity generators belonging to the sister concern. The company utilised gas available to it from GAIL to generate electricity and supplied it to the sister concern at concessional rates. It was held that the security deposit made by the company to its sister concern was a business transaction arising in the normal course of business between two concerns and the transaction did not attract section 2(22)(e) [*CIT, Agra vs Atul Engineering Udyog, [NJRS] 2014-LL-0926-121, ITA No. 223 of 2011, Allahabad High Court*]

In view of the above, the CBDT has, vide this circular, clarified that it is a settled position that trade advances, which are in the nature of commercial transactions, would not fall within the ambit of the word 'advance' in section 2(22)(e) and therefore, the same would not to be treated as deemed dividend.

Basis of charge of dividend [Section 8]

Dividend declared or distributed or paid by a company is deemed to be the income of the shareholder in the previous year in which it is so declared or distributed or paid, as the case may be.

Deemed dividend u/s 2(22)(a)/(b)/(c)/(d) – Distribution by a company which is deemed as dividend u/s 2(22)(a)/(b)/(c)/(d) would be the income of the previous year in which it is so distributed.

Deemed dividend u/s 2(22)(e) – Payment of advance or loan to a shareholder or a concern, as the case may be, which is deemed as dividend u/s 2(22)(e) will be the income of the previous year in which it is so paid.

Interim dividend – Interim dividend would be deemed to be the income of the previous year in which such dividend is unconditionally made available by the company to the members who are entitled to it.

Tax rate on dividend income - Any income by way of dividend received by a resident from a company, whether domestic or foreign, is taxable in the hands of shareholder at normal rates of tax.

ILLUSTRATION 1

Dhaval is in business of manufacturing customized kitchen equipments. He is also the Managing Director and held nearly 65% of the paid-up share capital of Aarav (P) Ltd. A substantial part of the business of Dhaval is obtained through Aarav (P) Ltd. For this purpose, Aarav (P) Ltd. passed on the advance received from its customers to Dhaval to execute the job work entrusted to him.

The Assessing Officer held that the advance money received by Dhaval is in the nature of loan given by Aarav (P) Ltd. to him and accordingly is deemed dividend within the meaning of provisions of section 2(22)(e) of the Income-tax Act, 1961. The Assessing Officer, therefore, made the addition by treating advance money as deemed dividend.

Examine whether the action of the Assessing Officer is tenable in law.

SOLUTION

As per section 2(22)(e), in case a company, not being a company in which the public are substantially interested, makes payment of any sum by way of advance or loan to a shareholder holding not less than 10% of voting power/share capital of the company, then, the payment so made shall be deemed to be dividend in the hands of such shareholder to the extent to which the company possesses accumulated profits.

In the present case, Dhaval is holding 65% of the paid-up capital of Aarav (P) Ltd. Aarav (P) Ltd. has passed on advance received from its customers to Dhaval for execution of job work entrusted to Dhaval.

Since Aarav (P) Ltd. is not a company in which public are substantially interested, the applicability of the provisions of section 2(22)(e) in respect of such transaction has to be examined. In *CIT v. Rajkumar* (2009) 318 ITR 462 (Del.), it was held that trade advance given to the shareholder which is in the nature of money transacted to give effect to a commercial transaction, would not amount to deemed dividend under section 2(22)(e). The Delhi High Court ruling in *CIT v. Ambassador Travels (P) Ltd.* (2009) 318 ITR 376 also supports the above view.

In the present case, the payment is made to Dhaval by Aarav (P) Ltd. for execution of work is in the course of commercial business transaction and therefore, it cannot be treated as deemed dividend under section 2(22)(e). Hence, the action of the Assessing Officer is not tenable in law.

Note – *This can also be answered on the basis of Circular No. 19/2017, dated 12.06.2017. The CBDT has, in its circular clarified that it is a settled position that trade advances, which are in the nature of commercial transactions, would not fall within the ambit of the word 'advance' in section 2(22)(e) and therefore, the same would not to be treated as deemed dividend. Since, the payment*

is made to Dhaval by Aarav (P) Ltd. for execution of work is in the course of commercial business transaction and therefore, the advance cannot be treated as deemed dividend under section 2(22)(e). Hence, the action of the Assessing Officer is not tenable in law.

ILLUSTRATION 2

MNO (P) Ltd. is a company in which the public are not substantially interested. K is a shareholder of the company holding 15% of the equity shares. The accumulated profits of the company as on 1.10.2023 amounted to ₹ 10,00,000. The company lent ₹ 1,00,000 to K by an account payee bank draft on 1.10.2023. The loan was not connected with the business of the company. K repaid the loan to the company by an account payee bank draft on 30.3.2024. Examine the effect of the borrowal and repayment of the loan by K on the computation of his total income for the assessment year 2024-25.

SOLUTION

As per section 2(22)(e), any payment by a company, in which the public are not substantially interested, by way of advance or loan to a shareholder, being a person who is the beneficial owner of shares holding not less than 10% of the voting power, shall be treated as dividend to the extent to which the company possesses accumulated profits.

In the instant case, MNO (P) Ltd. is a company in which the public are not substantially interested. The company has accumulated profits of ₹ 10,00,000 on 1.10.2023. The loan given by the company to K was not in the course of its business. K holds more than 10% of the equity shares in the company. Therefore, assuming that K has voting power equivalent to his shareholding, section 2(22)(e) comes into play. Deemed dividend of ₹ 1,00,000 under section 2(22)(e) would be taxable in the hands of Mr. K at normal rates of tax.

Under section 2(22)(e), the liability arises the moment the loan is borrowed by the shareholder and it is immaterial whether the loan is repaid before the end of the accounting year or not. Therefore, the repayment of loan by K to the company on 30.3.2024 will not affect the taxability of the sum of ₹ 1,00,000 as deemed dividend.

(ii) Casual Income [Section 56(2)(ib)]

Casual income means income in the nature of winning from lotteries, crossword puzzles, races including horse races, card games and other games of any sort, gambling, betting etc. Such winnings are chargeable to tax at a flat rate of 30% under the head "Income from Other Sources".

(iii) Consideration received in excess of FMV of shares issued by a closely held company to be treated as income of such company, where shares are issued at a premium [Section 56(2)(viib)]

- (a) Section 56(2)(viib) brings to tax the consideration received from a person by a company, other than a company in which public are substantially interested, which is in excess of the fair market value (FMV) of shares. ***The person from whom the consideration is received may be a resident or non-resident.***
- (b) Such excess is to be treated as the income of a closely held company taxable under section 56(2) under the head “Income from Other Sources”, in cases where consideration received for issue of shares exceeds the face value of shares i.e. where shares are issued at a premium i.e., (Issue price of share – FMV of such share) x No. of shares.
- (c) Fair market value of the shares shall be the higher of, the value as may be –
- (1) determined in accordance with the prescribed method²; or
 - (2) substantiated by the company to the satisfaction of the Assessing Officer, based on the value of its assets on the date of issue of shares.

For the purpose of computation of FMV, the value of assets would include the value of intangible assets being goodwill, know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature.

Examples:

Co.	No. of shares	Face value of shares (₹)	FMV of shares (₹)	Issue price of shares (₹)	Applicability of section 56(2)(viib)
Example					
A (P) Ltd.	10,000	100	120	130	The provisions of section 56(2)(viib) are attracted in this case since the shares are issued at a premium (i.e., issue price exceeds the face value of shares). The excess of the issue price of the shares over the FMV would be taxable under section 56(2)(viib).

² For detailed reading of Rule 11U and 11UA of the Income-tax Rules, 1962, refer to Annexure 3 at the end of this module.

					₹ 1,00,000 [10,000 × ₹ 10 (₹ 130 - ₹ 120)] shall be treated as income in the hands of A (P) Ltd.
Example					
B (P) Ltd.	20,000	100	120	110	The provisions of section 56(2)(viib) are attracted since the shares are issued at a premium. However, no sum shall be chargeable to tax in the hands of B (P) Ltd. under the said section as the shares are issued at a price less than the FMV of shares.
Example					
C (P) Ltd.	30,000	100	90	98	Section 56(2)(viib) is not attracted since the shares are issued at a discount, though the issue price is greater than the FMV.
Example					
D (P) Ltd.	40,000	100	90	110	The provisions of section 56(2)(viib) are attracted in this case since the shares are issued at a premium. The excess of the issue price of the shares over the FMV would be taxable under section 56(2)(viib). Therefore, ₹ 8,00,000 [40,000 × ₹ 20 (₹ 110 - ₹ 90)] shall be treated as income in the hands of D (P) Ltd.

(d) However, these provisions would not be attracted where consideration for issue of shares is received:

- (1) by a Venture Capital Undertaking (VCU) from a Venture Capital Fund (VCF) or Venture Capital Company (VCC) or a specified fund;

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

Exchange Board of India Act, 1992 or regulated under the **IFSC Authority (Fund Management) Regulations, 2022 made under the IFSC Authority Act, 2019.**

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

- (2) by a company from a class or classes of persons as notified by the Central Government for this purpose.

Accordingly, the Central Government has, vide Notification No. 29/2023, dated 24.03.2023, notified that the provisions of section 56(2)(viib) shall not apply to consideration received by a company for issue of shares that exceeds the face value of such shares, if the said consideration is received from the following categories of persons –

- (i) Government and Government related investors such as central banks, sovereign wealth funds, international or multilateral organizations or agencies including entities controlled by the Government or where direct or indirect ownership of the Government is 75% or more;*
- (ii) Banks or Entities involved in Insurance Business, where such entity is subject to applicable regulations in the country where it is established or incorporated or is a resident;*
- (iii) Any of the following entities, which is a resident of specified country or specified territory, and such entity is subject to applicable regulations in the country where it is established or incorporated or is a resident :–*
 - (a) entities registered with SEBI as Category-I FPI;*
 - (b) endowment funds associated with a university, hospitals or charities;*
 - (c) pension funds created or established under the law of the foreign country or specified territory;*
 - (d) Broad Based Pooled Investment Vehicle or fund where the number of investors in such vehicle or fund is more than 50 and such fund is not a hedge fund or a fund which employs diverse or complex trading strategies.*

*Further, the Central Government has, vide Notification No. 30/2023, dated 24-05-2023, notified that the provisions of section 56(2)(viib) shall not apply to consideration received by a company for issue of shares that exceeds the face value of such shares, if the said consideration **received from any person**, by a company which fulfills the conditions specified by the Ministry of Commerce and Industry in the Department for Promotion of Industry and Internal Trade and files the declaration referred to in the said notification. In effect, vide this notification, the Central Government has notified the conditions to be fulfilled by a company which issues shares rather than the class or classes of persons to whom such shares are issued.*

The Ministry of Commerce and Industry in the Department for Promotion of Industry and Internal Trade has, vide Notification No. G.S.R. 127(E) dated 19.2.2019, specified in para 4 thereunder, that a startup shall be eligible for exemption under clause (ii) of the proviso to section 56(2)(viib), if it fulfills the following conditions:

- (i) It has been recognized by the Department for Promotion of Industry and Internal Trade as start up as per this notification or any earlier notification on the subject.
- (ii) Aggregate amount of paid up capital and share premium of the startup after issue or proposed issue of shares, if any, does not exceed, ₹ 25 crore.

However, in computing the aggregate amount of paid up share capital, the amount of paid up share capital and share premium of ₹ 25 crore in respect of shares issued to any of the following persons shall not be included:

- (a) a non-resident
- (b) a venture capital company or a venture capital fund

Further, consideration received by such startup for shares issued or proposed to be issued to a specified company shall also be exempt and shall not be included in computing the aggregate amount of paid up share capital and share premium of ₹ 25 crore. For this purpose, a specified company means a company whose shares are frequently traded within the meaning of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 and whose net worth on the last date of financial year preceding the year in which shares are issued exceeds ₹ 100 crore or turnover for the financial year preceding the year in which shares are issued exceeds ₹ 250 crore.

- (iii) It has not invested in any of the following assets –
- (a) building or land appurtenant thereto, being a residential house, other than that used by the Startup for the purposes of renting or held by it as stock-in-trade, in the ordinary course of business;
 - (b) land or building, or both, not being a residential house, other than that occupied by the Startup for its business or used by it for purposes of renting or held by it as stock-in trade, in the ordinary course of business;
 - (c) loans and advances, other than loans or advances extended in the ordinary course of business by the Startup where the lending of money is substantial part of its business;
 - (d) capital contribution made to any other entity;
 - (e) shares and securities;
 - (f) a motor vehicle, aircraft, yacht or any other mode of transport, the actual cost of which exceeds ten lakh rupees, other than that held by the Startup for the purpose of plying, hiring, leasing or as stock-in-trade, in the ordinary course of business;
 - (g) jewellery other than that held by the Startup as stock-in-trade in the ordinary course of business;
 - (h) any other asset, whether in the nature of capital asset or otherwise, of the nature specified in section 56(2)(vii)(d)(iv) to (ix) i.e., archaeological collections, drawings, paintings, sculptures, any work of art or bullion.

However, the Startup should not invest in any of the assets mentioned above for the period of 7 years from the end of the latest financial year in which shares are issued at premium;

Meaning of Startup:

A company would be considered as Startup if the following conditions are satisfied:

- (a) **Period** – It would be considered as a Startup upto a period of 10 years from the date of incorporation/ registration, if it is incorporated as a private limited company (as defined in the Companies Act, 2013) in India.

- (b) **Turnover limit** - Turnover of the company for any of the financial years since incorporation/registration has not exceeded ₹ 100 crore.
- (c) **Object and Purposes** - The company is working towards innovation, development or improvement of products or processes or services, or if it is a scalable business model with a high potential of employment generation or wealth creation.

However, a private limited company shall not be considered a “Startup”, if it formed by splitting up or reconstruction of an existing business.

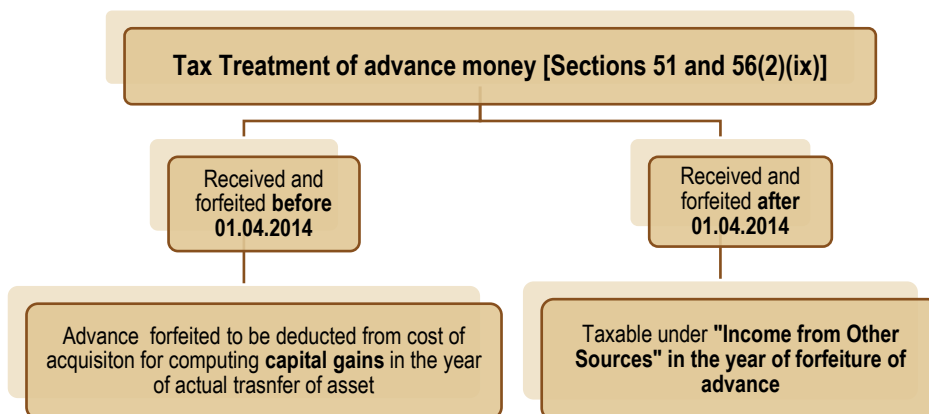
Note: It may, however, be noted that where the provisions of section 56(2)(viib) have not been applied to a company on account of fulfilment of conditions specified in the above notification and such company fails to comply with any of those conditions, then, any consideration received for issue of share that exceeds the fair market value of such share shall be deemed to be the income of that company chargeable to income-tax for the previous year in which such failure has taken place. Further, it shall also be deemed that the company has under-reported the income in consequence of the misreporting referred to in section 270A(8) and 270A(9) for the said previous year. Consequently, penalty @200% of tax payable on under-reported income would be leviable.

(iv) Interest received on compensation/ enhanced compensation deemed to be income in the year of receipt and taxable under the head “Income from Other Sources” [Section 56(2)(viii)]

- (a) As per section 145(1), income chargeable under the head “Profits and gains of business or profession” or “Income from other sources”, shall be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee.
- (b) Section 145B(1) provides that notwithstanding anything contained in section 145(1), the interest received by an assessee on compensation or on enhanced compensation shall be deemed to be his income of the previous year in which it is received, irrespective of the method of accounting followed by the assessee.
- (c) Section 56(2)(viii) provides that income by way of interest received on compensation or on enhanced compensation referred to in section 145B(1) shall be assessed as “Income from other sources” in the year in which it is received.

(v) Advance forfeited due to failure of negotiations for transfer of a capital asset to be taxable as “Income from other sources” [Section 56(2)(ix)]

- (a) Prior to A.Y.2015-16, any advance retained or received in respect of a negotiation for transfer which failed to materialise is reduced from the cost of acquisition of the asset or the written down value or the fair market value of the asset, at the time of its transfer to compute the capital gains arising therefrom as per section 51. In case the asset transferred is a long-term capital asset, indexation benefit would be on the cost so reduced.
- (b) With effect from A.Y.2015-16, section 56(2)(ix) provides for the taxability of any sum of money, received as an advance or otherwise in the course of negotiations for transfer of a capital asset. Such sum shall be chargeable to income-tax under the head ‘Income from other sources’, if such sum is forfeited and the negotiations do not result in transfer of such capital asset.
- (c) In order to avoid double taxation of the advance received and retained, section 51 was amended to provide that where any sum of money received as an advance or otherwise in the course of negotiations for transfer of a capital asset, has been included in the total income of the assessee for any previous year, in accordance with section 56(2)(ix), such amount shall not be deducted from the cost for which the asset was acquired or the written down value or the fair market value, as the case may be, in computing the cost of acquisition.
- (d) It may be noted that advance received and forfeited upto 31.3.2014 has to be reduced from cost of acquisition while computing capital gains, since such advance would not have been subject to tax under section 56(2)(ix). Only the advance received and forfeited on or after 1.4.2014 would be subject to tax under section 56(2)(ix). Hence, such advance would not be reduced from the cost of acquisition for computing capital gains.



(vi) Any sum of money or value of property received without consideration or for inadequate consideration to be subject to tax in the hands of the recipient [Section 56(2)(x)]

In order to prevent the practice of receiving sum of money or the property without consideration or for inadequate consideration, section 56(2)(x) brings to tax any sum of money or the value of any property received by any person without consideration or the value of any property received for inadequate consideration.

(a) **Sum of Money:** If any sum of money is received without consideration and the aggregate value of which exceeds ₹ 50,000, the whole of the aggregate value of such sum is chargeable to tax.

(b) **Immovable property [Land or building or both]:**

I. If an immovable property is received

(a) **Without consideration:** the stamp duty value of such property would be taxed as the income of the recipient, if it exceeds ₹ 50,000.

(b) **For Inadequate consideration:** If consideration is less than the stamp duty value of the property and the difference between the stamp duty value and consideration is more than the higher of –

(i) ₹ 50,000 and

(ii) 10% of consideration,

the difference between the stamp duty value and the consideration shall be chargeable to tax in the hands of the assessee as "Income from other sources".

It may be noted that the above limit shall be considered for **each property separately**.

- II. **Value of property to be considered where the date of agreement is different from date of registration:** Taking into consideration the possible time gap between the date of agreement and the date of registration, the stamp duty value may be taken as on the date of agreement instead of the date of registration, if the date of the agreement fixing the amount of consideration for the transfer of the immovable property and the date of registration are not the same, provided whole or part of the consideration has been paid by way of an account payee cheque or an account payee bank draft or by use of electronic clearing system (ECS) through a bank account or through such prescribed electronic mode on or before the date of agreement.

The prescribed electronic modes notified are credit card, debit card, net banking, IMPS (Immediate payment Service), UPI (Unified Payment Interface), RTGS (Real Time Gross Settlement), NEFT (National Electronic Funds Transfer), and BHIM (Bharat Interface for Money) Aadhar Pay as other electronic modes of payment [CBDT Notification No. 8/2020 dated 29.01.2020].

- III. **If the stamp duty value of immovable property is disputed by the assessee,** the Assessing Officer may refer the valuation of such property to a Valuation Officer. In such a case, the provisions of section 50C and section 155(15) shall, as far as may be, apply for determining the value of such property. As per section 50C, if such value is less than the stamp duty value, the same would be taken for determining the value of such property, for computation of income under this head in the hands of the buyer.

(c) **Movable Property [Property other than immovable property]:**

If movable property is received

- (i) **Without consideration:** The **aggregate fair market value** of such property on the date of receipt would be taxed as the income of the recipient, if it exceeds ₹ 50,000.
- (ii) **For inadequate consideration:** If the difference between the **aggregate fair market value** and such consideration exceeds ₹ 50,000, such difference would be taxed as the income of the recipient.

- (d) **Applicability of section 56(2)(x):** The provisions of section 56(2)(x) would apply only to the specified property which is the nature of a capital asset of the recipient and not stock-in-trade, raw material or consumable stores of any business of the recipient. Therefore, only

transfer of a specified capital asset, without consideration or for inadequate consideration would attract the provisions of section 56(2)(x).

(e) **The table below summarizes the scheme of taxability of gifts –**

	Nature of asset	Taxable value
1	Money	The whole amount if the same exceeds ₹ 50,000.
2	Movable property	(i) Without consideration: The aggregate fair market value of the property, if it exceeds ₹ 50,000. (ii) Inadequate consideration: The difference between the aggregate fair market value and the consideration, if such difference exceeds ₹ 50,000.
3	Immovable property	(i) Without consideration: The stamp value of the property, if it exceeds ₹ 50,000. (ii) Inadequate consideration: The difference between the stamp duty value and the consideration, if such difference is more than the higher of ₹ 50,000 and 10% of consideration.

(f) **Non-applicability of section 56(2)(x):** However, any sum of money or value of property received in the following circumstances would be outside the ambit of section 56(2)(x) -

- (i) from any relative; or
- (ii) on the occasion of the marriage of the individual; or
- (iii) under a will or by way of inheritance; or
- (iv) in contemplation of death of the payer or donor, as the case may be; or
- (v) from any local authority as defined in the *Explanation* to section 10(20); or
- (vi) 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
- (vii) from or by any trust or institution registered under section 12A or section 12AA or section 12AB; or

However, where sum of money or property has been received by specified persons under section 13(3), this relaxation is not available and section 56(2)(x) would be applicable.

- (viii) by any fund or trust or institution or any university or other educational institution or any hospital or other medical institution referred to in Section 10(23C)(iv)/(v)/(vi)/(via).
- (ix) by way of transaction not regarded as transfer under section 47(i)/(iv)/(v)/(vi)/(via)/(viaa)/(vib)/(vic)/(vica)/(vicb)/(vid)/(vii)/(viiac)/(viid)/(viiac)/(viiad)/(viiac)/(viiad)/(viiac)/(viiad).
- (x) from an individual by a trust created or established solely for the benefit of relative of the individual.
- (xi) by an individual, from any person, in respect of any expenditure actually incurred by him on his medical treatment or treatment of any member of his family, for any illness related to COVID-19 subject to conditions notified by the Central Government.

Accordingly, the Central Government has, *vide Notification No. 91/2022 dated 5.8.2022*, specified the following conditions –

The individual has to keep a record of the following documents, namely:-

- (a) the COVID-19 positive report of the individual or his family member, or medical report if clinically determined to be COVID-19 positive through investigations in a hospital or an in-patient facility by a treating physician for a person so admitted;
- (b) all necessary documents of medical diagnosis or treatment of the individual or family member due to COVID-19 or illness related to COVID-19 suffered within 6 months from the date of being determined as a COVID-19 positive;

The details of the amount so received in any financial year has to be furnished in Form No. 1 to the Income-tax Department within 9 months from the end of such financial year.

- (xii) by a member of the family of a deceased person –
 - (A) from the employer of the deceased person (without any limit); or
 - (B) from any other person or persons to the extent that such sum or aggregate of such sums $\leq$ ₹ 10 lakhs,

where the cause of death of such person is illness related to COVID-19 and the payment is –

- (i) received within 12 months from the date of death of such person; and

- (ii) subject to such other conditions notified by the Central Government.

Accordingly, the Central Government has, *vide Notification No. 92/2022 dated 5.8.2022*, specified the following conditions –

1. (i) the death of the individual should be within 6 months from the date of testing positive or from the date of being clinically determined as a COVID-19 case, for which any sum of money has been received by the member of the family;
 - (ii) the family member of the individual has to keep a record of the following documents,
 - (a) the COVID-19 positive report of the individual, or medical report if clinically determined to be COVID-19 positive through investigations in a hospital or an inpatient facility by a treating physician;
 - (b) a medical report or death certificate issued by a medical practitioner or a Government civil registration office, in which it is stated that death of the person is related to corona virus disease (COVID-19).
 2. The details of such amount received in any financial year has to be furnished in Form A to the Assessing Officer within 9 months from the end of such financial year.
- (xiii) from such class of persons and subject to such conditions, as may be prescribed.

Accordingly, CBDT has inserted Rule 11UAC to notify that the provisions of section 56(2)(x) would not be applicable to the following transactions –

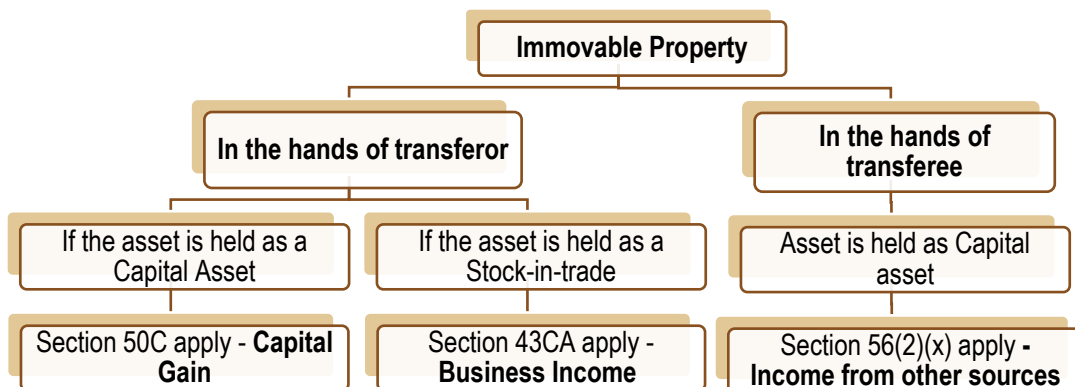
S. No.	Property	Received by	Condition
1.	Any immovable property, being land or building or both	a resident of an unauthorized colony in the National Capital Territory of Delhi	where the Central Government by notification in the Official Gazettee, regularised the transactions of such immovable property based on the latest Power of Attorney, Agreement to Sale, Will, possession letter and other documents including documents evidencing payment of consideration for conferring or recognising right of ownership or transfer or mortgage in regard to such immovable property in favour of such resident.

	Resident means a person having physical possession of property on the basis of a registered sale deed or latest set of Power of Attorney, Agreement to Sale, Will, possession letter and other documents including documents evidencing payment of consideration in respect of a property in unauthorised colonies and includes their legal heirs but does not include tenant, licensee or permissive user. Unauthorised colony means a colony or development comprising of a contiguous area, where no permission has been obtained for approval of layout plan or building plans and has been identified for regularisation of such colony in pursuance to the notification number S.O. 683(E), dated the 24th March, 2008, of the Delhi Development Authority.		
2.	Any movable property, being unquoted shares, of a company and its subsidiary and the subsidiary of such subsidiary	Shareholder	Where, (i) the Tribunal, on an application moved by the Central Government under section 241 of the Companies Act, 2013, has suspended the Board of Directors of such company and has appointed new directors nominated by the Central Government under section 242 of the said Act; and (ii) share of company and its subsidiary and the subsidiary of such subsidiary has been received pursuant to a resolution plan approved by the Tribunal under section 242 of the Companies Act, 2013 after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner.
	A company shall be a subsidiary of another company, if such other company holds more than half in nominal value of the equity share capital of the company;		
3.	Any movable property, being equity shares, of the reconstructed bank	Investor or investor bank (SBI)	where the said share has been allotted by the reconstructed bank (Yes Bank) under the Yes Bank Limited Reconstruction Scheme, 2020 at ₹ 10 per share (Face value - ₹ 2 per share; Premium - ₹ 8 per share).

4.	Any movable property, being equity shares, of a public sector company or a company	a person	It should be received from a public sector company or the Central Government or any State Government under strategic disinvestment.
	Strategic disinvestment - Sale of shareholding by the Central Government or any State Government or a public sector company, in a public sector company or in a company, which results in - reduction of its shareholding to below 51% and - transfer of control to the buyer. The condition of reduction below 51% would apply only in a case where shareholding of the Central Government or the State Government or the public sector company was above 51% before such sale of shareholding. The requirement of transfer of control may be carried out by the Central Government or the State Government or the public sector company or any two of them or all of them.		
5.	Any movable property, being shares or units or interest in the resultant fund	The fund management entity of the resultant fund	It should be received in lieu of shares or units or interest held by the investment manager entity in the original fund, pursuant to the relocation, subject to the following conditions, namely – (i) not less than 90% of shares or units or interest in the fund management entity of the resultant fund are held by the same entity(ies) or person(s) in the same proportion as held by them in the investment manager entity of the original fund; and (ii) not less than 90% of the aggregate of shares or units or interest in the investment manager entity of the original fund was held by such entity(ies) or person(s).

(g) **Meaning of certain terms:**

Term	Meaning
Property	A capital asset of the assessee, namely,- (a) immovable property being land or building or both, (b) shares and securities, (c) jewellery, (d) archaeological collections, (e) drawings, (f) paintings, (g) sculptures, (h) any work of art or bullion. It also includes virtual digital asset.
Relative	(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 any of the persons referred to above. (b) In case of Hindu Undivided Family , any member thereof.
Family	For the purpose of (xi) and (xii), family, in relation to an individual means (i) the spouse and children of the individual; and (ii) the parents, brothers and sisters of the individual or any of them, wholly or mainly dependent on the individual.

SUMMARY

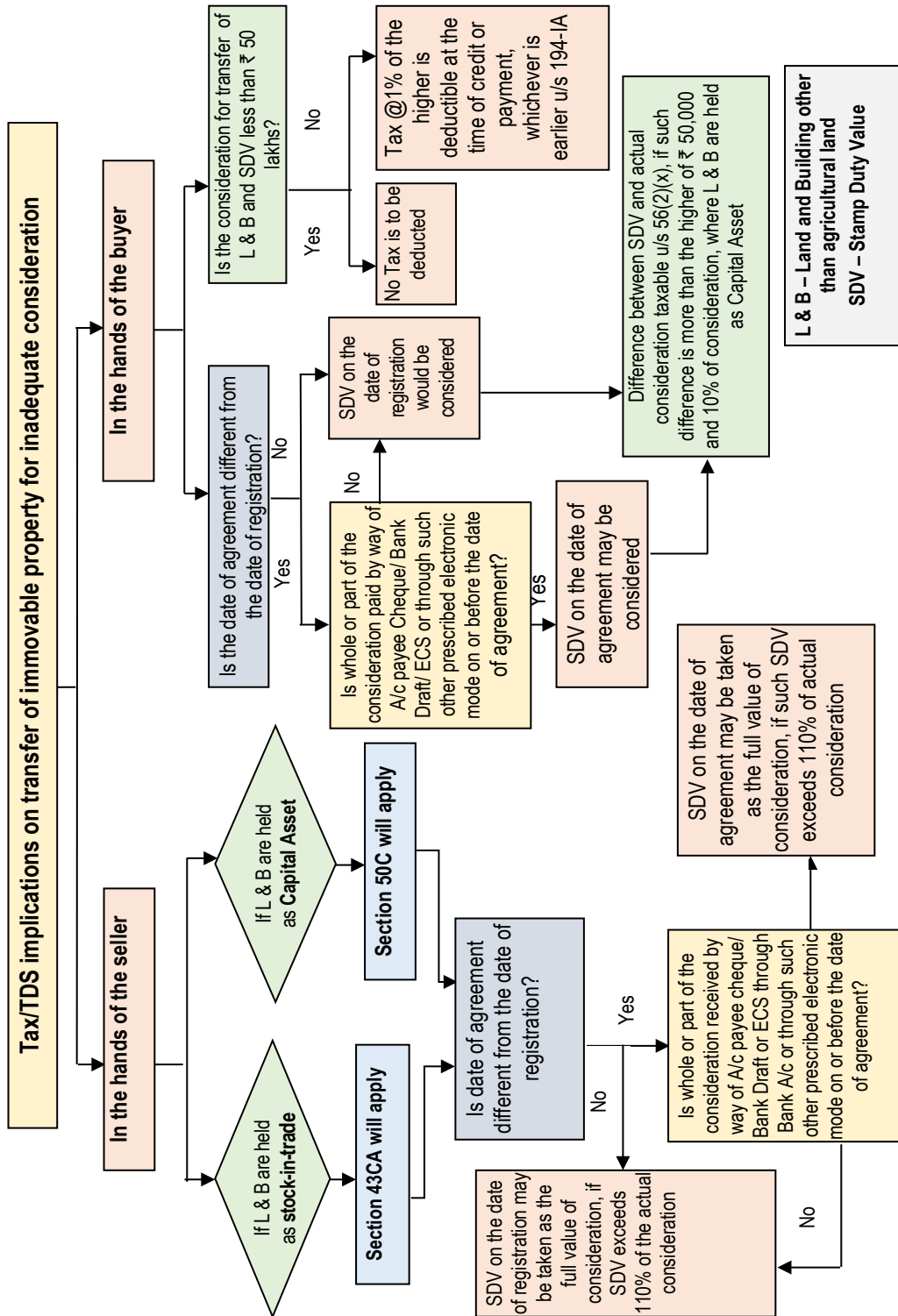


ILLUSTRATION 3

Mr. A, a dealer in shares, received the following without consideration during the P.Y.2023-24 from his friend Mr. B, -

- (1) Cash gift of ₹ 75,000 on his anniversary, 15th April, 2023.
- (2) Bullion, the fair market value of which was ₹ 60,000, on his birthday, 19th June, 2023.
- (3) A plot of land at Faridabad on 1st July, 2023, the stamp value of which is ₹ 5 lakh on that date. Mr. B had purchased the land in April, 2009.

Mr. A purchased from his friend Mr. C, who is also a dealer in shares, 1000 shares of X Ltd. @ ₹ 400 each on 19th June, 2023, the fair market value of which was ₹ 600 each on that date. Mr. A sold these shares in the course of his business on 23rd June, 2023.

Further, on 1st November, 2023, Mr. A took possession of property (building) booked by him two years back at ₹ 20 lakh. The stamp duty value of the property as on 1st November, 2023 was ₹ 32 lakh and on the date of booking was ₹ 23 lakh. He had paid ₹ 1 lakh by account payee cheque as down payment on the date of booking.

On 1st March, 2024, he sold the plot of land at Faridabad for ₹ 7 lakh.

Compute the income of Mr. A chargeable under the head “Income from other sources” and “Capital Gains” for A.Y.2024-25.

SOLUTION**Computation of “Income from other sources” of Mr. A for the A.Y.2024-25**

	Particulars	₹
(1)	Cash gift is taxable under section 56(2)(x), since it exceeds ₹ 50,000	75,000
(2)	Since bullion is included in the definition of property, therefore, when bullion is received without consideration, the same is taxable, since the aggregate fair market value exceeds ₹ 50,000	60,000
(3)	Stamp value of plot of land at Faridabad, received without consideration, is taxable under section 56(2)(x)	5,00,000
(4)	Difference of ₹ 2 lakh in the value of shares of X Ltd. purchased from Mr. C, a dealer in shares, is not taxable as it represents the stock-in-trade of Mr. A. Since Mr. A is a dealer in shares and it has been mentioned that the shares were subsequently sold in the course of his business, such shares represent the stock-in-trade of Mr. A.	-

(5)	Difference between the stamp duty value of ₹ 23 lakh on the date of booking and the actual consideration of ₹ 20 lakh paid is taxable under section 56(2)(x) since the difference exceeds ₹ 2 lakhs being, the higher of ₹ 50,000 and 10% of consideration.	3,00,000
Income from Other Sources		9,35,000

Computation of “Capital Gains” of Mr. A for the A.Y.2024-25

Particulars	₹
Sale Consideration	7,00,000
Less: Cost of acquisition [deemed to be the stamp value charged to tax under section 56(2)(x) as per section 49(4)]	5,00,000
Short-term capital gains	2,00,000

Note – The resultant capital gains will be short-term capital gains since for calculating the period of holding, the period of holding of previous owner is not to be considered.

ILLUSTRATION 4

Discuss the taxability or otherwise of the following in the hands of the recipient under section 56(2)(x) of the Income-tax Act, 1961 -

- (i) Akhil HUF received ₹ 75,000 in cash from niece of Akhil (i.e., daughter of Akhil's sister). Akhil is the Karta of the HUF.
- (ii) Nitisha, a member of her father's HUF, transferred a house property to the HUF without consideration. The stamp duty value of the house property is ₹ 9,00,000.
- (iii) Mr. Akshat received 100 shares of A Ltd. from his friend as a gift on occasion of his 25th marriage anniversary. The fair market value on that date was ₹ 100 per share. He also received jewellery worth ₹ 45,000 (FMV) from his nephew on the same day.
- (iv) Kishan HUF gifted a car to son of Karta for achieving good marks in XII board examination. The fair market value of the car is ₹ 5,25,000.

SOLUTION

	Taxable/ Non-taxable	Amount liable to tax (₹)	Reason
(i)	Taxable	75,000	Sum of money exceeding ₹ 50,000 received without consideration from a non-relative is taxable under section 56(2)(x). Daughter of Mr. Akhil's sister is not a relative of Akhil HUF, since she is not a member of Akhil HUF.

(ii)	Non-taxable	Nil	Immovable property received without consideration by a HUF from its relative is not taxable under section 56(2)(x). Since Nitisha is a member of the HUF, she is a relative of the HUF. However, income from such asset would be included in the hands of Nitisha under 64(2).
(iii)	Taxable	55,000	As per provisions of section 56(2)(x), in case the aggregate fair market value of property, other than immovable property, received without consideration exceeds ₹ 50,000, the whole of the aggregate value shall be taxable. In this case, the aggregate fair market value of shares (₹ 10,000) and jewellery (₹ 45,000) exceeds ₹ 50,000. Hence, the entire amount of ₹ 55,000 shall be taxable.
(iv)	Non-taxable	Nil	Car is not included in the definition of property for the purpose of section 56(2)(x), therefore, the same shall not be taxable.

ILLUSTRATION 5

Mr. Hari, a property dealer, sold a building in the course of his business to his friend Mr. Rajesh, who is a dealer in automobile spare parts, for ₹ 90 lakh on 1.1.2024, when the stamp duty value was ₹ 150 lakh. The agreement was, however, entered into on 1.9.2023 when the stamp duty value was ₹ 140 lakh. Mr. Hari had received a down payment of ₹ 15 lakh by a crossed cheque from Mr. Rajesh on the date of agreement. Discuss the tax implications in the hands of Mr. Hari and Mr. Rajesh, assuming that Mr. Hari has purchased the building for ₹ 75 lakh on 12th July, 2022.

Would your answer be different if Hari was a share broker instead of a property dealer?

SOLUTION**Case 1: Tax implications if Mr. Hari is a property dealer**

In the hands of Mr. Hari	In the hands of Mr. Rajesh
In the hands of Hari, the provisions of section 43CA would be attracted, since the building represents his stock-in-trade and he has transferred the same for a consideration less than the stamp duty value; and the stamp duty value exceeds 110% of consideration. Under section 43CA, the option to adopt the stamp duty value on the date of agreement can be exercised only if whole or part of the consideration has been received on or before the date of agreement by way of account payee cheque or draft or by use of ECS through a bank account or	Since Mr. Rajesh is a dealer in automobile spare parts, the building purchased would be a capital asset in his hands. The provisions of section 56(2)(x) would be attracted in the hands of Mr. Rajesh who has received immovable property, being a capital asset, for inadequate consideration and the difference between the consideration and stamp duty value exceeds ₹ 9,00,000, being the higher of ₹ 50,000 and 10% of consideration.

through credit card, debit card, net banking, IMPS (Immediate payment Service), UPI (Unified Payment Interface), RTGS (Real Time Gross Settlement), NEFT (National Electronic Funds Transfer), and BHIM (Bharat Interface for Money) Aadhar Pay on or before the date of agreement. In this case, since the down payment of ₹ 15 lakh is received on the date of agreement by crossed cheque and not account payee cheque, the option cannot be exercised.

Therefore, **₹ 75 lakh**, being the difference between the stamp duty value on the date of transfer i.e., ₹ 150 lakh, and the purchase price i.e., ₹ 75 lakh, would be chargeable as **business income** in the hands of Mr. Hari, since stamp duty value exceeds **110% of the consideration**.

Therefore, **₹ 60 lakh**, being the difference between the stamp duty value of the property on the date of registration (i.e., ₹ 150 lakh) and the actual consideration (i.e., ₹ 90 lakh) would be taxable under section 56(2)(x) in the hands of Mr. Rajesh, since the payment on the date of agreement is made by crossed cheque and not account payee cheque/draft or ECS or through credit card, debit card, net banking, IMPS (Immediate payment Service), UPI (Unified Payment Interface), RTGS (Real Time Gross Settlement), NEFT (National Electronic Funds Transfer), and BHIM (Bharat Interface for Money) Aadhar Pay.

Case 2: Tax implications if Mr. Hari is a share broker

In the hands of Mr. Hari	In the hands of Mr. Rajesh
In case Mr. Hari is a share broker and not a property dealer, the building would represent his capital asset and not stock-in-trade. In such a case, the provisions of section 50C would be attracted in the hands of Mr. Hari, since building is transferred for a consideration less than the stamp duty value; and the stamp duty value exceeds 110% of consideration. Thus, ₹ 75 lakh, being the difference between the stamp duty value on the date of registration (i.e., ₹ 150 lakh) and the purchase price (i.e., ₹ 75 lakh) would be chargeable as short-term capital gains. It may be noted that under section 50C, the option to adopt the stamp duty value on the date of agreement can be exercised only if whole or part of the consideration has been received on or before the date of agreement by way of account payee cheque or draft or by use of ECS through a bank account or through credit card, debit card, net banking, IMPS (Immediate payment Service), UPI (Unified Payment Interface), RTGS (Real Time Gross	There would be no difference in the taxability in the hands of Mr. Rajesh, whether Mr. Hari is a property dealer or a stock broker, (except where the property transferred in a residential unit fulfilling the stipulated conditions, which is not so in this case). Therefore, the provisions of section 56(2)(x) would be attracted in the hands of Mr. Rajesh who has received immovable property, being a capital asset, for inadequate consideration and the difference between the consideration and stamp duty value exceeds ₹ 9,00,000, being the higher of ₹ 50,000 and 10% of consideration. Therefore, ₹ 60 lakh, being the difference between the stamp duty value of the property on the date of registration (i.e., ₹ 150 lakh) and the actual consideration (i.e., ₹ 90 lakh) would be taxable under section 56(2)(x) in the hands of Mr. Rajesh, since the payment on the date of agreement is made by crossed cheque and not account payee cheque/draft or ECS or through credit card, debit card, net banking, IMPS (Immediate payment Service),

Settlement), NEFT (National Electronic Funds Transfer), and BHIM (Bharat Interface for Money) Aadhar Pay on or before the date of agreement. In this case, since the down payment of ₹ 15 lakhs has been received on the date of agreement by crossed cheque and not account payee cheque, the option cannot be exercised.	UPI (Unified Payment Interface), RTGS (Real Time Gross Settlement), NEFT (National Electronic Funds Transfer), and BHIM (Bharat Interface for Money) Aadhar Pay.

(vii) Compensation or any other payment received in connection with termination of his employment [Section 56(2)(xi)]

Any compensation or any other payment, due to or received by any person, by whatever name called, in connection with the termination of his employment or the modification of the terms and conditions relating thereto shall be chargeable to tax under this head. However, if it is received from employer, then it is taxable u/s 17(3)(i) under the head "Income from Salaries".

(viii) Any specified sum received by a unit holder from a business trust during the previous year [Section 56(2)(xii)]

Section 56(2)(xii) provides that any specified sum received by a unit holder from a business trust during the previous year with respect to unit held by him at any time during the previous year would be chargeable to tax in the hands of unit holder under the head "Income from other sources".

Specified sum is to be computed in the following manner:

Specified sum = A (-) B (-) C (which shall be zero if sum of B and C is greater than A)	
A	Aggregate of sum distributed by the business trust with respect to such unit, during the previous year or during any earlier previous year or years, to such unit holder, who holds such unit on the date of distribution of sum or to any other unit holder who held such unit at any time prior to the date of such distribution, which is – (a) not in the nature of interest and dividend referred to in section 10(23FC) or rental income referred to in section 10(23FCA); and (b) not chargeable to tax in the hands of the business trust under section 115UA(2)
B	Amount at which such unit was issued by the business trust; and
C	Amount charged to tax under this clause in any earlier previous year;

(ix) Sum received, including the amount allocated by way of bonus, under a LIP other than under a ULIP and keyman insurance policy, which is not exempt u/s 10(10D) [Section 56(2)(xiii)]

Any sum received under a life insurance policy, including the sum allocated by way of bonus on such policy would not be included in the total income of a person [Section 10(10D)].

The following table summarizes the exemption available under section 10(10D) vis-a-vis the date of issue of such policies and the corresponding condition to be satisfied for exemption -

	Exemption u/s 10(10D)	
In respect of policies issued before 1.4.2003	Any sum received under a LIP including the sum allocated by way of bonus is exempt.	
In respect of policies issued between 1.4.2003 and 31.3.2012	Any sum received under a LIP including the sum allocated by way of bonus is exempt. However, exemption would not be available if the premium payable for any of the years during the term of the policy exceeds 20% of "actual capital sum assured".	
In respect of policies issued on or after 1.4.2012 but before 1.4.2013	Any sum received under a LIP including the sum allocated by way of bonus is exempt. However, exemption would not be available if the premium payable for any of the years during the term of the policy exceeds 10% of actual capital sum assured.	
In respect of policies issued on or after 1.4.2013	(a)	Where the insurance is on the life of a person with disability or severe disability as referred to in section 80U or a person suffering from disease or ailment as specified under section 80DDB.
		Any sum received under a LIP including the sum allocated by way of bonus is exempt. However, exemption would not be available if the premium payable for any of the years during the term of the policy exceeds 15% of "actual capital sum assured"
	(b)	Where the insurance is on the life of any person, other than mentioned in (a) above
		Any sum received under a LIP including the sum allocated by way of bonus is exempt. However, exemption would not be available if the premium payable for any of the years during the term of the policy exceeds 10% of "actual capital sum assured".
In respect of ULIP issued on or after 1.2.2021	Any sum received under a ULIP including the sum allocated by way of bonus is exempt.	

	However, exemption would not be available if the premium payable for any of the years during the term of the policy exceeds 10% or 15%, as the case may be, of "actual capital sum assured. Further, exemption would also not be available with respect to ULIP issued on or after 1.2.2021, if the amount of premium payable exceeds ₹ 2,50,000 for any of the previous years during the term of such ULIP. Such ULIP would be specified ULIP, which is a capital asset. In a case where premium is payable by a person for more than one ULIP issued on or after 1.2.2021 and the aggregate of premium payable on such ULIPs exceed ₹ 2,50,000 for any of the previous years during the term of any such ULIPs, exemption would be available in respect of any of those ULIPs, at the option of the assessee, whose aggregate premium payable does not exceed ₹ 2,50,000 for any of the previous years during their term. All other ULIPs would be specified ULIPs, which are capital assets. Meaning of ULIP - ULIP means a life insurance policy which has components of both investment and insurance and is linked to a unit defined under IRDA (ULIP) Regulations, 2019 issued by IRDA under the Insurance Act, 1938 and the IRDA Act, 1999.
<i>In respect of life insurance policies issued on or after 1.4.2023</i>	<i>Any sum received under a LIP including the sum allocated by way of bonus is exempt.</i> <i>However, exemption would not be available if the premium payable for any of the years during the term of the policy exceeds 10% or 15%, as the case may be, of "actual capital sum assured.</i> <i>Further, exemption would also not be available if the amount of premium payable exceeds ₹ 5,00,000 for any of the previous years during the term of such policy.</i> <i>In a case where premium is payable by a person for more than one LIP (other than ULIP) issued on or after 1.4.2023 and the aggregate of premium payable on such policies exceed ₹ 5,00,000 for any of the previous years during the term of any such policy(ies), exemption would be available in respect of any of those LIPs (other than ULIP), at the option of the assessee, whose aggregate premium payable does not exceed ₹ 5,00,000 for any of the previous years during their term.</i>
<i>Any sum is received on the death of a person is exempt irrespective of the annual premium payable on the ULIP/LIP. The condition of payment of premium of 10% or 15% or 20% or ₹ 5,00,000 would not be applicable.</i>	

Exemption is not available in respect of amount received from an insurance policy taken for disabled person under section 80DD: Any sum received under section 80DD(3) shall not be exempt under section 10(10D). Accordingly, if the dependent disabled, in respect of whom an individual or the member of the HUF has paid or deposited any amount in any scheme of LIC or

any other insurer, predeceases the individual or the member of the HUF, the amount so paid or deposited shall be deemed to be the income of the assessee of the previous year in which such amount is received. Such amount would not be exempt u/s 10(10D).

Exemption is not available in respect of the sum received under a Keyman insurance policy:

Any sum received under a Keyman insurance policy shall also not be exempt.

Explanation 1 to section 10(10D) defines “Keyman insurance policy” as a life insurance policy taken by one person on the life of another person who is or was the employee of the first-mentioned person or is or was connected in any manner whatsoever with the business of the first-mentioned person. The term includes within its scope a keyman insurance policy which has been assigned to any person during its term, with or without consideration. Therefore, such policies shall continue to be treated as a keyman insurance policy even after the same is assigned to the keyman. Consequently, the sum received by the keyman on such policies, being “keyman insurance policies”, would not be exempt u/s 10(10D).

Unit Linked Insurance Policies

In order to deter the practice of high net worth individuals from claiming exemption u/s 10(10D) by investing in ULIPs with huge premium, additional condition has been stipulated u/s 10(10D) in respect of ULIPs issued on or after 1.2.2021.

In case where an assessee has a Single ULIP issued on or after 1.2.2021 - Exemption u/s 10(10D) would **not** be available with respect to any ULIP issued on or after 1.2.2021, if the amount of premium payable exceeds ₹ 2,50,000 for any of the previous years during the term of such ULIP. Such ULIP would be a specified ULIP, which is a capital asset.

In case where an assessee has multiple ULIPs issued on or after 1.2.2021 - In a case where premium is payable by a person for more than one ULIP issued on or after 1.2.2021 and the aggregate of premium payable on such ULIPs exceed ₹ 2,50,000 for any of the previous years during the term of any such ULIP(s), exemption u/s 10(10D) would be available in respect of any of those ULIPs, at the option of the assessee, whose aggregate premium payable does not exceed ₹ 2,50,000 for any of the previous years during their term. All other ULIPs would be specified ULIPs, which are capital assets under section 2(14)(c). However, to get exemption u/s 10(10D), the condition of annual premium not exceeding 10% of the actual capital sum assured also needs to be satisfied.

Exemption in case of death of a person - In case any sum is received on the death of a person, exemption u/s 10(10D) would be available irrespective of the annual premium payable of the ULIP.

Guidelines by CBDT: In case any difficulty arises in giving effect to the provisions of this clause, the CBDT may issue guidelines for the purpose of removing the difficulty with the previous approval of the Central Government.

Accordingly, the CBDT has, with the approval of the Central Government, vide Circular No. 2/2022, dated 19.01.2022, issued the following guidelines in respect of ULIPs –

Situation 1: No sum including any sum allocated by way of bonus (such sum hereinafter referred as “consideration”) is received by the assessee on any ULIPs which are issued on or after 1.2.2021 (such ULIPs hereinafter referred as “eligible ULIPs”) during any previous year preceding the current previous year or consideration has been received on such eligible ULIPs in an earlier previous year but has not been claimed exempt. In such a situation, the exemption u/s 10(10D) would be determined as under:

I. Where the assessee has received consideration, during the current P.Y., under one eligible ULIP only

Circumstance	Eligibility for exemption u/s 10(10D)
If the amount of premium payable on such eligible ULIP does not exceed ₹ 2,50,000 for any of the PYs during the term of such eligible ULIP and annual premium does not exceed 10% of actual capital sum assured	Such consideration would be eligible for exemption u/s 10(10D). [Refer Example 1 given below]
If the amount of premium payable on such eligible ULIP > ₹ 2,50,000 for any of the PYs during the term of such eligible ULIP	Such consideration would not be eligible for exemption u/s 10(10D). [Refer Example 2 given below]

Example 1:

ULIP	A
Date of issue	1.4.2021
Annual premium	2,50,000
Sum assured	25,00,000
Consideration received as on 01.11.2031 on maturity	32,00,000
Note – The assessee did not receive any consideration under any other eligible ULIPs in earlier P.Y. preceding the P.Y.2031-32.	

Eligibility for exemption u/s 10(10D) - The consideration received would be exempt u/s 10(10D) in A.Y. 2032-33, since the annual premium payable on the policy does not exceed ₹ 2,50,000 and also does not exceed 10% of actual capital sum assured.

Example 2:

ULIP	A
Date of issue	1.4.2021
Annual premium	5,00,000
Sum assured	50,00,000
Consideration received as on 01.11.2031 on maturity	60,00,000
Note – The assessee did not receive any consideration under any other eligible ULIPs in earlier P.Y. preceding the P.Y.2031-32.	

Eligibility for exemption u/s 10(10D) - The consideration received would not be exempt u/s 10(10D) in A.Y. 2032-33 since the annual premium payable on the eligible ULIP exceeds ₹ 2,50,000.

II. Where the assessee has received consideration, during the current P.Y., under more than one eligible ULIP

Circumstance	Eligibility for exemption u/s 10(10D)
If the aggregate of the amount of premium payable on such eligible ULIPs does not exceed ₹ 2,50,000 for any of the PYs during the term of such eligible ULIPs and the annual premium ≤ 10% of actual capital sum assured	Such consideration would be eligible for exemption under u/s 10(10D). [Refer Example 3 given below]
If the aggregate of the amount of premium payable on such eligible ULIPs > ₹ 2,50,000 for any of the PYs during the term of such eligible ULIP	Consideration in respect of any of those eligible ULIPs whose aggregate amount of premium payable does not exceed ₹ 2,50,000 for any of the PYs during their term would be eligible for exemption u/s 10(10D), provided their annual premium ≤ 10% of actual capital sum assured. [Refer Examples 4 and 5 given below]

Example 3:

ULIP	A	B
Date of issue	1.4.2021	1.4.2021
Annual premium	1,00,000	1,50,000
Sum assured	10,00,000	15,00,000
Consideration received as on 01.11.2031 on maturity	12,00,000	18,00,000
Note – The assessee did not receive any consideration under any other eligible ULIPs in earlier P.Y. preceding the P.Y.2031-32.		

Eligibility for exemption u/s 10(10D) – In this case, the aggregate of the annual premium payable for ULIP “A” and ULIP “B” does not exceed ₹ 2,50,000 during the term of these policies.

Further, annual premium payable in respect of ULIP “A” and ULIP “B” does not exceed 10% of actual capital sum assured. Therefore, the consideration received under ULIP “A” and “B” would be exempt u/s 10(10D) in A.Y. 2032-33

Example 4:

ULIP	A	B	C
Date of issue	1.4.2021	1.4.2021	1.4.2021
Annual premium	1,00,000	1,50,000	3,00,000
Sum assured	10,00,000	15,00,000	30,00,000
Consideration received as on 01.11.2031 on maturity	12,00,000	18,00,000	34,00,000
Note – The assessee did not receive any consideration under any other eligible ULIPs in earlier P.Y. preceding the P.Y.2031-32.			

Eligibility for exemption u/s 10(10D) – In this case, the aggregate of the annual premium payable for ULIP “A”, ULIP “B” and ULIP “C” exceeds ₹ 2,50,000 during the term of these policies.

However, the consideration received under ULIPs “A” and “B” would be exempt u/s 10(10D) in A.Y. 2032-33, since aggregate of annual premium payable for these two policies does not exceed ₹ 2,50,000 for any previous year during the term of these two policies and also does not exceed 10% of actual capital sum assured.

Consequently, the consideration received under ULIP “C” alone would **not** be exempt u/s 10(10D) in A.Y. 2032-33.

Example 5:

ULIP	X	A	B	C
Date of issue	1.4.2020	1.4.2021	1.4.2021	1.4.2021
Annual premium	2,50,000	1,00,000	1,50,000	3,00,000
Sum assured	25,00,000	10,00,000	15,00,000	30,00,000
Consideration received as on 01.11.2030 on maturity	30,00,000			
Consideration received as on 01.11.2031 on maturity		12,00,000	18,00,000	34,00,000
Note – The assessee did not receive any consideration under any other eligible ULIPs in earlier P.Y. preceding the P.Y.2031-32.				

Eligibility for exemption u/s 10(10D) - The consideration received under ULIP "X" would be exempt u/s 10(10D) in A.Y. 2031-32 since annual premium does not exceed 10% of the actual capital sum assured. Moreover, as the policy has been issued before 1.2.2021, limit of ₹ 2,50,000 of amount of premium payable is not applicable.

The aggregate of annual premium payable for ULIP "A", ULIP "B" and ULIP "C" (being ULIPs issued on or after 1.2.2021) exceeds ₹ 2,50,000 during the term of these policies.

However, the consideration received under ULIPs "A" and "B" would be exempt u/s 10(10D) in A.Y. 2032-33, since aggregate of annual premium payable for these two policies does not exceed ₹ 2,50,000 for any previous year during the term of these two policies and annual premium payable in respect of these policies does not exceed 10% of actual capital sum assured.

Consequently, the consideration received under ULIP "C" alone would not be exempt u/s 10(10D) in A.Y. 2032-33.

Situation 2: Consideration has been received by the assessee under any one or more eligible ULIPs during any P.Y. preceding the current P.Y. and it has been claimed to be exempt u/s 10(10D). Such eligible ULIPs are referred as "Earlier Exempt Eligible ULIPs (EEE ULIPs)" in this paragraph and corresponding examples and reference to eligible ULIPs shall not include EEE ULIPs. The exemption u/s 10(10D) would be determined as under:

I. Where the assessee has received consideration, during the current P.Y., under one eligible ULIP only

Circumstance	Eligibility for exemption u/s 10(10D)
If aggregate amount of premium payable on such eligible ULIP and EEE ULIPs does not exceed ₹ 2,50,000 for any of the PYs during the term of such eligible ULIP and annual premium in respect of eligible ULIP does not exceed 10% of actual capital sum assured.	Consideration under such eligible ULIP would be eligible for exemption u/s 10(10D). [Refer Example 6]
If aggregate amount of premium payable on such eligible ULIP and EEE ULIPs > ₹ 2,50,000 for any of the PYs during the term of such eligible ULIP	Consideration under such eligible ULIP would <u>not</u> be eligible for exemption u/s 10(10D). [Refer Example 7]

Example 6:

ULIP	X	A
Date of issue	1.4.2021	1.4.2022
Annual premium	2,00,000	50,000
Sum assured	20,00,000	5,00,000
Consideration received as on 01.11.2031 on maturity	25,00,000	
Consideration received as on 01.11.2032 on maturity		6,00,000
Note – The assessee did not receive any consideration under any other eligible ULIPs in earlier P.Y. preceding the P.Y.2032-33, except ULIP X in P.Y. 2031-32.		

Eligibility for exemption u/s 10(10D) – The consideration under ULIP “X” would be exempt u/s 10(10D) in A.Y. 2032-33, since the annual premium does not exceed ₹ 2,50,000 and also does not exceed 10% of actual capital sum assured.

The consideration received under ULIP “A” will also be exempt u/s 10(10D) in A.Y. 2033-34 since aggregate of the annual premium payable for ULIP “A” and ULIP “X” does not exceed ₹ 2,50,000 for the P.Ys. 2022-23 to 2031-32 and the annual premium of ULIP “A” does not exceed 10% of actual capital sum assured.

Example 7:

ULIP	X	A
Date of issue	1.4.2021	1.4.2022
Annual premium	2,00,000	1,00,000
Sum assured	20,00,000	10,00,000
Consideration received as on 01.11.2031 on maturity	25,00,000	
Consideration received as on 01.11.2032 on maturity		12,00,000
Note – The assessee did not receive any consideration under any other eligible ULIPs in earlier P.Y. preceding the P.Y.2032-33, except ULIP X in P.Y. 2031-32.		

Eligibility for exemption u/s 10(10D) – The consideration under ULIP “X” would be exempt u/s 10(10D) in A.Y. 2032-33, since the annual premium does not exceed ₹ 2,50,000 and also does not exceed 10% of actual capital sum assured.

The consideration received under ULIP “A” will not be exempt u/s 10(10D) in A.Y. 2033-34 since aggregate of the annual premium payable for ULIP “A” and ULIP “X” (both ULIPs issued on or after 1.2.2021) exceeds ₹ 2,50,000.

II. Where the assessee has received consideration, during the current P.Y., under more than one eligible ULIP

Circumstance	Eligibility for exemption u/s 10(10D)
If aggregate of the amount of premium payable on such eligible ULIPs and EEE ULIPs does not exceed ₹ 2,50,000 for any of the PYs during the term of such eligible ULIPs and annual premium in respect of eligible ULIPs also does not exceed 10% of actual capital sum assured.	Consideration received would be eligible for exemption under u/s 10(10D).
If aggregate of the amount of premium payable on such eligible ULIPs and EEE ULIPs > ₹ 2,50,000 for any of the PYs during the term of such eligible ULIPs	Consideration in respect of any of those eligible ULIPs (whose aggregate amount of premium along with the aggregate amount of premium of EEE ULIPs does not exceed ₹ 2,50,000 for any of the PYs during their term) would be eligible for exemption u/s 10(10D). [Refer Examples 8, 9 and 10 given below]

Example 8:

ULIP	X	A	B	C
Date of issue	1.4.2021	1.4.2022	1.4.2022	1.4.2022
Annual premium	2,00,000	1,00,000	1,50,000	3,00,000
Sum assured	20,00,000	10,00,000	15,00,000	30,00,000
Consideration received as on 01.11.2031 on maturity	25,00,000			
Consideration received as on 01.11.2032 on maturity		12,00,000	18,00,000	34,00,000
Note – The assessee did not receive any consideration under any other eligible ULIPs in earlier P.Y. preceding the P.Y.2032-33, except ULIP X in P.Y. 2031-32.				

Eligibility for exemption u/s 10(10D) - The consideration under ULIP “X” would be exempt u/s 10(10D) in A.Y. 2032-33, since the annual premium does not exceed ₹ 2,50,000 and also does not exceed 10% of actual capital sum assured.

In this case, the aggregate of the annual premium payable for ULIP “A”, ULIP “B” and ULIP “C” along with the premium for ULIP “X” exceeds ₹ 2,50,000 during the term of these

policies. Hence, the consideration received under ULIPs “A”, “B” and “C” will **not** be exempt u/s 10(10D) in A.Y. 2033-34.

Alternative treatment: If the consideration under ULIP “X” was not claimed to be exempt u/s 10(10D) in A.Y. 2032-33 by the assessee, then, the consideration received under ULIP “A” and ULIP “B” would be exempt u/s 10(10D) in A.Y.2033-34 since the aggregate of the annual premium payable for the ULIPs “A” and “B” together did not exceed ₹ 2,50,000 for any of the previous years during the term of these two policies.

Example 9:

ULIP	X	A	B	C
Date of issue	1.4.2021	1.4.2022	1.4.2022	1.4.2022
Annual premium	1,00,000	1,00,000	1,50,000	3,00,000
Sum assured	10,00,000	10,00,000	15,00,000	30,00,000
Consideration received as on 01.11.2031 on maturity	12,00,000			
Consideration received as on 01.11.2032 on maturity		12,00,000	18,00,000	34,00,000
Note – The assessee did not receive any consideration under any other eligible ULIPs in earlier P.Y. preceding the P.Y.2032-33, except ULIP X in P.Y. 2031-32.				

Eligibility for exemption u/s 10(10D) - The consideration under ULIP “X” would be exempt u/s 10(10D) in A.Y. 2032-33, since the annual premium does not exceed ₹ 2,50,000 and also does not exceed 10% of actual capital sum assured.

In this case, the aggregate of the annual premium payable for ULIP “A”, ULIP “B” and ULIP “C” along with the premium for ULIP “X” exceeds ₹ 2,50,000 during the term of these policies.

However, the consideration received under ULIPs “A” or “B” (any one) can be claimed as exempt u/s 10(10D) in A.Y. 2033-34.

If the consideration received under ULIP “A” claimed to be exempt as aggregate of the annual premium payable for ULIP “X” and “A” did not exceed ₹ 2,50,000 for any of the PYs., the consideration received under ULIP “B” would not be exempt.

If the consideration received under ULIP “B” claimed to be exempt as aggregate of the annual premium payable for ULIP “X” and “B” did not exceed ₹ 2,50,000 for any of the PYs., the consideration received under ULIP “A” would not be exempt. Exemption for consideration received under ULIP “B” is preferred as it is more beneficial to the assessee.

Alternative treatment: If the consideration under ULIP “X” was not claimed to be exempt u/s 10(10D) in A.Y. 2032-33 by the assessee, then the consideration received under ULIP “A” and ULIP “B” would be exempt u/s 10(10D) in A.Y. 2033-34 since the aggregate of the annual premium payable for the ULIPs “A” and “B” together did not exceed ₹ 2,50,000 for any of the previous years during the term of these two policies.

It may be noted that in every case, the consideration received for ULIP “C” would not be exempt u/s 10(10D).

Example 10:

ULIP	X	Y	A	B	C
Date of issue	1.4.2021	1.4.2021	1.4.2022	1.4.2022	1.4.2022
Annual premium	1,00,000	1,00,000	1,00,000	1,50,000	3,00,000
Sum assured	10,00,000	10,00,000	10,00,000	15,00,000	30,00,000
Consideration received on surrender as on 1.7.2025	6,00,000				
Consideration received as on 01.11.2031 on maturity		12,00,000			
Consideration received as on 01.11.2032 on maturity			12,00,000	18,00,000	34,00,000
Note – The assessee did not receive any consideration under any other eligible ULIPs in earlier P.Y. preceding the P.Y.2032-33, except ULIP “X” and “Y”.					

Eligibility for exemption u/s 10(10D) - The consideration under ULIP “X” would be exempt u/s 10(10D) in A.Y.2026-27, since the annual premium does not exceed ₹ 2,50,000 and also does not exceed 10% of actual capital sum assured.

The consideration received under ULIP “Y” would be exempt u/s 10(10D) in A.Y. 2032-33, since the aggregate of annual premium payable for ULIP “X” and “Y” does not exceed ₹ 2,50,000 and annual premium payable for ULIP “Y” does not exceed 10% of actual capital sum assured.

The consideration received under ULIPs “A”, ULIP “B” and ULIP “C” would not be exempt u/s 10(10D) in A.Y. 2033-34, since aggregate of annual premium payable for these three policies and ULIP “X” and “Y” exceeds ₹ 2,50,000.

Alternative treatment: If the consideration on surrender under ULIP “X” was not claimed to be exempt u/s 10(10D) in A.Y. 2026-27 by the assessee, then the consideration received under ULIP “Y” would be exempt and the consideration received under ULIP “A” or ULIP “B”

(any one) can be exempt u/s 10(10D) in A.Y. 2033-34. If the consideration received under ULIP "A" claimed to be exempt, as aggregate of the annual premium payable for ULIP "Y" and "A" did not exceed ₹ 2,50,000 for any of the PYs., the consideration received under ULIP "B" would not be exempt.

If the consideration received under ULIP "B" is claimed to be exempt as aggregate of the annual premium payable for ULIP "Y" and "B" did not exceed ₹ 2,50,000 for any of the PYs., the consideration received under ULIP "A" would not be exempt. Exemption for consideration received under ULIP "B" is preferred as it is more beneficial to the assessee.

If the consideration on surrender of ULIP "X" and on maturity of ULIP "Y" were not claimed to be exempt under section 10(10D) in A.Y.2026-27 and A.Y.2032-33, respectively, then consideration received under both ULIP "A" and ULIP "B" would be exempt in A.Y.2033-34 (being ULIPs issued on or after 1.2.2021, whose aggregate consideration does not exceed ₹ 2,50,000).

It may be noted that, in every case, consideration received under ULIP "C" would not be exempt under section 10(10D).

Life Insurance Policies (Other than Unit Linked Insurance Policies)

In case where an assessee has a single life insurance policy (other than ULIP) issued on or after 1.4.2023 - Exemption u/s 10(10D) would **not** be available with respect to any life insurance policy (other than ULIP) issued on or after 1.4.2023, if the amount of premium payable exceeds ₹ 5,00,000 for any of the previous years during the term of such life insurance policy.

In case where an assessee has multiple life insurance policies (other than ULIPs) issued on or after 1.4.2023 - In a case where premium is payable by a person for more than one life insurance policies (other than ULIPs) issued on or after 1.4.2023 and the aggregate of premium payable on such life insurance policies exceed ₹ 5,00,000 for any of the previous years during the term of any such LIP(s), exemption u/s 10(10D) would be available in respect of any of those LIPs, at the option of the assessee, whose aggregate premium payable does not exceed ₹ 5,00,000 for any of the previous years during their term. However, to get exemption u/s 10(10D), the condition of annual premium not exceeding 10% of the actual capital sum assured also needs to be satisfied.

Exemption in case of death of a person - In case any sum is received on the death of a person, exemption u/s 10(10D) would be available irrespective of the annual premium payable of the LIP.

Guidelines by CBDT: In case any difficulty arises in giving effect to the provisions of this clause, the CBDT may issue guidelines for the purpose of removing the difficulty with the previous approval of the Central Government.

Accordingly, the CBDT has, with the approval of the Central Government, vide Circular No. 15/2023, dated 16.08.2023, issued the following guidelines in respect of LIPs (other than ULIPs)–

Situation 1: No sum of any nature including bonus (such sum hereinafter referred as “consideration”) is received by the assessee on any LIPs which are issued on or after 1.4.2023 (such LIPs hereinafter referred as “eligible LIPs”) during any previous year preceding the current previous year or consideration has been received on such eligible LIPs in an earlier previous year but has not been claimed exempt. In such a situation, the exemption u/s 10(10D) would be determined as under:

I. Where the assessee has received consideration, during the current P.Y., under one eligible LIP only

Circumstance	Eligibility for exemption u/s 10(10D)
If the amount of premium payable on such eligible LIP does not exceed ₹ 5,00,000 for any of the PYs during the term of such eligible LIP and annual premium does not exceed 10% of actual capital sum assured	Such consideration would be eligible for exemption u/s 10(10D). [Refer Example 11 and 12 given below]
If the amount of premium payable on such eligible LIP > ₹ 5,00,000 for any of the PYs during the term of such eligible LIP	Such consideration would not be eligible for exemption u/s 10(10D). [Refer Example 13 given below]

Example 11:

LIP	A
Date of issue	1.4.2013
Annual premium	6,00,000
Sum assured	60,00,000
Consideration received as on 01.11.2023 on maturity	70,00,000
Note – The assessee did not receive any consideration under any other eligible LIPs in earlier P.Y. preceding the P.Y.2023-24.	

Eligibility for exemption u/s 10(10D) - The consideration received under LIP “A” would be exempt u/s 10(10D) in A.Y. 2024-25 since annual premium does not exceed 10% of the actual capital sum assured. Moreover, as the policy has been issued before 1.4.2023, limit of ₹ 5,00,000 of amount of premium payable is not applicable, since it is not an eligible ULIP.

Example 12:

LIP	A
Date of issue	1.4.2023
Annual premium	5,00,000
Sum assured	50,00,000
Consideration received as on 01.11.2033 on maturity	52,00,000
Note – The assessee did not receive any consideration under any other eligible LIPs in earlier P.Y. preceding the P.Y.2033-34.	

Eligibility for exemption u/s 10(10D) - The consideration received would be exempt u/s 10(10D) in A.Y. 2034-35, since the annual premium payable on the policy does not exceed ₹ 5,00,000 and also does not exceed 10% of actual capital sum assured.

Example 13:

LIP	A
Date of issue	1.4.2023
Annual premium	6,00,000
Sum assured	60,00,000
Consideration received as on 01.11.2033 on maturity	70,00,000
Note – The assessee did not receive any consideration under any other eligible LIPs in earlier P.Y. preceding the P.Y.2033-34.	

Eligibility for exemption u/s 10(10D) - The consideration received would **not** be exempt u/s 10(10D) in A.Y. 2034-35 since the annual premium payable on the eligible LIP exceeds ₹ 5,00,000.

II. Where the assessee has received consideration, during the current P.Y., under more than one eligible LIP

Circumstance	Eligibility for exemption u/s 10(10D)
If the aggregate of the amount of premium payable on such eligible LIPs does not exceed ₹ 5,00,000 for any of the PYs during the term of such eligible LIPs and the annual premium $\leq$ 10% of actual capital sum assured	Such consideration would be eligible for exemption under u/s 10(10D). [Refer Example 14 given below]

<i>If the aggregate of the amount of premium payable on such eligible LIPs > ₹ 5,00,000 for any of the PYs during the term of such eligible LIP</i>	<i>Consideration in respect of any of those eligible LIPs whose aggregate amount of premium payable does not exceed ₹ 5,00,000 for any of the PYs during their term would be eligible for exemption u/s 10(10D), provided their annual premium ≤ 10% of actual capital sum assured.</i> [Refer Examples 15, 16 and 17 given below]

Example 14:

LIP	A	B
<i>Date of issue</i>	1.4.2023	1.4.2023
<i>Annual premium</i>	3,00,000	2,00,000
<i>Sum assured</i>	30,00,000	20,00,000
<i>Consideration received as on 01.11.2033 on maturity</i>	32,00,000	21,00,000
Note – The assessee did not receive any consideration under any other eligible LIPs in earlier P.Y. preceding the P.Y.2033-34.		

Eligibility for exemption u/s 10(10D) – In this case, the aggregate of the annual premium payable for LIP “A” and LIP “B” does not exceed ₹ 5,00,000 during the term of these policies.

Further, annual premium payable in respect of LIP “A” and LIP “B” does not exceed 10% of actual capital sum assured. Therefore, the consideration received under LIP “A” and “B” would be exempt u/s 10(10D) in A.Y. 2034-35

Example 15:

LIP	A	B
<i>Date of issue</i>	1.4.2023	1.4.2023
<i>Annual premium</i>	4,50,000	5,50,000
<i>Sum assured</i>	45,00,000	55,00,000
<i>Consideration received as on 01.11.2033 on maturity</i>	52,00,000	60,00,000
Note – The assessee did not receive any consideration under any other eligible LIPs in earlier P.Y. preceding the P.Y.2033-34.		

Eligibility for exemption u/s 10(10D) – In this case, the aggregate of the annual premium payable for LIP “A” and LIP “B” exceeds ₹ 5,00,000 during the term of these policies.

However, the consideration received under LIP “A” would be exempt u/s 10(10D) in A.Y. 2034-35, since its annual premium payable does not exceed ₹ 5,00,000 for any previous

year during the term of the policy and also does not exceed 10% of actual capital sum assured.

Consequently, the consideration received under LIP “B” alone would **not** be exempt u/s 10(10D) in A.Y. 2034-35.

Example 16:

LIP	A	B	C
Date of issue	1.4.2023	1.4.2023	1.4.2023
Annual premium	1,00,000	3,50,000	6,00,000
Sum assured	10,00,000	35,00,000	60,00,000
Consideration received as on 01.11.2033 on maturity	12,00,000	40,00,000	70,00,000
Note – The assessee did not receive any consideration under any other eligible LIPs in earlier P.Y. preceding the P.Y.2033-34.			

Eligibility for exemption u/s 10(10D) - The aggregate of annual premium payable for LIP “A”, LIP “B” and LIP “C” exceeds ₹ 5,00,000 during the term of these policies.

However, the consideration received under LIPs “A” and “B” would be exempt u/s 10(10D) in A.Y. 2034-35, since aggregate of annual premium payable for these two policies does not exceed ₹ 5,00,000 for any previous year during the term of these two policies and annual premium payable in respect of these policies does not exceed 10% of actual capital sum assured.

Consequently, the consideration received under LIP “C” alone would not be exempt u/s 10(10D) in A.Y. 2034-35.

Example 17:

LIP	X	A	B	C
Date of issue	1.4.2022	1.4.2023	1.4.2023	1.4.2023
Annual premium	5,50,000	1,00,000	3,50,000	6,00,000
Sum assured	55,00,000	10,00,000	35,00,000	60,00,000
Consideration received as on 01.11.2032 on maturity	62,00,000			
Consideration received as on 01.11.2033 on maturity		12,00,000	40,00,000	70,00,000
Note – The assessee did not receive any consideration under any other eligible LIPs in earlier P.Y. preceding the P.Y.2033-34, except LIP X in P.Y. 2032-33.				

Eligibility for exemption u/s 10(10D) - The consideration received under LIP "X" would be exempt u/s 10(10D) in A.Y. 2032-33, since annual premium does not exceed 10% of the actual capital sum assured. Moreover, as the policy has been issued before 1.4.2023, limit of ₹ 5,00,000 on amount of premium payable is not applicable, since LIP "X" is not an eligible LIP.

The aggregate of annual premium payable for LIP "A", LIP "B" and LIP "C" (being LIPs issued on or after 1.4.2023) exceeds ₹ 5,00,000 during the term of these policies.

However, the consideration received under LIPs "A" and "B" would be exempt u/s 10(10D) in A.Y. 2034-35, since aggregate of annual premium payable for these two policies does not exceed ₹ 5,00,000 for any previous year during the term of these two policies and annual premium payable in respect of these policies does not exceed 10% of actual capital sum assured.

Consequently, the consideration received under LIP "C" alone would not be exempt u/s 10(10D) in A.Y. 2034-35.

Situation 2: Consideration has been received by the assessee under any one or more eligible LIPs during any P.Y. preceding the current P.Y. and it has been claimed to be exempt u/s 10(10D). Such eligible LIPs are referred as "Earlier Exempt Eligible LIPs (EEE LIPs)" in this paragraph and corresponding examples and reference to eligible LIPs shall not include EEE LIPs. The exemption u/s 10(10D) would be determined as under:

I. Where the assessee has received consideration, during the current P.Y., under one eligible LIP only

Circumstance	Eligibility for exemption u/s 10(10D)
If aggregate amount of premium payable on such eligible LIP and EEE LIPs does not exceed ₹ 5,00,000 for any of the PYs during the term of such eligible LIP and annual premium in respect of eligible LIP does not exceed 10% of actual capital sum assured.	Consideration under such eligible LIP would be eligible for exemption u/s 10(10D).
If aggregate amount of premium payable on such eligible LIP and EEE LIPs > ₹ 5,00,000 for any of the PYs during the term of such eligible LIP	Consideration under such eligible LIP would not be eligible for exemption u/s 10(10D).

II. Where the assessee has received consideration, during the current P.Y., under more than one eligible LIP

Circumstance	Eligibility for exemption u/s 10(10D)
If aggregate of the amount of premium payable on such eligible LIPs and EEE LIPs does not exceed ₹ 5,00,000 for any of the PYs during the term of such eligible LIPs and annual premium in respect of eligible LIPs also does not exceed 10% of actual capital sum assured.	Consideration received would be eligible for exemption under u/s 10(10D).
If aggregate of the amount of premium payable on such eligible LIPs and EEE LIPs > ₹ 5,00,000 for any of the PYs during the term of such eligible LIPs	Consideration in respect of any of those eligible LIPs (whose aggregate amount of premium along with the aggregate amount of premium of EEE LIPs does not exceed ₹ 5,00,000 for any of the PYs during their term) would be eligible for exemption u/s 10(10D). [Refer Examples 18, 19 and 20 given below]

Example 18:

LIP	X	A	B	C
Date of issue	1.4.2023	1.4.2024	1.4.2024	1.4.2024
Annual premium	4,50,000	1,00,000	1,50,000	6,00,000
Sum assured	45,00,000	10,00,000	15,00,000	60,00,000
Consideration received as on 01.11.2033 on maturity	50,00,000			
Consideration received as on 01.11.2034 on maturity		12,00,000	18,00,000	70,00,000
Note – The assessee did not receive any consideration under any other eligible LIPs in earlier P.Y. preceding the P.Y.2034-35, except LIP X in P.Y. 2033-34.				

Eligibility for exemption u/s 10(10D) - The consideration under LIP “X” would be exempt u/s 10(10D) in P.Y. 2033-34, since the annual premium does not exceed ₹ 5,00,000 and also does not exceed 10% of actual capital sum assured.

In this case, the aggregate of the annual premium payable for LIP “A”, LIP “B” and LIP “C” along with the premium for LIP “X” exceeds ₹ 5,00,000 during the term of these policies.

The aggregate of the annual premium payable for LIP “A” and the premium for LIP “X” also exceeds ₹ 5,00,000 during the term of these policies.

Consequently, the consideration received under LIP “A”, LIP “B” and LIP “C” would not be exempt u/s 10(10D) in A.Y. 2035-36.

Example 19:

LIP	X	A	B	C
Date of issue	1.4.2023	1.4.2024	1.4.2024	1.4.2024
Annual premium	2,50,000	2,00,000	2,50,000	6,00,000
Sum assured	25,00,000	20,00,000	25,00,000	60,00,000
Consideration received as on 01.11.2033 on maturity	30,00,000			
Consideration received as on 01.11.2034 on maturity		24,00,000	38,00,000	70,00,000
Note – The assessee did not receive any consideration under any other eligible LIPs in earlier P.Y. preceding the P.Y.2034-35, except LIP X in P.Y. 2033-34.				

Eligibility for exemption u/s 10(10D) - The consideration under LIP “X” would be exempt u/s 10(10D) in P.Y. 2033-34, since the annual premium does not exceed ₹ 5,00,000 and also does not exceed 10% of actual capital sum assured.

In this case, the aggregate of the annual premium payable for LIP “A”, LIP “B” and LIP “C” along with the premium for LIP “X” exceeds ₹ 5,00,000 during the term of these policies.

However, the consideration received under LIPs “A” or “B” (any one) can be claimed as exempt u/s 10(10D) in A.Y. 2035-36.

If the consideration received under LIP “A” is claimed to be exempt as aggregate of the annual premium payable for LIP “X” and “A” did not exceed ₹ 5,00,000 for any of the PYs., the consideration received under LIP “B” would not be exempt.

If the consideration received under LIP “B” is claimed to be exempt as aggregate of the annual premium payable for LIP “X” and “B” did not exceed ₹ 5,00,000 for any of the PYs., the consideration received under LIP “A” would not be exempt. Exemption for consideration received under LIP “B” is preferred as it is more beneficial to the assessee.

Alternative treatment: If the consideration under LIP “X” was not claimed to be exempt u/s 10(10D) in A.Y. 2034-35 by the assessee, then, the consideration received under LIP “A” and LIP “B” would be exempt u/s 10(10D) in A.Y. 2035-36 since the aggregate of the annual premium payable for the LIPs “A” and “B” together did not exceed ₹ 5,00,000 for any of the previous years during the term of these two policies. However, the most beneficial treatment is to claim LIP “X” and “B” as exempt.

It may be noted that in every case, the consideration received for LIP "C" would not be exempt u/s 10(10D).

Example 20:

LIP	X	Y	A	B	C
Date of issue	1.4.2023	1.4.2023	1.4.2024	1.4.2024	1.4.2024
Annual premium	2,00,000	2,00,000	2,00,000	3,00,000	6,00,000
Sum assured	20,00,000	20,00,000	20,00,000	30,00,000	60,00,000
Consideration received on surrender as on 1.7.2033	12,00,000				
Consideration received as on 01.11.2034 on maturity		24,00,000			
Consideration received as on 01.11.2035 on maturity			24,00,000	36,00,000	70,00,000
Note – The assessee did not receive any consideration under any other eligible LIPs in earlier P.Y. preceding the P.Y.2035-36, except LIP "X" and "Y".					

Eligibility for exemption u/s 10(10D) - The consideration under LIP "X" would be exempt u/s 10(10D) in A.Y.2034-35, since the annual premium does not exceed ₹ 5,00,000 and also does not exceed 10% of actual capital sum assured.

The consideration received under LIP "Y" would be exempt u/s 10(10D) in A.Y. 2035-36, since the aggregate of annual premium payable for LIP "X" and "Y" does not exceed ₹ 5,00,000 and annual premium payable for LIP "Y" does not exceed 10% of actual capital sum assured.

The consideration received under LIPs "A", ULIP "B" and ULIP "C" would not be exempt u/s 10(10D) in A.Y. 2036-37, since aggregate of annual premium payable for these three policies and LIP "X" and "Y" exceeds ₹ 5,00,000.

Alternative treatment: If the consideration on surrender under LIP "X" was not claimed to be exempt u/s 10(10D) in A.Y. 2034-35 by the assessee, then the consideration received under LIP "Y" would be exempt and the consideration received under LIP "A" or LIP "B" (any one) can be exempt u/s 10(10D) in A.Y. 2036-37. If the consideration received under LIP "A" is claimed to be exempt, as aggregate of the annual premium payable for LIP "Y"

and “A” did not exceed ₹ 5,00,000 for any of the PYs., the consideration received under LIP “B” would not be exempt.

If the consideration received under LIP “B” is claimed to be exempt as aggregate of the annual premium payable for LIP “Y” and “B” did not exceed ₹ 5,00,000 for any of the PYs., the consideration received under LIP “A” would not be exempt. Exemption for consideration received under LIP “B” is preferred as it is more beneficial to the assessee.

If the consideration on surrender of LIP “X” and on maturity of LIP “Y” were not claimed to be exempt under section 10(10D) in A.Y.2034-35 and A.Y.2035-36, respectively, then consideration received under both LIP “A” and LIP “B” would be exempt in A.Y.2036-37 (being LIPs issued on or after 1.4.2023, whose aggregate consideration does not exceed ₹ 5,00,000).

It may be noted that, in every case, consideration received under LIP “C” would not be exempt under section 10(10D).

Example 21:

LIP			A	B	C
ULIP	X	Y			
Date of issue	1.4.2021	1.4.2023	1.4.2023	1.4.2023	1.4.2023
Annual premium	1,00,000	1,00,000	1,00,000	1,50,000	3,00,000
Sum assured	10,00,000	10,00,000	10,00,000	15,00,000	30,00,000
Consideration received on surrender as on 1.7.2033	6,00,000		6,00,000		
Consideration received as on 01.11.2034 on maturity		12,00,000		18,00,000	34,00,000
Note – The assessee did not receive any consideration under any other eligible LIPs or ULIPs in earlier P.Y. preceding the P.Y.2034-35, except ULIP “X” and LIP “A”.					

Eligibility for exemption u/s 10(10D) - The consideration under ULIP “X” would be exempt u/s 10(10D) in A.Y. 2034-35, since the annual premium does not exceed ₹ 2,50,000 and also does not exceed 10% of actual capital sum assured.

The consideration under ULIP “Y” would be exempt u/s 10(10D) in A.Y.2035-36, since the aggregate of annual premium for ULIP “X” and ULIP “Y” does not exceed ₹ 2,50,000 and also does not exceed 10% of actual capital sum assured.

The consideration under LIP “A” would be exempt u/s 10(10D) in A.Y.2034-35, since the annual premium does not exceed ₹ 5,00,000 and also does not exceed 10% of actual capital sum assured.

In this case, the aggregate of the annual premium payable for LIP “B” and LIP “C” along with the premium for LIP “A” exceeds ₹ 5,00,000 during the term of these policies.

However, the consideration received under LIPs “B” or “C” (any one) can be claimed as exempt u/s 10(10D) in A.Y. 2035-36.

If the consideration received under LIP “B” is claimed to be exempt as aggregate of the annual premium payable for LIP “A” and “B” did not exceed ₹ 5,00,000 for any of the PYs., the consideration received under LIP “C” would not be exempt.

If the consideration received under LIP “C” is claimed to be exempt as aggregate of the annual premium payable for LIP “A” and “C” did not exceed ₹ 5,00,000 for any of the PYs., the consideration received under LIP “B” would not be exempt. Exemption for consideration received under LIP “C” should be preferred as it is more beneficial to the assessee.

Alternative treatment: *If the consideration under LIP “A” was not claimed to be exempt u/s 10(10D) in A.Y. 2034-35 by the assessee, then the consideration received under LIP “B” and LIP “C” would be exempt u/s 10(10D) in A.Y. 2035-36 since the aggregate of the annual premium payable for the LIPs “B” and “C” together did not exceed ₹ 5,00,000 for any of the previous years during the term of these two policies. This would be most beneficial to the assessee.*

Clarification on GST Component: *It is also clarified by the CBDT that the premium payable/ aggregate premium payable for a life insurance policy/policies, other than a ULIP, issued on or after 1.4.2023, for any previous year, would be exclusive of the amount of GST payable on such premium.*

Clarification on premium of Term life insurance policy: *It is further clarified by the CBDT that the limit of ₹ 5,00,000 of amount of premium payable would not be applicable in case of a term life insurance policy i.e. where sum under a life insurance policy is only paid to the nominee in case of the death of the person insured during the term of the policy and no amount is paid to anyone if the insured person survives the policy tenure.*

Hence, any sum received under a term insurance policy shall continue to be exempt under section 10(10D), irrespective of the amount of the premium payable in respect of such policy. Further the premium paid for such policies would not be counted for checking the limit of ₹ 5,00,000 of amount of premium payable.

Taxability of sum received under a LIP which is not exempt u/s 10(10D) [Section 56(2)(xiii)]

Where any sum is received (including the amount allocated by way of bonus) at any time during a previous year, under a life insurance policy, other than the sum

- (i) received under a ULIP*
- (ii) received under a Keyman insurance policy*

which is not exempt under section 10(10D), the sum so received as exceeds the aggregate of the premium paid during the term of such life insurance policy, and not claimed as deduction under any other provision of the Act, computed in the prescribed manner, would be chargeable to tax under the head "Income from other sources".

Accordingly, the CBDT has, vide this notification, notified Rule 11UACA to compute the income chargeable to tax under section 56(2)(xiii). Where any person receives at any time during any previous year any sum under such LIP, then, the income chargeable to tax under section 56(2)(xiii) during the previous year in which such sum is received has to be computed in the following manner -

	Situation	Income chargeable to tax during the previous year in which such sum is received
<i>(i)</i>	<i>Where the sum is received for the first time under the LIP during the previous year (first previous year)</i>	A-B, where <i>A = the sum or aggregate of sum received under the LIP during the first previous year; and</i> <i>B = the aggregate of the premium paid during the term of the LIP till the date of receipt of the sum in the first previous year that has not been claimed as deduction under any other provision of the Act.</i>
<i>(ii)</i>	<i>where the sum is received under the LIP during the previous year subsequent to the first previous year (subsequent previous year)</i>	C-D, where <i>C = the sum or aggregate of sum received under the LIP during the subsequent previous year; and</i> <i>D = the aggregate of the premium paid during the term of the LIP till the date of receipt of the sum in the subsequent previous year not being premium which –</i> <i>(a) has been claimed as deduction under any other provision of the Act; or</i> <i>(b) is included in "B" or "D" in any of the previous year(s).</i>

"Sum received under a LIP" means any amount, by whatever name called, received under such policy which is not exempt under section 10(10D), other than the sum–

- (a) received under a ULIP; or*
- (b) received under a Keyman insurance policy*

(2) Income chargeable under the head “Income from other sources” only if not chargeable under the head “Profits and gains of business or profession” -

- (i) Any sum received by an employer-assessee from his employees as contributions to any provident fund, superannuation fund or any other fund for the welfare of the employees.
- (ii) Income from letting out on hire, machinery, plant or furniture.
- (iii) Where letting out of buildings is inseparable from the letting out of machinery, plant or furniture, the income from such letting.
- (iv) Interest on securities

However, the following Interest income arising to certain persons would be exempt under section 10(15):

- (a) Income by way of interest, premium on redemption or other payment on notified securities, bonds, annuity certificates or other savings certificates is exempt subject to such conditions and limits as may be specified in the notification.

Interest on Post Office Savings Bank Account would be exempt from tax to the extent of:

- (1) ₹ 3,500 in case of an individual account.
- (2) ₹ 7,000 in case of a joint account.

- (b) Interest payable —

- (1) by public sector companies on certain specified bonds and debentures subject to the conditions which the Central Government may specify by notification, including the condition that the holder of such bonds or debentures registers his name and holding with that company;

Accordingly, the Central Government has specified tax free bonds issued by India Infrastructure Company Ltd. and tax free, secured, redeemable, non-convertible Bonds of the Indian Railway Finance Corporation Ltd. (IRFCL), National Highways Authority of India (NHAI), Rural Electrification Corporation Ltd. (RECL), Housing and Urban Development Corporation Ltd. (HUDCL), Power Finance Corporation (PFC), Jawaharlal Nehru Port Trust, Dredging Corporation of India Limited, Ennore Port Limited and The Indian Renewable Energy Development Agency Limited, the interest from which would be exempt under this section.

- (2) by Government of India on deposit made by an employee of the Central or State Government or a public sector company in accordance with the scheme as may be notified of the moneys due to him on account of his retirement while on superannuation or otherwise. It is significant that this scheme is not applicable to non-Government employees.

The term 'industrial undertaking' means any undertaking which is engaged in:

- (i) the manufacture or processing of goods; or
- (ii) the manufacture of computer software or recording of programmes on any disc, tape, perforated media or other information device; or
- (iii) the business of generation or generation and distribution of electricity or any other form of power; or
- (iv) the business of providing telecommunication services; or
- (v) mining; or
- (vi) construction of ships, or
- (vii) the business of ship-breaking; or
- (viii) the operation of ships or aircrafts or construction or operation of rail systems.

For the purposes of the clause, "interest" shall not include interest paid on delayed payment of loan or default if which is more than 2% p.a. over the rate of interest payable in terms of such loan. Interest would include hedging transaction charges on account of currency fluctuation.

- (c) **Bhopal Gas Victims** - Section 10(15)(v) provides exemption in respect of interest on securities held by the Welfare Commissioner, Bhopal Gas Victims, Bhopal, in the Reserve Bank's Account No. SL/DH 048. Recently, in terms of an order of the Supreme Court to finance the construction of a hospital at Bhopal to serve the victims of the gas leak, the shares of the Union Carbide Indian Ltd., have been sold. The scope of the above exemption has been extended to interest on deposits for the benefit of the victims of the Bhopal Gas Leak disaster. Such deposits can be held in such account with the RBI or with a public sector bank as the Central Government may notify in the Official Gazette.

- (d) Interest on Gold Deposit Bond issued under the Gold Deposit Scheme, 1999 or deposit certificates issued under the Gold Monetization Scheme, 2015 notified by the Central Government.
- (e) Interest on bonds, issued by –
 - (1) a local authority; or
 - (2) a State Pooled Finance Entity

and specified by the Central Government by notification in the Official Gazette.

“State Pooled Finance Entity” means such entity which is set up in accordance with the guidelines for the Pooled Finance Development Scheme notified by the Central Government in the Ministry of Urban Development.

Accordingly, the Central Government has specified the “Tax-free Pooled Finance Development Bonds” under Pooled Finance Development Fund Scheme of Government of India, interest from which would be exempt under section 10(15).

(3) Keyman Insurance Policy

Any sum received under a Keyman insurance policy including the sum allocated by way of bonus on such policy is chargeable under the head “Income from other sources” if such income is not chargeable under the head “Profits and gains of business or profession” or under the head “Salaries” i.e. if such sum is received by any person other than the employer who took the policy and the employee in whose name the policy was taken.

(4) Residual Income

Any income chargeable to tax under the Act, but not falling under any other head of income shall be chargeable to tax under the head “Income from other sources” e.g. Salary received by an MPs/MLAs will not be chargeable to income-tax under the head ‘Salary’ but will be chargeable as “Income from other sources” under section 56.

Interest from non-SLR Securities of Banks: Whether chargeable under the head “Profits and gains of business or profession” or “Income from other sources”? [Circular No. 18, dated 2.11.2015]

The issue addressed by this circular is whether in the case of banks, expenses relating to investment in non-SLR securities need to be disallowed under section 57(i), by considering interest on non-SLR securities as “Income from other sources.”

Section 56(1)(id) provides that income by way of interest on securities shall be chargeable to

income-tax under the head "Income from Other Sources", if the income is not chargeable to income-tax under the head "Profits and Gains of Business and Profession".

The CBDT clarified that the **investments made by a banking concern are part of the business of banking**. Therefore, the income arising from such investments is attributable to the business of banking falling **under the head "Profits and Gains of Business and Profession"**.



5.4 APPLICABLE RATE OF TAX IN RESPECT OF CASUAL INCOME [SECTION 115BB]

- (1) This section provides that income by way of winnings from lotteries, crossword puzzles, races including horse races or card games and other games of any sort or from gambling or betting of any form would be taxed at a flat rate of 30% *plus* surcharge, if applicable, plus **health and education cess @4%**.

However, income by way of winnings from any online game would not be taxed under this section.

- (2) No expenditure or allowance can be allowed from such income.
- (3) Deduction under Chapter VI-A is not allowable from such income.
- (4) Adjustment of unexhausted basic exemption limit is also not permitted against such income.



5.5 APPLICABLE RATE OF TAX IN RESPECT OF WINNINGS FROM ONLINE GAMES [SECTION 115BBJ]

- (1) *This section provides that net winnings from any online game would be taxed at a flat rate of 30% plus surcharge, if applicable, plus health and education cess@4%.*
- (2) *No expenditure or allowance can be allowed from such income.*
- (3) *Deduction under Chapter VI-A is not allowable from such income.*
- (4) *Adjustment of unexhausted basic exemption limit is also not permitted against such income.*

(5) **Meaning of certain terms**

S. No.	Term	Meaning
(i)	Internet	The combination of computer facilities and electromagnetic transmission media, and related equipment and software, comprising the interconnected worldwide network of computer networks that transmits information based on a protocol for controlling such transmission
(ii)	Online game	A game that is offered on the internet and is accessible by a user through a computer resource including any telecommunication device

**5.6 DEDUCTIONS ALLOWABLE [SECTION 57]**

The income chargeable under the head “Income from other sources” shall be computed after making the following deductions:

- (1) **In the case of dividend or income in respect of units of a mutual fund specified under section 10(23D) or income in respect of units of a specified company defined in the Explanation to section 10(35):** Interest expenditure to earn such income is allowed as deduction subject to a maximum of 20% of such income included in the total income, without deduction under this section.
- (2) **In the case of interest on securities:** Any reasonable sum paid by way of commission or remuneration to a banker or any other person for the purpose of realising such interest on behalf of the assessee.
- (3) **Income consists of recovery from employees as contribution to any provident fund etc. in terms of section 2(24)(x):** A deduction will be allowed in accordance with the provisions of section 36(1)(va) i.e. to the extent the contribution is remitted before the due date under the respective Acts.
- (4) **Where the income to be charged under this head is from letting on hire of machinery, plant and furniture, with or without building:** The following items of deductions are allowable in the computation of such income:
 - (i) the amount paid on account of any current repairs to the machinery, plant or furniture.
 - (ii) the amount of any premium paid in respect of insurance against risk of damage or destruction of the machinery or plant or furniture.

(iii) the normal depreciation allowance in respect of the machinery, plant or furniture, due thereon.

- (5) **In the case of income in the nature of family pension:** A deduction of a sum equal to 33-1/3 percent of such income or ₹ 15,000, whichever is less, is allowable.

³From A.Y.2024-25, this deduction is allowable both under the default tax regime u/s 115BAC and under the optional tax regime i.e., normal provisions of the Act.

For the purposes of this deduction “family pension” means a regular monthly amount payable by the employer to a person belonging to the family of an employee in the event of his death.

Exemption in respect of family pension

1. The family pension received by the widow or children or nominated heirs, **of a member of the armed forces (including para-military forces)** of the Union, where the death of such member has occurred in the course of operational duties, in specified circumstances would, however, be exempt under section 10(19).
2. The family pension received by any member of the family of an individual who had been in the service of Central or State Government and had been awarded “Param Vir Chakra” or “Vir Chakra” or “Vir Chakra” or other notified gallantry awards would be exempt under section 10(18)(ii).

- (6) **Any other expenditure not being in the nature of capital expenditure** laid out or expended wholly and exclusively for the purpose of making or earning such income.
- (7) **In case of income by way of interest on compensation/ enhanced compensation received chargeable to tax under section 56(2)(viii):** Deduction of 50% of such income. No deduction would be allowable under any other clause of section 57 in respect of such income.

ILLUSTRATION 6

Interest on enhanced compensation received by Mr. G during the previous year 2023-24 is ₹ 5,00,000. Out of this interest, ₹ 1,50,000 relates to the previous year 2019-20, ₹ 1,65,000 relates to previous year 2020-21 and ₹ 1,85,000 relates to previous year 2021-22. Discuss the tax implication, if any, of such interest income for A.Y.2024-25.

³ Upto A.Y.2023-24, this deduction was not allowed under section 115BAC.

SOLUTION

The entire interest of ₹ 5,00,000 would be taxable in the year of receipt, namely, P.Y.2023-24.

Particulars	₹
Interest on enhanced compensation taxable u/s 56(2)(viii)	5,00,000
Less: Deduction under section 57(iv) @50%	2,50,000
Interest chargeable under the head “Income from other sources”	2,50,000

Chart summarising the taxability of compensation/enhanced compensation (including interest) received on compulsory acquisition:

Initial Compensation will be taxable in the year in which first instalment is received under the head 'Capital Gains'

Enhanced Compensation will be taxable as & when received under the head 'Capital Gains'

Interest on compensation/ enhanced compensation is taxable in year of receipt under the head 'Income from Other Sources' after deduction of 50% of such interest



5.7 DEDUCTIONS NOT ALLOWABLE [SECTION 58]

No deduction shall be made in computing the “Income from other sources” of an assessee in respect of the following items of expenses:

(1) In the case of any assessee:

- (i) any personal expense of the assessee;
- (ii) any interest chargeable to tax under the Act which is payable outside India on which tax has not been paid or deducted at source.
- (iii) any payment taxable in India as salaries, if it is payable outside India unless tax has been paid thereon or deducted at source.

- (2) **Any expenditure in respect of which a payment is made to a related person or made in cash in excess of ₹ 10,000:** In addition to these disallowances, section 58(2) specifically provides that the disallowance of any expenditure in respect of which a payment is made to a related person, to the extent the same is considered excessive or unreasonable by the Assessing Officer, having regard to the FMV. and disallowance of payment or aggregate of payments exceeding ₹ 10,000 made to a person during a day otherwise than by account payee cheque or draft or ECS through bank account or through such other prescribed electronic mode such as credit card, debit card, net banking, IMPS, UPI, RTGS, NEFT, and BHIM Aadhar Pay covered by section 40A will be applicable to the computation of income under the head 'Income from other sources' as well.
- (3) **Disallowance of 30% of expenditure:** 30% of expenditure shall not be allowed, in respect of a sum which is payable to a resident and on which tax is deductible at source, if
- such tax has not been deducted or;
 - such tax after deduction has not been paid on or before the due date of return specified in section 139(1).

In case, assessee fails to deduct the whole or any part of tax on any such sum but is not deemed as assessee in default under the first proviso to section 201(1) by reason that such payee –

- (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 payer furnishes a certificate to this effect from an accountant in such form as may be prescribed,

it would be deemed that the assessee has deducted and paid the tax on such sum.

The date of deduction and payment of taxes by the payer shall be deemed to be the date on which return of income has been furnished by the payee.

- (4) **No deduction in respect of any expenditure incurred in connection with casual income:** No deduction in respect of any expenditure or allowance in connection with income by way of earnings from lotteries, cross word puzzles, races including horse races,

card games and other games of any sort or from gambling or betting of any form or nature whatsoever shall be allowed in computing the said income.

The prohibition will not, however, apply in respect of the income of an assessee, being the owner of race horses, from the activity of owning and maintaining such horses. In respect of the activity of owning and maintaining race horses, expenses incurred shall be allowed even in the absence of any stake money earned. Such loss shall be allowed to be carried forward in accordance with the provisions of section 74A.



5.8 DEEMED INCOME CHARGEABLE TO TAX [SECTION 59]

The provisions of section 41(1) are made applicable, so far as may be, to the computation of income under this head. Accordingly, where a deduction has been made in respect of a loss, expenditure or liability and subsequently any amount is received or benefit is derived in respect of such expenditure incurred or loss or trading liability allowed as deduction, then it shall be deemed as income in the year in which the amount is received or the benefit is accrued.

SIGNIFICANT SELECT CASES

S. No.	Case Law	
1.	PCIT v. Dr. Ranjan Pai (2021) 431 ITR 250 (Karn)	
	Issue	Analysis & Decision
	Can bonus shares received by shareholders be taxable under the head 'Income from other sources' as per the provisions of section 56(2)(x), as they are received without consideration?	The issue of bonus shares by capitalization of reserves is merely a reallocation of the company's funds. There is no inflow of fresh funds or increase in the capital employed, which remains the same. Thus, there is no addition or alteration to the profit-making apparatus and the total funds available with the company remain the same. On the other hand, when a shareholder gets bonus shares, the value of the original shares held by him goes down and the market value as well as intrinsic value of the two shares put together will be the same or nearly the same as the value of original share before the issue of bonus shares. Thus, any profit derived by the assessee shareholder on account of receipt of bonus shares is adjusted by depreciation in the value of equity shares originally held by him. Hence, the provisions of section 56(2)(x) would not be attracted in the hands of the recipient shareholders on receipt of bonus shares. <i>Note - This decision was rendered in the context of section 56(2)(vii); however, the underlying principle emanating therefrom applies with equal force in the context of the present provisions contained in section 56(2)(x). Accordingly, the issue and decision has been presented with reference to section 56(2)(x).</i>
2.	CIT v. Sree Rama Multi Tech Ltd. (2018) 403 ITR 426 (SC)	
	Issue	Analysis & Decision
	Is interest income from share application money deposited in bank eligible for set-off against public issue expenses or should such interest be subject to tax under the head 'Income from Other Sources'?	The assessee-company was statutorily required to keep share application money in a separate account till the allotment of shares was completed. Part of the share application money would normally have to be returned to unsuccessful applicants, and therefore, the entire share application money would not ultimately be appropriated by the company. The interest earned was inextricably linked with the requirement of raising share capital.

		Any surplus money deposited in the bank for the purpose of earning interest is liable to be taxed as "Income from Other Sources". Here, the share application money was deposited with the bank not to make additional income but to comply with the statute. The interest accrued on such deposit is merely incidental. Moreover, the issue of shares relates to capital structure of the company and hence, expenses incurred in connection with the issue of shares are to be capitalized. Accordingly, the accrued interest is not liable to be taxed as "Income from Other Sources"; the same is eligible to be set-off against public issue expenses.
3.	<i>Movaliya Bhikhubhai Balabhai v. ITO (TDS) (2016) 388 ITR 343 (Guj)</i>	
	Issue	Analysis & Decision
	Is interest on enhanced compensation u/s 28 of the Land Acquisition Act, 1894 assessable as capital gains or as income from other sources?	The assessee has received interest u/s 28 of the Land Acquisition Act, 1894 which represents enhanced value of land and thus, partakes the character of compensation and not interest. Hence, interest u/s 28 is liable to be taxed under the head of 'Capital Gains' and not under 'Income from Other Sources'. On the other hand, interest u/s 34 of the Land Acquisition Act, 1894 is for the delay in making payment after the compensation amount is determined. Such amount is liable to be taxed under the head 'Income from Other Sources'. Note: <i>The Land Acquisition Act, 1894 has now been repealed and replaced by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Section 72 and Section 80 of the new legislation have similar provisions regarding award of interest.</i>
4.	<i>CIT v. Parle Plastics Ltd. (2011) 332 ITR 63 (Bom.)</i>	
	Issue	Analysis & Decision
	What are the tests for determining "substantial part of business" of lending company for the purpose of application of exclusion provision u/s 2(22)?	U/s 2(22), "dividend" does not include, <i>inter alia</i>, any advance or loan made to a shareholder by a company in the ordinary course of its business, where the lending of money is a substantial part of the business of the company. Percentage of turnover in relation to the whole as also the percentage of the profit in relation to the whole and sometimes even percentage of manpower used

		for a particular part of the business in relation to the total manpower or work force of the company would be required to be taken into consideration for determining the substantial part of business. The capital employed for a specific division of a company in comparison to total capital employed would also be relevant to determine whether the part of the business constitutes a substantial part.
5.	CIT v. Vir Vikram Vaid (2014) 367 ITR 365 (Bom)	
	Issue	Analysis & Decision
	Can repair and renovation expenses incurred by a company in respect of premises leased out by a shareholder having substantial interest in the company, be treated as deemed dividend?	The expenditure incurred by virtue of repairs and renovation on the premises cannot be brought within the definition of advance or loan given to the shareholder having substantial interest in the company, though he is the owner of the premises. It cannot be treated as payment by the company on behalf of the shareholder or for the individual benefit of such shareholder. Accordingly, the repair and renovation expenses in respect of premises owned by the shareholder having substantial interest in the company and occupied by the company cannot be treated as deemed dividend.
6.	Pradip Kumar Malhotra v. CIT (2011) 338 ITR 538 (Cal.)	
	Issue	Analysis & Decision
	Can the loan or advance given to a shareholder by the company, in return for an advantage conferred on the company by the shareholder, be deemed as dividend under section 2(22)(e)?	The phrase "by way of advance or loan" appearing in section 2(22)(e) must be construed to mean those advances or loans which a shareholder enjoys simply on account of being a person who is the beneficial owner of shares (not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits) holding not less than 10% of the voting power. In case such loan or advance is given to such shareholder as a consequence of any further consideration which is beneficial to the company received from such a shareholder, such advance or loan cannot be deemed as dividend within the meaning of the Act. Thus, only gratuitous loan or advance given by a company to a shareholder, who is the beneficial owner of shares holding not less than 10% of the voting power, would come within the purview of section 2(22)(e) but not cases where the loan or advance is given in return for an advantage conferred upon the company by such shareholder.

7.	<i>CIT v. Ambassador Travels (P) Ltd. (2009) 318 ITR 376 (Del.)</i>	
	Issue	Analysis & Decision
	Would the provisions of deemed dividend u/s 2(22)(e) be attracted in respect of financial transactions entered into in the normal course of business?	U/s 2(22)(e), loans and advances made out of accumulated profits of a company in which public are not substantially interested to a beneficial owner of shares holding not less than 10% of the voting power or to a concern in which such shareholder has substantial interest is deemed as dividend. However, this provision would not apply in the case of advance made in the course of the assessee's business as a trading transaction. The assessee was involved in booking of resorts for the customers of these companies and entered into normal business transactions as a part of its day-to-day business activities. Such financial transactions cannot under any circumstances be treated as loans or advances received by the assessee from these concerns for the purpose of application of section 2(22)(e).
8.	<i>CIT v. Manjoo and Co. (2011) 335 ITR 527 (Kerala)</i>	
	Issue	Analysis & Decision
	Can winnings of prize money on unsold lottery tickets held by the distributor of lottery tickets be assessed as business income and be subject to normal rates of tax instead of the rates prescribed u/s 115BB?	The receipt of the prize money is not in his capacity as a lottery distributor but as a holder of the lottery ticket which won the prize. The Lottery Department also does not treat it as business income received by the distributor but instead treats it as prize money paid on which tax is deducted at source. Further, winnings from lotteries are assessable under the special provisions of section 115BB, irrespective of the head under which such income falls.

TEST YOUR KNOWLEDGE

Questions

1. *Parimal, Managing Director of Heavens Engg. Pvt. Ltd. holds 70% of its paid up capital of ₹ 20 lakhs. The balance as at 31.03.2023 in General Reserve was ₹ 6 lakhs. The company on 1.04.2023 gave an interest-free loan of ₹ 5 lakhs to its Supervisor having salary of ₹ 4,000 p.m., who in turn on 15.4.2023 advanced the said amount of loan so taken from the company to Shri Parimal. The Assessing Officer had treated the amount of advance as deemed dividend. Is the action of Assessing Officer correct?*
2. *Mr. Santhanam holding 25% voting power in VKS Manufacturing Private Limited permitted his own land to be mortgaged to a bank for enabling the company to obtain a loan. Mr. Santhanam requested the company to release the property from the mortgage. The company failed to do so, but for retaining the benefit of bank loan it gave an advance of ₹ 10 lakhs to Mr. Santhanam, which was authorized by a resolution passed by the Board of Directors. The company's accumulated profit on the date of payment of advance was ₹ 50 lakhs. The Assessing Officer proposes to treat the amount of ₹ 10 lakhs as deemed dividend by invoking the provision of section 2(22)(e).*

Is the proposition of the Assessing Officer correct in law?

3. *An enterprise engaged in manufacturing of steel balls discontinued its activities and decided to lease out its factory building, plant and machinery and furniture from 1.4.2023 on a consolidated lease rent of ₹ 50,000 per month. Compute the income for Assessment Year 2024-25 of the assessee from following information:*

	₹
(i) Interest received on deposits	1,00,000
(ii) Brokerage paid on hundi loan taken	2,000
(iii) Interest paid on hundi and other loans which were given as deposits on interest to others	75,000
(iv) Expenses incurred on repairs of building, plant and machinery	15,000
(v) Fire insurance premium of plant and machinery and furniture	12,000
(vi) Depreciation for the year	1,47,500
(vii) Legal fees paid to an advocate for drafting and registering the lease agreement	1,500

- (viii) *Factory licence fees paid for the year* 1,000
- (ix) *There is unabsorbed depreciation of ₹ 2,75,000 of the Assessment Years 2022-23 and 2023-24.*
- (x) *Interest paid in (iii) above includes an amount of ₹ 25,000 remitted to a non-resident outside India on which tax was not deducted at source.*
4. *In July 2023, Mr. Pervez employed as Marketing Manager in a Pharma company, received a Maruti car as gift from a distributor of the company. The value of the gifted car is estimated at ₹ 2,60,000. Is the value of car taxable as income? If so, under what head it is taxable?*

Answers

1. The company had advanced a loan to an employee who in turn had advanced the same to the Managing Director of the company holding 70% of its capital. By virtue of the provisions of section 2(22)(e), the same shall be treated as the payment by a company in which public are not substantially interested, on behalf of, or for individual benefit of any such share holder (who holds not less than 10% of the voting power), to the extent to which the company possesses accumulated profits.

In this case, the company has reserves of ₹ 6 lakhs on 31st March of the preceding year and the amount of loan advanced on 1st April is ₹ 5 Lakhs. Therefore, the payment is to be treated as deemed dividend. The amount of interest-free loan of ₹ 5 lakhs given by the company to the supervisor who in turn had given the same to Mr. Parimal, shall be construed as the amount given for the benefit of Mr. Parimal and would be treated as deemed dividend. This has been held by the Supreme Court in the case of *L. Alagusundaram Chettiar v. CIT (2001) 252 ITR 893*.

2. The issue under consideration is whether loan or advance given to a shareholder by the company, in return of an advantage or benefit conferred on the company by the shareholder, can be deemed as dividend under section 2(22)(e) of the Income-tax Act, 1961 in the hands of the shareholder

The facts of the case are similar to the facts in *Pradip Kumar Malhotra v. CIT (2011) 338 ITR 538*, wherein the above issue came up before the Calcutta High Court.

The High Court observed that the phrase "by way of advance or loan" appearing in section 2(22)(e) must be construed to mean those advances or loans which a shareholder enjoys simply on account of being a person who is the beneficial owner of shares (not being

shares entitled to a fixed rate of dividend whether with or without a right to participate in profits) holding not less than 10% of the voting power.

In case such loan or advance is given to such shareholder as a consequence of any further consideration received from such a shareholder which is beneficial to the company, such advance or loan cannot be a deemed dividend within the meaning of the Act.

Thus, gratuitous loan or advance given by a company to a shareholder, who is the beneficial owner of shares holding not less than 10% of the voting power, would come within the purview of section 2(22)(e) to the extent of accumulated profits of the company but not the cases where the loan or advance is given in return for an advantage conferred upon the company by such shareholder.

In this case, advance of ₹ 10 lakhs was given by VKS Manufacturing (P) Ltd. to Mr. Santhanam holding 25% of voting power in lieu of non-release of his personal property from mortgage thereby enabling the company to retain the benefit of loan obtained from bank. Therefore, applying the rationale of the Calcutta High Court ruling in *Pradip Kumar Malhotra's* case, such advance cannot be brought within the purview of section 2(22)(e), since it was not in the nature of gratuitous advance but was given to protect the interest of the company.

The proposition of the Assessing Officer to treat the amount of ₹ 10 lakhs as deemed dividend by invoking the provisions of section 2(22)(e) in this case is, therefore, **not correct**.

3. The income derived from leased assets shall be chargeable to tax as 'Income from other sources' under section 56(2)(iii) but the computation thereof shall be made after allowing deductions specified under sections 30, 31 and 32 subject to section 38. This is as per the provisions of section 57(ii) and 57(iii).

Computation of income under the head “Income from other sources”

Particulars	₹	₹
(A) Lease Rent for 12 months @ ₹ 50,000 p.m.		6,00,000
Less: Expenses and deductions allowable under section 57(ii) & 57(iii):		
Repairs	15,000	
Fire Insurance Premium	12,000	
Legal expenses for drafting of lease agreement	1,500	
Factory Licence fee	1,000	
Depreciation for the year	1,47,500	

Unabsorbed depreciation of earlier assessment years – eligible for deduction (Note 1)		2,75,000	4,52,000
(B) Interest on Deposits		1,00,000	1,48,000
Less: Expenses allowable under section 57(i)			
Brokerage	₹ 2,000		
Interest on hundi loans (Note 2)	₹ 50,000	52,000	48,000
Total Income			1,96,000

Notes:

1. Unabsorbed depreciation of ₹ 2,75,000 pertains to earlier assessment years. The unabsorbed depreciation shall form part of the current year depreciation and can be set off against any other head of income. Accordingly, the amount of ₹ 2,75,000 is adjustable/ allowed to be set off against 'Income from other sources'.
2. Since deposits are made by investing amount received on hundi and other loans, the interest on hundi and other loans would be eligible for deduction from the income arising on such deposits.

However, interest paid to non-resident is not eligible for deduction as the tax has not been deducted at source.

4. Mr. Pervez, an employee of a Pharma company, has received a car as a gift from a distributor of the company. Since there is no employer-employee relationship in this case between the distributor and Mr. Pervez, the value of gift is **not** a perquisite chargeable to tax under the head "Salaries".

Section 56(2)(x) brings within its scope the value of any property received by any person. For this purpose, "property" means immovable property being land or building or both, shares and securities, jewellery, archaeological collections, drawings, paintings, sculptures, any work of art or bullion.

Therefore, for the purpose of attracting the provisions of section 56(2)(x) for chargeability under the head "Income from Other Sources", an individual should be in receipt of property as defined therein. Since, car is not included in the definition of "property", the provisions of section 56(2)(x) would not be attracted in the hands of Mr. Pervez.

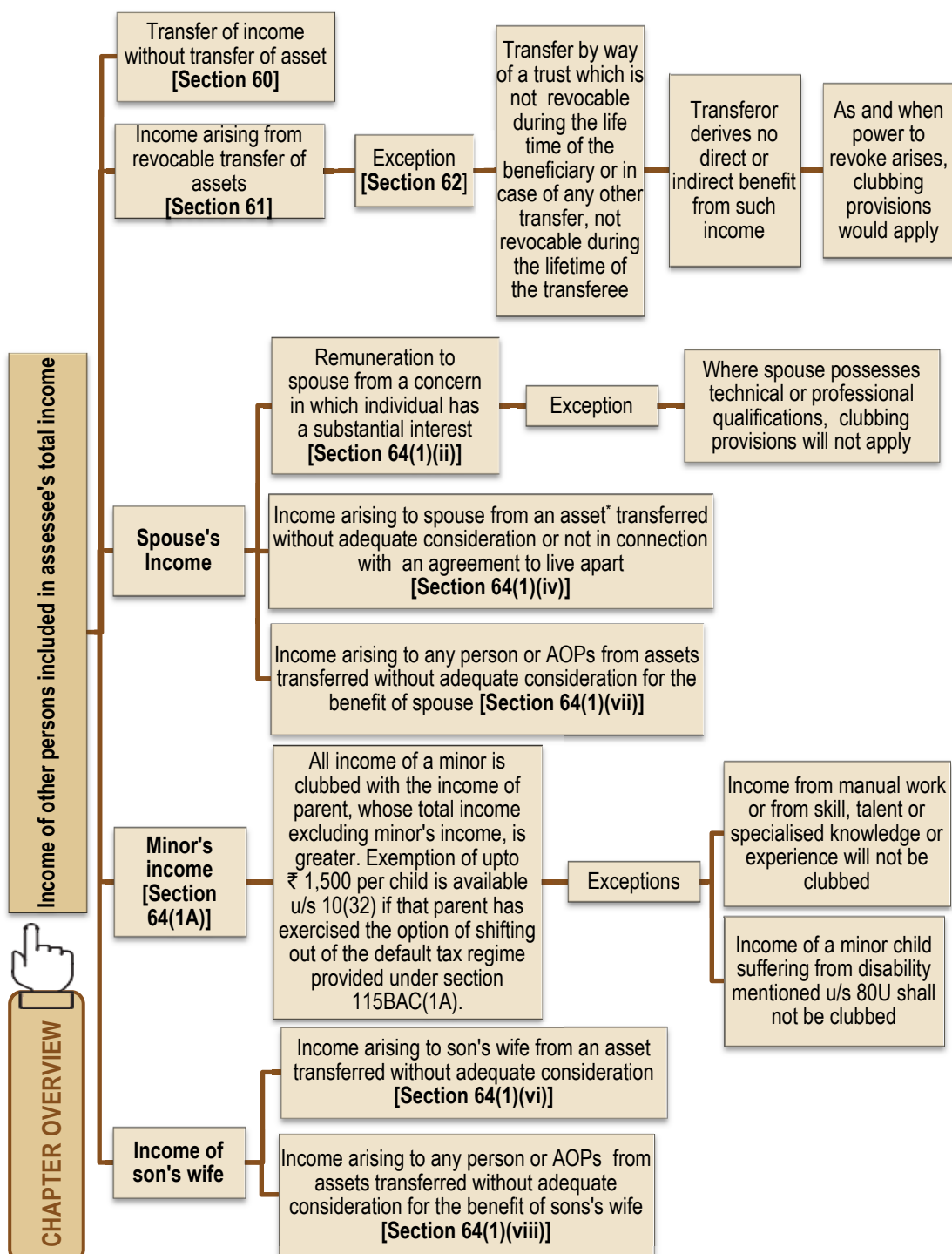
INCOME OF OTHER PERSONS INCLUDED IN ASSESSEE'S TOTAL INCOME



LEARNING OUTCOMES

After studying this chapter, you would be able to -

- ❑ **examine** the cases where clubbing provisions would be attracted;
- ❑ **examine** the circumstances when income of minor child, has to be included in the hands of parent and exemption available in respect of such included income;
- ❑ **examine** the circumstances when the income of HUF has to be included in the hands of its member(s);
- ❑ **apply** the clubbing provisions to determine the amount of income which need to be included in the hands of another person;
- ❑ **examine** the cases of cross transfers to determine the person in whose hands the income arising from assets transferred has to be included and the portion of income that has to be included;
- ❑ **compute** the income under different heads of income after applying the clubbing provisions.



* In case of transfer of house property to spouse without adequate consideration, transferor will be deemed as owner of such property as per section 27(i). In such a case, section 64(1)(iv) will not apply.



6.1 CLUBBING OF INCOME – AN INTRODUCTION

Under the Income-tax Act, 1961, an assessee is generally taxed in respect of his own income. However, there are certain cases where an assessee has to pay tax in respect of income of another person. The provisions for the same are contained in sections 60 to 65 of the Act. These provisions have been enacted to counteract the tendency on the part of the tax-payers to dispose off their property or transfer their income in such a way that their tax liability can be avoided or reduced.

These provisions can be categorized as follows:

- Income of other persons included in an assessee's total income [Sections 60-63]
- Income of other persons included in an Individual's total income [Section 64]

Note - In the case of individuals, income-tax is levied on a slab system on the total income. The tax system is progressive i.e., as the income increases, the applicable rate of tax increases. Some taxpayers in the higher income bracket have a tendency to divert some portion of their income to their spouse, minor child etc. to minimize their tax burden. In order to prevent such tax avoidance, clubbing provisions have been incorporated in the Act, under which income arising to certain persons (like spouse, minor child etc.) have to be included in the income of the person who has diverted his income for the purpose of computing tax liability.



6.2 INCOME OF OTHER PERSONS INCLUDIBLE IN ASSESSEE'S TOTAL INCOME

(1) Transfer of income without transfer of asset [Section 60]

- If any person transfers the income from any asset without transferring the asset itself, such income is to be included in the total income of the transferor.
- It is immaterial whether the transfer is revocable or irrevocable and whether it was made before the commencement of this Act or after its commencement.

Example: Mr. A confers the right to receive rent in respect of his house property on his wife, Mrs. A, without transferring the house itself to her. In this case, the rent received by Mrs. A will be clubbed with the income of Mr. A.

(2) Income arising from revocable transfer of assets [Section 61]

All income arising to any person by virtue of a revocable transfer of assets is to be included in the total income of the transferor.

Meaning of revocable transfer [Section 63]

Transfer is deemed to be revocable if—

- (i) it contains any provision for the retransfer, directly or indirectly, of the whole or any part of the income or assets to the transferor, or
- (ii) it gives, in any way to the transferor, a right to reassume power, directly or indirectly, over the whole or any part of the income or the assets.

This clubbing provision will operate even if only part of income of the transferred asset had been applied for the benefit of the transferor. Once the transfer is revocable, the entire income from the transferred asset is includible in the total income of the transferor.

Exception where clubbing provisions are not attracted even in case of revocable transfer [section 62]

Section 61 will not apply to any income arising to any person if there is -

- (i) a transfer by way of trust which is not revocable during the life time of the beneficiary; and
- (ii) any other transfer, which is not revocable during the life time of the transferee.

In the above cases, the income from the transferred asset is not includible in the total income of the transferor, provided the transferor derives no direct or indirect benefit from such income.

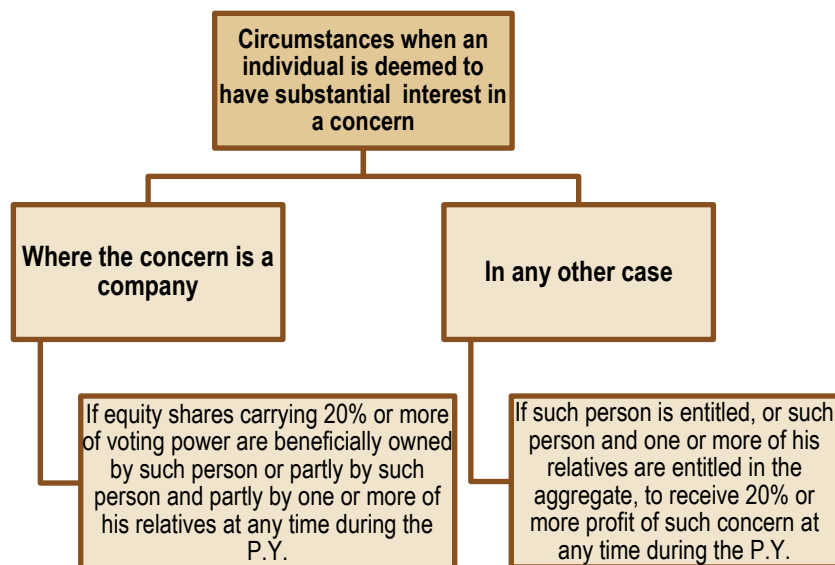
If the transferor receives direct or indirect benefit from such income, such income is to be included in his total income even though the transfer may not be revocable during the life time of the beneficiary or transferee, as the case may be.

As and when the power to revoke the transfer arises, the income arising by virtue of such transfer will be included in the total income of the transferor.

6.3 INCOME OF OTHER PERSONS INCLUDIBLE IN AN INDIVIDUAL'S TOTAL INCOME**(1) Clubbing of income arising to spouse**

- (l) Income by way of remuneration from a concern in which the individual has substantial interest [Section 64(1)(ii)]
- (i) **Remuneration in cash or kind to spouse from a concern in which the individual has a substantial interest is to be clubbed:** In computing the total income of any individual, all such income which arises, directly or indirectly, to the spouse of such individual by way of

salary, commission, fees or any other form of remuneration, whether in cash or in kind, from a concern in which such individual has a substantial interest shall be included.



The term '**relative**' in relation to an individual means the husband, wife, brother or sister or any lineal ascendant or descendant of that individual [Section 2(41)].

- (ii) **Clubbing provisions will not apply where remuneration is received on account of technical or professional qualifications:** Clubbing provisions, however, does not apply where the spouse of the said individual possesses technical or professional qualifications and the income to the spouse is solely attributable to the application of his/her technical or professional knowledge or experiences. In such an event, the income arising to such spouse is to be assessed in his/her hands.
- (iii) **Both husband and wife have substantial interest in a concern:** Where both husband and wife have substantial interest in a concern and both are in receipt of income by way of salary etc. from the said concern, such income will be includible in the hands of that spouse, whose total income, excluding such income is higher.

Where any such income is once included in the total income of either spouse, income arising in the succeeding year shall not be included in the total income of the other spouse unless the Assessing Officer is satisfied, after giving that spouse an opportunity of being heard, that it is necessary to do so.

ILLUSTRATION 1

Mr. Arun holds shares carrying 55% voting power in MNO (P) Ltd. Mrs. Anamika, wife of Mr. Arun is working as a computer software programmer in MNO (P) Ltd. at a salary of ₹ 35,000 p.m. She is, however, not qualified for the job. The other income of Mr. Arun & Mrs. Anamika are ₹ 7,30,000 & ₹ 4,20,000, respectively. Compute the gross total income of Mr. Arun and Mrs. Anamika for the A.Y.2024-25.

SOLUTION

Mr. Arun holds shares carrying 55% voting power in MNO (P) Ltd i.e., a substantial interest in the company. His wife is working in the same company without any professional qualifications for the same. Thus, by virtue of the clubbing provisions of the Act, the salary received by Mrs. Anamika from MNO (P) Ltd. will be clubbed in the hands of Mr. Arun.

Computation of Gross total income of Mr. Arun

Particulars	₹	₹
Salary received by Mrs. Anamika (₹ 35,000 × 12)	4,20,000	
Less: Standard deduction under section 16(ia)	50,000	3,70,000
Other Income		7,30,000
Gross total income		11,00,000

The gross total income of Mrs. Anamika is ₹ 4,20,000.

ILLUSTRATION 2

Will your answer be different if Mrs. Anamika was qualified for the job?

SOLUTION

If Mrs. Anamika possesses professional qualifications for the job, then the clubbing provisions shall not be applicable.

Gross total income of Mr. Arun = ₹ 7,30,000 (other income)

Gross total income of Mrs. Anamika = Salary received by Mrs. Anamika [₹ 35,000×12] less ₹ 50,000, being the standard deduction under section 16(ia) plus other income [₹ 4,20,000] = ₹ 7,90,000

ILLUSTRATION 3

Mr. Binu holds shares carrying 33% voting power in Yamma (P) Ltd. Mrs. Babita is working as an accountant in Yamma (P) Ltd. getting income under the head salary (computed) of ₹ 3,60,000 without any qualification in accountancy. Mr. Binu also receives ₹ 32,000 as interest on securities.

Mrs. Babita owns a house property which she has let out. Rent received from tenants is ₹ 6,500 p.m. Compute the gross total income of Mr. Binu and Mrs. Babita for the A.Y. 2024-25.

SOLUTION

Since Mrs. Babita is not professionally qualified for the job, the clubbing provisions shall be applicable.

Computation of Gross total income of Mr. Binu

Particulars	₹
Income from salary of Mrs. Babita (Computed)	3,60,000
Income from other sources	
- Interest on securities	32,000
	3,92,000

Computation of gross total income of Mrs. Babita

Particulars	₹	₹
Income from Salary [clubbed in the hands of Mr. Binu]		Nil
Income from house property		
Gross Annual Value [₹ 6,500 × 12]	78,000	
Less: Municipal taxes paid	-	
Net Annual Value (NAV)	78,000	
Less: Deductions under section 24		
- 30% of NAV i.e., 30% of ₹ 78,000	23,400	
- Interest on loan	-	54,600
Gross total income		54,600

(II) Income arising to the spouse from an asset transferred without adequate consideration [Section 64(1)(iv)]

- (i) **Transfer of asset (other than house property):** Where there is a transfer of an asset (other than house property), directly or indirectly, from one spouse to the other, otherwise than for adequate consideration or in connection with an agreement to live apart, any income arising to the transferee-spouse from the transferred asset, either directly or indirectly, shall be included in the total income of the transferor-spouse.
- (ii) **Transfer of house property:** In the case of transfer of house property, the provisions are contained in section 27. If an individual transfers a house property to his spouse, without

adequate consideration or otherwise than in connection with an agreement to live apart, the transferor shall be deemed to be the owner of the house property and its annual value will be taxed in his hands.

- (iii) **Income from accretion of the transferred asset:** It may be noted that any income from the accretion of the transferred asset is not to be clubbed with the income of the transferor i.e., the income arising on transferred assets alone has to be clubbed. However, income earned by investing such income (arising from transferred asset) cannot be clubbed.
- (iv) **Meaning of adequate consideration:** It is also to be noted that natural love and affection do not constitute adequate consideration. Therefore, where an asset is transferred without adequate consideration, the income from such asset will be clubbed in the hands of the transferor.
- (v) **Transferred asset invested in business:** Where the assets transferred, directly or indirectly, by an individual to his spouse are invested by the transferee in the business, proportionate income arising to the transferee from such investment is to be included in the total income of the transferor. If the investment is in the nature of contribution of capital, proportionate interest receivable by the transferee from the firm will be clubbed with the income of the transferor.

Such proportion has to be computed by taking into account the value of the aforesaid investment **as on the first day of the previous year** to the total investment in the business or by way of capital contribution in a firm as a partner, as the case may be, by the transferee as on that day.

ILLUSTRATION 4

Mr. Rahul started a proprietary business on 01.04.2022 with a capital of ₹ 6,00,000. He incurred a loss of ₹ 3,00,000 during the year 2022-23. To overcome the financial position, his wife Mrs. Radha, a software engineer, gave a gift of ₹ 7,00,000 on 01.04.2023, which was immediately invested in the business by Mr. Rahul. He earned a profit of ₹ 5,00,000 during the year 2023-24. Compute the amount to be clubbed in the hands of Mrs. Radha for the Assessment Year 2024-25. If Mrs. Radha gave the said amount as loan, what would be the amount to be clubbed?

SOLUTION

Section 64(1)(iv) of the Income-tax Act, 1961 provides for the clubbing of income in the hands of the individual, if the income earned is from the assets (other than house property) transferred directly or indirectly to the spouse of the individual, otherwise than for adequate consideration or in connection with an agreement to live apart.

In this case, Mr. Rahul received a gift of ₹ 7,00,000 on 1.4.2023 from his wife Mrs. Radha, which he invested in his business immediately. The income to be clubbed in the hands of Mrs. Radha for the A.Y. 2024-25 is computed as under:

Particulars	Mr. Rahul's capital contribution (₹)	Capital contribution out of gift from Mrs. Radha (₹)	Total (₹)
Capital as on 1.4.2023	3,00,000 (6,00,000 – 3,00,000)	7,00,000	10,00,000
Profit for P.Y.2023-24 to be apportioned on the basis of capital employed on the first day of the previous year i.e. as on 1.4.2023 (3:7)	1,50,000 $\left(5,00,000 \times \frac{3}{10}\right)$	3,50,000 $\left(5,00,000 \times \frac{7}{10}\right)$	5,00,000

Therefore, the income to be clubbed in the hands of Mrs. Radha for the A.Y.2024-25 is ₹ 3,50,000.

In case, Mrs. Radha gave the said amount of ₹ 7,00,000 as a *bona fide* loan, then, clubbing provisions would not be attracted.

Note: The provisions of section 56(2)(x) would not be attracted in the hands of Mr. Rahul, since he has received a sum of money exceeding ₹ 50,000 without consideration from a relative i.e., his wife.

(III) Transfer of assets for the benefit of spouse [Section 64(1)(vii)]

All income arising directly or indirectly to any person or association of persons, from the assets transferred, directly or indirectly, to such person or association of persons by an individual without adequate consideration is includible in the income of the individual to the extent such income is used by the transferee for the immediate or deferred benefit of the transferor's spouse.

(2) Clubbing of income arising to son's wife

(I) Income arising to son's wife from the assets transferred without adequate consideration by the father-in-law or mother-in-law [Section 64(1)(vi)]

- (i) **Asset transferred without adequate consideration:** Where an asset is transferred, directly or indirectly, by an individual to his or her son's wife without adequate consideration, the income from such asset is to be included in the total income of the transferor.

- (ii) **Asset transferred invested in the business:** For this purpose, where the assets transferred directly or indirectly by an individual to his or her son's wife are invested by the transferee in the business, proportionate income arising from such investment is to be included in the total income of the transferor. If the investment is in the nature of contribution of capital, the proportionate interest receivable from firm will be clubbed with the income of the transferor.

Such proportion has to be computed by taking into account the value of the aforesaid investment **as on the first day of the previous year** to the total investment in the business or by way of capital contribution in a firm as a partner, as the case may be, by the transferee as on that day.

(II) Transfer of assets for the benefit of son's wife [Section 64(1)(viii)]

All income arising directly or indirectly, to any person or association of persons from the assets transferred, directly or indirectly, without adequate consideration, to such person or association of persons by an individual will be included in the total income of the individual to the extent such income is used by the transferee for the immediate or deferred benefit of the transferor's son's wife.

Note: Where any asset is transferred by a person to any other person without consideration or for inadequate consideration, the provisions of 56(2)(x) would get attracted in the hands of transferee, if conditions specified thereunder are satisfied.

ILLUSTRATION 5

Mrs. Komal transferred her immovable property to TPS Co. Ltd. subject to a condition that out of the rental income, a sum of ₹ 42,000 per annum shall be utilized for the benefit of her son's wife.

Mrs. Komal claims that the amount of ₹ 42,000 (utilized by her son's wife) should not be included in her total income as she no longer owned the property.

Examine with reasons whether the contention of Mrs. Komal is valid in law.

SOLUTION

The clubbing provisions under section 64(1)(viii) are attracted in case of transfer of any asset, directly or indirectly, otherwise than for adequate consideration, to any person to the extent to which the income from such asset is for the immediate or deferred benefit of son's wife. Such income shall be included in computing the total income of the transferor-individual.

Therefore, income of ₹ 42,000 meant for the benefit of daughter-in-law is chargeable to tax in the hands of transferor i.e., Mrs. Komal in this case.

Hence, the contention of Mrs. Komal is not valid in law.

Note - In order to attract the clubbing provisions under section 64(1)(viii), the transfer should be otherwise than for adequate consideration. In this case, it is presumed that the transfer is otherwise than for adequate consideration and therefore, the clubbing provisions are attracted. Moreover, the provisions of section 56(2)(x) will also get attracted in the hands of TPS Co Ltd., if the conditions specified thereunder are satisfied.

If it is presumed that the transfer was for adequate consideration, the provisions of section 64(1)(viii) and section 56(2)(x) would not be attracted.

(3) Clubbing of minor's income

- (i) All income of a minor is to be included in the income of his parent.
- (ii) However, the income derived by the minor from manual work or from any activity involving his skill, talent or specialized knowledge or experience will not be included in the income of his parent.
- (iii) The income of the minor will be included in the income of that parent, whose total income is greater.
- (iv) Once clubbing of minor's income is done with that of one parent, it will continue to be clubbed with that parent only, in subsequent years. The Assessing Officer, may, however, club the minor's income with that of the other parent, if, after giving the other parent an opportunity to be heard, he is satisfied that it is necessary to do so.
- (v) Where the marriage of the parents does not subsist, the income of the minor will be includible in the income of that parent who maintains the minor child in the relevant previous year.
- (vi) However, the income of a minor child suffering from any disability of the nature specified in section 80U shall not be included in the hands of the parent but shall be assessed in the hands of the child.
- (vii) It may be noted that the clubbing provisions are attracted even in respect of income of minor married daughter.

Exemption in respect of clubbed income of minor [Section 10(32)]

In case the income of an individual (i.e., the parent) includes the income of his/her minor child in terms of section 64(1A), such parent shall be entitled to exemption of ₹ 1,500 in respect of each minor child. However, if income of any minor so includible is less than ₹ 1,500, then the entire income shall be exempt.

Exemption under section 10(32) would be available to the parent only if he/she exercises the option of shifting out of the default tax regime provided under section 115BAC(1A). The same would not be available to him/her under the default tax regime where he/she computes his/her total income as per section 115BAC and pays tax at the concessional rates provided thereunder.

- (viii) In case the asset transferred to a minor child (not being a minor married daughter) without consideration or for inadequate consideration is a house property, then, by virtue of section 27(i), the transferor-parent will be the deemed owner of the house property. Therefore, the income from house property will be taxable in the hands of the transferor-parent, being the deemed owner and not in the hands of the minor child. Consequently, clubbing provisions under section 64(1A) would not be attracted in respect of such income, due to which the benefit of exemption u/s 10(32) (discussed above) cannot be availed against such income.

However, if the house property is transferred by a parent to his or her minor married daughter, without consideration or for inadequate consideration, then, section 27(i) is **not** attracted. In such a case, the income from house property will be included u/s 64(1A) in the hands of that parent, whose total income before including minor child's income is higher; and benefit of exemption u/s 10(32) can be availed by that parent in respect of the income so included if he/she exercises the option of shifting out of the default tax regime provided under section 115BAC(1A).

Child in relation to an individual includes a step-child and an adopted child of that individual. [Section 2(15B)]

ILLUSTRATION 6

Mr. Arvind has three minor children – two twin daughters, aged 12 years, and one son, aged 16 years. Income of the twin daughters is ₹ 2,500 p.a. each and that of the son is ₹ 1,200 p.a. Mrs. Avani (wife of Mr. Arvind) has transferred her flat to her minor son on 1.4.2023 out of natural love and affection. The flat was let out on the same date and the rental income from the flat is ₹ 10,000 p.m. Compute the income, in respect of minor children, to be included in the hands of Mr. Arvind and Mrs. Avani under section 64(1A) assuming that Mr. Arvind's total income is higher than Mrs. Avani's total income, before including income of minor children and both Mr. Arvind and Mrs. Avani exercise the option of shifting out of the default tax regime provided under section 115BAC(1A).

SOLUTION

Taxable income, in respect of minor children, in the hands of Mr. Arvind is

Particulars	₹	₹
Twin minor daughters [₹ 2,500 × 2]	5,000	2,000
Less: Exempt under section 10(32) [₹ 1,500 × 2]	3,000	
Minor son	1,200	Nil
Less: Exemption under section 10(32) would be lower of ₹ 1200, being the income of minor son or ceiling limit of ₹ 1500	1,200	
Income to be clubbed in the hands of Mr. Arvind		2,000

Note – As per section 27(i), Mrs. Avani is the deemed owner of house property transferred to her minor son. Natural love and affection do not constitute adequate consideration for this purpose. Accordingly, the income from house property of ₹ 84,000 [i.e., ₹ 1,20,000 (-) ₹ 36,000, being 30% of ₹ 1,20,000) would be taxable directly in her hands as the deemed owner of the said property. Consequently, clubbing provisions under section 64(1A) would not be attracted in respect of income from house property, owing to which exemption u/s 10(32) cannot be availed by her.



6.4 CROSS TRANSFERS

In the case of cross transfers also (e.g., A making gift of ₹ 50,000 to the wife of his brother B for the purchase of a house by her and a simultaneous gift by B to A's minor son of shares in a foreign company worth ₹ 50,000 owned by him), the income from the assets transferred would be assessed in the hands of the deemed transferor if the transfers are so intimately connected that they form part of a single transaction, and each transfer constitutes consideration for the other by being mutual or otherwise. Thus, in the instant case, the transfers have been made by A and B to persons who are not their spouse or minor child so as to circumvent the provisions of this section, showing that such transfers constituted consideration for each other.

The Supreme Court, in case of *CIT v. Keshavji Morarji* [1967] 66 ITR 142, observed that if two transactions are inter-connected and are parts of the same transaction in such a way that it can be said that the circuitous method was adopted as a device to evade tax, the implication of clubbing provisions would be attracted. Accordingly, the income arising to Mrs. B from the house property should be included in the total income of B and the dividend from shares transferred to A's minor son would be taxable in the hands of A, assuming that Mr. A's income is higher than that of Mrs. A. This is because A and B are the indirect transferors to their minor child and spouse, respectively, of income-yielding assets, so as to reduce their burden of taxation.

ILLUSTRATION 7

Mr. Madan gifted a sum of ₹ 6.5 lakhs to his brother's wife on 14-6-2023. On 12-7-2023, his brother gifted a sum of ₹ 5.2 lakhs to Mr. Madan's wife. The gifted amounts were invested as fixed deposits in banks by Mrs. Madan and wife of Mr. Madan's brother on 01-8-2023 at 9% interest. Examine the consequences of the above under the provisions of the Income-tax Act, 1961 in the hands of Mr. Madan and his brother.

SOLUTION

In the given case, Mr. Madan gifted a sum of ₹ 6.5 lakhs to his brother's wife on 14.06.2023 and simultaneously, his brother gifted a sum of ₹ 5.2 lakhs to Mr. Madan's wife on 12.07.2023. The gifted amounts were invested as fixed deposits in banks by Mrs. Madan and his brother's wife. These transfers are in the nature of cross transfers. Accordingly, the income from the assets transferred would be assessed in the hands of the deemed transferor because the transfers are so intimately connected to form part of a single transaction and each transfer constitutes consideration for the other by being mutual or otherwise.

If two transactions are inter-connected and are part of the same transaction in such a way that it can be said that the circuitous method was adopted as a device to evade tax, the implication of clubbing provisions would be attracted. It was so held by the Apex Court in *CIT vs. Keshavji Morarji* (1967) 66 ITR 142.

Accordingly, the interest income arising to Mrs. Madan in the form of interest on fixed deposits would be included in the total income of Mr. Madan and interest income arising in the hands of his brother's wife would be taxable in the hands of Mr. Madan's brother as per section 64(1), to the extent of amount of cross transfers i.e., ₹ 5.2 lakhs.

This is because both Mr. Madan and his brother are the indirect transferors of the income to their respective spouses with an intention to reduce their burden of taxation.

However, the interest income earned by his spouse on fixed deposit of ₹ 5.2 lakhs alone would be included in the hands of Mr. Madan's brother and not the interest income on the entire fixed deposit of ₹ 6.5 lakhs, since the cross transfer is only to the extent of ₹ 5.2 lakhs.



6.5 CONVERSION OF SELF-ACQUIRED PROPERTY INTO THE PROPERTY OF A HINDU UNDIVIDED FAMILY [SECTION 64(2)]

Section 64(2) deals with the case of conversion of self-acquired property into property of a Hindu undivided family.

- (1) Where an individual, who is a member of the HUF, converts at any time after 31-12-1969, his individual property into property of the HUF of which he is a member or throws such property into the common stock of the family or otherwise transfers such individual property, directly or indirectly, to the family otherwise than for adequate consideration, the income from such property shall continue to be included in the total income of the individual.
- (2) Where the converted property has been partitioned, either by way of total or partial partition, the income derived from such converted property as is received by the spouse on partition will be deemed to arise to the spouse from assets transferred indirectly by the individual to the spouse and consequently, such income shall also be included in the total income of the individual who effected the conversion of such property.
- (3) Where income from the converted property is included in the total income of an individual under section 64(2), it will be excluded from the total income of the family or, as the case may be, of the spouse of the individual.

6.6 INCOME INCLUDES LOSS

It is significant to note that as per the *Explanation 2* to section 64, 'income' would include 'loss'. Accordingly, where the specified income to be included in the total income of the individual is a loss, such loss will be taken into account while computing the total income of the individual. It is significant to note that this *Explanation* applies to clubbing provisions under both sections 64(1) and 64(2).

6.7 DISTINCTION BETWEEN SECTION 61 AND SECTION 64

It may be noted that the main distinction between the two sections is that section 61 applies only to a revocable transfer made by any person while section 64 applies to revocable as well as irrevocable transfers made only by individuals.

Note - *The clubbing provisions are attracted in respect of income arising from the assets transferred, however, income arising on accretion of income arising from transferred asset, would not be clubbed except in case of minor child.*

6.8 LIABILITY OF PERSON IN RESPECT OF INCOME INCLUDED IN THE INCOME OF ANOTHER PERSON [SECTION 65]

Sections 61 to 64 provide for clubbing of income of one person in the hands of the other in circumstances specified therein. However, service of notice of demand (in respect of tax on such

income) may be made upon the person to whom such asset is transferred (i.e., the transferee). In such a case, the transferee is liable to pay that portion of tax levied on the transferor which is attributable to the income so clubbed.

Similar provision will be applicable in case of deemed ownership of house property under section 27 i.e., transfer of house property otherwise than for adequate consideration to spouse, not being in connection with agreement to live apart or to minor child not being a minor married daughter.

ILLUSTRATION 8

Mr. Ravi has gifted his only house property to his wife, Mrs. Ravi, and his married daughter, Mrs. Divya. The Assessing Officer has served a notice of demand on Mr. Ravi for payment of tax for the income derived from the said house property. Examine the validity of the Assessing Officer's action.

SOLUTION

As per section 27(i), an individual who transfers otherwise than for adequate consideration any house property to his spouse, not being a transfer in connection with an agreement to live apart, or to a minor child not being a married daughter shall be deemed to be the owner of the house property so transferred.

Mr. Ravi, in this case, would be the deemed owner only in respect of the share of house property transferred to his wife Mrs. Ravi without consideration and not for the share of the house property transferred to his married daughter Mrs. Divya.

Since Mr. Ravi is the deemed owner of the share of house property transferred to his wife without consideration, the income derived from the house property, to the extent attributable to the share of property transferred to his wife without consideration, would be taxable in his hands under the head "Income from house property".

However, as per section 65, the notice of demand can be served on Mrs. Ravi for payment of that portion of tax levied on Mr. Ravi attributable to the income derived [by virtue of section 27(i)], from the share of house property transferred to Mrs. Ravi, and standing in her name.

However, the income derived from house property, attributable to the share of property transferred to his married daughter without consideration, would be taxable in the hands of his daughter. Such income would not be taxable in the hands of Mr. Ravi. Mr. Ravi will not be responsible for the payment of tax attributable to aforesaid share of income of daughter from house property.

Thus, the action of the Assessing Officer in serving notice of demand on Mr. Ravi for payment of tax for the entire income derived from the said house property is not valid.

TEST YOUR KNOWLEDGE

Questions

1. Mrs. E, wife of Mr. F, is a partner in a firm. Her capital contribution to the firm as on 01-04-2023 was ₹ 5 lakhs, out of which ₹ 3 lakhs was contributed out of her own sources and ₹ 2 lakhs was contributed out of gift from her husband.

As further capital was needed by the firm, she further invested ₹ 2 lakhs on 01.05.2023 out of the funds gifted by her husband. The firm paid interest on capital of ₹ 80,000 and share of profit of ₹ 60,000 for the financial year 2023-24.

Advise Mr. F as to the applicability of the provisions of section 64(1)(iv) and the manner thereof in respect of the above referred transactions.

2. Mr. A has gifted a house property valued at ₹ 50 lakhs to his wife, Mrs. B, who in turn has gifted the same to Mrs. C, their daughter-in-law. The house was let out at ₹ 25,000 per month throughout the year. Compute the total income of Mr. A and Mrs. C.

Will your answer be different if the said property was gifted to his son, husband of Mrs. C?

3. Mr. Korani transferred 2,000 debentures of ₹ 100 each of Wild Fox Ltd. to his wife Mrs. Rekha Korani on 03.10.2022 without consideration. The company paid interest of ₹ 30,000 in September, 2023 which was deposited by Mrs. Korani with Kartar Finance Co. in October, 2023. Kartar Finance Co. paid interest of ₹ 3,000 upto March, 2024. How would both the interest income be charged to tax in A.Y. 2024-25?

4. Mr. Rose, out of his own funds, had taken an FDR for ₹ 10,00,000 bearing interest @10% p.a. payable half-yearly in the name of his wife Lilly. The interest earned during the financial year 2023-24 of ₹ 1,00,000 was invested by Mrs. Lilly in the business of packed spices which resulted in a net profit of ₹ 55,000 for the year ended 31.03.2024. How shall the interest on FDR and income from business be taxed for the Assessment Year 2024-25?

5. Naresh is a fashion designer having lucrative business. His wife is a model. Naresh pays her monthly salary of ₹ 10,000. The Assessing Officer while admitting that the salary is an admissible deduction, in computing the total income of Naresh had applied the provisions of section 64(1) and had clubbed the income (salary) of his wife in Naresh hands.

Discuss the correctness of the action of the Assessing Officer.

Answers

1. As per section 64(1)(iv), in computing the total income of any individual, there shall be included all such income as arises, directly or indirectly, subject to the provisions of section 27(i), to the spouse of such individual from assets transferred directly or indirectly to the spouse by such individual otherwise than for adequate consideration or in connection with an agreement to live apart.

In this instant case, Mr. F has gifted money to his wife, Mrs. E. Mrs. E, in turn, invested such gifted money in the capital of a partnership firm, of which she is a partner. Mrs. E has also contributed a sum of ₹ 3 lakhs out of her own resources to the capital of the firm.

As per *Explanation 3* to section 64(1), for the purpose of clubbing under section 64(1)(iv), where the assets transferred, directly or indirectly, by an individual to his spouse are invested by the transferee in the nature of contribution of capital as a partner in a firm, proportionate interest on capital will be clubbed with the income of the transferor. Such proportion has to be computed by taking into account the value of the aforesaid investment as on the **first day of the previous year** to the total investment by way of capital contribution as a partner in the firm as on that day.

In view of the above provision, interest received by Mrs. E from the firm shall be included in total income of Mr. F to the extent of ₹ 32,000 i.e., $\text{₹ } 80,000 \times \text{₹ } 2,00,000 / \text{₹ } 5,00,000$.

Share of profit amounting to ₹ 60,000 is exempt from income-tax under the provisions of section 10(2A). The provisions of section 64 will not apply, if the income from the transferred asset itself is exempt from tax.

Note: It is assumed that rate of interest on capital contributed by Mrs. E does not exceed 12% p.a.

2. As per section 27(i), an individual who transfers otherwise than for adequate consideration any house property to his spouse, not being a transfer in connection with an agreement to live apart, shall be deemed to be the owner of the house property so transferred.

Therefore, in this case, Mr. A would be the deemed owner of the house property transferred to his wife Mrs. B without consideration.

As per section 64(1)(vi), income arising to the son's wife from assets transferred, directly or indirectly, to her by an individual otherwise than for adequate consideration would be included in the total income of such individual.

Income from let-out property is ₹ 2,10,000 [i.e., ₹ 3,00,000, being the actual rent calculated at ₹ 25,000 per month less ₹ 90,000, being deduction under section 24 @30% of ₹ 3,00,000]

In this case, income of ₹ 2,10,000 from let-out property arising to Mrs. C, being Mr. A's son's wife, would be included in the income of Mr. A, applying the provisions of section 27(i) and section 64(1)(vi). Such income would, therefore, not be taxable in the hands of Mrs. C.

In case the property was gifted to Mr. A's son, the clubbing provisions under section 64 would not apply, since the son is not a minor child. Therefore, the income of ₹ 2,10,000 from letting out of property gifted to the son would be taxable in the hands of the son.

It may be noted that the provisions of section 56(2)(x) would not be attracted in the hands of the recipient of house property, since the receipt of property in each case was from a "relative" of such individual. Therefore, the stamp duty value of house property would not be chargeable to tax in the hands of the recipient of immovable property, even though the house property was received by her or him without consideration.

Note - The first part of the question can also be answered by applying the provisions of section 64(1)(vi) directly to include the income of ₹ 2,10,000 arising to Mrs. C in the hands of Mr. A. [without first applying the provisions of section 27(i) to deem Mr. A as the owner of the house property transferred to his wife Mrs. B without consideration], since section 64(1)(vi) speaks of clubbing of income arising to son's wife from indirect transfer of assets to her by her husband's parent, without consideration. Gift of house property by Mr. A to Mrs. C, via Mrs. B, can be viewed as an indirect transfer by Mr. A to Mrs. C.

3. As per section 64(1)(iv), income arising from assets transferred without adequate consideration by an individual to his spouse is liable to be clubbed in the hands of the individual. It may be noted that income on the asset transferred has to be clubbed but if there is accretion to the asset, any further income derived on such accretion should not be clubbed.

Therefore, applying the provisions of section 64(1)(iv), ₹ 30,000, being the interest on debentures received by Mrs. Rekha Korani in September, 2023 will be clubbed with the income of Mr. Korani, since he had transferred the debentures of the company without consideration to her in October, 2022.

However, the interest of ₹ 3,000 upto March, 2024 earned by Mrs. Rekha Korani on the interest on the debentures deposited by her with Kartar Finance Company shall be taxable in her individual capacity and will not be clubbed with the income of Mr. Korani.

4. Section 64(1)(iv) specifies that the income derived by the spouse of an assessee from the assets transferred directly or indirectly without adequate consideration or intention to live apart shall be clubbed with the income of the transferor. Therefore, the interest income of ₹ 1 lakh on the FDR of ₹ 10 lakhs for the F.Y.2023-24 shall be clubbed with the income of Mr. Rose.

When Mrs. Lilly invested the interest income in a business and earned profits therefrom, such profits shall not be clubbed with the income of her husband but shall be taxable in her individual capacity. This is so because the income from the accretion of the transferred assets is not to be clubbed with the income of the transferor [*CIT v. M. S. S. Rajan (2001) 252 ITR 126 (Mad)*].

5. This question is based on the principles laid down by Madras High Court in the case of *CIT v. Smt. R. Bharati (1999) 240 ITR 697* where the interpretation of the terms “professional qualifications” and “knowledge” came up for consideration as per proviso to section 64(1).

These words do not necessarily connote a qualification conferred by a recognized university after examining the candidate who has undergone a course of study in a technical subject or course of study preparing him for a profession of law, accountancy etc. Accordingly, the term “qualification” must be given a wide meaning as referring to the qualities which are required to be possessed by a person performing the work that he does, so long as that work is capable of being regarded as technical or professional.

The word “professional” is a term capable of very broad meaning and would encompass a variety of occupations. A large number of occupations are being practiced which form a source of livelihood and are capable of being regarded, as professions as long as they require certain degree of skill. A person having skill, experience and competence in a line of work can be regarded as professionally qualified for the purpose of section 64(1)(ii).

Applying the rationale of the Madras High Court ruling, a model, having skill, competence and experience in her line can be considered as a professional. Hence, the action of the Assessing Officer is not correct.

[illegible]

AGGREGATION OF INCOME, SET OFF OR CARRY FORWARD OF LOSSES

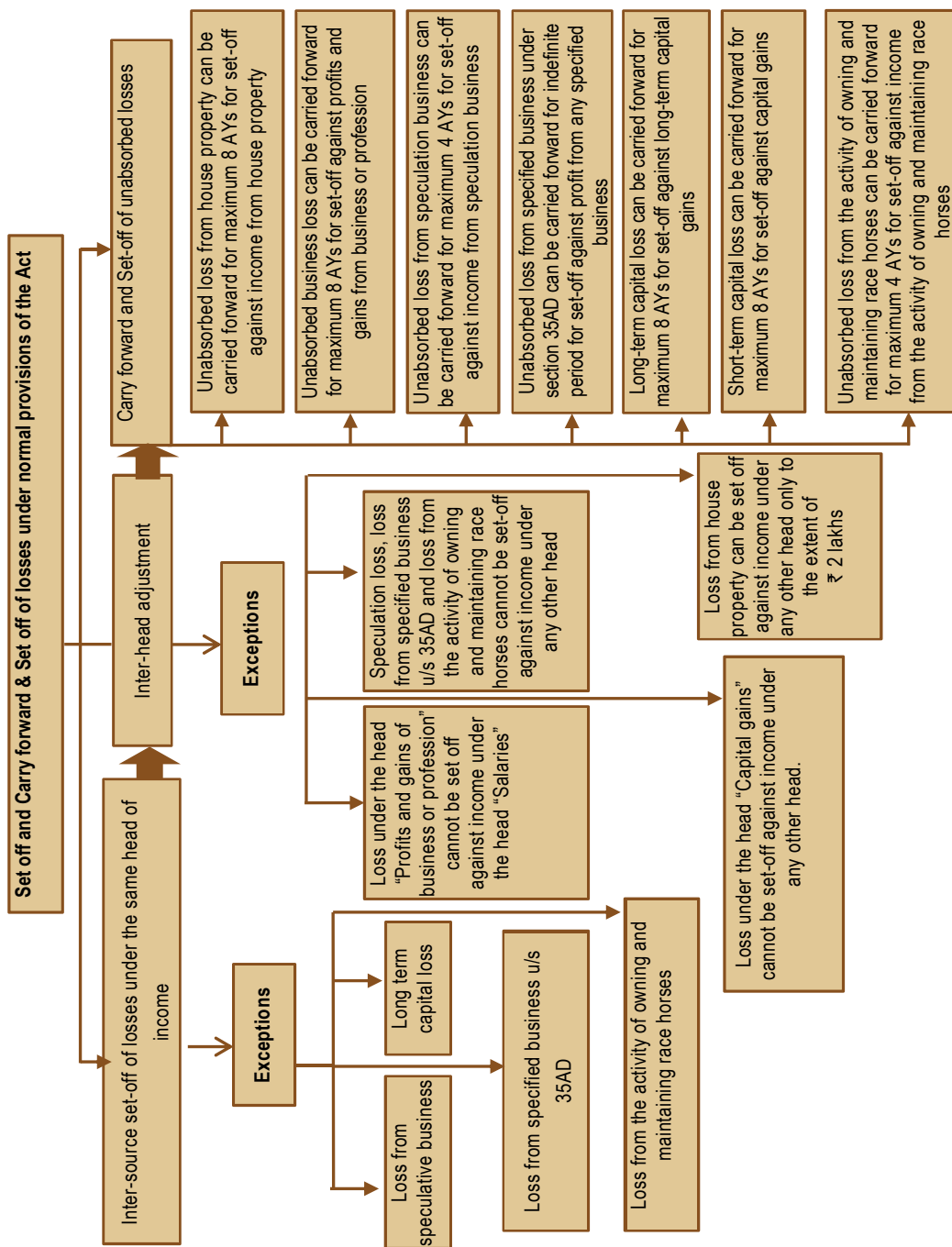


LEARNING OUTCOMES

After studying this chapter, you would be able to -

- ❑ **identify** the permissible inter-source and inter-head adjustments for set-off of losses and the restrictions in inter-source and inter-head set-off of losses;
- ❑ **determine** the unabsorbed losses which can be carried forward to the subsequent assessment year for set-off against income of that year and the maximum period of carry forward of such losses;
- ❑ **appreciate** the provisions regarding carry forward and set-off of losses in case of closely held companies and eligible start-ups as also in case of change in constitution of firms;
- ❑ **appreciate** the conditions which are required to be satisfied by the amalgamating company and the amalgamated company for carry forward and set-off of loss of the amalgamating company by the amalgamated company;
- ❑ **appreciate** the special provisions for carry forward and set-off of losses of a banking company against the profits of a banking institution under a scheme of amalgamation;
- ❑ **compute** the gross total income of an assessee after applying the provisions relating to set-off and carry forward and set-off of losses.

CHAPTER OVERVIEW

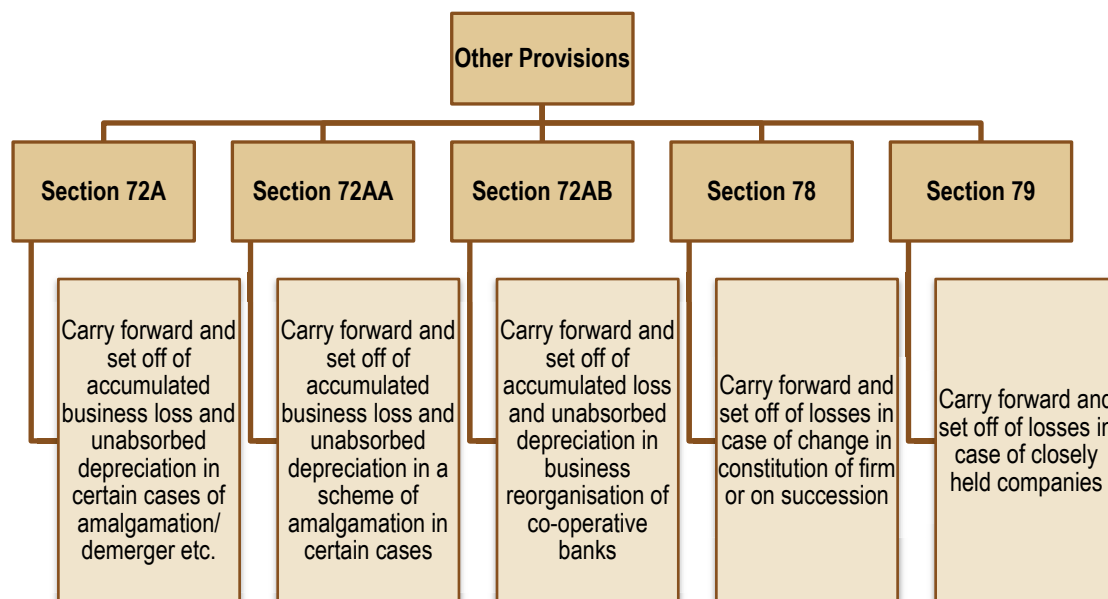


Notes - Following brought forward losses/ depreciation is not allowed to be set off while computing total income under the special concessional tax regimes under section 115BAA/115BAB/115BAC/115BAD/115BAE -

1. Brought forward business loss of specified business u/s 35AD
2. Brought forward business loss on account of deduction u/s 35(1)(ii)/(iii) or u/s 35(2AA) [or u/s 35(2AB), in case of computation of total income under sections 115BAA/115BAB, applicable to companies].
3. Unabsorbed depreciation attributable to additional depreciation u/s 32(1)(iii).

This is because deductions u/s 35AD, u/s 35(1)(ii)/(iii), u/s 35(2AA), u/s 35(2AB) and additional depreciation u/s 32(1)(iii) are not allowable under the special concessional tax regimes.

In addition, in case of persons covered under section 115BAC, brought forward loss from self-occupied house property is not allowed to be set-off while computing total income for A.Y.2024-25 under the default tax regime thereunder.



7.1 AGGREGATION OF INCOME

In certain cases, some amounts are deemed as income in the hands of the assessee though they are actually not in the nature of income. These cases are contained in sections 68, 69, 69A, 69B, 69C and 69D. These are discussed in detail in Chapter 1. The Assessing Officer may require the assessee to furnish explanation in such cases. If the assessee does not offer any explanation or the explanation offered by the assessee is not satisfactory, the amounts referred to in these sections would be deemed to be the income of the assessee. Such amounts have to be aggregated with the assessee's income.



7.2 CONCEPT OF SET OFF AND CARRY FORWARD OF LOSSES

Specific provisions have been made in the Income-tax Act, 1961 for the set-off and carry forward of losses. In simple words, "Set-off" means adjustment of losses against the profits from another source/head of income in the same assessment year. If losses cannot be set-off in the same year due to inadequacy of eligible profits, then such losses are carried forward to the next assessment year for adjustment against the eligible profits of that year. The maximum period for which different losses can be carried forward for set-off has been provided in the Act.



7.3 INTER SOURCE ADJUSTMENTS [SECTION 70]

(1) Inter-source set-off of losses

Under this section, the losses incurred by the assessee in respect of one source shall be set-off against income from any other source under the same head of income, since the income under each head is to be computed by grouping together the net result of the activities of all the sources covered by that head. In simpler terms, loss from one source of income can be adjusted against income from another source, both the sources being under the same head.

Example: Loss from one house property can be set off against the income from another house property.

Example: Loss from one business, say textiles, can be set off against income from any other business, say printing, in the same year as both these sources of income fall under one head of income. Therefore, the loss in one business may be set-off against the profits from another business in the same year.

(2) Impermissible inter-source set-off

Inter-source set-off, however, is not permissible in the following cases -

(i) Long-term capital loss [Section 70(3)]

Short-term capital loss is allowed to be set off against both short-term capital gain and long-term capital gain. However, long-term capital loss can be set-off only against long-term capital gain and not against short-term capital gain.

(ii) **Speculation loss [Section 73(1)]**

A loss in speculation business can be set-off only against the profits of any other speculation business and not against any other business or professional income.

However, losses from other business can be adjusted against profits from speculation business.

(iii) **Loss from the activity of owning and maintaining race horses [Section 74A(3)]**

Such loss can be set-off only against income from the activity of owning and maintaining race horses.

(iv) **Losses from specified business [Section 73A(1)]**

A loss in any specified business referred in section 35AD can be set-off only against any other specified business, whether eligible for deduction under 35AD or not.

However, losses from other business can be set-off against profits from specified business

It must be noted that **loss from an exempt source** cannot be set-off against profits from a taxable source of income. For example, share of loss from a partnership firm cannot be set-off against business income, since share of income of the firm is exempt under section 10(2A).



7.4 INTER HEAD ADJUSTMENTS [SECTION 71]

Loss under one head of income can be adjusted or set off against income under another head. However, the following points should be considered:

- (1) **Loss under any head other than capital gains:** Where the net result of the computation under any head of income (other than 'Capital Gains') is a loss, the assessee can set-off such loss against his income assessable for that assessment year under any other head, including 'Capital Gains'.
- (2) **Loss under the head "Profits and gains from business or profession:** Where the net result of the computation under the head "Profits and gains of business or profession" is a loss, such loss cannot be set off against income under the head "Salaries". It shall be allowed to set off from income under any other head except "Salaries".
- (3) **Loss under the head "Capital Gains":** Where the net result of computation under the head 'Capital Gains' is a loss, whether short term or long term, such capital loss cannot be set-off against income under any other head.
- (4) **Loss under the head "Income from house property":** Where the net result of the computation under the head "Income from house property" is a loss and the assessee has

income assessable under any other head of income, the amount of such loss exceeding ₹ 2 lakhs would not be allowable to be set-off against income under the other head. In other words, the maximum loss from house property which can be set-off against income from any other head is ₹ 2 lakhs.

Note - The loss under the head “Income from house property” would not be allowable to be set-off against income under the other head if an assessee (Individual/HUF/AOP (other than Co-operative Society)/BoI/Artificial Juridical Person)) pays tax at concessional rate u/s 115BAC. However, if the assessee exercises the option of shifting out of the default tax regime provided under section 115BAC(1A) and there is a loss under the head “Income from house property” and the assessee has income assessable under any other head of income, the maximum loss from house property which can be set-off against income from any other head is ₹ 2 lakhs. In other words, in such case, the amount of such loss exceeding ₹ 2 lakhs would not be allowable to be set-off against income under the other head.

- (5) **Speculation loss and loss from the activity of owning and maintaining race horses** cannot be set off against income under any other head.
- (6) **Losses from Specified business u/s 35AD:** A loss in any specified business referred in section 35AD can be set-off only against any other specified business, whether eligible for deduction under 35AD or not.

However, losses from other business can be set-off against profits from specified business.

If the income from a source is exempt from tax, loss from that exempt source cannot be set off against taxable income from a different source or taxable income under a different head.



7.5 CARRY FORWARD AND SET OFF OF LOSS FROM HOUSE PROPERTY [SECTION 71B]

(1) Set-off and Carry Forward & Set-off of losses:

- (a) *If the assessee, being an individual, HUF, AoP (other than Co-operative Society), BoI or Artificial Juridical Person, exercises the option of shifting out of the default tax regime provided under section 115BAC(1A): In any assessment year, if there is a loss under the head “Income from house property”, such loss will first be set-off against income from any other head to the extent of ₹ 2,00,000 during the same year. The unabsorbed loss will be carried forward to the*

following assessment year to be set-off against income under the head "Income from house property".

(b) **If such assessee referred to in (a) above pays tax at concessional rate u/s 115BAC:** The loss under the head "Income from house property" would not be allowable to be set-off against income under any other head. The unabsorbed loss will be carried forward to the following assessment year to be set-off against income under the head "Income from house property".

(c) **In case of other assessees (Companies/Firms/Co-operative Societies):** In any assessment year, if there is a loss under the head "Income from house property", such loss will first be set-off against income from any other head to the extent of ₹ 2,00,000 during the same year. The unabsorbed loss will be carried forward to the following assessment year to be set-off against income under the head "Income from house property".

This is irrespective of whether or not the company opts for section 115BAA/115BAB and whether or not the co-operative society opts for section 115BAD/115BAE.

(2) **Maximum period for carry forward & set-off of losses:** The loss under this head is allowed to be carried forward upto 8 assessment years immediately succeeding the assessment year in which the loss was first computed.

Note - It is to be remembered that once a particular loss is carried forward, it can be set off only against the income from the same head in the forthcoming assessment years.

ILLUSTRATION 1

Mr. Kamal (aged 35 years) submits the following particulars pertaining to the A.Y.2024-25:

Particulars	₹
Income from salary (computed)	4,20,000
Loss from let-out property	(-) 2,30,000
Business loss	(-) 1,20,000
Bank interest (FD) received	85,000

Compute the total income of Mr. Kamal for the A.Y.2024-25, assuming that

- (i) He has exercised the option of shifting out of the default tax regime provided under section 115BAC(1A).
- (ii) He pays tax under the default tax regime.

SOLUTION

- (i) **Computation of total income of Mr. Kamal for the A.Y.2024-25 under the normal provisions of the Act**

Particulars	Amount (₹)	Amount (₹)
Income from salary	4,20,000	
Less: Loss from house property of ₹ 2,30,000 to be restricted to ₹ 2 lakhs by virtue of section 71(3A)	(-) 2,00,000	2,20,000
Balance loss of ₹ 30,000 from house property to be carried forward to next assessment year		
Income from other sources (interest on fixed deposit with bank)	85,000	
Less: Business loss of ₹ 1,20,000 set-off to the extent of ₹ 85,000	(-) 85,000	-
(Business loss of ₹ 35,000 to be carried forward for set-off against business income of the next assessment year)		
Gross total income [See Note below]		2,20,000
Less: Deduction under Chapter VI-A		Nil
Total income		2,20,000

Notes: (i) Gross Total Income includes salary income of ₹ 2,20,000 after adjusting loss of ₹ 2,00,000 from house property. The balance loss of ₹ 30,000 from house property to be carried forward to next assessment year for set-off against income from house property of that year.

(ii) Business loss of ₹ 1,20,000 is set off to the extent of bank interest of ₹ 85,000 and remaining business loss of ₹ 35,000 will be carried forward as it cannot be set off against salary income.

- (ii) **Computation of total income of Mr. Kamal for the A.Y.2024-25 under default tax regime**

Particulars	Amount (₹)	Amount (₹)
Income from salary		4,20,000
Income from other sources (interest on fixed deposit with bank)	85,000	
Less: Business loss of ₹ 1,20,000 set-off to the extent of ₹ 85,000	(-) 85,000	-
(Business loss of ₹ 35,000 to be carried forward for set-off against business income of the next assessment year)		
Gross total income/ Total Income		2,20,000

Notes: (i) Under the default tax regime, loss from house property cannot be set off against income under any other head. Therefore, the entire loss of ₹ 2,30,000 from house property to be carried forward to next assessment year for set-off against income from house property of that year.

(ii) Business loss of ₹ 1,20,000 is set off to the extent of bank interest of ₹ 85,000 and remaining business loss of ₹ 35,000 will be carried forward as it cannot be set off against salary income.



7.6 CARRY FORWARD AND SET OFF OF BUSINESS LOSSES [SECTION 72]

Under the Act, the assessee has the right to carry forward the losses under the head of business and profession in cases where such loss cannot be set-off due to the absence or inadequacy of income under any other head in the same year. The loss so carried forward can be set-off against the profits of subsequent previous years.

Section 72 covers the carry forward and set-off of losses arising from a business or profession.

Conditions

The assessee's right to carry forward business losses under this section is, however, subject to the following conditions:-

- (1) The loss should have been incurred in business, profession or vocation.
- (2) The loss should not be in the nature of a loss in the business of speculation.
- (3) **Loss from one business can be carried forward & set-off against the income from any other business:** The loss may be carried forward and set-off against the income from business or profession though not necessarily against the profits and gains of the same business or profession in which the loss was incurred.

However, a loss carried forward cannot, under any circumstances, be set-off against the income from any head other than "Profits and gains of business or profession".

- (4) **Person who incurred the loss alone is entitled to carry forward & set-off the loss:** The loss can be carried forward and set off only against the profits of the assessee who incurred the loss. That is, only the person who has incurred the loss is entitled to carry forward or set off the same. Consequently, the successor of a business cannot carry forward or set off the losses of his predecessor except in the case of succession by inheritance.

(5) **Maximum period for carry forward & set-off of losses:** A business loss can be carried forward for a maximum period of 8 assessment years immediately succeeding the assessment year in which the loss was incurred.

(6) **Rehabilitation of business [Proviso to section 72(1)]**

If there is a loss sustained in a business which is discontinued in the circumstances mentioned under section 33B and such business is re-established, reconstructed or revived by the assessee within 3 years from the end of previous year of discontinuation, the loss attributable to such business

- (i) shall be allowed to be set off against the profits and gains, if any, of that business or any other business carried on by him and assessable for that assessment year, and
- (ii) if the loss cannot be wholly so set off, the amount of balance loss to be carried to the following assessment year and so on for 7 assessment years immediately succeeding provided such re-established business is continued to be carried by the assessee.

Note: Circumstances referred to in section 33B

The business is formed as re-establishment, reconstruction or revival by the assessee of the business of such industrial undertaking which is discontinued by reason of extensive damage to or destruction of any building, machinery, plant or furniture owned by the assessee and used for the purpose of such business.

Such damage or destruction should be affected as a direct result of flood, typhoon, hurricane, cyclone, earthquake or other convulsion of nature or riot or civil disturbance or accidental fire or explosion or action by an enemy or action taken in combating an enemy.

ILLUSTRATION 2

Mr. Vikas, a resident individual, furnishes the following particulars for the P.Y.2023-24:

Particulars	₹
<i>Income from salary (computed)</i>	50,000
<i>Income from house property</i>	(24,000)
<i>Income from non-speculative business</i>	(24,000)
<i>Income from speculative business</i>	(6,000)
<i>Short-term capital losses</i>	25,000
<i>Long-term capital gains taxable u/s 112</i>	21,000

What is the total income chargeable to tax for the A.Y.2024-25, assuming that he pays tax under section 115BAC?

SOLUTION

Total income of Mr. Vikas for the A.Y. 2024-25

Particulars	Amount (₹)	Amount (₹)
Income from salaries		50,000
Income from house property		
Loss from house property to be carried forward [Note (i)]	(24,000)	
Profits and gains of business and profession		
Business loss to be carried forward [Note (ii)]	(24,000)	
Speculative loss to be carried forward [Note (iii)]	(6,000)	
Capital Gains		
Long term capital gain taxable u/s 112	21,000	
Short term capital loss of ₹ 25,000 set-off against long-term capital gains to the extent of ₹ 21,000 [Note (iii)]	(21,000)	
	Nil	
Balance short term capital loss of ₹ 4,000 to be carried forward [Note (iv)]		
Taxable income		50,000

Notes:

- (i) Since Mr. Vikas is paying tax under the default tax regime u/s 115BAC, loss from house property cannot be set off against income under any other head. Hence, such loss has to be carried forward to the next year for set-off against income from house property, if any.
- (ii) Business loss cannot be set-off against salary income. Therefore, loss of ₹ 24,000 from the non-speculative business cannot be set off against the income from salaries. Hence, such loss has to be carried forward to the next year for set-off against business profits, if any.
- (iii) Loss of ₹ 6,000 from the speculative business can be set off only against the income from the speculative business. Hence, such loss has to be carried forward.
- (iv) Short term capital loss can be set off against both short term capital gain and long term capital gain. Therefore, short term capital loss of ₹ 25,000 can be set-off against long-term capital gains to the extent of ₹ 21,000. The balance short term capital loss of ₹ 4,000 cannot be set-off against any other income and has to be carried forward to the next year for set-off against capital gains, if any.



7.7 CARRY FORWARD AND SET OFF OF ACCUMULATED BUSINESS LOSSES AND UNABSORBED DEPRECIATION IN CERTAIN CASES OF AMALGAMATION/ DEMERGER, ETC. [SECTION 72A]

(1) Amalgamation

Applicability: This section applies where there has been an amalgamation of –

- (i) a company owning an industrial undertaking or a ship or a hotel with another company; or
- (ii) a banking company with a specified bank; or
- (iii) one or more public sector company or companies with one or more public sector company or companies; or
- (iv) erstwhile public sector company (i.e., a company which was a public sector company in earlier previous years and ceases to be a public sector company by way of strategic disinvestment by the Government) with one or more company or companies, if the share purchase agreement entered into under strategic disinvestment restricted immediate amalgamation of the said public sector company and the amalgamation is carried out within five year from the end of the previous year in which the restriction on amalgamation in the share purchase agreement ends.

Strategic disinvestment means sale of shareholding by the Central Government or any State Government or a public sector company, in a public sector company or in a company, which results in reduction of its shareholding to below 51% and transfer of control to the buyer.

However, the condition of reduction of shareholding below 51% would apply only in a case where shareholding of the Central Government or the State Government or the public sector company was above 51% before such sale of shareholding.

Further, the requirement of transfer of control to the buyer may be carried out by the Central Government or the State Government or the public sector company or any two of them or all of them.

As per section 2(27) of the Companies; Act, 2013, control shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue

of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner.

Allowability of carry forward and set-off of accumulated loss and unabsorbed loss by amalgamated company in case of amalgamation: It provides that the accumulated loss and unabsorbed depreciation of the amalgamating company shall be deemed to be the loss or unabsorbed depreciation, as the case may be, of the amalgamated company for the previous year in which the amalgamation took place. Other provisions of the Act relating to set off and carry forward shall also apply accordingly.

However, in case of an amalgamation of erstwhile public sector company, with one or more company or companies, the accumulated loss and the unabsorbed depreciation of the amalgamating company, which is deemed to be the loss or, as the case may be, the allowance for unabsorbed depreciation of the amalgamated company, shall not be more than the accumulated loss and unabsorbed depreciation of the public sector company as on the date on which the public sector company ceases to be a public sector company as a result of strategic disinvestment.

Conditions for availing benefit under this section

(i) Conditions to be fulfilled by the amalgamating company

- (a) The amalgamating company should have been **engaged in the business**, in which the accumulated loss occurred or depreciation remains unabsorbed, **for 3 or more years**.
- (b) The amalgamating company has held continuously as on the date of amalgamation, **at least 3/4th of the book value of the fixed assets held by it, 2 years prior** to the date of amalgamation.

(ii) Conditions to be fulfilled by the amalgamated company

- (a) The amalgamated company should **hold at least 3/4th of the book value of fixed assets** of the amalgamating company acquired as a result of amalgamation **for a minimum period of 5 years** from the effective date of amalgamation.
- (b) The amalgamated company **continues the business** of the amalgamating company for **at least 5 years**.
- (c) The amalgamated company must also fulfill such other conditions prescribed under Rule 9C for the revival of the business of the amalgamating company or to ensure that the amalgamation is for genuine business purpose -

- (1) The amalgamated company shall achieve the level of production of at least 50% of the installed capacity (capacity of production as on the date of amalgamation) of the said undertaking before the end of 4 years from the date of amalgamation and continue to maintain the said minimum level of production till the end of 5 years from the date of amalgamation. Central Government has the power to modify this requirement on an application made by the amalgamated company.
- (2) The amalgamated company shall furnish to the Assessing Officer a certificate in the prescribed form verified by a Chartered Accountant in this regard.

Consequences of non-fulfillment of specified conditions: In case the above specified conditions are not fulfilled, that part of carry forward of loss and unabsorbed depreciation remaining to be utilized by the amalgamated company shall lapse and such loss or depreciation as has been set-off shall be treated as the income in the year in which there is a failure to fulfill the conditions.

(2) Demerger

Allowability of carry forward and set-off of accumulated loss and unabsorbed loss by resulting company in case of demerger: Where there has been a demerger of an undertaking,

- the accumulated loss and the unabsorbed depreciation directly relatable to the undertaking transferred by the demerged company to the resulting company shall be allowed to be carried forward and set off in the hands of the resulting company.
- if the accumulated loss or unabsorbed depreciation is not directly relatable to the undertaking, the same will be apportioned between the demerged company and the resulting company in the same proportion in which the value of the assets retained by the demerged company and have been transferred to the resulting company.

Conditions for availing benefit under this section: The Central Government is empowered to notify such conditions as it considers necessary to ensure that the demerger is for genuine business purpose.

(3) Re-organisation of business

Allowability of carry forward and set-off of accumulated loss and unabsorbed loss by company in case of succession: In case of re-organisation of business, whereby a firm is succeeded by a company as per the provisions of section 47(xiii), or a sole proprietary concern is succeeded by a company as per the provisions of section 47(xiv), then the accumulated business loss and the unabsorbed depreciation of the firm/proprietary concern, as the case may be, shall be

deemed to be the loss or depreciation allowance of the successor company for the previous year in which the business re-organisation took place. Other provisions of the Act relating to set-off and carry forward will apply accordingly.

Consequences of non-fulfillment of specified conditions: If it is found that any of the conditions laid down in the corresponding sub-sections (xiii) or (xiv) of section 47 have not been complied with, the set-off of loss or allowance of depreciation made in any previous year in the hands of the successor company shall be deemed to be the income of the company chargeable to tax in the year in which the conditions have been violated.

(4) Conversion of a company into LLP [Section 72A(6A)]

Allowability of carry forward and set-off of accumulated loss and unabsorbed loss by LLP in case of conversion: In case of re-organisation of business, whereby a private company or unlisted company is succeeded by a LLP as per the provisions of section 47(xiiib), then the successor LLP would be allowed to carry forward and set-off the business loss and unabsorbed depreciation of the predecessor company.

Consequences of non-fulfillment of specified conditions: If the entity fails to fulfill the conditions specified in section 47(xiiib), the benefit of set-off of business loss/unabsorbed depreciation availed by the LLP would be deemed to be the profits and gains of the LLP chargeable to tax in the previous year in which the LLP fails to fulfill any of the conditions.

(5) Meanings of certain terms

Term	Particulars
Accumulated loss	It means so much of the loss of - the predecessor firm or - the proprietary concern or - the private company or unlisted public company or - the amalgamating company or - the demerged company, as the case may be, under the head "Profit and gains of business or profession" (not being a loss sustained in a speculation business) which such predecessor firm or the proprietary concern or the company or amalgamating company or demerged company, would have been entitled to carry forward and set off under the provisions of section 72, if the re-organisation of business or amalgamation or demerger had not taken place.
Industrial undertaking	It means any undertaking which is engaged in - (i) the manufacture or processing of goods; (ii) the manufacture of computer software;

	(iii) the business of generation or distribution of electricity or any other form of power; (iv) providing telecommunication services, whether basic or cellular, including radio paging, domestic satellite service, network of trunking, broad band network and internet services. (v) mining; (vi) the construction of ships, aircraft or rail systems.
Unabsorbed depreciation	Unabsorbed depreciation means so much of the allowance for depreciation of - the predecessor firm or - the proprietary concern or - the private company or unlisted public company or - the amalgamating company or - the demerged company, as the case may be, which remains to be allowed and which would have been allowed to the predecessor firm or the proprietary concern or the company or amalgamating company or demerged company, as the case may be, under the provisions of this Act, if the re-organisation of business or amalgamation or demerger had not taken place
Specified bank	It means the State Bank of India (SBI) constituted under the SBI Act, 1955 or a subsidiary bank as defined in the SBI (Subsidiary Banks) Act, 1959 or a corresponding new bank constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 or under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980.



7.8 CARRY FORWARD AND SET OFF OF ACCUMULATED BUSINESS LOSSES AND UNABSORBED DEPRECIATION IN A SCHEME OF AMALGAMATION IN CERTAIN CASES [SECTION 72AA]

(1) **Applicability:** This section provides for carry forward and set off of accumulated loss and unabsorbed depreciation allowance where there has been an amalgamation of -

- (i) *one or more banking company*
 - *with any other banking institution under a scheme sanctioned and brought into force by the Central Government under section 45(7) of the Banking Regulation Act, 1949; or*

- *with any other banking institution or a company subsequent to a strategic disinvestment, wherein the amalgamation is carried out within 5 years from the end of the previous year during which such strategic disinvestment is carried out; or*
 - (ii) one or more corresponding new bank or banks with any other corresponding new bank under a scheme brought into force by the Central Government under section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 or under section 9 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980, or both, as the case may be, or
 - (ii) one or more Government company or companies with any other Government company under a scheme sanctioned and brought into force by the Central Government under section 16 of the General Insurance Business (Nationalisation) Act, 1972.
- (2) **Allowability of carry forward and set-off of accumulated loss and unabsorbed depreciation in case of amalgamation:** The accumulated loss and unabsorbed depreciation of such banking company or companies or amalgamating corresponding new bank or banks or amalgamating Government company or companies shall be deemed to be the loss or the allowance for depreciation of such banking institution **or company** or amalgamated corresponding new bank or amalgamated Government company for the previous year in which the scheme of amalgamation is brought into force. Accordingly, all the provisions contained in the Income-tax Act, 1961, relating to set off and carry forward of loss and unabsorbed depreciation would be applicable.
- (3) **Meaning of certain terms:**

Term	Meaning
Accumulated loss	So much of the loss of the amalgamating banking company or companies or amalgamating corresponding new bank or banks or amalgamating Government company or companies under the head "Profits and gains of business or profession" (not being a loss sustained in a speculation business) which such amalgamating banking company or companies or amalgamating corresponding new bank or banks or amalgamating Government company or companies, would have been entitled to carry forward and set off under the provisions of section 72, if the amalgamation had not taken place
Government company	It means a Government company as defined in section 2(45) of the Companies Act, 2013, which is engaged in the general insurance

	business and which has come into existence by operation of section 4 or section 5 or section 16 of the General Insurance Business (Nationalisation) Act, 1972
Unabsorbed depreciation	It means so much of the allowance for depreciation of the amalgamating banking company or companies or amalgamating corresponding new bank or banks or amalgamating Government company or companies which remains to be allowed and which would have been allowed to such banking company or companies or amalgamating corresponding new bank or banks or amalgamating Government company or companies, if the amalgamation had not taken place.



7.9 CARRY FORWARD AND SET OFF OF ACCUMULATED LOSS AND UNABSORBED DEPRECIATION IN BUSINESS REORGANISATION OF CO-OPERATIVE BANKS [SECTION 72AB]

- (1) **Allowability of carry forward and set-off of accumulated loss and unabsorbed loss by a co-operative bank in case of reorganisation:** Under this section, in a case where the amalgamation has taken place during the previous year, set-off of accumulated loss and the unabsorbed depreciation of the predecessor co-operative bank will be allowed in the hands of the successor co-operative bank as if the amalgamation had not taken place. All the other provisions of this Act relating to set off and carry forward of loss and allowance for depreciation would apply accordingly.
- (2) **Conditions for availing benefit under this section**
 - (i) **Conditions to be fulfilled by the predecessor co-operative bank**
 - (a) It should have been engaged in the business of banking for three or more years; and
 - (b) It has held at least 3/4th of the book value of fixed assets as on the date of the business reorganisation, continuously for 2 years prior to the date of business reorganisation;
 - (ii) **Conditions to be fulfilled by the successor co-operative bank**
 - (a) It should hold at least 3/4th of the book value of fixed assets of the predecessor co-operative bank acquired through business reorganisation, continuously for

a minimum period of 5 years immediately succeeding the date of business reorganisation;

- (b) It continues the business of the predecessor co-operative bank for a minimum period of 5 years from the date of business reorganisation; and
- (c) It fulfils such other conditions as may be prescribed to ensure the revival of the business of the predecessor co-operative bank or to ensure that the business reorganisation is for genuine business purpose.

(3) **Quantum allowed of accumulated loss and unabsorbed depreciation:** The amount of set-off of the accumulated loss and unabsorbed depreciation allowable to the resulting co-operative bank has to be calculated in the following manner -

- (i) In a case where the whole of the amount of such loss or unabsorbed depreciation is directly relatable to the undertakings transferred to the resulting co-operative bank - the entire accumulated loss or unabsorbed depreciation of the demerged co-operative bank is allowed to be set-off.
- (ii) In a case where the accumulated loss or unabsorbed depreciation is not directly relatable to the undertakings transferred to the resulting co-operative bank - the amount which bears the same proportion to the accumulated loss or unabsorbed depreciation of the demerged co-operative bank as the assets of the undertaking transferred to the resulting co-operative bank bears to the assets of the demerged co-operative bank.

Example:

If A Co-op Bank is the demerged co-operative bank and B Co-op Bank is the resulting co-operative bank, the amount of set-off of the accumulated loss and unabsorbed depreciation allowable to B Co-op. bank would be –

$$\text{Unabsorbed business loss/depreciation of A Co-op bank} \times \frac{\text{Assets of the undertaking transferred to B Co-op bank}}{\text{Assets of A Co-op bank}}$$

- (4) **Additional conditions for availing benefit under this section:** The Central Government may specify other conditions by notification in the Official Gazette as it considers necessary, to ensure that the business reorganisation is for genuine business purposes.
- (5) **Period before and after business reorganization to constitute two different previous years:** The period commencing from the beginning of the previous year and ending on the

date immediately preceding the date of business reorganisation, and the period commencing from the date of such business reorganisation and ending with the previous year shall be deemed to be two different previous years for the purposes of set off and carry forward of loss and allowance for depreciation.

Example:

If the date on which business re-organisation took place is 1.11.2023, then the period between 1.4.2023 and 31.10.2023 and the period between 1.11.2023 and 31.3.2024 would be deemed to be two different previous years for the purposes of set-off and carry forward of unabsorbed business losses and depreciation.

- (6) **Consequences of non-fulfillment of specified conditions:** In a case where the conditions specified in (2) above or notified under (4) above are not complied with, the set-off of accumulated loss or unabsorbed depreciation allowed in any previous year to the successor co-operative bank shall be deemed to be the income of the successor co-operative bank chargeable to tax for the year in which the conditions are not complied with.
- (7) **Meaning of certain terms**

Term	Particulars
Accumulated loss	It means so much of loss of the amalgamating co-operative bank or the demerged co-operative bank, as the case may be, under the head "Profits and gains of business or profession" (not being a loss sustained in a speculation business) which such amalgamating co-operative bank or the demerged co-operative bank, would have been entitled to carry forward and set-off under the provisions of section 72 as if the business reorganisation had not taken place.
Unabsorbed depreciation	It means so much of the allowance for depreciation of the amalgamating co-operative bank or the demerged co-operative bank, as the case may be, which remains to be allowed and which would have been allowed to such bank as if the business reorganisation had not taken place.



7.10 LOSSES IN SPECULATION BUSINESS [SECTION 73]

The meaning of the expression 'speculative transaction' as defined in section 43(5) and the treatment of income from speculation business has already been discussed under the head "Profits and gains of business or profession".

- (1) **Set-off and Carry forward & set-off of loss from speculation business:** Since speculation is deemed to be a business distinct and separate from any other business

carried on by the assessee, the losses incurred in speculation can be neither set off in the same year against any other non-speculation income nor be carried forward and set off against other income in the subsequent years.

Therefore, if the losses sustained by an assessee in a speculation business cannot be set-off in the same year against any other speculation profit, they can be carried forward to subsequent years and set-off only against income from any speculation business carried on by the assessee. Loss from the activity of trading in derivatives, however, is not to be treated as speculative loss.

- (2) **Maximum period for carry forward & set-off of losses:** The loss in speculation business can be carried forward only for a **maximum period of 4 years** from the end of the relevant assessment year in respect of which the loss was computed. Loss from the activity of trading in derivatives, however, is not to be treated as speculative loss.
- (3) **When a business of a company deemed to be carrying on a speculation business:** The *Explanation* to this section provides that where any part of the business of a company consists in the purchase and sale of the shares of other companies, such a company shall be deemed to be carrying on speculation business to the extent to which the business consists of the purchase and sale of such shares.

However, this deeming provision does not apply to the following companies –

- (i) A company whose gross total income consists of mainly income chargeable under the heads “Income from house property”, “Capital gains” and “Income from other sources”;
- (ii) A company, the principal business of which is –
 - (a) the business of trading in shares; or
 - (b) the business of banking; or
 - (c) the granting of loans and advances.

Thus, these companies would be exempted from the operation of this *Explanation*. Accordingly, if these companies carry on the business of purchase and sale of shares of other companies, they would not be deemed to be carrying on speculation business.



7.11 CARRY FORWARD & SET OFF OF LOSSES BY SPECIFIED BUSINESSES [SECTION 73A]

- (1) **Set-off and Carry forward & set-off of losses of specified business:** Any loss computed in respect of the specified business referred to in section 35AD shall be set off only against profits and gains, if any, of any other specified business. The unabsorbed loss, if any, will be carried forward for set off against profits and gains of any specified business in the following assessment year and so on

Note - The loss of an assessee claiming deduction under section 35AD in respect of a specified business can be set-off against the profit of another specified business under section 73A, irrespective of whether the latter is eligible for deduction under section 35AD. An assessee can, therefore, set-off the losses of a hospital or hotel which begins to operate after 1st April, 2010 and which is eligible for deduction under section 35AD, against the profits of the existing business of operating a hospital (with atleast 100 beds for patients) or a hotel (of two-star or above category), even if the latter is not eligible for deduction under section 35AD.

- (2) **Loss can be set-off indefinitely:** There is no time limit specified for carry forward and set-off and therefore, such loss can be carried forward indefinitely for set-off against income from specified business.

Notes:

- (1) Companies opting for section 115BAA/115BAB and Co-operative societies opting for section 115BAD/115BAE are **not** eligible for deduction under section 35AD.
- (2) An assessee, being an Individual/HUF/AOP/BOI, paying tax under the default tax regime under section 115BAC(1A) would **not** be entitled to deduction under section 35AD. However, such person exercising the option of shifting out of the default tax regime provided under section 115BAC(1A) and carrying on specified business, can claim deduction u/s 35AD in respect of capital expenditure (other than land, goodwill and financial instruments) incurred in respect of such business, subject to fulfillment of specified conditions. Any loss computed in respect of the specified business referred to in section 35AD can, however, be set off only against profits and gains, if any, of any other specified business. The unabsorbed loss, if any, will be carried forward for set off against profits and gains of any specified business in the following assessment year and so on.



7.12 LOSSES UNDER THE HEAD 'CAPITAL GAINS' [SECTION 74]

Carry forward & set-off of losses: Section 74 provides that where for any assessment year, the net result under the head 'Capital gains' is short term capital loss or long term capital loss, the loss shall be carried forward to the following assessment year to be set off in the following manner:

- (1) **Short-term capital loss:** Where the loss so carried forward is a short-term capital loss, it shall be set off against any capital gains, short term or long term, arising in that year.
- (2) **Long-term capital loss:** Where the loss so carried forward is a long-term capital loss, it shall be set off only against long term capital gain arising in that year.
- (3) **Loss under head capital gains:** Net loss under the head capital gains cannot be set off against income under any other head.
- (4) **Maximum period for carry forward & set-off of loss:** Any unabsorbed loss shall be carried forward to the following assessment year up to a maximum of 8 assessment years immediately succeeding the assessment year for which the loss was first computed.

Note - Long-term capital gain exceeding ₹ 1,00,000 arising on sale of equity shares or units of equity oriented fund or unit of business trust on which STT is paid

- in respect of equity shares, both at the time of acquisition and sale and
- in respect of units of equity oriented fund or unit of business trust, at the time of sale

is taxable under section 112A @10%. Long-term capital loss on sale of such shares/units can, therefore, be set-off and carried forward for set-off against long-term capital gains by virtue of section 70(3) and section 74.

ILLUSTRATION 3

During the P.Y. 2023-24, Mr. Chetan has the following income and the brought forward losses:

Particulars	₹
Short term capital gains on sale of shares	1,75,000
Brought forward Long-term capital loss of A.Y.2022-23	(96,000)
Short term capital loss of A.Y.2023-24	(42,000)
Long term capital gain u/s 112	85,000

What is the capital gain taxable in the hands of Mr. Chetan for the A.Y.2024-25?

SOLUTION

Taxable capital gains of Mr. Chetan for the A.Y. 2024-25

Particulars	₹	₹
Short term capital gains on sale of shares	1,75,000	1,33,000
Less: Brought forward short-term capital loss of the A.Y.2023-24	(42,000)	
Long term capital gain	85,000	Nil
Less: Brought forward long-term capital loss of A.Y.2022-23 of ₹ 96,000 set-off to the extent of ₹ 85,000 [See Note below]	(85,000)	
Taxable short-term capital gains		1,33,000

Note: Long-term capital loss cannot be set off against short-term capital gain. Hence, the unadjusted long term capital loss of A.Y.2022-23 of ₹ 11,000 (i.e., ₹ 96,000 – ₹ 85,000) has to be carried forward to the next year to be set-off against long-term capital gains of that year.



7.13 LOSSES FROM THE ACTIVITY OF OWNING AND MAINTAINING RACE HORSES [SECTION 74A(3)]

- (1) **Set-off and Carry forward & set-off of loss:** According to provisions of section 74A(3), the losses incurred by an assessee from the activity of owning and maintaining race horses cannot be set-off against the income from any other source other than the activity of owning and maintaining race horses.
- (2) **Maximum period for carry forward & set-off of losses:** Such loss can be carried forward for a maximum period of 4 assessment years immediately succeeding the assessment year for which the loss was first computed, for being set-off against the income from the activity of owning and maintaining race horses.
- (3) **Meaning of certain terms**

Term	Meaning
Amount of loss incurred by the assessee in the activity of owning and	(i) In case assessee has no income by way of stake money – amount of revenue expenditure incurred by the assessee wholly & exclusively for the purpose of maintaining race horses. (ii) In case assessee has income by way of stake money - The amount by which such income by way of stake money falls short of the

maintaining race horses	amount of revenue expenditure incurred by the assessee wholly & exclusively for the purpose of maintaining race horses. i.e. Loss = Stake money – revenue expenditure for the purpose of maintaining race horses.
Horse race	A horse race upon which wagering or betting may be lawfully made.
Income by way of stake money	The gross amount of prize money received on a race horse or race horses by the owner thereof on account of the horse or horses or any one or more of the horses winning or being placed second or in any lower position in horse races.

ILLUSTRATION 4

Mr. Dinesh has the following income for the P.Y. 2023-24-

Particulars	₹
Income from the activity of owning and maintaining the race horses	75,000
Income from textile business	95,000
Brought forward textile business loss (relating to A.Y. 2023-24)	50,000
Brought forward loss from the activity of owning and maintaining the race horses (relating to A.Y. 2021-22)	96,000

What is the total income in the hands of Mr. Dinesh for the A.Y. 2024-25?

SOLUTION

Total income of Mr. Dinesh for the A.Y. 2024-25

Particulars	₹	₹
Income from the activity of owning and maintaining race horses	75,000	
Less: Brought forward loss of ₹ 96,000 from the activity of owning and maintaining race horses set-off to the extent of ₹ 75,000	75,000	
	Nil	
Balance loss of ₹ 21,000 (₹ 96,000 – ₹ 75,000) from the activity of owning and maintaining race horses to be carried forward to A.Y. 2025-26		
Income from textile business	95,000	
Less: Brought forward business loss from textile business	50,000	45,000
Total income		45,000

Note: Loss from the activity of owning and maintaining race horses cannot be set-off against any other source/head of income.



7.14 CARRY FORWARD AND SET OFF OF LOSSES IN CASE OF CHANGE IN CONSTITUTION OF FIRM OR SUCCESSION [SECTION 78]

- (1) **Change in constitution of firm:** Where there is a change in the constitution of a firm, so much of the loss proportionate to the share of a retired or deceased partner remaining unabsorbed (i.e. so much of the loss proportionate to the share of a retired or deceased partner as exceeds his share of profits, if any, in the firm in respect of the previous year), shall not be allowed to be carried forward by the firm. However, unabsorbed depreciation can be carried forward without such restriction.
- (2) **Succession otherwise by inheritance:** Where any person carrying on any business or profession has been succeeded in such capacity by another person otherwise than by inheritance, such other person shall not be allowed to carry forward and set off against his income, any loss incurred by the predecessor.
- (3) **Succession by inheritance:** Where there is a succession by inheritance, the legal heirs are entitled to set-off the business loss of the predecessor. Such carry forward and set-off is possible even if the legal heirs constitute themselves as a partnership firm. In such a case, the firm can carry forward and set-off the business loss of the predecessor.



7.15 CARRY FORWARD AND SET OFF OF LOSSES IN CASE OF CLOSELY HELD COMPANIES [SECTION 79]

- (1) **Carry forward and set-off of losses in case of closely held company not being an eligible start-up referred to in section 80-IAC**

In the case of a company in which the public are not substantially interested and not being an eligible start-up referred to in section 80-IAC, 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% of the voting power were beneficially held by persons
- who beneficially held shares of the company carrying not less than 51% of the voting power on the last day of the year or years in which the loss was incurred.

(2) Carry forward and set-off of losses in case of closely held company being an eligible start-up referred to in section 80-IAC

In case of a company in which the public are not substantially interested but being an eligible start-up as referred to in section 80-IAC, any unabsorbed loss of the company shall be allowed to be carried forward and set off against the income of the previous year if either of the conditions are satisfied –

- (a) on the last day of the previous year, the shares of the company carrying not less than 51% of the voting power were beneficially held by persons who beneficially held shares of the company carrying not less than 51% of the voting power on the last day of the year or years in which the loss was incurred; or
- (b) all the shareholders of such company who held shares carrying voting power on the last day of the previous year or years in which the loss was incurred continue to hold those shares on the last day of such previous year in which the loss is to be set-off and such loss has been incurred during the period of **10 years** beginning from the year of incorporation of such company.

(3) Non-applicability of restriction

This restriction shall, however, not apply:

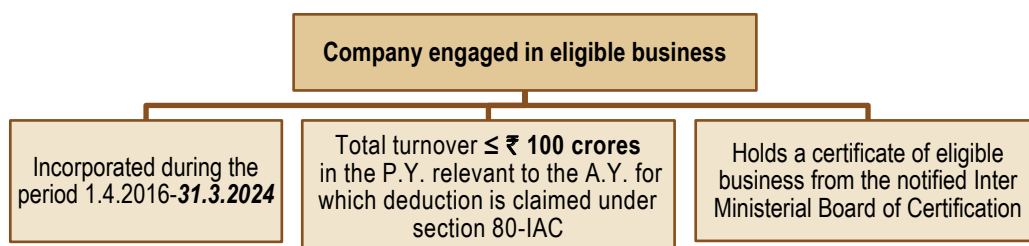
- (i) where a change in the voting power and shareholding takes place in a previous year consequent upon the death of a shareholder or on account of transfer of shares by way of gift to any relative of the shareholder making such gift;
- (ii) where any change in shareholding takes place in an Indian company, being a subsidiary of a foreign company, as a result of amalgamation or demerger of the foreign company. However, this is subject to the condition that 51% of the shareholders of the amalgamating/ demerged company continue to be shareholders of the amalgamated/ resulting foreign company.
- (iii) where a change in shareholding takes place in a previous year pursuant to a resolution plan approved under the Insolvency and Bankruptcy Code, 2016, after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner.
- (iv) to a company, and its subsidiary and the subsidiary of such subsidiary, where
 - (a) the Tribunal, on an application moved by the Central Government under section 241 of the Companies Act, 2013, has suspended the Board of

Directors of such company and has appointed new directors nominated by the Central Government, under section 242 of the said Act; and

- (b) a change in shareholding of a company, and its subsidiary and the subsidiary of such subsidiary, has taken place in a previous year pursuant to a resolution plan approved by the Tribunal under section 242 of the Companies Act, 2013 after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner.
- (v) to a company to the extent that a change in the shareholding has taken place during the previous year on account of
 - (a) relocation of a capital asset by the original fund to the resulting fund; and
 - (b) consequent transfer of a capital asset, being a share or unit or interest held by a shareholder or unitholder or interest holder in the original fund, in consideration for the share or unit or interest in the resultant fund [For the meaning of the terms “relocation”, “original fund” and “resultant fund”, please refer Chapter 4: Capital Gains]
- (vi) to an erstwhile public sector company which has become so as a result of strategic disinvestment by the Government (discussed in detail at 7.7) subject to the condition that the ultimate holding company of such erstwhile public sector company immediately after completion of the strategic disinvestment, continues to hold, directly or through its subsidiary or subsidiaries, 51% of the voting power of the erstwhile public sector company in aggregate.

However, if the above condition is not complied with in any previous year after the completion of strategic disinvestment, the restriction mentioned in (1) or (2) above shall apply for such previous year and subsequent previous year.

(4) Meaning of eligible start-up:



(5) **Meaning of eligible business:**

A business carried out by an eligible start-up engaged in –

- Innovation, development or improvement of products or processes or services or
- a scalable business model with a high potential of employment generation or wealth creation

(6) A company shall be a subsidiary of another company, if such other company holds more than half in nominal value of the equity share capital of the company.



7.16 NO SET OFF OF LOSSES AGAINST UNDISCLOSED INCOME BROUGHT TO TAX CONSEQUENT TO SEARCH, REQUISITION AND SURVEY [SECTION 79A]

(1) **No set-off of losses or unabsorbed depreciation against undisclosed income:** No loss (whether brought forward or otherwise) or unabsorbed depreciation under section 32(2) can be set-off against undisclosed income included in the total income of any previous year of an assessee [consequent to a search under section 132 or a requisition under section 132A or a survey under section 133A (other than a survey conducted for TDS verification under section 133A(2A))] while computing his total income for such previous year.

(2) **Meaning of undisclosed income:** Undisclosed income means -

(i) **Income represented by any money, bullion, jewellery or other valuable article or thing or any entry in the books of account:** Any income of the previous year represented, either wholly or partly, by any money, bullion, jewellery or other valuable article or thing or any entry in the books of account or other documents or transactions found in the course of a search under section 132 or a requisition under section 132A or a survey under section 133A [other than under section 133A(2A)], which has -

- (A) **not been recorded on or before the date of search or requisition or survey**, as the case may be, in the books of account or other documents maintained in the normal course relating to such previous year; or
- (B) **not been disclosed** to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner before the date of search or requisition or survey, as the case may be; or

- (ii) **Income represented by any entry in respect of an expense:** Any income of the previous year represented, either wholly or partly, by any entry in respect of an expense recorded in the books of account or other documents maintained in the normal course relating to the previous year **which is found to be false** and which would not have been found to be so, had the search not been initiated or the survey not been conducted or the requisition not been made.



7.17 ORDER OF SET OFF OF LOSSES

As per the provisions of section 72(2), brought forward business loss is to be set-off before setting off unabsorbed depreciation. Therefore, the order in which set-off will be effected is as follows -

- (1) Current year depreciation under section 32(1)
- (2) Current year capital expenditure on scientific research and current year expenditure on family planning, to the extent allowed.
- (3) Brought forward loss from business/profession [Section 72(1)]
- (4) Unabsorbed depreciation [Section 32(2)]
- (5) Unabsorbed capital expenditure on scientific research [Section 35(4)]
- (6) Unabsorbed expenditure on family planning [Section 36(1)(ix)].

ILLUSTRATION 5

Mr. Varun has furnished his details for the A.Y.2024-25 as under:

Particulars	₹
Income from salaries (computed)	1,70,000
Income from speculation business	60,000
Loss from non-speculation business	(40,000)
Short term capital gain	90,000
Long term capital loss of A.Y.2022-23	(30,000)
Winning from lotteries (gross)	20,000

What is the taxable income of Mr. Varun for the A.Y.2024-25?

SOLUTION

Computation of taxable income of Mr. Varun for the A.Y.2024-25

Particulars	₹	₹
Income from salaries		1,70,000
Income from speculation business	60,000	
Less: Loss from non-speculation business	(40,000)	20,000
Short-term capital gain		90,000
Winnings from lotteries		20,000
Taxable income		3,00,000

Note: Long term capital loss can be set off only against long term capital gain. Therefore, long term capital loss of ₹ 30,000 has to be carried forward to the next assessment year.

ILLUSTRATION 6

Compute the gross total income of Mr. Fadnis for the A.Y.2024-25 from the information given below –

Particulars	₹
Income from house property (computed)	1,25,000
Income from business (before providing for depreciation)	1,35,000
Short-term capital gains on sale of shares	56,000
Long-term capital loss from sale of property (brought forward from A.Y.2021-22)	(90,000)
Income from tea business	1,20,000
Dividend from Indian companies carrying on agricultural operations (Gross)	1,20,000
Current year depreciation	26,000
Brought forward business loss (loss incurred six years ago)	(45,000)

SOLUTION

Gross Total Income of Mr. Fadnis for the A.Y. 2024-25

Particulars	₹	₹
Income from house property		1,25,000
Income from business		
Profits before depreciation	1,35,000	

Less: Current year depreciation	26,000	
	1,09,000	
Income from tea business (40% is business income)	48,000	
	1,57,000	
Less: Brought forward business loss	45,000	1,12,000
Income from the capital gains		
Short-term capital gains		56,000
Income from Other Sources		
Dividend from Indian companies is chargeable to tax in the hands of shareholders		1,20,000
Gross Total Income		4,13,000

Notes:

- (1) Dividend from Indian companies of ₹ 1,20,000 is taxable in the hands of shareholders at normal rate of tax.
- (2) 60% of the income from tea business is treated as agricultural income and therefore, exempt from tax.
- (3) Long-term capital loss can be set-off only against long-term capital gains. Therefore, long-term capital loss of ₹ 90,000 brought forward from A.Y.2021-22 cannot be set-off in the A.Y.2024-25. It has to be carried forward for set-off against long-term capital gains, if any, during A.Y.2025-26.



7.18 SUBMISSION OF RETURN OF LOSSES [SECTION 80]

As per section 80,

- business loss to be carried forward under section 72(1)
- speculation business loss to be carried forward under section 73(2)
- loss from specified business to carried forward under section 73A(2)
- loss under the head "Capital Gains" to be carried forward under section 74(1) and
- loss incurred in the activity of owning and maintaining race horses to be carried forward under section 74A(3).

which has not been determined in pursuance of a return filed under section 139(3) cannot be carried forward and set-off. Thus, the assessee must have filed a return of loss under section 139(3) in order to carry forward and set off of such losses. Such a return of loss should be filed within the time allowed under section 139(1).

In other words, the non-filing of a return of loss disentitles the assessee from carrying forward the above specified losses sustained by him. Such a return should be filed within the time allowed under section 139(1).

This condition does not apply to a loss from house property carried forward under section 71B and unabsorbed depreciation carried forward under section 32(2).

SIGNIFICANT SELECT CASES

Pramod Mittal v. CIT (2013) 356 ITR 456 (Delhi)

Issue	Analysis & Decision
Can the loss suffered by an erstwhile partnership firm, which was dissolved, be carried forward for set-off by the individual partner who took over the business of the firm as a sole proprietor, considering the succession as a succession by inheritance?	The partnership firm was dissolved and the take over 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 for set-off against his income is not allowed. Note - In <i>CIT v. Madhukant M. Mehta</i> (2001) 247 ITR 805 (SC), the sole proprietor had expired and after his death, the heirs succeeded the business as a partnership concern. Therefore, the losses suffered by the deceased proprietor was allowed to be set-off by the partnership firm since the case falls within the exception mentioned u/s 78(2), i.e., a case of succession by inheritance. Also, in <i>Saroj Aggarwal v. CIT</i> (1985) 156 ITR 497 (SC), upon death of a partner, his legal heirs were inducted as partners in the partnership firm. The partnership firm was not dissolved on the death of the partner. The partnership firm which suffered the losses continued with induction of the legal heirs of the deceased partner. This, being a case of succession by inheritance, the benefit of carry forward of losses was given to the re-constituted partnership firm. In the present case, however, the partnership firm was dissolved and the take over 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.

TEST YOUR KNOWLEDGE

Questions

1. X carrying on a business as sole proprietor, died on 31st March, 2024. On his death, the same business was continued by his legal heirs, by forming a firm. As on 31st March 2024, a determined business loss of ₹ 5 lakhs is to be carried forward under the Income-tax Act, 1961.

Does the firm consisting of all legal heirs of Mr. X, get a right to have this loss adjusted against its current income?

2. ABC Limited owning an industrial undertaking was amalgamated with XYZ Limited on 01.04.2023. All the conditions of section 2(1B) were satisfied.

ABC Limited has the following brought forward losses as assessed till the Assessment Year 2023-24:

	Particulars	₹ (in lakhs)
(i)	Speculative Loss	4
(ii)	Unabsorbed Depreciation	18
(iii)	Unabsorbed expenditure of capital nature on scientific research	2
(iv)	Business Loss	120

XYZ Limited has computed a profit of ₹ 140 lacs for the financial year 2023-24 before setting off the eligible losses of ABC Limited but after providing depreciation at 15% per annum on ₹ 150 lacs, being the consideration at which plant and machinery were transferred to XYZ Limited. The written down value as per Income-tax record of ABC Limited as on 1st April, 2023 was ₹ 100 lacs.

The above profit of XYZ Limited includes speculative profit of ₹ 10 lacs.

Compute the total income of XYZ Limited for Assessment Year 2024-25 and indicate the losses/ other allowances to be carried forward by it.

3. Examine in brief about the treatment to be given in the following case under the Income-tax Act, 1961, for A.Y.2024-25:

A loss of ₹ 85,000 was sustained by Simran in the activity of owning and maintaining camels for races.

4. *M/s. JKLM, a firm, consists of four partners namely, J, K, L and M. They shared profits and losses equally during the year ended 31.3.2023. The assessed business loss of the firm for the assessment year 2023-24 which it is entitled to carry forward amounts to ₹ 3,60,000. A new deed of partnership was executed among J, K, L and M on 1.4.2023 in terms of which they agreed to share profits and losses in the ratio of 15:15:20:50 respectively.*

Compute the amount of business loss relating to the assessment year 2023-24, which the firm is entitled to set off against its business income for the assessment year 2024-25. The business income of the firm for the assessment year 2024-25 is ₹ 3,30,000. Your answer should be supported by reasons.

5. *An assessee sustained a loss under the head "Income from house property" in the previous year relevant to the assessment year 2023-24, which could not be set off against income from any other head in that assessment year. The assessee did not furnish the return of loss within the time allowed under section 139(1) in respect of the relevant assessment year. However, the assessee filed the return within the time allowed under section 139(4). Can the assessee carry forward such loss for set off against income from house property of the assessment year 2024-25?*

Answers

1. Section 78(2) provides that where a person carrying on any business or profession has been succeeded in such capacity by another person, otherwise than by inheritance, then, the successor is not entitled to carry forward and set-off the loss of the predecessor against his income. This implies that generally, set-off of business losses should be claimed by the same person who suffered the loss and the only exception to this provision is when the business passes on to another person by inheritance.

The facts of case given in the question are similar to the case *CIT v. Madhukant M. Mehta* (2001) 247 ITR 805, where the Supreme Court has held that if the business is succeeded by inheritance, the legal heirs are entitled to the benefit of carry forward of the loss of the predecessor. Even if the legal heirs constitute themselves as a partnership firm, the benefit of carry forward and set off of the loss of the predecessor would be available to the firm.

In this case, the business of X was continued by his legal heirs after his death by constituting a firm. Hence, the exception contained in section 78(2) along with the decision of the Apex Court discussed above, would apply in this case. Therefore, the firm is entitled to carry forward the business loss of ₹ 5 lakhs of X.

2. Computation of total income of XYZ Limited for the A.Y. 2024-25

Particulars	(₹ in lakhs)	
Business income before setting-off brought forward losses of ABC Ltd.		140.00
Add: Excess depreciation claimed in the scheme of amalgamation of ABC Limited with XYZ Limited.		
Value at which assets are transferred by ABC Ltd.	150	
WDV in the books of ABC Ltd.	100	
Excess accounted	50	
Excess depreciation claimed in computing taxable income of XYZ Ltd. [₹ 50 lacs × 15 %] [Explanation 2 to section 43(6)]		7.50
		147.50
Set-off of brought forward business loss of ABC Ltd. (See Notes 2 & 4)		(120.00)
Set-off of unabsorbed depreciation under section 32(2) read with section 72A (See Notes 2 & 4)		(18.00)
Set-off of unabsorbed capital expenditure under section 35(1)(iv) read with section 35(4) (See Note 5)		(2.00)
Business income		7.50

Notes:

1. It is presumed that the amalgamation is within the meaning of section 72A of the Income-tax Act, 1961.
2. In the case of amalgamation of companies, the unabsorbed losses and unabsorbed depreciation of the amalgamating company shall be deemed to be the loss or unabsorbed depreciation of the amalgamated company for the previous year in which the amalgamation was effected and such business loss and unabsorbed depreciation shall be carried forward and set-off by the amalgamated company for a period of 8 years and indefinitely, respectively.
3. As per section 72A(7), the accumulated loss to be carried forward specifically excludes loss sustained in a speculative business. Therefore, speculative loss of ₹ 4 lacs of ABC Ltd. cannot be carried forward by XYZ Ltd.
4. Section 72(2) provides that where any allowance or part thereof unabsorbed under section 32(2) (i.e., unabsorbed depreciation) or section 35(4) (i.e., unabsorbed

scientific research capital expenditure) is to be carried forward, effect has to be first given to brought forward business losses under section 72.

5. Section 35(4) provides that the provisions of section 32(2) relating to unabsorbed depreciation shall apply in relation to deduction allowable under section 35(1)(iv) in respect of capital expenditure on scientific research related to the business carried on by the assessee. Therefore, unabsorbed capital expenditure on scientific research can be set-off and carried forward in the same manner as unabsorbed depreciation.
6. The restriction contained in section 73 is only regarding set-off of loss computed in respect of speculative business. Such a loss can be set-off only against profits of another speculation business and not non-speculation business. However, there is no restriction under the Income-tax Act, 1961 regarding set-off of normal business losses against speculative income. Therefore, normal business losses can be set-off against profits of a speculative business.

Consequently, there is no loss or allowance to be carried forward by XYZ Ltd. to the F.Y. 2024-25.

3. Section 74A(3) lays down the provisions for set-off and carry forward of loss from the activity of owning and maintaining race horses. According to provisions of section 74A(3), the losses incurred by an assessee from the activity of owning and maintaining race horses cannot be set-off against the income from any other source other than the activity of owning and maintaining race horses. Since the scope of this section is confined to the activity of owning and maintaining race horses only, therefore, set-off and carry forward of loss from the activity of owning and maintaining camels is not covered under section 74A(3).

It is possible to take a view that the loss from the activity of owning and maintaining camels for races may be governed by section 72 provided such activity amounts to business. Accordingly, the loss from the activity of owning and maintaining of camels for races can be set-off against any income (other than income from salary) of current year and unadjusted amount shall be carried forward for set off against any business income for a maximum period of 8 assessment years immediately succeeding the assessment year in which the loss was incurred.

4. The firm is entitled to set off its brought forward business loss amounting to ₹ 3,60,000 relating to the assessment year 2023-24 to the extent of ₹ 3,30,000 against its business

income of ₹ 3,30,000 for the assessment year 2024-25, as per the provisions of section 72(1).

The balance unabsorbed business loss of ₹ 30,000 relating to the assessment year 2023-24 will be carried forward to assessment year 2025-26.

Section 78(1) which deals with carry forward and set-off of losses in the case of change in constitution of firm is applicable only where there is retirement or death of a partner. **It is not applicable to a case where there is a change in the ratio of sharing profits and losses amongst the existing partners.** Therefore, section 78(1) is not applicable to the case of M/s. JKLM.

5. Section 139(3) stipulates that an assessee claiming carry forward of loss under the heads "Profits and gains of business or profession" or "Capital gains" should furnish the return of loss within the time stipulated under section 139(1). There is no reference to loss under the head "Income from house property" in section 139(3). The assessee, in the instant case, has filed the return showing loss from property within the time prescribed under section 139(4). The assessee is, therefore, entitled to carry forward such loss for set off against the income from house property of the subsequent assessment year.

[illegible]

DEDUCTIONS FROM GROSS TOTAL INCOME

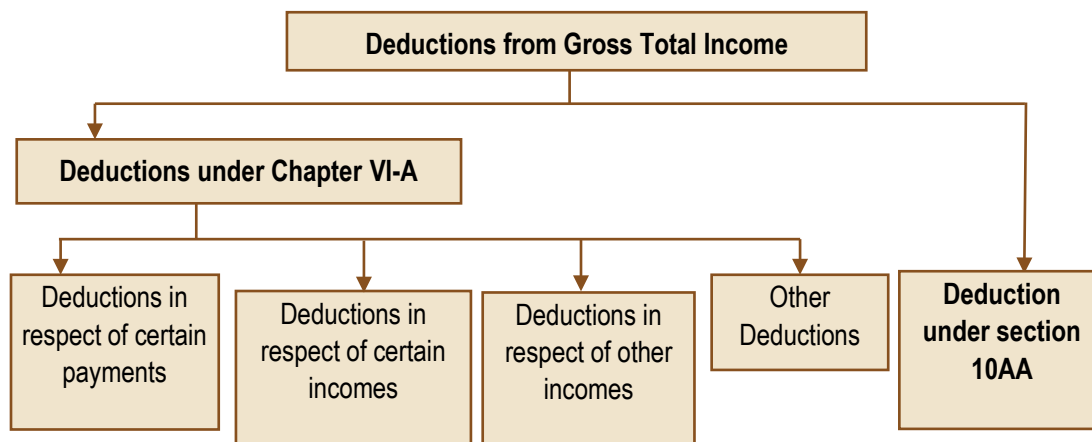


LEARNING OUTCOMES

After studying this chapter, you would be able to:

- ❑ **appreciate** the general provisions contained in “A – General” of Chapter VI-A relating to deductions to be made in computing total income;
- ❑ **analyse and apply** the provisions of Chapter VI-A contained in “B – Deductions in respect of certain payments” in problem solving and addressing related issues;
- ❑ **appreciate** the provisions of Chapter VI-A contained in “C – Deductions in respect of certain incomes” and “CA – Deductions in respect of other incomes”, and **analyse and apply** the provisions in problem solving and addressing related issues;
- ❑ **compute** the deduction allowable in the case of a person with disability under section 80U;
- ❑ **compute** the aggregate deduction available under Chapter VI-A to an assessee, if available, and thereafter, arrive at the total income of the assessee;
- ❑ **compute** the deduction available under section 10AA for units established in SEZs considering the conditions specified thereunder.

CHAPTER OVERVIEW



8.1 GENERAL PROVISIONS

As we have seen earlier, section 10 exempts certain incomes. Such income are excluded from the total income and do not enter into the computation process at all. On the other hand, Chapter VI-A contains deductions from gross total income. Section 10AA also provides for a deduction in respect of units established in SEZ from the total income of the assessee. The important point to be noted here is that if there is no gross total income, then no deductions will be permissible.

This Chapter contains deductions in respect of certain payments, deductions in respect of certain incomes, deductions in respect of other income and other deductions. It also includes deduction under section 10AA.

Section 80A

- (1) Section 80A(1) provides that in computing the total income of an assessee, there shall be allowed from his gross total income, the deductions specified in sections 80C to 80U.
- (2) According to section 80A(2), the aggregate amount of the deductions under this chapter shall not, in any case, exceed the gross total income of the assessee. Therefore, the total income after deductions will either be positive or nil. It cannot be negative due to deductions.

An assessee cannot have a loss as a result of the deduction under Chapter VI-A and claim to carry forward the same for the purpose of set-off against his income in the subsequent year.

- (3) Section 80A(3) provides that in the case of AOP/BOI, if any deduction is admissible under section 80G/80GGA/80GGC/80-IA/80-IB/80-ID/80-IE, no deduction under the same section shall be made in computing the total income of a member of the AOP or BOI in relation to the share of such member in the income of the AOP or BOI.
- (4) The profits and gains allowed as deduction under section 10AA or under any provision of Chapter VI-A under the heading "C.-Deductions in respect of certain incomes" in any assessment year, shall not be allowed as deduction under any other provision of the Act for such assessment year [Section 80A(4)];
- (5) The deduction, referred to in (4) above, shall not exceed the profits and gains of the undertaking or unit or enterprise or eligible business, as the case may be [Section 80A(4)];
- (6) No deduction under any of the provisions referred to in (4) above, shall be allowed if the deduction has not been claimed in the return of income [Section 80A(5)];
- (7) The transfer price of goods and services between such undertaking or unit or enterprise or eligible business and any other business of the assessee shall be determined at the market value of such goods or services as on the date of transfer. This is notwithstanding anything to the contrary contained in section 10AA or in any provision of Chapter VI-A under the heading "C- Deductions in respect of certain incomes" [Section 80A(6)].
- (8) For this purpose, the expression "market value" has been defined to mean,-
 - (a) in relation to any goods or services sold or supplied, the price that such goods or services would fetch if these were sold by the undertaking or unit or enterprise or eligible business in the open market, subject to statutory or regulatory restrictions, if any;
 - (b) in relation to any goods or services acquired, the price that such goods or services would cost if these were acquired by the undertaking or unit or enterprise or eligible business from the open market, subject to statutory or regulatory restrictions, if any;
 - (c) if it is a specified domestic transaction referred to in section 92BA, - in relation to any goods or services sold, supplied or acquired means the arm's length price as defined in section 92F(ii) of such goods or services.
- (9) Where a deduction under any provision of this Chapter under the heading "C – Deductions in respect of certain incomes" is claimed and allowed in respect of the profits of such specified business for any assessment year, no deduction under section 35AD is permissible in relation to such specified business for the same or any other assessment year.

In short, once the assessee has claimed the benefit of deduction under section 35AD for a particular year in respect of a specified business, he cannot claim benefit under Chapter VI-A under the heading “C.-Deductions in respect of certain incomes” for the same or any other year and *vice versa*.

Section 80AB

This section provides that for the purpose of calculation of deductions specified in Chapter VI-A under the heading “C - Deductions in respect of certain incomes”, the income computed in accordance with the provisions of the Act (before making any deduction under Chapter VI-A) shall alone be regarded as income received by the assessee and which is included in his gross total income. Accordingly, the deductions specified in the aforesaid sections will be calculated with reference to the net income as computed in accordance with the provisions of the Act (before making deduction under Chapter VI-A) and not with reference to the gross amount of such income. This is notwithstanding anything contained in the respective sections of Chapter VI-A.

Section 80AC: Furnishing return of income on or before due date mandatory for claiming deduction under Chapter VI-A under the heading “C.- Deductions in respect of certain incomes”

- (1) Section 80AC stipulates compulsory filing of return of income on or before the due date specified under section 139(1), as a pre-condition for availing benefit of deductions under any provision of Chapter VI-A under the heading “C. – Deductions in respect of certain incomes”.

Table showing the deductions contained in Chapter VI-A under the heading “C. – Deductions in respect of certain income”

Section	Deduction
80-IA	Deductions in respect of profits and gains from undertakings or enterprises engaged in infrastructure development/ operation/ maintenance, generation/ transmission/ distribution of power etc.
80-IAB	Deduction in respect of profits and gains derived by an undertaking or enterprise engaged in development of SEZ
80-IAC	Deduction in respect of profits and gains derived by an eligible start-up from an eligible business
80-IB	Deduction in respect of profits and gains from certain industrial undertakings other than infrastructure development undertakings
80-IBA	Deduction in respect of profits and gains from housing projects/rental housing projects

80-IE	Deduction in respect of profits and gains from manufacture or production of eligible article or thing, substantial expansion to manufacture or produce any eligible article or thing or carrying on of eligible business in North-Eastern States
80JJA	Deduction in respect of profits and gains from business of collecting and processing of bio-degradable waste
80JJAA	Deduction in respect of employment of new employees
80LA	Deduction in respect of certain income of Offshore Banking Units and International Financial Services Centre
80M	Deduction in respect of certain inter-corporate dividends
80P	Deduction in respect of income of co-operative societies
80PA	Deduction in respect of certain income of Producer Companies
80QQB	Deduction in respect of royalty income, etc., of authors of certain books other than text books
80RRB	Deduction in respect of royalty on patents

- (2) The effect of this provision is that in case of failure to file return of income on or before the stipulated due date, the undertakings would lose the benefit of deduction under these sections.

ILLUSTRATION 1

Examine the following statements with regard to the provisions of the Income-tax Act, 1961:

- (a) *For grant of deduction u/s 80-IB, filing of audit report in prescribed form is must for a corporate assessee; filing of return within the due date laid down in section 139(1) is not required.*
- (b) *Filing of belated return under section 139(4) of the Income-tax Act, 1961 will debar an assessee from claiming deduction under section 80-IE.*

SOLUTION

- (a) **The statement is not correct.** Section 80AC stipulates compulsory filing of return of income on or before the due date specified under section 139(1), as a pre-condition for availing the benefit of deduction, *inter alia*, under section 80-IB.
- (b) **The statement is correct.** As per section 80AC, the assessee has to furnish his return of income on or before the due date specified under section 139(1), to be eligible to claim deduction under, *inter alia*, section 80-IE.

Section 80B(5)

“Gross total income” means the total income computed in accordance with the provisions of the Act without making any deduction under Chapter VI-A. “Computed in accordance with the provisions of the Act” implies —

- (1) that deductions under appropriate computation section have already been given effect to;
- (2) that income of other persons, if includible under sections 60 to 64, has been included;
- (3) the intra head and/or inter head losses have been adjusted; and
- (4) that unabsorbed business losses, unabsorbed depreciation etc., have been set-off.

Two types of deductions are allowable from Gross Total Income - Deductions under Chapter VI-A and Deduction under section 10AA which are discussed in this chapter.

Let us first consider the deductions allowable in respect of certain payments.



8.2 DEDUCTIONS IN RESPECT OF PAYMENTS

(1) Deduction in respect of investment in specified assets [Section 80C]

Section 80C provides for a deduction from the Gross Total Income, of savings in specified modes of investments. The deduction under section 80C is available only to an individual or HUF.

Note - The deduction under section 80C is available only to an individual or HUF exercising the option of shifting out of the default tax regime provided under section 115BAC(1A). It is not available under the default tax regime under section 115BAC.

The maximum permissible deduction under section 80C is ₹ 1,50,000. The following are the investments/contributions eligible for deduction –

(i) Contribution in Unit-linked Insurance Plan 1971

Contributions in the name of the individual, his or her spouse or any child of the individual for participation in the Unit-linked Insurance Plan 1971. In case of a HUF, the contribution can be in the name of any member.

(ii) Contribution in Unit-linked Insurance Plan of LIC Mutual Fund

Contributions in the name of the individual, his or her spouse or any child of the individual for participation in any Unit linked Insurance Plan of the LIC Mutual Fund. In case of a HUF, the contribution can be in the name of any member.

(iii) Premium paid in respect of life insurance policy

Premium paid for insurance on the life of the individual, spouse or any child (minor or major) and in the case of HUF, any member thereof. This will include a life policy and an endowment policy.

The following is a tabular summary of the deduction allowable under section 80C *vis-à-vis* the date of issue of such policies –

	Deduction u/s 80C	
In respect of policies issued before 31.3.2012	Premium paid to the extent of 20% of “actual capital sum assured”	
In respect of policies issued on or after 1.4.2012 but before 1.4.2013	Premium paid to the extent of 10% of “actual capital sum assured”	
In respect of policies issued on or after 1.4.2013	(a)	Where the insurance is on the life of a person with disability or severe disability as referred to in section 80U or a person suffering from disease or ailment as specified under section 80DDB.
		Premium paid to the extent of 15% of “actual capital sum assured”
	(b)	Where the insurance is on the life of any person, other than mentioned in (a) above
		Premium paid to the extent of 10% of “actual capital sum assured”
Meaning of actual capital sum assured - Minimum amount assured under the policy on happening of the insured event at any time during the term of the policy, not taking into account– (i) the value of any premium agreed to be returned; or (ii) any benefit by way of bonus or otherwise over and above the sum actually assured, which is to be or may be received under the policy by any person.		

ILLUSTRATION 2

Compute the eligible deduction under section 80C for A.Y.2024-25 in respect of life insurance premium paid by Mr. Hari during the P.Y.2023-24, the details of which are given hereunder, if Mr. Hari has exercised the option of shifting out of the default tax regime provided under section 115BAC(1A) -

	<i>Date of issue of policy</i>	<i>Person insured</i>	<i>Actual capital sum assured (₹)</i>	<i>Insurance premium paid during 2023-24 (₹)</i>
(i)	30/3/2012	Self	8,00,000	48,000
(ii)	1/5/2018	Spouse	1,50,000	20,000
(iii)	1/6/2021	Handicapped son (section 80U disability)	4,00,000	80,000

SOLUTION

	<i>Date of issue of policy</i>	<i>Person insured</i>	<i>Actual capital sum assured (₹)</i>	<i>Insurance premium paid during 2023-24 (₹)</i>	<i>Deduction u/s 80C for A.Y.2024-25 (₹)</i>	<i>Remark (restricted to % of actual capital sum assured)</i>
(i)	30/3/2012	Self	8,00,000	48,000	48,000	20%
(ii)	1/5/2018	Spouse	1,50,000	20,000	15,000	10%
(iii)	1/6/2021	Handicapped son (section 80U disability)	4,00,000	80,000	60,000	15%
Total					1,23,000	

ILLUSTRATION 3

What would your answer if Mr. Hari pays tax under default tax regime under section 115BAC?

SOLUTION

If Mr. Hari pays tax under default tax regime under section 115BAC, he would not be eligible for deduction under section 80C.

(iv) Premium paid in respect of a contract for deferred annuity

Premium paid to effect and keep in force a contract for a deferred annuity on the life of the individual and/or his or her spouse or any child, provided such contract does not contain any provision for the exercise by the insured of an option to receive cash payments in lieu of the payment of the annuity.

It is pertinent to note here that a contract for a deferred annuity need not necessarily be with an insurance company. It follows therefore that such a contract can be entered into with any person.

(v) Any sum deducted from the salary payable of a Government employee for securing a deferred annuity

Amount deducted by or on behalf of the Government from the salary of a Government employee in accordance with the conditions of his service for securing a deferred annuity or making provisions for his spouse or children. The excess, if any, over one-fifth of the salary is to be ignored.

(vi) Contribution to SPF/PPF/RPF

Contributions to any provident fund to which the Provident Funds Act, 1925 applies and recognized provident fund qualifies for deduction under section 80C.

Contribution made to any Provident Fund set up by the Central Government and notified in his behalf (i.e., the Public Provident Fund established under the Public Provident Fund Scheme, 1968) also qualifies for deduction under section 80C. Such contribution can be made in the name of the individual, his spouse and any child of the individual; and any member of the family, in case of a HUF. The maximum limit for deposit in PPF is ₹ 1,50,000 in a year.

ILLUSTRATION 4

An individual assessee, resident in India, has made the following deposit/payment during the previous year 2023-24:

Particulars	₹
Contribution to the public provident fund	1,50,000
Insurance premium paid on the life of the spouse (policy taken on 1.4.2018) (Assured value ₹ 3,00,000)	36,000

What is the deduction allowable under section 80C for A.Y.2024-25 if the assessee has exercised the option of shifting out of the default tax regime provided under section 115BAC(1A)?

SOLUTION

Computation of deduction under section 80C for A.Y.2024-25

Particulars	₹
Deposit in public provident fund	1,50,000

Insurance premium paid on the life of the spouse (Maximum 10% of the assured value ₹ 3,00,000, as the policy is taken after 31.3.2012)	30,000
Total	1,80,000
However, the maximum permissible deduction u/s 80C is restricted to	1,50,000

(vii) Contribution to approved superannuation Fund

Contribution by an employee to an approved superannuation fund qualifies for deduction under section 80C.

(viii) Any sum paid or deposited in Sukanya Samridhi Account

Subscription to any such security of the Central Government or any such deposit scheme as the Central Government as may notify in the Official Gazette. Accordingly, Sukanya Samridhi Scheme has been notified to provide that any sum paid or deposited during the previous year in the said Scheme, by an individual in the name of –

- (a) any girl child of the individual; or
- (b) any girl child for whom such individual is the legal guardian

would be eligible for deduction under section 80C.

Exemption on payment from Sukanya Samridhi Account [Section 10(11A)]

Section 10(11A) provides that any payment from an account opened in accordance with the Sukanya Samridhi Account Rules, 2014, made under the Government Savings Bank Act, 1873, shall **not** be included in the total income of the assessee. Accordingly, the interest accruing on deposits in, and withdrawals from any account under the said scheme would be exempt.

(ix) Subscription to National Savings Certificates VIII

Subscription to any Savings Certificates under the Government Savings Certificates Act, 1959 notified by the Central Government in the Official Gazette (i.e. National Savings Certificate (VIII Issue) issued under the Government Savings Certificates Act, 1959).

(x) Contribution to approved annuity plan of LIC

Contributions to approved annuity plans of LIC (New Jeevan Dhara and New Jeevan Akshay, New Jeevan Dhara I and New Jeevan Akshay I, II and III) or any other insurer (Tata AIG Easy Retire Annuity Plan of Tata AIG Life Insurance Company Ltd.) as the Central Government may, by notification in the Official Gazette, specify in this behalf.

(xi) Subscription towards notified units of mutual fund or UTI

Subscription to any units of any mutual fund referred to in section 10(23D) or from the Administrator or the specified company under any plan formulated in accordance with such scheme notified by the Central Government;

(xii) Contribution to notified pension fund set up by mutual fund or UTI

Contribution by an individual to a pension fund set up by any Mutual Fund referred to in section 10(23D) or by the Administrator or the specified company as the Central Government may specify (i.e., UTI-Retirement Benefit Pension Fund set up by the specified company referred to in section 2(h) of the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002 as a pension fund).

“Specified company” means a company formed and registered under the Companies Act, 1956¹ and whose entire capital is subscribed by such financial institutions or banks as may be specified by the Central Government, by notification in the Official Gazette, for the purpose of transfer and vesting of the undertaking

“Administrator” means a person or a body of persons appointed as Administrator by the Central Government. The Central Government shall appoint a person or a body of persons, as the “Administrator of the specified undertaking of the Unit Trust of India” for the purpose of taking over the administration thereof and the Administrator shall carry on the management of the specified undertaking of the Trust for and on behalf of the Central Government.

“Specified undertaking” includes all business, assets, liabilities and properties of the Trust representing and relatable to the schemes and Development Reserve Fund.

(xiii) Contribution to National Housing Bank (Tax Saving) Term Deposit Scheme, 2008

Subscription to any deposit scheme or contribution to any pension fund set up by the National Housing Bank i.e., National Housing Bank (Tax Saving) Term Deposit Scheme, 2008.

(xiv) Subscription to notified deposit scheme

Subscription to any such deposit scheme of

- a public sector company which is engaged in providing long-term finance for construction, or purchase of houses in India for residential purposes or

¹ Now Companies Act, 2013

- any such deposit scheme of any authority constituted in India by or under any law enacted either for the purpose of dealing with and satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, towns and villages or for both.

The deposit scheme should be notified by the Central Government, for example, public deposit scheme of HUDCO.

(xv) *Payment of tuition fees to any university, college, school or other educational institutions within India for full-time education for maximum 2 children*

Payment of tuition fees by an individual assessee at the time of admission or thereafter to any university, college, school or other educational institutions within India for the purpose of full-time education of any **two children** of the individual. This benefit is only for the amount of tuition fees for full-time education and shall not include any payment towards development fees or donation or payment of similar nature and payment made for education to any institution situated outside India.

(xvi) *Repayment of housing loan including stamp duty, registration fee and other expenses*

Any payment made towards the cost of purchase or construction of a new residential house property. The income from such property –

- (1) should be chargeable to tax under the head “Income from house property”;
- (2) would have been chargeable to tax under the head “Income from house property” had it not been used for the assessee’s own residence.

The approved types of payments are as follows:

- (1) Any instalment or part payment of the amount due under any self-financing or other schemes of any development authority, Housing Board or other authority engaged in the construction and sale of house property on ownership basis; or
- (2) Any instalment or part payment of the amount due to any company or a cooperative society of which the assessee is a shareholder or member towards the cost of house allotted to him; or
- (3) Repayment of amount borrowed by the assessee from:
 - (a) The Central Government or any State Government;
 - (b) Any bank including a co-operative bank;

- (c) The Life Insurance Corporation;
 - (d) The National Housing Bank;
 - (e) Any public company formed and registered in India with the main object of carrying on the business of providing long-term finance for construction or purchase of houses in India for residential purposes which is eligible for deduction under section 36(1)(viii);
 - (f) Any company in which the public are substantially interested or any cooperative society engaged in the business of financing the construction of houses;
 - (g) The assessee's employer, where such employer is an authority or a board or a corporation or any other body established or constituted under a Central or State Act;
 - (h) The assessee's employer where such employer is a public company or public sector company or a university established by law or a college affiliated to such university or a local authority or a co-operative society.
- (4) Stamp duty, registration fee and other expenses for the purposes of transfer of such house property to the assessee.

Inadmissible payments: However, the following amounts do not qualify for rebate:

- (1) admission fee, cost of share and initial deposit which a shareholder of a company or a member of a co-operative society has to pay for becoming a shareholder or member; or
- (2) the cost of any addition or alteration or renovation or repair of the house property after the issue of completion certificate in respect of the house property or after the house has been occupied by the assessee or any person on his behalf or after it has been let out; or
- (3) any expenditure in respect of which deduction is allowable under section 24.

(xvii) Subscription to certain equity shares or debentures

Subscription to equity shares or debentures forming part of any eligible issue of capital approved by the Board on an application made by a public company or as subscription to any eligible issue of capital by any public financial institution in the prescribed form.

A lock-in period of three years is provided in respect of such equity shares or debentures. In case of any sale or transfer of shares or debentures within three years of the date of acquisition, the aggregate amount of deductions allowed in respect of such equity shares or debentures in the previous year or years preceding the previous year in which such sale or transfer has taken place shall be deemed to be the income of the assessee of such previous year and shall be liable to tax in the assessment year relevant to such previous year.

A person shall be treated as having acquired any shares or debentures on the date on which his name is entered in relation to those shares or debentures in the register of members or of debenture-holders, as the case may be, of the public company.

(xviii) Subscription to certain units of mutual fund

Subscription to any units of any mutual fund referred to in section 10(23D) and approved by the Board on an application made by such mutual fund in the prescribed form.

It is necessary that such units should be subscribed only in the eligible issue of capital of any company.

Eligible issue of capital for (xvii) and (xviii) means an issue made by a public company formed and registered in India or a public financial institution and the entire proceeds of the issue are utilised wholly and exclusively for the purposes of any business referred to in section 80-IA(4).

(xix) Investment in five year Term Deposit

Investment in term deposit -

- (1) for a period of not less than five years with a scheduled bank; and
- (2) which is in accordance with a scheme framed and notified by the Central Government in the Official Gazette

qualifies as an eligible investment for availing deduction under section 80C.

The maximum limit for investment in term deposit is ₹ 1,50,000.

Scheduled bank means -

- (1) the State Bank of India
- (2) a subsidiary bank of SBI, or
- (3) a corresponding new bank constituted under section 3 of the -

- (a) Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970, or
- (b) Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980, or
- (4) any other bank, being a bank included in the Second Schedule to the Reserve Bank of India Act, 1934.

(xx) Subscription to notified bonds issued by NABARD

Subscription to such bonds issued by NABARD (as the Central Government may notify in the Official Gazette) qualifies for deduction under section 80C.

(xxi) Deposit in Senior Citizens Savings Scheme Rules, 2004

Deposit in an account under the Senior Citizens Savings Scheme Rules, 2004 qualifies for deduction under section 80C.

(xxii) Investment in five year Post Office time deposit

Investment in five year time deposit in an account under Post Office Time Deposit Rules, 1981 qualifies for deduction under section 80C.

(xxiii) Contribution to additional account under NPS

Contribution by a Central Government employee to additional account under NPS (specified account) referred to in section 80CCD for a fixed period of not less than 3 years and which is in accordance with the scheme² notified by the Central Government for this purpose qualifies for deduction under section 80C. It may be noted that only the contribution to the **additional account under NPS** will qualify for deduction under section 80C.

There are two types of NPS account i.e., Tier I and Tier II, to which an individual can contribute. Section 80CCD provides deduction in respect of contribution to individual pension account [Tier I account] under the NPS [referred to in section 20(2)(a) of the Pension Fund Regulatory and Development Authority Act, 2013 (PFRDA)] whereas deduction under section 80C is allowable in respect of contribution by Central Government employee to additional account [Tier II account] of NPS [referred to in section 20(3) of the PFRDA], which does not qualify for deduction under section 80CCD. **Thus, Tier II account is the additional account under NPS, contribution to which would qualify for deduction under section 80C only in the hands of a Central Government employee.**

² National Pension Scheme Tier II- Tax Saver Scheme, 2020 notified for this purpose.

Termination of Insurance Policy or Unit Linked Insurance Plan or transfer of House Property or withdrawal of deposit:

Where, in any previous year, an assessee:

- (1) terminates his contract of insurance referred to in (iii) above, by notice to that effect or where the contract ceases to be in force by reason of not paying the premium, by not reviving the contract of insurance, -
 - (a) in case of any single premium policy, within two years after the date of commencement of insurance; or
 - (b) in any other case, before premiums have been paid for two years; or
- (2) terminates his participation in any Unit Linked Insurance Plan referred to in (i) or (ii) above, by notice to that effect or where he ceases to participate by reason of failure to pay any contribution, by not reviving his participation, before contributions in respect of such participation have been paid for five years, or
- (3) transfers the house property referred to in (xvi) above, before the expiry of five years from the end of the financial year in which possession of such property is obtained by him, or receives back, whether by way of refund or otherwise, any sum specified in (xvi) above,

then, no deduction will be allowed to the assessee in respect of sums paid during such previous year and the total amount of deductions of income allowed in respect of the previous year or years preceding such previous year, shall be deemed to be income of the assessee of such previous year and shall be liable to tax in the assessment year relevant to such previous year.

Further, where any amount is withdrawn by the assessee from his account under the Senior Citizens Savings Scheme or under the Post Office Time Deposit Rules before the expiry of a period of 5 years from the date of its deposit, the amount so withdrawn shall be deemed to be the income of the assessee of the previous year in which the amount is withdrawn. Accordingly, the amount so withdrawn would be chargeable to tax in the assessment year relevant to such previous year. The amount chargeable to tax would also include that part of the amount withdrawn which represents interest accrued on the deposit.

However, if any part of the amount relating to interest so received or withdrawn has been subject to tax in any of the earlier years, such amount shall not be taxed again.

If any amount has been received by the nominee or legal heir of the assessee, on the death of such assessee, the amount would not be chargeable to tax. But if the amount relating to interest on deposit was not included in the total income of the assessee in any of any earlier years, then such interest would be chargeable to tax.

ILLUSTRATION 5

Mr. Binu, aged about 40 years, has earned a lottery income of ₹ 1,30,000 (gross) during the P.Y. 2023-24. He also has interest on Fixed Deposit of ₹ 35,000. He invested an amount of ₹ 20,000 in Public Provident Fund account and ₹ 34,000 in five years term deposit. What is the total income of Mr. Binu for the A.Y.2024-25 if he has exercised the option of shifting out of the default tax regime provided under section 115BAC(1A)?

SOLUTION**Computation of total income of Mr. Binu for A.Y.2024-25**

Particulars	₹	₹
Income from Other Sources		
- Interest on Fixed Deposit		35,000
- Lottery income		1,30,000
Gross Total Income		1,65,000
Less: Deductions under Chapter VIA [See Note below]		
Under section 80C		
- Deposit in Public Provident Fund	20,000	
- Investment in five years term deposit	34,000	
	54,000	
Restricted to		35,000
Total Income		1,30,000

Note: Though the value of eligible investments is ₹ 54,000, however, deduction under Chapter VIA cannot exceed the gross total income exclusive of long term capital gains u/s 112/112A, short-term capital gains covered under section 111A, winnings of lotteries etc. of the assessee.

Therefore, the maximum permissible deduction u/s 80C = ₹ 1,65,000 – ₹ 1,30,000 = ₹ 35,000.

(2) Deduction in respect of contribution to certain pension funds [Section 80CCC]

- (i) **Eligible assessee** - Where an assessee, being an individual, has in the previous year paid or deposited any amount out of his income chargeable to tax to effect or keep in force a contract for any **annuity plan of LIC** of India or any **other insurer** for receiving pension from the fund set up by LIC or such other insurer, he shall be allowed a deduction in the computation of his total income.

For this purpose, the interest or bonus accrued or credited to the assessee's account shall not be reckoned as contribution.

Note: Where any amount paid or deposited by the assessee has been taken into account for the purposes of this section, a deduction under section 80C shall not be allowed with reference to such amount.

- (ii) **Maximum Deduction:** The maximum permissible deduction is ₹ 1,50,000 [Further, the overall limit of ₹ 1,50,000 prescribed in section 80CCE will continue to be applicable i.e. the maximum permissible deduction under sections 80C, 80CCC and 80CCD(1) put together is ₹ 1,50,000].
- (iii) **Deemed Income:** Where any amount standing to the credit of the assessee in the fund in respect of which a deduction has been allowed, together with interest or bonus accrued or credited to the assessee's account is received by the assessee or his nominee on account of the surrender of the annuity plan in any previous year or as pension received from the annuity plan, such amount will be deemed to be the income of the assessee or the nominee in that previous year in which such withdrawal is made or pension is received. It will be chargeable to tax as income of that previous year.

Note - The deduction under section 80CCC is available only to an individual exercising the option of shifting out of the default tax regime provided under section 115BAC(1A). It is not available under the default tax regime under section 115BAC.

(3) Deduction in respect of contribution to pension scheme notified by the Central Government [Section 80CCD]

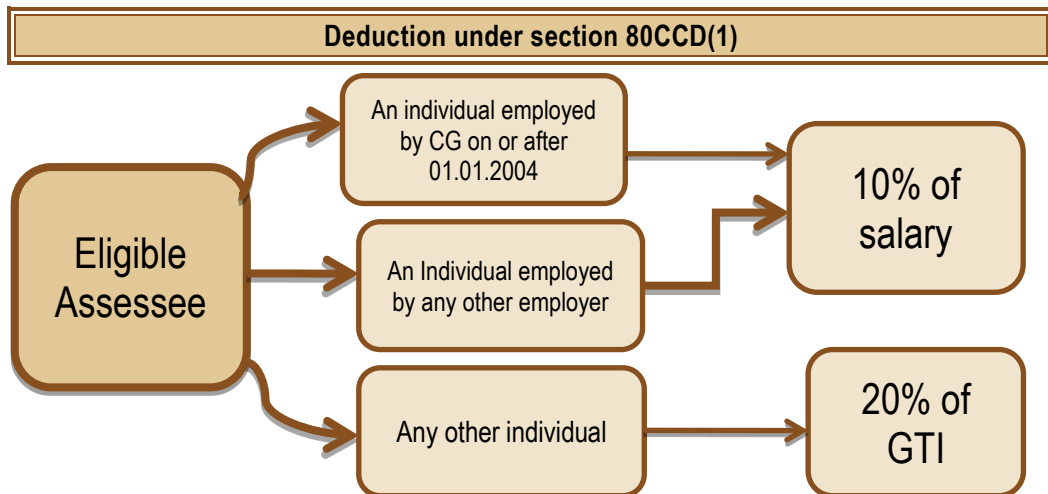
- (i) **Pension Scheme of Central Government:** As per the "Restructured Defined Contribution Pension System" applicable to new entrants to Government service, it is mandatory for persons entering the service of the Central Government on or after 1st January, 2004, to contribute 10% of their salary every month towards their pension account. A matching contribution is required to be made by the Government to the said account. The benefit of this scheme is also available to individuals employed by any other employer as well as to self-employed individuals.
- (ii) **Deduction:** Section 80CCD provides deduction in respect of contribution made to the pension scheme notified by the Central Government.

Accordingly, in exercise of the powers conferred by section 80CCD(1), the Central Government has notified the 'Atal Pension Yojana (APY)' as a pension scheme, contribution to which would qualify for deduction under section 80CCD in the hands of the individual.

(iii) **Quantum of deduction**

- (a) Section 80CCD(1) provides a deduction for the amount paid or deposited by an employee in his pension account subject to a maximum of 10% of his salary. The deduction in the case of a self-employed individual would be restricted to 20% of his gross total income in the previous year.

Note - Deduction u/s 80CCD(1) would be available to an individual only if he exercises the option of shifting out of the default tax regime u/s 115BAC(1A) (i.e., if he pays tax under the optional tax regime – the normal provisions of the Act).



- (b) Section 80CCD(1B) provides for an additional deduction of up to ₹ 50,000 in respect of the whole of the amount paid or deposited by an individual assessee under NPS in the previous year, whether or not any deduction is allowed under section 80CCD(1).

Note - Deduction u/s 80CCD(1B) would be available to an individual only if he exercises the option of shifting out of the default tax regime provided u/s 115BAC(1A) (i.e., it is available only if he pays tax under the optional tax regime – normal provisions of the Act)

- (c) Whereas the deduction under section 80CCD(1) is subject to the overall limit of ₹ 1.50 lakh under section 80CCE (i.e., the maximum permissible deduction under sections 80C, 80CCC and 80CCD(1) put together is ₹ 1,50,000), the deduction of upto ₹ 50,000 under section 80CCD(1B) is in addition to the overall limit of ₹ 1.50 lakh provided under section 80CCE.
- (d) Under section 80CCD(2), contribution made by the Central Government or State Government or any other employer in the previous year to the said account of an employee, is allowed as a deduction in computation of the total income of the assessee.
- (e) The entire employer's contribution would be included in the salary of the employee. However, deduction under section 80CCD(2) would be restricted to 14% of salary, in case of contribution made by the Central Government or State Government, and to 10% of salary, in case of contribution made by any other employer.

Notes:

1. Deduction u/s 80CCD(2) would be available to an individual irrespective of the regime under which he pays tax.
2. The limit of ₹ 1,50,000 under section 80CCE does not apply to employer's contribution to pension scheme of Central Government which is allowable as deduction under section 80CCD(2).
3. No deduction will be allowed u/s 80C in respect of amounts paid or deposited by the assessee, for which deduction has been allowed u/s 80CCD(1) or 80CCD(1B).
4. For computation of limit under section 80CCD(1) and (2), salary includes dearness allowance, if the terms of employment so provide, but excludes all other allowances and perquisites.

- (iv) **Deemed income:** The amount standing to the credit of the assessee in the pension account (for which deduction has already been claimed by him under this section) and accretions to such account, shall be taxed as income in the year in which such amounts are received by the assessee or his nominee on -
- (a) closure of the account or
 - (b) his opting out of the said scheme or
 - (c) receipt of pension from the annuity plan purchased or taken on such closure or opting out.

However, the amount received by the nominee on the death of the assessee under the circumstances referred to in (a) and (b) above, shall not be deemed to be the income of the nominee.

Further, the assessee shall be deemed not to have received any amount in the previous year if such amount is used for purchasing an annuity plan in the same previous year.

Notes:**1. Exemption on payment from NPS Trust to an assessee on closure of his account or on his opting out of the pension scheme [Section 10(12A)]**

- (i) As per section 80CCD, any payment from National Pension System Trust to an assessee on account of closure or his opting out of the pension scheme is chargeable to tax.
- (ii) Section 10(12A) provides that any payment from National Pension System Trust to an assessee on account of closure or his opting out of the pension scheme referred to in section 80CCD, to the extent it does not exceed **60%** of the total amount payable to him at the time of closure or his opting out of the scheme, shall be exempt from tax.

2. Exemption on payment from NPS Trust to an employee on partial withdrawal [Section 10(12B)]

To provide relief to an employee subscriber of NPS, section 10(12B) provides that any payment from National Pension System Trust **to an employee** under the pension scheme referred to in section 80CCD, on partial withdrawal made out of his account in accordance with the terms and conditions specified under the Pension Fund Regulatory and Development Authority Act, 2013 and the regulations made there under, shall be exempt from tax to the extent it does not exceed **25%** of amount of contributions made by him.

(4) Limit on deductions under sections 80C, 80CCC & 80CCD(1) [Section 80CCE]

This section restricts the aggregate amount of deduction under section 80C, 80CCC and 80CCD(1) to ₹ 1,50,000. It may be noted that the deduction of upto ₹ 50,000 under section 80CCD(1B) and employer's contribution to pension scheme, allowable as deduction under section 80CCD(2) in the hands of the employee, would be outside the overall limit of ₹ 1,50,000 stipulated under section 80CCE.

The following table summarizes the ceiling limit under these sections –

Section	Particulars	Ceiling limit (₹)
80C	Investment in LIP, Deposit in PPF/SPF/RPF etc.	1,50,000
80CCC	Contribution to certain pension funds	1,50,000
80CCD(1)	Contribution to NPS of Government	10% of salary or 20% of GTI, as the case may be.
80CCE	Aggregate deduction under sections 80C, 80CCC & 80CCD(1)	1,50,000
80CCD(1B)	Contribution to NPS notified by the Central Government (outside the limit of ₹ 1,50,000 under section 80CCE)	50,000
80CCD(2)	Contribution by the Central Government or State Government to NPS A/c of its employees (outside the limit of ₹ 1,50,000 under section 80CCE)	14% of salary
	Contribution by any other employer to NPS A/c of its employees (outside the limit of ₹ 1,50,000 under section 80CCE)	10% of salary

ILLUSTRATION 6

The basic salary of Mr. Arjun is ₹ 1,00,000 p.m. He is entitled to dearness allowance, which is 40% of basic salary. 50% of dearness allowance forms part of pay for retirement benefits. Both Mr. Arjun and his employer contribute 15% of basic salary to the pension scheme referred to in section 80CCD. Examine the tax treatment in respect of such contribution in the hands of Mr. Arjun if he has exercised the option of shifting out of the default tax regime provided under section 115BAC(1A).

What would be your answer if Mr. Arjun pays tax under the default tax regime under section 115BAC?

SOLUTION

(i) Tax treatment in the hands of Mr. Arjun in respect of employer's and own contribution to pension scheme referred to in section 80CCD, where Mr. Arjun has exercised the option of shifting out of the default tax regime provided under section 115BAC(1A) [i.e., where Mr. Arjun pays tax under the normal provisions of the Act]

- (a) Employer's contribution to such pension scheme would be treated as salary since it is specifically included in the definition of "salary" under section 17(1)(viii). Therefore, ₹ 1,80,000, being 15% of basic salary of ₹ 12,00,000, will be included in Mr. Arjun's salary.

- (b) Mr. Arjun's contribution to pension scheme is allowable as deduction under section 80CCD(1). However, the deduction is restricted to 10% of salary. Salary, for this purpose, means basic pay plus dearness allowance, if it forms part of pay for retirement benefits.

Therefore, deduction under section 80CCD for Mr. Arjun would be –

Particulars	₹
Basic salary = ₹ 1,00,000 × 12 =	12,00,000
Dearness allowance = 40% of ₹ 12,00,000 = ₹ 4,80,000	
50% of Dearness Allowance forms part of pay = 50% of ₹ 4,80,000	2,40,000
Salary for the purpose of deduction under section 80CCD	14,40,000
Deduction under section 80CCD(1) is restricted to 10% of ₹ 14,40,000 (as against actual contribution of ₹ 1,80,000, being 15% of basic salary of ₹ 12,00,000)	1,44,000
As per section 80CCD(1B), a further deduction of upto ₹ 50,000 is allowable. Therefore, deduction under section 80CCD(1B) is ₹ 36,000 (₹ 1,80,000 - ₹ 1,44,000).	36,000

₹ 1,44,000 is allowable as deduction under section 80CCD(1). This would be taken into consideration and be subject to the overall limit of ₹ 1,50,000 under section 80CCE. ₹ 36,000 allowable as deduction under section 80CCD(1B) is outside the overall limit of ₹ 1,50,000 under section 80CCE.

In the alternative, ₹ 50,000 can be claimed as deduction under section 80CCD(1B). The balance ₹ 1,30,000 (₹ 1,80,000 - ₹ 50,000) can be claimed as deduction under section 80CCD(1).

- (c) Employer's contribution to pension scheme would be allowable as deduction under section 80CCD(2), subject to a maximum of 10% of salary. Therefore, deduction under section 80CCD(2), would also be restricted to ₹ 1,44,000, even though the entire employer's contribution of ₹ 1,80,000 is included in salary under section 17(1)(viii). However, this deduction of employer's contribution of ₹ 1,44,000 to pension scheme would be outside the overall limit of ₹ 1,50,000 under section 80CCE i.e., this deduction would be over and above the other deductions which are subject to the limit of ₹ 1,50,000.

(ii) Where Mr. Arjun pays tax under the default tax regime under section 115BAC

Mr. Arjun would not be eligible for deduction under section 80CCD(1)/(1B) in respect of his contribution to pension scheme under the default tax regime under section 115BAC. However, he would be allowed deduction of ₹ 1,44,000 under section 80CCD(2) in respect of employer's contribution to pension

scheme. It may be noted that employer's contribution of ₹ 1,80,000, being 15% of basic salary of ₹ 12,00,000, will form part of Mr. Arjun's salary.

ILLUSTRATION 7

The gross total income of Mr. Neeraj for the A.Y.2024-25 is ₹ 9,00,000. He has made the following investments/ payments during the F.Y.2023-24 –

Particulars		₹
(1)	Contribution to PPF	1,30,000
(2)	Payment of tuition fees to Sunrise School, Mumbai, for education of his son studying in Class X	95,000
(3)	Repayment of housing loan taken from Canara Bank	30,000
(4)	Contribution to approved pension fund of LIC	1,05,000

Compute the eligible deduction under Chapter VI-A for the A.Y.2024-25 if Mr. Neeraj exercises the option of shifting out of the default tax regime provided under section 115BAC(1A).

SOLUTION

Computation of deduction under Chapter VI-A for the A.Y.2024-25

Particulars	₹
Deduction under section 80C	
- Contribution to PPF	1,30,000
- Payment of tuition fees to Sunrise School, Mumbai, for education of his son studying in Class X	95,000
- Repayment of housing loan	30,000
	2,55,000
Restricted to ₹ 1,50,000, being the maximum permissible deduction u/s 80C	1,50,000
Deduction under section 80CCC	
- Contribution to approved pension fund of LIC	1,05,000
	2,55,000
As per section 80CCE, the aggregate deduction under section 80C, 80CCC and 80CCD(1) has to be restricted to ₹ 1,50,000	
Deduction allowable under Chapter VIA for the A.Y.2024-25	1,50,000

(5) Deduction in respect of contribution to Agnipath Scheme [Section 80CCH]

- (i) **Meaning of Agnipath scheme:** Agnipath scheme is a Central Government scheme launched in 2022 for enrolment of Indian youth in the Indian Armed Forces.

- (ii) **Meaning of Agniveer Corpus Fund:** The Agniveer Corpus Fund means a fund in which consolidated contributions of all the Agniveers and matching contributions of the Central Government along with interest on both these contributions are held.
- (iii) **Features of the Agnipath Scheme:** Each Agniveer is to contribute 30% of his monthly customized Agniveer Package to the individual's Agniveer Corpus Fund. Further, the Government will also contribute a matching amount to the 'Agniveer Corpus Fund'. The Government will also pay to the subscriber interest as approved from time to time on the contributions standing in his account.
- (iv) **Quantum of deduction:**
- (a) Section 80CCH(1) provides a deduction for the amount paid or deposited by an assessee, being an individual enrolled in the Agnipath Scheme and subscribing to the Agniveer Corpus Fund on or after 1.11.2022, in his account in the Agniveer Corpus Fund.

Note - Deduction u/s 80CCH(1) would be available to an individual only if he has exercised the option of shifting out of the default tax regime provided u/s 115BAC(1A).

- (b) Under section 80CCH(2), the whole amount of contribution made by the Central Government to the said account of an assessee in the Agniveer Corpus Fund, is allowed as a deduction in computation of the total income of the assessee.
- (e) The entire Central Government's contribution to the Agniveer Corpus Fund would be included in the salary of the assessee. However, deduction under section 80CCH(2) would be available for the same.

Note - Deduction u/s 80CCH(2) would be available to an individual irrespective of the regime under which he pays tax.

Exemption on payment from Agnipath Corpus Fund to a person enrolled under the Agnipath Scheme or to his nominee [Section 10(12C)]

Any payment from the Agnipath Corpus Fund to a person enrolled under the Agnipath Scheme or to his nominee would be exempt from tax.

(6) Deduction in respect of medical insurance premium [Section 80D]

(i) In case of an Individual

- (a) **Deduction in respect of insurance premium paid for family:** A deduction to the extent of ₹ 25,000 is allowed in respect of the following payments—

- (1) premium paid to effect or keep in force an insurance on the health of self, spouse and dependant children or
 - (2) any contribution made to the Central Government Health Scheme or
 - (3) such other health scheme as may be notified by the Central Government. Contributory Health Service Scheme of the Department of Atomic Energy has been notified by the Central Government.
- (b) **Deduction in respect of insurance premium for parents:** A further deduction up to ₹ 25,000 is allowable to effect or to keep in force an insurance on the health of parents of the assessee.

Quantum of deduction in case of senior citizen: An increased deduction of **₹ 50,000** (instead of ₹ 25,000) shall be allowed in case any of the persons mentioned above is a **senior citizen** i.e., an individual resident in India of the age of 60 years or more at any time during the relevant previous year.

- (c) **Deduction in respect of payment towards preventive health check-up:** Section 80D provides that deduction to the extent of ₹ 5,000 shall be allowed in respect payment made on account of preventive health check-up of self, spouse, dependant children or parents made during the previous year. However, the said deduction of ₹ 5,000 is within the overall limit of ₹ 25,000 or **₹ 50,000**, specified in (a) and (b) above.
- (d) **Mode of payment:** For claiming such deduction under section 80D, the payment can be made:
- (1) by any mode, including cash, in respect of any sum paid on account of preventive health check-up;
 - (2) by any mode other than cash, in all other cases.
- (e) **Deduction for medical expenditure incurred on senior citizens:** As a welfare measure towards **senior citizens** i.e., person of the age of 60 years or more and resident in India, who are unable to get health insurance coverage, deduction of upto **₹ 50,000** would be allowed in respect of any payment made on account of medical expenditure in respect of a such person(s), if no payment has been made to keep in force an insurance on the health of such person(s).

'Senior citizen' means an individual resident in India who is of the age of 60 years or more at any time during the relevant previous year.

(ii) In case of a HUF

Deduction under section 80D is allowable in respect of premium paid to insure the health of any member of the family. The maximum deduction available to a HUF would be ₹ 25,000 and in case any member is a senior citizen, ₹ 50,000.

Further, the amount paid on account of medical expenditure incurred on the health of any member(s) of a family who is a **senior citizen** would qualify for deduction subject to a maximum of ₹ 50,000 provided no amount has been paid to effect or keep in force any insurance on the health of such person(s).

(iii) Other conditions

The other conditions to be fulfilled are that such premium should be paid by any mode, other than cash, in the previous year out of his income chargeable to tax. Further, the medical insurance should be in accordance with a scheme made in this behalf by -

- (a) the General Insurance Corporation of India and approved by the Central Government in this behalf; or
- (b) any other insurer and approved by the Insurance Regulatory and Development Authority.

The following table summarizes the provisions of section 80D –

S. No.	Nature of payment/ expenditure	Expenditure on behalf of		Deduction
I	(i) Any premium paid, otherwise than by way of cash, to keep in force an insurance on the health	In case of individual	Self, spouse and dependent children	₹ 25,000
		In case of HUF	Family member	
	(ii) Contribution to Central Government Health Scheme (CGHS) (iii) Preventive health check up expenditure	In case any of the above persons is of the age of 60 years or more (+) resident in India		₹ 50,000

II	(i) Any premium paid, otherwise than by way of cash, to keep in force an insurance on the health (ii) Preventive health check up	In case either or both the parents is of the age of 60 years or more + Resident in India Parents	₹ 25,000 ₹ 50,000
Maximum ₹ 5,000 allowed as deduction for aggregate of preventive health check up expenditure, by any mode including cash, mentioned in I and II (Subject to overall limit of ₹ 25,000 or ₹ 50,000, as the case may be)			
III	Amount paid on account of medical expenditure	For self/ spouse/ parents + who is of the age of 60 years or more + Resident in India + no payment has been made to keep in force an insurance on the health of such person	₹ 50,000

Note: In case the individual or any of his family members is a senior citizen, the aggregate of deduction, in respect of payment of premium, contribution to CGHS and medical expenditure incurred, as specified in (I) & (III) above, cannot exceed **₹ 50,000**.

In case one of the parents is a senior citizen who is covered under mediclaim policy and another is also a senior citizen but not covered under mediclaim policy, the aggregate of deduction, in respect of payment of medical insurance premium and medical expenditure incurred, as specified in (II) & (III) above, cannot exceed **₹ 50,000**.

(iv) Deduction where premium for health insurance is paid in lump sum [Section 80D(4A)]

(a) Appropriate fraction of lump sum premium allowable as deduction: In a case where mediclaim premium is paid in lumpsum for more than one year by:

- (1) an individual, to effect or keep in force an insurance on his health or health of his spouse, dependent children or parents; or
- (2) a HUF, to effect or keep in force an insurance on the health of any member of the family,

then, the deduction allowable under this section for each of the relevant previous year would be equal to the appropriate fraction of such lump sum payment.

(b) Meaning of certain terms

Term	Meaning
Appropriate fraction	$1 \div \text{Total number of relevant previous years}$
Relevant previous year	The previous year in which such lump sum amount is paid; and the subsequent previous year(s) during which the insurance would be in force.

Note - Deduction under section 80D would be available to an individual/ HUF only if he/it exercises the option of shifting out of the default tax regime provided under section 115BAC(1A).

ILLUSTRATION 8

Mr. Ravi, aged 45 years, paid medical insurance premium of ₹ 22,000 during the P.Y.2023-24 to insure his health as well as the health of his spouse. He also paid medical insurance premium of ₹ 47,000 during the year to insure the health of his father, aged 65 years, who is not dependant on him. He contributed ₹ 4,600 to Central Government Health Scheme during the year. He has incurred ₹ 3,000 in cash on preventive health check-up of himself and his spouse and ₹ 4,500 by cheque on preventive health check-up of his father. Compute the deduction allowable under section 80D for the A.Y. 2024-25 if Mr. Ravi has exercised the option of shifting out of the default tax regime provided under section 115BAC(1A).

SOLUTION**Deduction allowable under section 80D for the A.Y.2024-25**

	Particulars	Actual Payment ₹	Maximum deduction allowable ₹
A.	Premium paid and medical expenditure incurred for self and spouse		
	(i) Medical insurance premium paid for self and spouse	22,000	22,000
	(ii) Contribution to CGHS	4,600	3,000
	(iii) Exp. on preventive health check-up of self & spouse	3,000	Nil
		29,600	25,000
B.	Premium paid and medical expenditure incurred for father, who is a senior citizen		
	(i) Mediclaim premium paid for father, who is over 60 years of age	47,000	47,000
	(ii) Expenditure on preventive health check-up of father	4,500	3,000
		51,500	50,000
	Total deduction under section 80D (₹ 25,000 + ₹ 50,000)		75,000

Notes:

- (1) The total deduction under A.(i), (ii) and (iii) above should not exceed ₹ 25,000. Therefore, the contribution to CGHS would be restricted to ₹ 3,000 [₹ 25,000 (-) ₹ 22,000] and expenditure on preventive health check-up for self and spouse would be Nil [₹ 25,000 (-) ₹ 22,000 (-) ₹ 3,000].
- (2) The total deduction under B. (i) and (ii) above should not exceed ₹ 50,000. Therefore, the expenditure on preventive health check-up for father would be restricted to ₹ 3,000, being [₹ 50,000 (-) ₹ 47,000].
- (3) In this case, the total deduction allowed on account of expenditure on preventive health check-up of self, spouse and father is ₹ 3,000, which is less than the maximum permissible limit of ₹ 5,000.

ILLUSTRATION 9

Mr. Yatin, aged 48 years, paid medical insurance premium of ₹ 23,000 during the P.Y.2023-24 to insure his health as well as the health of his spouse and dependant children. He also paid medical insurance premium of ₹ 35,000 during the year to insure the health of his mother, aged 71 years, who is not dependant on him. He incurred medical expenditure of ₹ 24,000 on his father, aged 78 years, who is not covered under mediclaim policy. His father is also not dependent upon him. He contributed ₹ 6,500 to Central Government Health Scheme during the year. Compute the deduction allowable under section 80D for the A.Y.2024-25 if Mr. Yatin has exercised the option of shifting out of the default tax regime provided under section 115BAC(1A).

SOLUTION**Deduction allowable under section 80D for the A.Y.2024-25**

Particulars		₹
(i) Medical insurance premium paid for self, spouse and dependent children	₹ 23,000	25,000
(ii) Contribution to CGHS	₹ 6,500	
	₹ 29,500	
restricted to		
(iii) Mediclaim premium paid for mother, who is over 60 years of age	₹ 35,000	
(iv) Medical expenditure incurred for father, who is over 60 years of age and not covered by any insurance	₹ 24,000	50,000
	₹ 59,000	
restricted to		
		75,000

(7) Deduction in respect of maintenance including medical treatment of a dependant disabled [Section 80DD]

- (i) **Eligible assessee:** Section 80DD provides deduction to an assessee, who is a resident in India, **being an individual or Hindu undivided family.**
- (ii) **Payment qualifying for deduction:**
- (a) Any amount –
- incurred for the medical treatment (including nursing), training and rehabilitation of a dependant, being a person with disability, or
 - paid or deposited under a scheme framed in this behalf by the Life Insurance Corporation or any other insurer or the Administrator or the Specified Company as referred to in section 2(h) of the Unit Trust of India (Transfer of Undertaking and Repeal) Act, 2002, for the maintenance of a dependant, being a person with disability
- qualifies for deduction.
- (b) The scheme should provide for payment of annuity or a lump sum amount for the benefit of a dependant, being a person with disability,
- I in the event of the death of the individual or member of the HUF, in whose name subscription was made; or
 - II on attaining the age of 60 years or more by such individual or the member of the HUF, and the payment or deposit to such scheme has been discontinued
- and the assessee must nominate either the dependant, being a person with disability or any other person or a trust to receive the payment on his behalf, for the benefit of the dependant, being a person with disability.
- (c) The benefit of deduction under this section is also available to assessee incurring expenditure on maintenance including medical treatment of persons suffering from autism, cerebral palsy and multiple disabilities.
- (iii) **Quantum of deduction:** The quantum of deduction is **₹ 75,000** and in case of severe disability (i.e. person with 80% or more disability) the deduction shall be **₹ 1,25,000**.

- (iv) **Deemed income:** If the dependent, being a person with disability, predeceases the individual or the member of HUF, in whose name subscription was made, then, the amount paid or deposited under the said scheme would be chargeable to tax in the hands of the assessee (individual or member of HUF) in the previous year in which such amount is received by him.

However, such deeming provisions would not apply, to the amount received by the dependant, being a person with disability, before his death, by way of annuity or lump sum under the scheme mentioned in II of (a) above i.e., when the individual or member of HUF attains the age of 60 years or more, and the payment or deposit to such scheme has been discontinued.

(v) **Conditions:**

- (a) For claiming the deduction, the assessee shall have to furnish a copy of the certificate issued by the medical authority under the Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 along with the return of income under section 139.
- (b) Where the condition of disability requires reassessment, a fresh certificate from the medical authority shall have to be obtained after the expiry of the period mentioned in the original certificate in order to continue to claim the deduction.

(vi) **Meaning of “Dependant”:**

	Assessee	Dependant
(1)	Individual	the spouse, children, parents, brother or sister of the individual who is wholly or mainly dependant on such individual and not claimed deduction under section 80U in the computation of his income
(2)	HUF	a member of the HUF, wholly or mainly dependant on such HUF and not claimed deduction under section 80U in the computation of his income

Note - Deduction under section 80DD would be available to an individual/HUF only if he/it exercises the option of shifting out of the default tax regime provided under section 115BAC(1A).

ILLUSTRATION 10

Mr. Mohan is a resident individual. He deposits a sum of ₹ 60,000 with Life Insurance Corporation every year for the maintenance of his disabled grandfather who is wholly dependant upon him. The disability is one which comes under the Persons with Disabilities (Equal Opportunities, Protection of

Rights and Full Participation) Act, 1995. A copy of the certificate from the medical authority is submitted. Compute the amount of deduction available under section 80DD for the A.Y. 2024-25 if Mr. Mohan has exercised the option of shifting out of the default tax regime provided under section 115BAC(1A).

SOLUTION

Since the amount deposited by Mr. Mohan was for his grandfather, he will not be allowed any deduction under section 80DD. The deduction is available if the individual assessee incurs any expense for a dependant disabled relative. Grandfather does not come within the meaning of “dependant” as defined under section 80DD.

ILLUSTRATION 11

What will be the deduction if Mr. Mohan had made this deposit for his dependant father?

SOLUTION

Since the expense was incurred for a dependant disabled relative, Mr. Mohan will be entitled to claim a deduction of ₹ 75,000 under section 80DD, irrespective of the amount deposited. In case his father has severe disability, the deduction would be ₹ 1,25,000.

(8) Deduction in respect of medical treatment etc. [Section 80DDB]

- (i) **Eligible assessee:** This section provides deduction to an assessee, who is resident in India, being an individual and Hindu undivided family. The deduction is available to an individual for medical expenditure incurred on himself or a dependant. It is also available to a Hindu undivided family (HUF) for such expenditure incurred on any of its members.
- (ii) **Meaning of “Dependant”:**

	Assessee	Dependant
(1)	Individual	the spouse, children, parents, brother or sister of the individual or any of them, wholly or mainly dependant on such individual for his support and maintenance.
(2)	HUF	a member of the HUF, wholly or mainly dependant on such HUF for his support and maintenance.

- (iii) **Payment qualifying for deduction:** Any amount actually paid for the medical treatment of such disease or ailment as may be specified in the rules made in this behalf by the Board for himself or a dependant, in case the assessee is an individual or for any member of a HUF, in case the assessee is a HUF will qualify for deduction.

- (iv) **Quantum of deduction:** The amount of deduction under this section shall be equal to the amount actually paid or ₹ 40,000, whichever is less, in respect of that previous year in which such amount was actually paid.

In case the amount is paid in respect of a senior citizen, i.e., a resident individual of the age of 60 years or more at any time during the relevant previous year, then the deduction would be the amount actually paid or ₹ 1,00,000, whichever is less.

The deduction under this section shall be reduced by the amount received, if any, under insurance from an insurer, or reimbursed by an employer, for the medical treatment of the assessee or the dependant.

- (v) **Maximum deduction:** The maximum limit of deduction under section 80DDB for the various categories of dependant are summarized hereunder:

	Dependant	Maximum limit (₹)
(1)	A senior citizen, being a resident individual	1,00,000
(2)	Other than a senior citizen	40,000

- (vi) **Condition:** No such deduction shall be allowed unless the assessee obtains the prescription for such medical treatment from a neurologist, an oncologist, a urologist, a hematologist, an immunologist or such other specialist, as may be prescribed.

Note - Deduction under section 80DDB would be available to an individual/HUF only if he/it exercises the option of shifting out of the default tax regime provided under section 115BAC(1A).

(9) Deduction in respect of interest loan taken for higher education [Section 80E]

- (i) **Eligible assessee:** Section 80E provides deduction to an individual-assessee in respect of any interest on loan paid by him in the previous year out of his income chargeable to tax.
- (ii) **Conditions:** The loan must have been taken for the purpose of pursuing his higher education or for the purpose of higher education of his or her relative. The loan must have been taken from any financial institution or approved charitable institution.
- (iii) **Meaning of certain terms:**

	Term	Meaning
(a)	Relative	Spouse and children of the individual or the student for whom the individual is the legal guardian
(b)	Higher education	It means any course of study (including vocational studies) pursued after passing the Senior Secondary Examination or its equivalent from any school, board or university recognised

		by the Central Government or State Government or local authority or by any other authority authorized by the Central Government or State Government or local authority to do so. Therefore, interest on loan taken for pursuing any course after Class XII or its equivalent, will qualify for deduction under section 80E.
(c)	Period deduction of	The deduction is allowed in computing the total income in respect of the initial assessment year (i.e., the assessment year relevant to the previous year, in which the assessee starts paying the interest on the loan) and seven assessment years immediately succeeding the initial assessment year or until the interest is paid in full by the assessee, whichever is earlier.
(d)	Approved charitable institution	It means an institution established for charitable purposes and approved by the prescribed authority under section 10(23C) or an institution referred to in section 80G(2)(a).
(e)	Financial institution	It means – (a) a banking company to which the Banking Regulation Act, 1949 applies (including a bank or banking institution referred to in section 51 of the Act); or (b) any other financial institution which the Central Government may, by notification in the Official Gazette, specify in this behalf

Note - Deduction under section 80E would be available to an individual only if he exercises the option of shifting out of the default tax regime provided under section 115BAC(1A).

ILLUSTRATION 12

Mr. Gopal has taken three education loans on April 1, 2023, the details of which are given below:

	Loan 1	Loan 2	Loan 3
For whose education loan was taken	Gopal	Son of Gopal	Daughter of Gopal
Purpose of loan	MBA	B. Tech.	B. Tech.
Amount of loan (₹)	6,00,000	3,00,000	4,50,000
Annual repayment of loan (₹)	1,20,000	48,000	88,000
Annual repayment of interest (₹)	24,000	12,000	16,000

Compute the amount deductible under section 80E for the A.Y. 2024-25 if Mr. Gopal has exercised the option of shifting out of the default tax regime provided under section 115BAC(1A).

SOLUTION

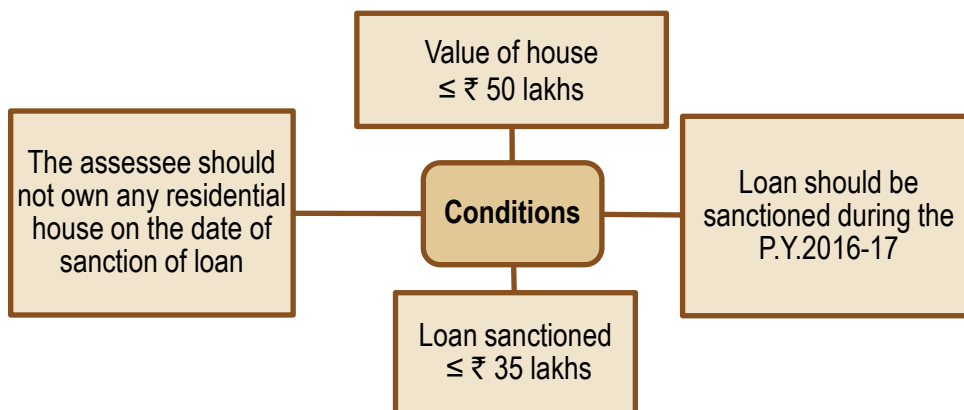
Deduction under section 80E is available to an individual assessee exercising the option of shifting out of the default tax regime provided under section 115BAC(1A), in respect of any interest paid by him in the previous year in respect of loan taken for pursuing his higher education or higher education of his spouse or children. Higher education means any course of study pursued after senior secondary examination.

Therefore, interest repayment in respect of all the above loans would be eligible for deduction.

Deduction under section 80E = ₹ 24,000 + ₹ 12,000 + ₹ 16,000 = ₹ 52,000.

(10) Deduction for interest on loan borrowed for acquisition of house property by an individual [Section 80EE]

- (i) **Eligible assessee:** An individual who has taken a loan for acquisition of residential house property from any financial institution. Interest payable on such loan would qualify for deduction under this section.
- (ii) **Conditions:** The conditions to be satisfied for availing this deduction are as follows –



- (iii) **Period of benefit:** The benefit of deduction under this section would be available till the repayment of loan continues.
- (iv) **Quantum of deduction:** The maximum deduction allowable is ₹ 50,000. The deduction of upto ₹ 50,000 under section 80EE is over and above the deduction of upto ₹ 2,00,000 available under section 24 for interest paid in respect of loan borrowed for acquisition of a self-occupied property.

- (v) **No deduction under any other provision:** The interest allowed as deduction under section 80EE will not be allowed as deduction under any other provision of the Act for the same or any other assessment year.

- (vi) **Meaning of certain terms:**

	Term	Meaning
(a)	Financial institution	▪ A banking company to which the Banking Regulation Act, 1949 applies; or ▪ Any bank or banking institution referred to in section 51 of the Banking Regulation Act, 1949; or ▪ A housing finance company.
(b)	Housing finance company	A public company formed or registered in India with the main object of carrying on the business of providing long-term finance for construction or purchase of houses in India for residential purposes.

Note - Deduction under section 80EE would be available to an individual only if he exercises the option of shifting out of the default tax regime provided under section 115BAC(1A).

ILLUSTRATION 13

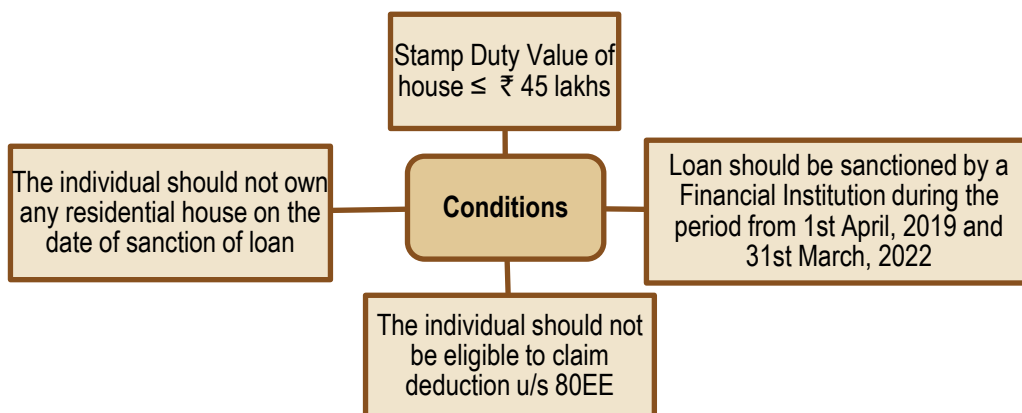
Mr. Ankur purchased a residential house property for self-occupation at a cost of ₹ 48 lakh on 1.4.2017, in respect of which he took a housing loan of ₹ 35 lakh from Bank of India@11% p.a. on the same date. The loan was sanctioned on 10th March, 2017. Compute the eligible deduction in respect of interest on housing loan for A.Y.2024-25 if Mr. Ankur has exercised the option of shifting out of the default tax regime provided under section 115BAC(1A), assuming that the entire loan was outstanding as on 31.3.2024 and he does not own any other house property.

SOLUTION

Particulars	₹
Interest deduction for A.Y.2024-25	
(i) Deduction allowable while computing income under the head "Income from house property"	
Deduction under section 24(b) ₹ 3,85,000 [₹ 35,00,000 × 11%] Restricted to	2,00,000
(ii) Deduction under Chapter VI-A from Gross Total Income	
Deduction under section 80EE ₹1,85,000 (₹ 3,85,000 – ₹ 2,00,000) Restricted to	50,000

(11) Deduction in respect of interest payable on loan taken for acquisition of residential house property [Section 80EEA]

- (i) **Eligible assessee:** An individual who has taken a loan for acquisition of residential house property from any financial institution. Interest payable on such loan would qualify for deduction under this section.
- (ii) **Conditions:** The conditions to be satisfied for availing this deduction are as follows –



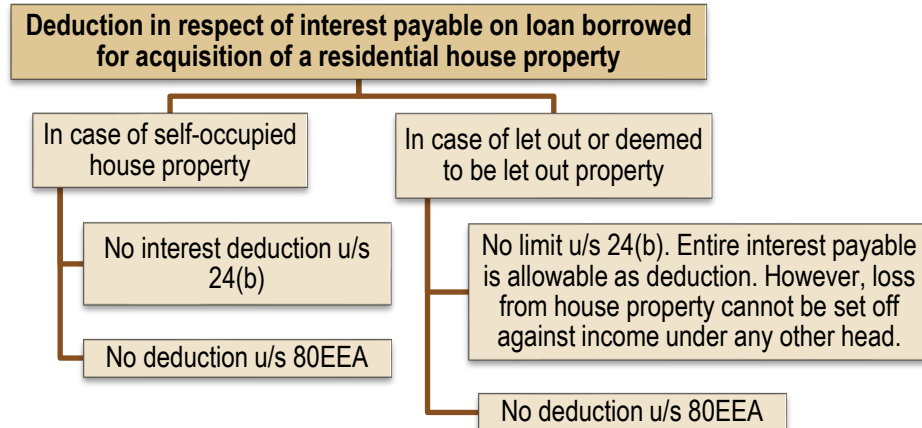
- (iii) **Period of benefit:** The benefit of deduction under this section would be available for interest payable for each assessment year.
- (iv) **Quantum of deduction:** The maximum deduction allowable is ₹ 1,50,000. The deduction of upto ₹ 1,50,000 under section 80EEA is over and above the deduction available under section 24(b) in respect of interest payable on loan borrowed for acquisition of a residential house property.
- (v) **No deduction under any other provision:** The interest allowed as deduction under section 80EEA will not be allowed as deduction under any other provision of the Act for the same or any other assessment year.
- (vi) **Meaning of certain terms:**

	Term	Meaning
(a)	Financial institution	• A banking company to which the Banking Regulation Act, 1949 applies; or • Any bank or banking institution referred to in section 51 of the Banking Regulation Act, 1949; or • A housing finance company.

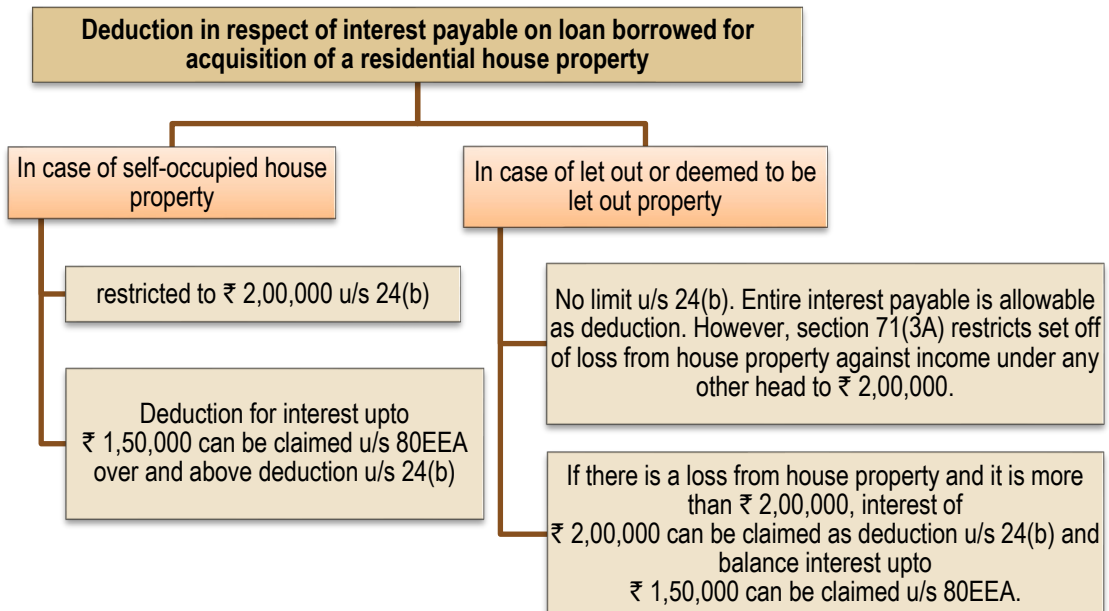
(b)	Housing finance company	A public company formed or registered in India with the main object of carrying on the business of providing long-term finance for construction or purchase of houses in India for residential purposes.

Note - Deduction under section 80EEA would be available to an individual only if he exercises the option of shifting out of the default tax regime provided under section 115BAC(1A).

In case the individual assessee pays tax under default tax regime under section 115BAC

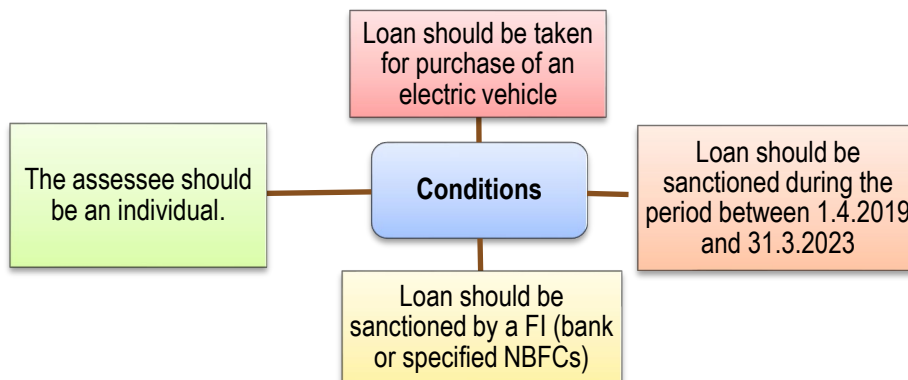


In case the individual assessee has exercised the option of shifting out of the default tax regime provided under section 115BAC(1A)



(12) Deduction in respect of interest payable on loan taken for purchase of electric vehicle [Section 80EEB]

- (i) **Eligible Assessee:** An individual who has taken a loan for purchase of an electric vehicle from any financial institution. Interest payable on such loan would qualify for deduction under this section.
- (ii) **Conditions:** The conditions to be satisfied for availing this deduction are as follows –



- (iii) **Period of benefit:** The benefit of deduction under this section would be available for interest payable on such loan for each assessment year.
- (iv) **Quantum of deduction:** Interest payable, subject to a maximum of ₹ 1,50,000.
- (v) **No deduction under any other provision:** The interest allowed as deduction u/s 80EEB will not be allowed as deduction under any other provision of the Act for the same or any other assessment year.
- (vi) **Meaning of certain terms:**

	Term	Meaning
(a)	Financial institution	• A banking company to which the Banking Regulation Act, 1949 applies; or • Any bank or banking institution referred to in section 51 of the Banking Regulation Act, 1949; or • Any deposit taking NBFC • A systemically important non-deposit taking NBFC i.e., a NBFC which is not accepting or holding public deposits and having total assets of not less than ₹ 500 crore as per the last audited balance sheet and is registered with the RBI.

(b)	Electric Vehicle	A vehicle which is powered exclusively by an electric motor whose traction energy is supplied exclusively by traction battery installed in the vehicle. The vehicle should have electric regenerative braking system, which during braking provides for the conversion of vehicle kinetic energy into electrical energy.

Note - Deduction under section 80EEB would be available to an individual only if he exercises the option of shifting out of the default tax regime provided under section 115BAC(1A).

ILLUSTRATION 14

The following are the particulars relating to Mr. Arun, Mr. Barun, Mr. Chetan and Mr. Dinesh, salaried individuals, for A.Y.2024-25 –

Particulars	Mr. Arun	Mr. Barun	Mr. Chetan	Mr. Dinesh
Amount of loan taken	₹ 43 lakhs	₹ 45 lakhs	₹ 20 lakhs	₹ 12 lakhs
Loan taken from	HFC	Deposit taking NBFC	Deposit taking NBFC	Public sector bank
Date of sanction of loan	1.4.2021	1.4.2020	1.4.2020	30.3.2019
Date of disbursement of loan	1.5.2021	1.5.2020	1.5.2020	1.5.2019
Purpose of loan	Acquisition of residential house property for self-occupation	Acquisition of residential house property for self-occupation	Purchase of electric vehicle for personal use	Purchase of electric vehicle for personal use
Stamp duty value of house property	₹ 45 lakhs	₹ 48 lakhs	-	-
Cost of electric vehicle	-	-	₹ 22 lakhs	₹ 18 lakhs
Rate of interest	9% p.a.	9% p.a.	10% p.a.	10% p.a.

Compute the amount of deduction, if any, allowable under the provisions of the Income-tax Act, 1961 for A.Y.2024-25 in the hands of Mr. Arun, Mr. Barun, Mr. Chetan and Mr. Dinesh if they have exercised the option of shifting out of the default tax regime provided under section 115BAC(1A). Assume that there has been no principal repayment in respect of any of the above loans upto 31.3.2024.

SOLUTION

Particulars		₹
Mr. Arun		
Interest deduction for A.Y.2024-25		
(i)	Deduction allowable while computing income under the head "Income from house property" Deduction u/s 24(b) ₹ 3,87,000 [₹ 43,00,000 × 9%] Restricted to	2,00,000
(ii)	Deduction under Chapter VI-A from Gross Total Income Deduction u/s 80EEA ₹ 1,87,000 (₹ 3,87,000 – ₹ 2,00,000) Restricted to	1,50,000
Mr. Barun		
Interest deduction for A.Y.2024-25		
(i)	Deduction allowable while computing income under the head "Income from house property" Deduction u/s 24(b) ₹ 4,05,000 [₹ 45,00,000 × 9%] Restricted to	2,00,000
(ii)	Deduction under Chapter VI-A Deduction u/s 80EEA is not permissible since: (i) loan is taken from NBFC (ii) stamp duty value exceeds ₹ 45 lakh. Deduction under section 80EEA would not be permissible due to either violation listed above.	Nil
Mr. Chetan		
Deduction under Chapter VI-A from Gross Total Income		
Deduction u/s 80EEB for interest payable on loan taken for purchase of electric vehicle [₹ 20 lakhs × 10% = ₹ 2,00,000, restricted to ₹ 1,50,000, being the maximum permissible deduction]		1,50,000
Mr. Dinesh		
Deduction under Chapter VI-A from Gross Total Income		
Deduction u/s 80EEB is not permissible since loan was sanctioned before 1.4.2019.		Nil

(13) Deduction in respect of donations to certain funds, charitable institutions etc. [Section 80G]

- (i) **Eligible assessee:** Where an assessee pays any sum as donation to eligible funds or institutions, he is entitled to a deduction, subject to certain limitations, from the gross total income.

Note - In case of an individual, HUF, AoP (other than a co-operative society) or BoI or an artificial juridical person, deduction u/s 80G would not be available under the default tax regime under section 115BAC(1A). Deduction under section 80G would be available only if such person has exercised the option of shifting out of the default tax regime provided under section 115BAC(1A) and pays tax as per the optional tax regime under the regular provisions of the Act.

In case of companies and co-operative societies, deduction would not be available if they opt for the special provisions u/s 115BAA/115BAB and section 115BAD/115BAE, respectively. In other words, deduction would be available only if companies and co-operative societies pay tax under the normal provisions of the Act.

- (ii) **Quantum of deduction:** There are four categories of deductions. The following table gives the details of the institutions and funds to which donations can be made for the purpose of claiming deduction under section 80G, –

I	Donation qualifying for 100% deduction, without any qualifying limit
(1)	The National Defence Fund set up by the Central Government
(2)	Prime Minister's National Relief Fund.
(3)	Prime Minister's Armenia Earthquake Relief Fund
(4)	The Africa (Public Contributions-India) Fund
(5)	The National Children's Fund
(6)	The National Foundation for Communal Harmony
(7)	Approved University or educational institution of national eminence
(8)	Chief Minister's Earthquake Relief Fund, Maharashtra
(9)	Any fund set up by the State Government of Gujarat exclusively for providing relief to the victims of the Gujarat earthquake
(10)	Any Zila Saksharta Samiti for primary education in villages and towns and for literacy and post-literacy activities
(11)	National Blood Transfusion Council or any State Blood Transfusion Council whose sole objective is the control, supervision, regulation or encouragement of operation and requirements of blood banks

(12)	Any State Government Fund set up to provide medical relief to the poor
(13)	The Army Central Welfare Fund or Indian Naval Benevolent Fund or Air Force Central Welfare Fund established by the armed forces of the Union for the welfare of past and present members of such forces or their dependants.
(14)	The Andhra Pradesh Chief Minister's Cyclone Relief Fund, 1996
(15)	The National Illness Assistance Fund
(16)	The Chief Minister's Relief Fund or Lieutenant Governor's Relief Fund in respect of any State or Union Territory
(17)	The National Sports Fund set up by the Central Government
(18)	The National Cultural Fund set up by the Central Government
(19)	The Fund for Technology Development and Application set up by the Central Government
(20)	National Trust for welfare of persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities
(21)	The Swachh Bharat Kosh, set up by the Central Government, other than the sum spent by the assessee in pursuance of CSR u/s 135(5) of the Companies Act, 2013
(22)	The Clean Ganga Fund, set up by the Central Government, where such assessee is a resident, other than the sum spent in pursuance of CSR u/s 135(5) of the Companies Act, 2013
(23)	The National Fund for Control of Drug Abuse constituted under section 7A of the Narcotic Drugs and Psychotropic Substances Act, 1985
(24)	Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM Cares Fund)
II	Donation qualifying for 50% deduction, without any qualifying limit
(1)	Prime Minister's Drought Relief Fund
III	Donation qualifying for 100% deduction, subject to qualifying limit
(1)	The Government or to any approved local authority, institution or association as may be approved for promotion of family planning
(2)	Sum paid by a company as donation to the Indian Olympic Association or any other association/institution established in India, as may be notified by the Government established – - for the development of infrastructure for sports or games, or - the sponsorship of sports and games in India
IV	Donation qualifying for 50% deduction, subject to qualifying limit
(1)	Any Institution or Fund established in India for charitable purposes fulfilling prescribed conditions under section 80G(5).

(2)	The Government or any local authority for utilisation for any charitable purpose other than the purpose of promoting family planning.
(3)	An authority constituted in India by or under any other law enacted either for the purpose - of dealing with and satisfying the need for housing accommodation or - of planning, development or improvement of cities, towns and villages, or both.
(4)	Any Corporation established by the Central Government or any State Government for promoting the interests of the members of a minority community as referred in section 10(26BB).
(5)	for renovation or repair of any such temple, mosque, gurdwara, church or other place as notified by the Central Government to be of historic, archaeological or artistic importance or to be a place of public worship of renown throughout any State or States.

- (iii) **Qualifying limit:** The eligible donations referred to in III and IV should be aggregated and the sum total should be limited to 10% of the adjusted gross total income. This would be the maximum permissible deduction.

The donations qualifying for 100% deduction would be first adjusted from the maximum permissible deduction and thereafter 50% deduction of the balance would be allowed.

Steps for computation of qualifying limit

Step 1:	Compute adjusted total income i.e., the GTI as reduced by the following: (i) Deductions under Chapter VI-A, except under section 80G (ii) Short-term capital gain taxable under section 111A (iii) Long-term capital gains taxable under sections 112 & 112A (iv) Any income on which income-tax is not payable (v) Income referred to in section 115A(1)(a), 115AB, 115AC, 115AD and 115D
Step 2:	Calculate 10% of adjusted total income
Step 3:	Calculate the actual donation, which is subject to qualifying limit (Total of Category III and IV donations, shown in the table above)
Step 4:	Lower of Step 2 or Step 3 is the maximum permissible deduction.
Step 5:	The said deduction is adjusted first against donations qualifying for 100% deduction (i.e., Category III donations). Thereafter, 50% of balance qualifies for deduction under section 80G.

- (iv) **Conditions:** Donation to any institution or fund referred in point no. (1) of (IV) above i.e., donation to whom would qualify for 50% deduction, subject to qualifying limit, shall be

eligible for deduction if it is established in India for charitable purposes and fulfill the following conditions:

- (1) The institution or fund is:
 - (a) constituted as a public charitable trust, or
 - (b) registered under the Societies Registration Act, 1860 or under any corresponding law or under section 25 of the Companies Act, 1956³, or
 - (c) a University established by law or
 - (d) any other educational institution recognized by the Government or by a university established by law or affiliated to any university established by law
 - (e) an institution financed wholly or in part by the Government or a local authority [Section 80G(5)(v)].
- (2) Where such institution or fund derives any income, such income should not be liable to inclusion in its total income under the provisions of section 10(23AA), 10(23C) or 11 or 12 [Section 80G(5)(i)].

However, in respect of profits and gains of business, the condition of such income should not be liable to inclusion in its total income under the provisions of section 11 shall not be applicable if –

- the institution or fund maintains separate books of account in respect of such business;
- the donation made to it are not used by it, directly or indirectly, for the purpose of such business; and
- the institution or fund issues certificate to the donor in respect of the above compliance.

Further, it may be noted that the assessee will not lose the benefit of deduction if:

- (a) subsequent to the donation, any part of the income of the Institution has become chargeable to tax due to non-compliance with any of the provisions of section 11 or section 12 or section 12A.

³ Section 8 of the Companies Act, 2013

- (b) as a result of the operation of section 13(1)(c), exemption under section 11 or section 12 is denied to the institution in relation to any income arising to it from any investment made in a concern in which the person specified under section 13(3) has substantial interest and aggregate of fund so invested does not exceed 5% of the capital of that concern. *[Explanation 2 to section 80G]*
- (3) No part of the income or assets of the Institution or Fund is transferable or applied at any time for any purposes other than charitable purpose *[Section 80G(5)(ii)]*.
- Such charitable purpose however does not include any purpose the whole or substantially the whole of which is of a religious nature *[Explanation 3 to Section 80G]*.
- However, where an institution or fund incurs expenditure of a religious nature for an amount not exceeding 5% of its total income in that previous year, such institution or fund shall be deemed to be a fund or institution to which the provisions of this section apply *[Section 80G(5B)]*.
- (4) For the purposes of this section, an association or institution having as its object the control, supervision, regulation or encouragement in India of such games or sports as the Central Government may, by notification in the Official Gazette, specify in this behalf, shall be deemed to be an institution established in India for a charitable purpose. *[Explanation 4 to Section 80G]*
- (5) The Institution or Fund is not expressed to be for the benefit of any particular religious community or caste *[Section 80G(5)(iii)]*.
- An institution or fund established for the benefit of women and children or of Scheduled Castes, Backward classes or Scheduled Tribes is not however to be treated as an institution or fund for the benefit of a religious community or caste. *[Explanation 1 to Section 80G]*
- (6) The Institution or Fund maintains regular accounts of its receipt and expenditure *[Section 80G(5)(iv)]*.
- (7) Such institution or fund must be approved by the Principal Commissioner or Commissioner *[Section 80G(5)(vi)]*

First, second, third and fourth provisos to section 80G(5) provide that the institution or fund has to make an application in the prescribed form and manner to the Principal

Commissioner (PC) or Commissioner (C), for grant of approval within the prescribed time period and the PC or C will pass an order for grant of approval.

Procedure laid down under this section for grant of approval is on the similar lines as prescribed under section 10(23C)(iv)/(v)/(vi)/(via). Here also, the approval granted is valid for 5 years and provisional approval is valid for 3 years.

- (8) **Filing of statement of donation received by the institution or fund:** The institution or fund is required to prepare such statement for such period as may be prescribed and deliver or cause to be delivered to the prescribed income-tax authority or the person authorised by such authority such statement in such form and verified in such manner and setting forth such particulars and within such time as may be prescribed [Section 80G(5)(viii)].

The institution or fund can also deliver to the said prescribed authority a correction statement for rectification of any mistake or to add, delete or update the information furnished in the statement delivered under this sub-section in such form and verified in such manner as may be prescribed.

- (9) **Furnishing of certificate to the donor:** The institution or fund is also required to furnish to the donor, a certificate specifying the amount of donation in such manner, containing such particulars and within such time from the date of receipt of donation, as may be prescribed [Section 80G(5)(ix)]

Consequently, *Explanation 2A* to section 80G provides that claim of the assessee for a deduction in respect of any donation made to an institution or fund, in the return of income for any assessment year filed by him, is allowed on the basis of information relating to said donation furnished by the institution or fund, subject to verification in accordance with the risk management strategy formulated by the Board from time to time.

(v) **Other points:**

- (a) Where an assessee has claimed and has been allowed any deduction under this section in respect of any amount of donation, the same amount will not qualify for deduction under any other provision of the Act for the same or any other assessment year [Section 80G(5A)].
- (b) Donations in kind shall not qualify for deduction.

- (c) No deduction shall be allowed in respect of donation of any sum exceeding **₹ 2,000** unless such sum is paid by any mode other than cash [Section 80G(5D)].
- (d) The deduction under section 80G can be claimed whether it has any nexus with the business of the assessee or not.
- (e) As per *Circular No.2/2005 dated 12.1.2005*, in cases where employees make donations to the Prime Minister's National Relief Fund, the Chief Minister's Relief Fund or the Lieutenant Governor's Relief Fund through their respective employers, it is not possible for such funds to issue separate certificate to every such employee in respect of donations made to such funds as contributions made to these funds are in the form of a consolidated cheque. An employee who makes donations towards these funds is eligible to claim deduction under section 80G. It is, hereby, clarified that the claim in respect of such donations as indicated above will be admissible under section 80G on the basis of the certificate issued by the Drawing and Disbursing Officer (DDO)/ Employer in this behalf.

ILLUSTRATION 15

Mr. Arjun aged 45 years, has gross total income of ₹ 8,85,000 comprising of income from salary and house property. He has made the following payments and investments:

- (i) *Premium paid to insure the life of her major daughter (policy taken on 1.4.2018) (Assured value ₹ 1,80,000) – ₹ 20,000*
- (ii) *Medical Insurance premium for self – ₹ 14,000; Spouse – ₹ 15,000*
- (iii) *Donation to a public charitable institution registered under 80G ₹ 50,000 by way of cheque*
- (iv) *LIC Pension Fund – ₹ 60,000*
- (v) *Donation to National Children's Fund - ₹ 25,000 by way of cheque*
- (vi) *Donation to PM CARES Fund – ₹ 10,000 by way of cheque.*
- (vii) *Donation to approved institution for promotion of family planning - ₹ 40,000 by way of cheque*
- (viii) *Deposit in PPF - ₹ 1,20,000*

Compute the total income of Mr. Arjun for A.Y. 2024-25 if he exercises the option of shifting out of the default tax regime provided under section 115BAC(1A).

SOLUTION

Computation of Total Income of Mr. Arjun for A.Y. 2024-25

Particulars	₹	₹
Gross Total Income		8,85,000
Less: Deduction under section 80C		
Deposit in PPF	1,20,000	
Life insurance premium paid for insurance of major daughter (Maximum 10% of the assured value ₹ 1,80,000, as the policy is taken after 31.3.2012)	18,000	
	1,38,000	
Deduction u/s 80CCC in respect of LIC pension fund	60,000	
	1,98,000	
As per section 80CCE, deduction u/s 80C & 80CCC is restricted to		1,50,000
Deduction under section 80D		
Medical Insurance premium in respect of self and spouse	29,000	
Restricted to		25,000
Deduction under section 80G (See Working Note below)		90,500
Total income		6,19,500

Working Note: Computation of deduction under section 80G

	Particulars of donation	Amount donated (₹)	% of deduction	Deduction u/s 80G (₹)
(i)	National Children's Fund	25,000	100%	25,000
(ii)	PM Cares Fund	10,000	100%	10,000
(iii)	Approved institution for promotion of family planning	40,000	100%, subject to qualifying limit	40,000
(iv)	Public Charitable Trust	50,000	50% subject to qualifying limit (See Note below)	15,500
				90,500

Note - Adjusted total income = Gross Total Income (–) Amount of deductions under section 80C to 80U except section 80G i.e., ₹ 7,10,000, in this case., ₹ 71,000, being 10% of adjusted total income is the qualifying limit, in this case.

Firstly, donation of ₹ 40,000 to approved institution for family planning qualifying for 100% deduction subject to qualifying limit, has to be adjusted against this amount. Thereafter, donation to public charitable trust qualifying for 50% deduction, subject to qualifying limit is adjusted. Hence, the contribution of ₹ 50,000 to public charitable trust is restricted to ₹ 31,000 (being, ₹ 71,000 - ₹ 40,000), 50% of which would be the deduction under section 80G. Therefore, the deduction under section 80G in respect of donation to public charitable trust would be ₹15,500, which is 50% of ₹ 31,000.

(14) Deduction in respect of rent paid [Section 80GG]

- (i) **Eligible assessee:** Assessee, who is not in receipt of HRA qualifying for exemption under section 10(13A) from employer and who pays rent for accommodation occupied by him for residential purposes.
- (ii) **Conditions:** The following conditions have to be satisfied for claiming deduction under section 80GG -
 - (a) The assessee should not be receiving any house rent allowance exempt under section 10(13A).
 - (b) The expenditure incurred by him on rent of any furnished or unfurnished accommodation should exceed 10% of his total income arrived at after all deductions under Chapter VI A except section 80GG.
 - (c) The accommodation should be occupied by the assessee for the purposes of his own residence.
 - (d) The assessee should fulfill such other conditions or limitations as may be prescribed, having regard to the area or place in which such accommodation is situated and other relevant considerations.
 - (e) The assessee or his spouse or his minor child or an HUF of which he is a member should not own any accommodation at the place where he ordinarily resides or perform duties of his office or employment or carries on his business or profession; or
 - (f) If the assessee owns any accommodation at any place other than that referred to above, such accommodation should not be in the occupation of the assessee and its annual value is not required to be determined under section 23(2)(a) or section 23(4)(a).

- (g) The assessee should file a declaration in the prescribed form, confirming the details of rent paid and fulfillment of other conditions, with the return of income.

(iii) **Quantum of deduction:** The deduction admissible will be the least of the following:

- (a) Actual rent paid minus 10% of the total income of the assessee before allowing the deduction, or
- (b) 25% of such total income (arrived at after making all deductions under Chapter VI-A but before making any deduction under this section), or
- (c) Amount calculated at ₹ 5,000 p.m.

Note - Deduction under section 80GG would be available to an individual/HUF only if he/it exercises the option of shifting out of the default tax regime provided under section 115BAC(1A).

ILLUSTRATION 16

Mr. Rakesh, a businessman, whose total income (before allowing deduction under section 80GG) for A.Y.2024-25 is ₹ 4,60,000, paid house rent at ₹ 12,000 p.m. in respect of residential accommodation occupied by him at Mumbai. Compute the deduction allowable to him under section 80GG for A.Y.2024-25 if he has exercised the option of shifting out of the default tax regime provided under section 115BAC(1A).

SOLUTION

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

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

$$₹ 1,44,000 (-) ₹ 46,000 (10\% \times ₹ 4,60,000) = ₹ 98,000$$
- (ii) 25% of total income i.e., ₹ 4,60,000

$$= ₹ 1,15,000$$
- (iii) Amount calculated at ₹ 5,000 p.m. = ₹ 60,000

Deduction allowable u/s 80GG [least of (i), (ii) and (iii)] = ₹ 60,000

(15) Deduction in respect of donations for scientific research or rural development [Section 80GGA]

- (i) **Eligible assessee:** Section 80GGA grants deduction in respect of the donations made for scientific research or rural development by any assessee not having income chargeable under the head “Profits and gains of business or profession”.

(ii) Donations qualifying for deduction:

- (a) Any sum paid by the assessee in the previous year to a research association which has, as its object, the undertaking of scientific research or to a University, college or other institution to be used for scientific research; and

Such research association, University, college or institution must be approved under section 35(1)(ii).

- (b) Any sum paid to a research Association which has as its object the undertaking of research in social science or statistical research, University, College or other institution to be used for research in social science or statistical research.

Such Research Association, University, College or institution must be approved under section 35(1)(iii).

- (c) Any sum paid by the assessee in the previous year
- to an association or institution which has as its object the undertaking of any programme of rural development to be used for carrying out any programme of rural development approved by the prescribed authority for purposes of section 35CCA or
 - to an institution or association which has as its object the training of persons for implementing programmes of rural development.

It is, however, essential that assessee furnishes the certificate from such institution or association as referred to in section 35CCA(2) & (2A).

- (d) Any sum paid to a public sector company or a local authority or to an association or institution approved by the National Committee for carrying out any eligible project or scheme.
- (e) Further, it has been clarified that the deduction to which an assessee (i.e. donor) is entitled on account of payment of any sum
- to a research association or university college or other institution for scientific research or research in a social science or statistical research,
 - an association or institution for carrying out the programme of rural development

- public sector company or a local authority or to an association or institution approved by the National Committee for carrying out any eligible project or scheme

shall not be denied merely on the ground that subsequent to payment of such sum by the assessee, the approval granted to any of the aforesaid entities or to such programme is withdrawn.

- (f) Any sum paid to a rural development fund set up and notified under section 35CCA.
- (g) Any sum paid by the assessee in the previous year to National Urban Poverty Eradication Fund (NUPEF).

(iii) Restrictions on deduction:

- (a) No deduction under this section would be allowed in the case of an assessee whose gross total income includes income which is chargeable under the head "Profits and gains of business or profession.
- (b) Where a deduction under this section is claimed and allowed for any assessment year, deduction shall not be allowed in respect of such payment under any provision of this Act for the same or any other assessment year.
- (c) No deduction shall be allowed in respect of donation of any sum exceeding ₹ 2,000 unless such sum is paid by any mode other than cash.
- (d) Deduction under this section claimed by the assessee in the return of income for any assessment year would be allowable on the basis of the information relating to donation furnished by the payee to the prescribed income-tax authority or person specified by such authority, subject to verification in accordance with the risk management strategy formulated by the CBDT from time to time.

Note - An individual, HUF, AoP (other than a co-operative society) or BoI or an artificial juridical person will be eligible for deduction u/s 80GGA only if such person has exercised the option of shifting out of the default tax regime provided under section 115BAC(1A).

(16) Deduction in respect of contributions given by companies to political parties [Section 80GGB]

- (i) **Deduction & Conditions:** This section provides for deduction of any sum contributed in the previous year by an Indian company not opting for section 115BAA/ 115BAB to any political

party or an electoral trust. However, no deduction shall be allowed in respect of any sum contributed by way of cash.

(ii) **Meaning of “contribute”:** For the purposes of this section, the word “contribute” has the same meaning assigned to it under section 293A of the Companies Act, 1956⁴, which provides that -

- (a) a donation or subscription or payment given by a company to a person for carrying on any activity which is likely to effect public support for a political party shall also be deemed to be contribution for a political purpose;
- (b) the expenditure incurred, directly or indirectly, by a company on advertisement in any publication (being a publication in the nature of a souvenir, brochure, tract, pamphlet or the like) by or on behalf of a political party or for its advantage shall also be deemed to be a contribution to such political party or a contribution for a political purpose to the person publishing it.

(iii) **Meaning of “Political party”:** It means a political party registered under section 29A of the Representation of the People Act, 1951.

ILLUSTRATION 17

During the P.Y.2023-24, Sky Ltd., an Indian company contributed a sum of ₹ 3.5 lakh to an electoral trust; and incurred expenditure of ₹ 52,000 on advertisement in a brochure of a political party.

Is the company eligible for deduction in respect of such contribution/expenditure, assuming that the contribution was made by cheque? If so, what is the quantum of deduction? Sky Ltd. does not opt for section 115BAA/115BAB.

SOLUTION

An Indian company is eligible for deduction under section 80GGB in respect of any sum contributed by it in the previous year to any political party or an electoral trust. Further, the word “contribute” in section 80GGB has the meaning assigned to it in section 293A of the Companies Act, 1956, and accordingly, it includes the amount of expenditure incurred on advertisement in a brochure of a political party. Therefore, Sky Ltd. is eligible for a deduction of ₹ 4,02,000 under section 80GGB in respect of sum of ₹ 3.5 lakh contributed to an electoral trust and ₹ 52,000 incurred by it on advertisement in a brochure of a political party.

⁴ Now section 182 of the Companies Act, 2013

It may be noted that there is a specific disallowance under section 37(2B) in respect of expenditure incurred on advertisement in a brochure of a political party. Therefore, the expenditure of ₹ 52,000 would be disallowed while computing business income/ gross total income. However, the said expenditure incurred by an Indian company is allowable as a deduction from gross total income under section 80GGB.

(17) Deduction in respect of contributions given by any person to political parties [Section 80GGC]

- (i) **Deduction & Conditions:** This section provides for deduction of any sum contributed in the previous year by any person to a political party or an electoral trust. However, no deduction shall be allowed in respect of any sum contributed by way of cash.
- (ii) **Persons not eligible for deduction:** This deduction will, however, not be available to a local authority and an artificial juridical person, wholly or partly funded by the Government.
- (iii) **Meaning of “Political party”:** It means a political party registered under section 29A of the Representation of the People Act, 1951.

Note - An individual, HUF, AoP (other than a co-operative society) or BoI would be eligible for deduction u/s 80GGC only if such person has exercised the option of shifting out of the default tax regime provided under section 115BAC(1A). A co-operative society will not be eligible for deduction if it opts for special provisions of section 115BAD/115BAE.



8.3 DEDUCTIONS IN RESPECT OF CERTAIN INCOMES

(1) Deductions in respect of profits and gains from undertakings or enterprises engaged in infrastructure development, etc. [Section 80-IA]

Applicability

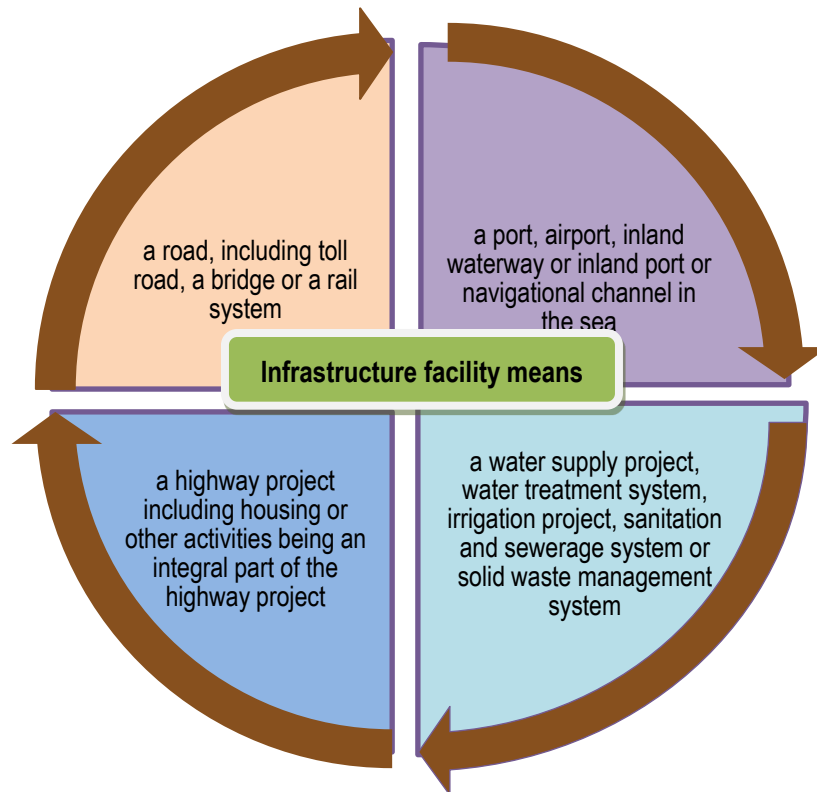
Section 80-IA(1) provides a 10 year tax holiday to an assessee, whose gross total income includes any profits and gains derived by an undertaking or enterprise from an eligible business i.e., business referred to in sub-section (4), namely :

- (i) **Infrastructure facility** - Any enterprise carrying on the business of:
 - (a) developing; or
 - (b) operating and maintaining; or
 - (c) developing, operating and maintaining
 - (d) any infrastructure facility.

Conditions: However, such enterprise must fulfill the following conditions:

- (1) It must be owned by a company registered in India or by a consortium of such companies or by an authority or a board or a corporation or any other body established or constituted under any Central or State Act.
- (2) It has entered into an agreement with the Central or a State Government or a local authority or statutory body for (i) developing or (ii) operating and maintaining, or (iii) developing, operating and maintaining a new infrastructure facility.
- (3) It starts operating and maintaining such infrastructure facility on or after 1-4-1995.
- (4) However, where an enterprise which developed such infrastructure facility transfers it to another enterprise on or after 1-4-1999, and such transferee enterprise operates and maintains it according to the agreement drawn up with the Government, etc., this section will apply to the transferee enterprise for the unexpired period of deduction (which was available to the first enterprise).

Meaning of “infrastructure facility”:



Note:

1. Structures at the ports for storage, loading and unloading etc. will be included in the definition of port for the purpose of section 80-IA, if the concerned port authority has issued a certificate that the said structures form part of the port.
2. Effluent treatment and conveyance system is a part of water treatment system and would accordingly, qualify as an infrastructure facility for the purpose of section 80-IA.
3. The CBDT has, vide *Circular No. 4/2010 dated 18.5.2010*, clarified that widening of an existing road by constructing additional lanes as a part of a highway project by an undertaking would be regarded as a new infrastructure facility for the purpose of section 80-IA(4)(i). However, simply relaying of an existing road would not be classifiable as a new infrastructure facility for this purpose.

Note – Any enterprise which starts the development or operation and maintenance of the infrastructure facility on or after 1.4.2017 will not be eligible for deduction under section 80-IA. Instead, they would be eligible for investment-linked tax deduction under section 35AD.

(ii) **Industrial parks** : Any undertaking which

- develops,
- develops and operates, or
- maintains and operates

an industrial park.

Conditions:

- (1) The undertaking begins to operate an industrial park in accordance with the scheme framed and notified by the Central Government.
- (2) The scheme is notified by the Government for the period beginning on 1-4-1997 and ending on 31-3-2011 for industrial parks
- (3) However, where an undertaking develops an industrial park on or after 1.4.1999 and transfers the operation and maintenance to another undertaking (transferee undertaking), the deduction to the transferee undertaking shall be available for the remaining period in the ten consecutive assessment years, in such a manner as would have been available to the transferor undertaking, as if the operation and maintenance were not so transferred to the transferee undertaking.

Rule 18C lays down the following eligibility criteria for Industrial Parks to claim benefit under section 80-IA(4)(iii) -

- (1) The undertaking should begin to develop, develop and operate or maintain and operate an industrial park any time during the period from 1.4.2006 to 31.3.2011.
- (2) The undertaking and the Industrial Park should be notified by the Central Government under the Industrial Park Scheme, 2008.
- (3) The undertaking should continue to fulfill the conditions envisaged in the Industrial Park Scheme, 2008.

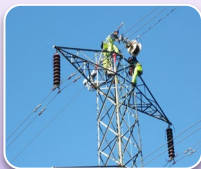
(iii) **Power undertakings:** Any undertaking which



is set up in any part of India for the generation or generation and distribution of power. However, such undertaking must begin to generate power at any time during the period between 1.4.1993 and 31.3.2017



starts transmission or distribution by laying a network of new transmission or distribution lines at any time during the period from 1.4.1999 and 31.3.2017. However, the deduction shall be allowed only in respect of profits derived from the laying of such network of new lines for transmission or distribution



undertakes substantial renovation and modernisation of the existing network of transmission or distribution lines at any time during the period beginning on 1.4.2004 and ending on 31.3.2017

Meaning of “Substantial renovation and modernisation”:

‘Substantial renovation and modernisation’ means an increase in the plant and machinery in the network of transmission or distribution lines by at least fifty per cent of the book value of such plant and machinery as on 1st April, 2004.

(iv) **Undertakings owned by an Indian company and set up for reconstruction or revival of a power generating plant:**

An undertaking owned by an Indian company and set up for reconstruction or revival of a power generating plant

Such Indian company should be formed before 30.11.2005 with majority equity participation by public sector companies for the purposes of enforcing the security interest of the lenders to the company owning the power generating plant

Such Indian company should have been notified before 31.12.2005 by the Central Government for the purposes of this clause

Such undertaking should begin to generate or transmit or distribute power before 31.3.2011

Rate of Deduction

The amount of deduction available will be 100% of the profits and gains derived from such business for **ten consecutive assessment years commencing at any time** during the periods specified in period of tax holiday/concession below.

Period of tax holiday/concession

	Eligible business	Period of tax holiday
1.	For all eligible business except business mentioned in point 2 below.	Assessee has the option to claim deduction for 10 consecutive assessment years out of 15 years beginning from the year in which the undertaking or the enterprise develops or begins to operate the infrastructure facility or develops industrial park or generates power or commences transmission or distribution of power or undertakes substantial renovation and modernization of the existing transmission or distribution lines.
2.	In case of an infrastructure facility being a public facility like – (i) a road, including a toll road, bridge or rail system; or (ii) a highway project including	Assessee has the option to claim deduction for 10 consecutive assessment years out of 20 years beginning from the year in which the undertaking or the enterprise develops or begins to operate the eligible business

	housing or other activities which are an integral part of the highway project; or (iii) a water supply project, water treatment system, irrigation project, sanitation and sewerage system or solid waste management system	

Other provisions

- (1) **Eligible business to be considered as the only source of income:** For the purpose of computing deduction under this section, the profits and gains of the eligible business shall be computed as if such eligible business were the only source of income of the assessee during the relevant previous years [Sub-section (5)].
- (2) **Conditions to exempt profit from housing or other activities, being integral part of highway project:** Where housing or other activities are an integral part of a highway project and the profits and gains have been calculated in accordance with the section, the profits shall not be liable to tax if the following conditions have been fulfilled:
 - (a) The profit has been transferred to a special reserve account; and
 - (b) the same is actually utilised for the highway project excluding housing and other activities before the expiry of 3 years following the year of transfer to the reserve account;
 - (c) The amount remaining unutilised shall be chargeable to tax as income of the year in which the transfer to the reserve account took place [Sub-section (6)].
- (3) **Audit of accounts:** The deduction shall be allowed to the undertaking only if the accounts of the undertaking for the relevant previous year have been audited by a chartered accountant and the assessee furnishes the audit report in the prescribed form, duly signed and verified by such accountant, before the specified date referred to in section 44AB i.e., the date one month prior to due date for filing return of income under section 139(1) [Sub-section (7)].
- (4) **Transfer of goods/services between eligible business and other business of the assessee:** Where any goods or services held for the purposes of the eligible business are transferred to any other business carried on by the assessee, or vice versa, and if the consideration for such transfer does not correspond with the market value of the goods or

services then the profits and gains of the eligible business shall be computed as if the transfer was made at market value.

However, if, in the opinion of the Assessing Officer, such computation presents exceptional difficulties, the Assessing Officer may compute the profits on such reasonable basis as he may deem fit [Sub-section (8)].

For this purpose, the market value, in relation to any goods or services transferred between the eligible business and any other business carried on by the assessee, shall mean –

- (i) the price that such goods or services would ordinarily fetch in the open market; or
- (ii) the arm's length price as defined under section 92F, where the transfer of such goods or services is a specified domestic transaction referred to in section 92BA.

(5) **Deduction not to exceed profits of eligible business:** The deductions claimed and allowed under this section shall not exceed the profits and gains of the eligible business. Further, where deduction is claimed and allowed under this section for any assessment year no deduction in respect of such profits will be allowed under any other section under this chapter under the heading "Deductions in respect of certain incomes" [Sub-section (9)].

(6) **Assessing Officer empowered to make adjustment in case any transaction produces excessive profits to eligible business:** The Assessing Officer is empowered to make an adjustment while computing the profit and gains of the eligible business on the basis of the reasonable profit that can be derived from the transaction, in case due to close connection or for any other reason the transaction between the assessee carrying on the eligible business under section 80-IA and any other person is so arranged that the transaction produces excessive profits to the eligible business [Sub-section (10)].

If the aforesaid arrangement between the assessee carrying on the eligible business and any other person is a specified domestic transaction referred to in section 92BA, then, the amount of profit of such transaction shall be determined having regard to arm's length price as defined under section 92F and not as per the reasonable profit from such transaction.

(7) **Central Government empowered to deny deduction to any class of eligible undertaking or enterprise:** The section empowers the Central Government to declare any class of industrial undertaking or enterprise as not being entitled to deduction under this section. The denial of exemption shall be with effect from such date as may be specified in the notification issued in the Official Gazette [Sub-section (11)].

- (8) **Deduction in case of amalgamation or demerger:** In the case of any amalgamation or demerger, by virtue of which the Indian company carrying on the eligible business is transferred to another Indian company, deduction under this section will be available as follows:

- (a) No deduction will be available to the amalgamating company or the demerged company, as the case may be, in the year of amalgamation/ demerger.
- (b) The provisions of this section will apply to the amalgamated/ resulting company as they would have applied to the amalgamating/ demerged company if the amalgamation/ demerger had not taken place [Sub-section (12)].

However, such transfer of benefit of deduction to the amalgamated/ resulting company would not be available in respect of any enterprise or undertaking which is transferred in a scheme of amalgamation or demerger effected on or after 1.4.2007 [Sub-section (12A)].

- (9) **No deduction to any business carrying on specified activities in the nature of a work contract:** The tax holiday under section 80-IA would not be available in relation to a business referred to in sub-section (4) which is in the nature of a works contract awarded by any person (including the Central or State Government) and executed by the undertaking or enterprise referred to in section 80-IA(1).

(2) **Deduction in respect of profits and gains by an undertaking or enterprise engaged in development of SEZ [Section 80-IAB]**

(i) **Quantum of deduction:**

Sub-section (1) provides for a deduction of 100% of profits and gains derived by an undertaking or an enterprise from any business of developing a SEZ for 10 consecutive assessment years.

(ii) **Eligible assessee:**

The deduction is available to an assessee, being a Developer, whose gross total income includes any profits and gains derived by an undertaking or an enterprise from any business of developing a SEZ, notified on or after 1st April, 2005 under the SEZ Act, 2005.

Note - No deduction would be available to an assessee, being a developer, where the development of SEZ begins on or after 1st April, 2017.

(iii) **Meaning of Developer:**

- (a) a person who, or
- (b) a State Government which

has been granted a letter of approval by the Central Government under section 3(10) of the SEZ Act, 2005.

A developer includes –

- (a) an authority and
- (b) a Co-developer.

Co-developer means -

- (a) a person who, or
- (b) a State Government which

has been granted a letter of approval by the Central Government under section 3(12) of the SEZ Act, 2005.

(iv) Option to choose 10 consecutive A.Y.s out of 15 years to claim deduction:

The assessee has the option of claiming the said deduction for any ten consecutive assessment years out of fifteen years beginning from the year in which a SEZ has been notified by the Central Government.

(v) Deduction to transferee in case of transfer of operation and maintenance of such SEZ:

In a case where an undertaking, being a Developer, who develops a SEZ on or after 1.4.2005 and transfers the operation and maintenance of such SEZ to another Developer, the deduction under sub-section (1) shall be allowed to such transferee Developer for the remaining period in the ten consecutive assessment years as if the operation and maintenance were not so transferred to the transferee Developer.

- (vi)** The provisions of sub-section (5) and sub-section (7) to (12) of section 80-IA shall apply to the Special Economic Zone for the purpose of allowing deductions under 80-IAB(1).

Lease rent from letting out buildings/developed space along with other amenities in an Industrial Park /SEZ - to be treated as business income [Circular No. 16/2017, dated 25.04.2017]

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

whereas the Assessing Officers hold it to be chargeable under the head 'Income from House Property'.

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

In a subsequent judgment dated 30.04.2014 in ITA No. 76 & 78/2012 in the case of *CIT v. Information Technology Park Ltd.* (NJRS Citation [2014-LL-0430-141]), the Karnataka High Court has reaffirmed its earlier views. It has held that, since the assessee-company was engaged in the business of developing, operating and maintaining an Industrial Park and providing infrastructure facilities to different companies as its business, the lease rent received by the assessee from letting out buildings along with other amenities in a software technology park would be chargeable to tax under the head "Profits and gains of business or profession" and not under the head "Income from house property". The judgment has been accepted by the CBDT.

In view of the above, it is now a settled position that in the case of an undertaking which develops, develops and operates or maintains and operates an industrial park/SEZ notified in accordance with the scheme framed and notified by the Government, the income from letting out of premises/developed space along with other facilities in an industrial park/SEZ is to be charged to tax under the head 'Profits and Gains of Business'.

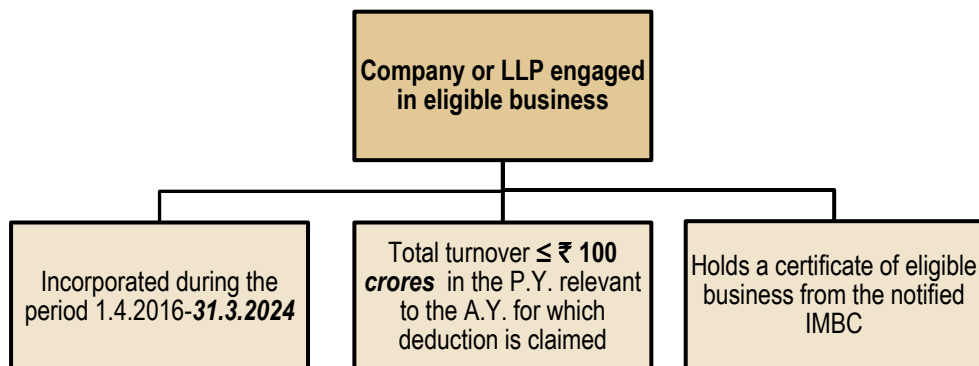
(3) Tax incentives for new start-ups [Section 80-IAC]

(i) Objective:

Section 80-IAC provides an incentive to start-ups in order to aid their growth in the early phase of their business.

(ii) Quantum of deduction:

Accordingly, a deduction of **100%** of the profits and gains derived by an eligible start-up from an eligible business is allowed for any **three consecutive assessment years out of ten** years beginning from the year in which the eligible start up is incorporated.

(iii) Meaning of eligible start-up:(iv) Meaning of eligible business:

A business carried out by an eligible start-up engaged in –

- Innovation, development or improvement of products or processes or services or
- a scalable business model with a high potential of employment generation or wealth creation

(v) Conditions to be fulfilled:

This incentive is available to an eligible start-up which fulfils the following conditions:

- (1) It is not formed by splitting up, or the reconstruction, of a business already in existence.

Exception: However, this condition shall not apply in the case of an undertaking which is formed as a result of reconstruction, re-establishment or revival of the business of any undertaking which has been discontinued in any previous year due to extensive damage or destruction of any building, machinery, plant or furniture owned by the assessee and used for the purposes of such business. Further, the reason for damage or destruction is due to any natural calamity or other unforeseen circumstances such as the following:

- (i) Flood, typhoon, hurricane, cyclone, earthquake or other natural calamity, or
- (ii) riot or civil disturbance, or
- (iii) accidental fire or explosion, or
- (iv) enemy action or action taken in combat,

and such business is re-established or revived within 3 years from the end of such previous year.

- (2) It is not formed by the transfer to a new business of machinery or plant previously used for any purpose.

Exceptions: However, any machinery or plant which was used outside India by any person other than the assessee shall not be regarded as machinery or plant previously used for any purpose, if all the following conditions are fulfilled, namely:—

- (a) such machinery or plant was not, at any time previous to the date of the installation by the assessee, used in India;
- (b) such machinery or plant is imported into India;
- (c) no deduction on account of depreciation in respect of such machinery or plant has been allowed or is allowable under the provisions of the Income-tax Act, 1961 in computing the total income of any person for any period prior to the date of the installation of the machinery or plant by the assessee.

Further, where in the case of a start-up, any machinery or plant or any part thereof previously used for any purpose is transferred to a new business and the total value of the machinery or plant or part so transferred does not exceed 20% of the total value of the machinery or plant used in the business, then, the condition specified that it should not be formed by transfer to a new business of plant and machinery used for any purpose shall be deemed to have been complied with.

- (vi) The provisions of sub-section (5) and sub-section (7) to (11) of section 80-IA shall apply to the start-ups for the purpose of allowing deductions under 80-IAC(1).

(4) Deductions in respect of profits and gains from certain undertaking [Section 80-IB]

Applicability

This section will be applicable to assesseees, whose gross total income includes any profits and gains from the business of processing, preservation and packaging of fruits or vegetables or meat and meat products or poultry or marine or dairy products or from the integrated business of handling, storage and transportation of foodgrains [Sub-section (11A)].

Conditions to be fulfilled, amount of deduction and period of deduction

In order to claim deduction, the undertaking should fulfill the following conditions:

- (i) It should be deriving profits from the business of processing, preservation and packaging of fruits or vegetables or meat or meat products or poultry or marine or dairy products or from the integrated business of handling, storage and transportation of foodgrains.
- (ii) It should begin to operate such business on or after 1.4.2001.
- (iii) It should begin operates such business on or after 1.4.2009 in case of an undertaking deriving profit from the business of processing, preservation and packaging of meat or meat products or poultry or marine or dairy products.

Quantum and period of deduction: The amount of deduction shall be 100% of the profits and gains derived from such business for 5 assessment years beginning with the initial assessment year i.e. the assessment year relevant to the previous year in which the undertaking begins such business. Thereafter, the deduction allowable is 25%. In the case of a company, the rate of 25% shall be substituted by 30%. The total period of deduction should not exceed 10 consecutive assessment years.

The provisions of sub-section (5) and sub-section (7) to (12) of section 80-IA shall apply to the eligible business under section 80-IB.

(5) Deductions in respect of profits and gains from housing projects/rental housing project [Section 80-IBA]

(i) Objective:

Section 80-IBA provides impetus to affordable housing sector to achieve the larger objective of 'Housing for All'.

(ii) Quantum of deduction:

Where the gross total income of an assessee includes any profits and gains derived from

- the business of developing and building housing projects an amount equal to 100% of the profits and gains derived from such business is allowable as deduction under section 80-IBA, subject to fulfilment of certain conditions [Section 80-IBA(1)].
- the business of developing and building rental housing project an amount equal to 100% of the profits and gains derived from such business is allowable as deduction [Section 80-IBA(1A)].

(iii) **Conditions to be fulfilled for claim of deduction in respect of housing project referred under section 80-IBA(1):**

- (a) the project is approved by the competent authority after 1st June, 2016 but on or before 31st March, 2022;
- (b) the project is completed within a period of **five years** from the date of approval by the competent authority:

However, in a case where the approval in respect of a housing project is obtained more than once, the project shall be deemed to have been approved on the date on which the building plan of such housing project was first approved by the competent authority and the project shall be deemed to have been completed when a certificate of completion of project as a whole is obtained in writing from the competent authority.

- (c) the carpet area of the shops and other commercial establishments included in the housing project does not exceed 3% of the aggregate carpet area;

Additional conditions to be fulfilled if the project is approved by the competent authority before 1st September, 2019

- (a) where a residential unit in the housing project is allotted to an individual, no other residential unit in the housing project shall be allotted to the individual or the spouse or the minor children of such individual;
- (b) **Conditions relating to size of plot of land, residential units etc.**

	Location of the housing project	Size on plot of land on which the project is located	Carpet area of the residential unit comprised in the housing project	Percentage of floor area ratio to be utilised by the project
(1)	(2)	(3)	(4)	(5)
(i)	Within the cities of Chennai, Delhi, Kolkata or Mumbai	Not less than 1,000 sq. m.	Not more than 30 sq. m.	Not less than 90% of the floor area ratio permissible in respect of the plot of land under the rules to be made by the Central Government or the State Government or the local authority, as the case may be.
(ii)	In any other place	Not less than 2,000 sq. m.	Not more than 60 sq. m.	not less than 80% of such floor area ratio

- (c) The project is the only housing project on the plot of land [referred to in column (3)].
- (d) the assessee maintains separate books of account in respect of the housing project.

Additional conditions to be fulfilled if the project is approved by the competent authority on or after 1st September, 2019

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

(b) Conditions relating to size of plot of land, residential units etc.

	Location of the housing project	Size on plot of land on which the project is located	Carpet area of the residential unit comprised in the housing project	Percentage of floor area ratio to be utilised by the project
(1)	(2)	(3)	(4)	(5)
(i)	Within the metropolitan cities of Bengaluru, Chennai, Delhi National Capital Region (limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurugram, Faridabad), Hyderabad, Kolkata and Mumbai (whole of Mumbai Metropolitan Region)	Not less than 1,000 sq. m.	Not more than 60 sq. m.	Not less than 90% of the floor area ratio permissible in respect of the plot of land under the rules to be made by the Central Government or the State Government or the local authority, as the case may be.
(ii)	In any other place	Not less than 2,000 sq. m.	Not more than 90 sq. m.	Not less than 80% of such floor area ratio

- (c) The project is the only housing project on the plot of land [referred to in column (3) above].
- (d) the assessee maintains separate books of account in respect of the housing project.
- (e) the stamp duty value of a residential unit in the housing project does not exceed ₹ 45 lakhs.

(iv) No deduction for person executing the housing project as a works contract:

An assessee who merely executes the housing project as a works-contract awarded by any person (including the Central Government or the State Government) would not be eligible for deduction under this section.

(v) Consequence of non-completion of housing project within 5 years:

In a case where the housing project is not completed within the period of five years from the date of approval by the competent authority and in respect of which a deduction has been claimed and allowed under this section, the total amount of deduction so claimed and allowed in one or more previous years, shall be deemed to be the income of the assessee chargeable under the head "Profits and gains of business or profession" of the previous year in which the period for completion so expires.

(vi) No deduction under any other provision of the Act in respect of such profits:

Where any amount of profits and gains derived from the business of developing and building housing projects is claimed and allowed under this section for any assessment year, deduction to the extent of such profit and gains shall not be allowed under any other provision of this Act.

(vii) Meaning of certain terms:

	Term	Meaning
(a)	Carpet area	Net usable floor area of an apartment Excluding – • The area covered by the external walls, • areas under service shafts • exclusive balcony or verandah area and • exclusive open terrace area However, carpet area includes the area covered by the internal partition walls of the apartment. Exclusive balcony or verandah and exclusive open terrace area means the area of the balcony or verandah and the area of open terrace respectively, which is appurtenant to the net usable floor area of an apartment, meant for the exclusive use of the allottee.
(b)	Competent authority	The authority empowered by the Central Government to approve the building plan by or under any law for the time being in force.
(c)	Floor area ratio	The quotient obtained by dividing the total covered area of plinth area on all the floors by the area of the plot of land
(d)	Housing project	A project consisting predominantly of residential units with such other facilities and amenities as the competent authority may approve subject to the provisions of this section

(e)	Rental project housing	A project which is notified by the Central Government under this clause on or before the 31.03.2022 and fulfils such conditions as may be specified in the said notification.
(f)	Residential unit	An independent housing unit with separate facilities for living, cooking and sanitary requirements, distinctly separated from other residential units within the building, which is directly accessible from an outer door or through an interior door in a shared hallway and not by walking through the living space of another household.
(g)	Stamp duty value	Value adopted or assessed or assessable by any authority of the Central Government or a State Government for the purpose of payment of stamp duty in respect of an immovable property.

(6) Tax holiday in respect of profits and gains from eligible business of certain undertakings in North-Eastern States [Section 80-IE]

(i) Applicability:

This section provides for an incentive to an undertaking which has during the period between 1st April, 2007 and 1st April, 2017, begun or begins, in any of the North-Eastern States (i.e., the States of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim and Tripura) -

- (1) to manufacture or produce any eligible article or thing;
- (2) to undertake substantial expansion to manufacture or produce any eligible article or thing;
- (3) to carry on any eligible business.

(ii) Meaning of certain terms:

	Terms	Meaning
(a)	Eligible article or thing	the article or thing other than - goods falling under Chapter 24 of the First Schedule to the Central Excise Tariff Act, 1985 which pertains to tobacco and manufactured tobacco substitutes; - pan masala as covered under Chapter 21 of the First Schedule to the Central Excise Tariff Act, 1985; - plastic carry bags of less than 20 microns; and - goods falling under Chapter 27 of the First Schedule to the Central Excise Tariff Act, 1985 produced by petroleum oil or gas refineries

(b)	Substantial expansion	Increase in the investment in the plant and machinery by at least 25% of the book value of plant and machinery (before taking depreciation in any year), as on the first day of the previous year in which the substantial expansion is undertaken
(c)	Eligible business	Business of - - hotel (not below two star category); - adventure and leisure sports including ropeways; - providing medical and health services in the nature of nursing home with a minimum capacity of 25 beds; - running an old-age home; - operating vocational training institute for hotel management, catering and food craft, entrepreneurship development, nursing and para-medical, civil aviation related training, fashion designing and industrial training; - running information technology related training centre; - manufacturing of information technology hardware; and - Bio-technology.

(iii) Quantum of deduction and period:

Where the gross total income of an assessee includes any profits and gains derived by such an undertaking, a deduction of 100% of the profits and gains derived from such business for 10 consecutive assessment years commencing with the initial assessment year shall be allowed in computing the total income of the assessee. Initial assessment year means the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce articles or things or completes substantial expansion.

(iv) No deduction under any other section of Chapter VIA or section 10AA of the Act in respect of such profits:

No benefit to these undertakings will be available under any of the sections in Chapter VIA or in section 10AA in relation to the profits and gains of such undertakings.

(v) Maximum permissible deduction:

While computing the total period of 10 years the period for which the benefit under section 80-IC has already been availed, if any, shall also be included.

(vi) The provisions of sub-section (5) and sub-section (7) to (12) of section 80-IA shall apply to the eligible undertaking under this section.

**SUMMARY OF DEDUCTIONS IN RESPECT OF CERTAIN
INCOMES: SECTIONS 80-IA to 80-IE**

Section	Eligible Business		Year of commencement of eligible business	Period of Deduction	Quantum of Deduction
80-IA	(1)	(i) Developing or (ii) Operating and maintaining or (iii) Developing, operating and maintaining any infrastructure facility	On or after 1.4.1995 but not later than 1.4.2017	<u>Infrastructure Facility of road, or a bridge or a rail system or a highway project or a water supply project:</u> 10 consecutive assessment years out of 20 years beginning from the year in which the enterprise develops or begins to operate the eligible business.	100% of the profits and gains derived from such business for 10 consecutive assessment years.
	(2)	Industrial parks	<u>Industrial parks:</u> Notified by the Central Government for the period on or after 1.4.1997 & ending on 31.3.2011.		
	(3)	Power undertakings	<u>Generation or Generation and distribution:</u> Set up between 1.4.1993 & 31.3.2017. <u>Transmission or distribution:</u> Start transmission during the period from 1.4.1999 & 31.3.2017. <u>Renovation and modernisation of existing network:</u> Undertakes substantial renovation and modernisation during the period on or after 1.4.2004 & ending on 31.3.2017.	<u>Other eligible businesses:</u> 10 consecutive assessment years out of 15 years beginning from the year in which the enterprise develops or begins to operate the eligible business.	

	(4)	Undertaking owned by an Indian Company set up for Reconstruction or revival of a power generating plant	Company formed on or before 30 th November, 2005 and begins to generate or transmit or distribute power before 31 st March 2011 and notified before 31.12.2005 by Central Government		
80-IAB		Development of Special Economic Zones(SEZs)	Develops SEZ, notified on or after 1 st April 2005 but before 1 st April 2017.	10 consecutive AYs out of 15 years beginning from the year in SEZ has been notified.	100% of the profits and gains derived from such business.
80-IAC		A business carried out by an eligible start-up engaged in Innovation, Development or Improvement of products or processes or services or a scalable business model with a high potential of employment generation or wealth creation	The company or LLP is incorporated during the period 1.4.2016 - 31.3.2024	3 consecutive AYs out of 10 years beginning from the year in which company or LLP, incorporated.	100% of the profits and gains derived from such business.
80-IB		Processing, preservation and packaging of fruits or vegetables or meat and meat products or poultry or marine or dairy products or from the integrated business of handling, storage and transportation of foodgrains	<u>Processing, preservation and packaging of meat or meat products or poultry or marine or dairy products:</u> On or after 1.4.2009 <u>Other eligible businesses:</u> On or after 1.4.2001	10 consecutive AYs beginning with the initial AY	100% of the profits and gains derived from such business for 5 AYs beginning with the initial AY 25% (30% in case of company) for remaining 5 years
80-IBA		Developing and building housing projects or rental housing project	Housing Project referred under section 80-IBA(1) is	----	100% of the profits and gains derived from

		approved after 1 st June 2016 but on or before 31 st March 2022		such housing project.
80-IE	Undertaking begun or begins, in any of the North-Eastern States (i.e., the States of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim and Tripura) - (1) to manufacture or produce any eligible article or thing; (2) to undertake substantial expansion to manufacture or produce any eligible article or thing; (3) to carry on any eligible business.	between 1st April, 2007 and ending before 1st April, 2017	10 consecutive AYs commencing with the initial AY	100% of the profits and gains derived from such business

Note - In case of an individual, HUF, AoP (other than a co-operative society) or BoI or an artificial juridical person, deduction under section 80-IA to 80-IE would be available only if such person has exercised the option of shifting out of the default tax regime provided under section 115BAC(1A). It would not be available if such person pays concessional rates of tax under the default tax regime u/s 115BAC.

In case of companies and co-operative societies, deduction under section 80-IA to 80-IE would not be available if they opt for the special provisions u/s 115BAA/115BAB and section 115BAD/115BAE, respectively. In other words, deduction would be available only if companies and co-operative societies pay tax under the normal provisions of the Act.

Admissibility of deduction under Chapter VI-A on the profits enhanced due to disallowance of expenditure related to business activity [Circular No.37/2016, Dated 02.11.2016]

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

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

The courts have generally held that if the expenditure disallowed is related to the business activity against which the Chapter VI-A deduction has been claimed, the deduction needs to be allowed on the enhanced profits. Some illustrative cases upholding this view are as follows:

- (i) If an expenditure incurred by assessee for the purpose of developing a housing project was not allowable on account of non-deduction of TDS under law, such disallowance would ultimately increase assessee's profits from business of developing housing project. The ultimate profits of assessee after adjusting disallowance under section 40(a)(ia) would qualify for deduction under section 80-IB.*
- (ii) If deduction under section 40A(3) is not allowed, the same would have to be added to the profits of the undertaking on which the assessee would be entitled for deduction under section 80-IB.*

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

(7) Deduction in respect of profits and gains from business of collecting and processing of bio-degradable waste [Section 80JJA]

- (i) Eligible business:** The deduction is allowable where the gross total income of an assessee includes any profits and gains derived from the business of collecting and processing or treating of bio-degradable waste -
 - (1) for generating power, or
 - (2) producing bio-fertilizers, bio-pesticides or other biological agents, or
 - (3) for producing bio-gas, or
 - (4) making pellets or briquettes for fuel or organic manure.
- (ii) Quantum of deduction and period:** The deduction allowable under this section is an amount equal to the whole of such profits and gains for a period of five consecutive assessment years beginning with the assessment year relevant to the previous year in which the business commences.

Note - In case of an individual, HUF, AoP (other than a co-operative society) or BoI or an artificial juridical person, deduction under section 80JJA would be available only if such person has exercised the option of shifting out of the default tax regime provided under section 115BAC(1A). It would not be available if such person pays concessional rates of tax under the default tax regime u/s 115BAC.

In case of companies and co-operative societies, deduction under section 80JJA would not be available if they opt for the special provisions u/s 115BAA/115BAB and section 115BAD/115BAE, respectively. In other words, deduction would be available only if companies and co-operative societies pay tax under the normal provisions of the Act.

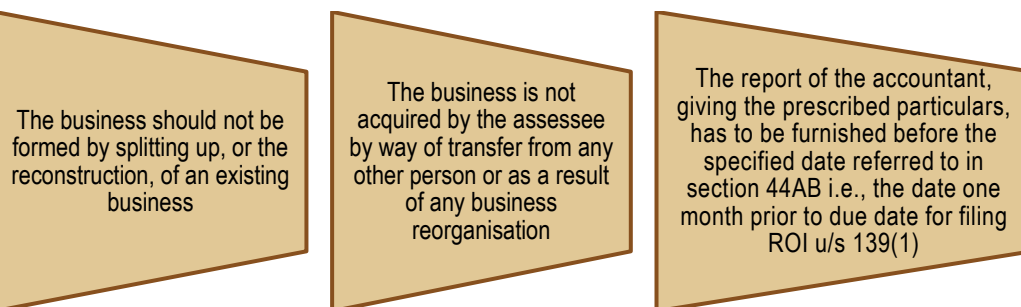
(8) Deduction in respect of employment of new employees [Section 80JJAA]

(i) Quantum and period of deduction:

Where the gross total income of an assessee to whom section 44AB applies, includes any profits and gains derived from business, a deduction of an amount equal to 30% of additional employee cost incurred in the course of such business in the previous year, would be allowed for three assessment years including the assessment year relevant to the previous year in which such employment is provided.

(ii) Conditions to be fulfilled:

The deduction would be allowed only subject to fulfilment of the following conditions:



(iii) Meaning of certain terms:

	Term	Meaning
(a)	Additional employee cost	Total emoluments paid or payable to additional employees employed during the previous year.
		In the case of an existing business The additional employee cost shall be Nil, if— (a) there is no increase in the number of employees from the total number of

			employees employed as on the last day of the preceding year; (b) emoluments are paid otherwise than by an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account or through any other prescribed electronic mode [credit card, debit card, net banking, IMPS (Immediate Payment Services), UPI (Unified Payment Interface), RTGS (Real Time Gross Settlement), NEFT (National Electronic Fund Transfer), BHIM (Bharat Interface for Money) Aadhar Pay].
		In the first year of a new business	The emoluments paid ⁵ or payable to employees employed during that previous year shall be deemed to be the additional employee cost.
(b)	Additional employee	An employee who has been employed during the previous year and whose employment has the effect of increasing the total number of employees employed by the employer as on the last day of the preceding year. <u>Exclusions from the definition:</u> (a) an employee whose total emoluments are more than ₹ 25,000 per month; or (b) an employee for whom the entire contribution is paid by the Government under the Employees' Pension Scheme notified in accordance with the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952; or	

⁵ As per Form No.10DA read with Rule 19AB, the amount shall **not** include emoluments paid otherwise than by way of account payee cheque/bank draft/ECS through a bank account and prescribed electronic modes

		(c) an employee employed for a period of less than 240 days during the previous year. In case of an assessee engaged in the business of manufacturing of apparel or footwear or leather products, an employee employed for a period of less than 150 days during the previous year; or (e) an employee who does not participate in the recognised provident fund. Note – If an employee is employed during the previous year for less than 240 days or 150 days, as the case may be, but is employed for a period of 240 days or 150 days, as the case may be, in the immediately succeeding year, he shall be deemed to have been employed in the succeeding year. Accordingly, the employer would be entitled to deduction of 30% of additional employee cost of such employees for three years from the succeeding year.
(c)	Emoluments	any sum paid or payable to an employee in lieu of his employment by whatever name called. Exclusions from the definition: (a) any contribution paid or payable by the employer to any pension fund or provident fund or any other fund for the benefit of the employee under any law for the time being in force; and (b) any lump-sum payment paid or payable to an employee at the time of termination of his service or superannuation or voluntary retirement, such as gratuity, severance pay, leave encashment, voluntary retrenchment benefits, commutation of pension and the like.

Note - Deduction u/s 80JJAA would be available to an assessee irrespective of the regime under which such assessee pays tax.

ILLUSTRATION 18

Mr. Vikas has commenced the business of manufacture of computers on 1.4.2023. He employed 420 new employees during the P.Y.2023-24, the details of whom are as follows –

	No. of employees	Date of employment	Regular/Casual	Total monthly emoluments per employee (₹)
(i)	75	1.4.2023	Regular	24,000
(ii)	125	1.5.2023	Regular	26,000

(iii)	120	1.7.2023	Casual	24,500
(iv)	100	1.9.2023	Regular	24,000

The regular employees participate in recognized provident fund while the casual employees do not. Compute the deduction, if any, available to Mr. Vikas for A.Y.2024-25, if the profits and gains derived from manufacture of computers that year is ₹ 90 lakhs and his total turnover is ₹ 11.48 crores.

What would be your answer if Mr. Vikas has commenced the business of manufacture of leather products on 1.4.2023?

SOLUTION

Mr. Vikas is eligible for deduction under section 80JJAA since he is subject to tax audit under section 44AB for A.Y.2024-25, and he has employed “additional employees” during the P.Y.2023-24.

I. If Mr. Vikas is engaged in the business of manufacture of computers

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

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

Working Note:

Number of additional employees

Particulars	No. of workmen	
Total number of employees employed during the year		420
Less: Casual employees employed on 1.7.2023 who do not participate in recognized provident fund	120	
Regular employees employed on 1.5.2023, since their total monthly emoluments exceed ₹ 25,000	125	
Regular employees employed on 1.9.2023 since they have been employed for less than 240 days in the P.Y.2023-24.	100	345
Number of “additional employees”		75

Notes –

- (i) Since casual employees do not participate in recognized provident fund, they do not qualify as additional employees. Further, 125 regular employees employed on 1.5.2023 also do not qualify as additional employees since their monthly emoluments exceed ₹ 25,000. Also, 100 regular employees employed on 1.9.2023 do not qualify

as additional employees for the P.Y.2023-24, since they are employed for less than 240 days in that year.

Therefore, only 75 employees employed on 1.4.2023 qualify as additional employees, and the total emoluments paid or payable to them during the P.Y.2023-24 is deemed to be the additional employee cost.

- (ii) As regards 100 regular employees employed on 1.9.2023, they would be treated as additional employees for previous year 2024-25, if they continue to be employees in that year for a minimum period of 240 days. Accordingly, 30% of additional employee cost in respect of such employees would be allowable as deduction under section 80JJAA in the hands of Mr. Vikas for the A.Y. 2025-26.

II. If Mr. Vikas is engaged in the business of manufacture of leather products

If Mr. Vikas is engaged in the business of manufacture of leather products, then, he would be entitled to deduction under section 80JJAA in respect of employee cost of regular employees employed on 1.9.2023, since they have been employed for more than 150 days in the previous year 2023-24.

Additional employee cost = ₹ 2,16,00,000 + ₹ 24,000 × 7 × 100 = ₹ 3,84,00,000

Deduction under section 80JJAA = 30% of ₹ 3,84,00,000 = ₹ 1,15,20,000

(9) **Deduction in respect of certain income of Offshore Banking Units and International Financial Services Centre [Section 80LA]**

(i) **Eligible assessee:**

This section is applicable to the following assessees -

- (a) a scheduled bank having an Offshore Banking Unit in a SEZ; or
- (b) any bank, incorporated by or under the laws of a country outside India, and having an Offshore Banking Unit in a SEZ; or
- (c) a Unit of an International Financial Services Centre (IFSC).

(ii) **Eligible income qualifying for deduction:**

The deduction will be allowed on account of the following income included in the gross total income of such assessees -

- (a) income from an Offshore Banking Unit in a SEZ; or

- (b) income from the business referred to in section 6(1) of the Banking Regulation Act, 1949, with -
- (1) an undertaking located in a SEZ or
 - (2) any other undertaking which develops, develops and operates or develops, operates and maintains a SEZ; or
- (c) income from any Unit of the IFSC from its business for which it has been approved for setting up in such a Centre in a SEZ.
- (d) income arising from the transfer of an asset, being an aircraft or a ship or a helicopter or an engine of an aircraft or a helicopter, or any part thereof, which was leased by a unit of an IFSC referred to in clause (c) to a person, subject to the condition that the unit has commenced operation on or before the 31.03.2024.

(iii) **Quantum and period of deduction:**

S. No.	Eligible assessee	Quantum and period of deduction	Relevant previous year from which deduction is allowed
(a)	a scheduled bank having an Offshore Banking Unit in a SEZ, whose GTI includes any income referred to in (ii) above	100% of such income for 5 consecutive AYs. Thereafter, 50% of such income for the next 5 consecutive AYs.	Beginning with the assessment year relevant to the previous year in which
(b)	any bank, incorporated by or under the laws of a country outside India, and having an Offshore Banking Unit in a SEZ, whose GTI includes any income referred to in (ii) above	<i>However, w.e.f. A.Y. 2023-24, such deduction of 50% available for next 5 consecutive assessment years has been enhanced to 100% of such income.</i>	(1) the permission under section 23(1)(a) of the Banking Regulation Act, 1949 was obtained; or (2) the permission or registration under the SEBI Act, 1992 was obtained; or (3) the permission or registration under the International Financial Services Centre Authority Act, 2019 was obtained.
(c)	Unit of an International Financial Services Centre (IFSC), whose GTI includes any income referred to in (ii) above	100% of such income for any 10 consecutive AYs at the option of the assessee, out of 15 years.	

(iv) Conditions:

The following conditions have to be fulfilled for claiming deduction under this section-

- (a) The report of a Chartered Accountant in the prescribed form certifying that the deduction has been correctly claimed in accordance with the provisions of this section, should be submitted along with the return of income.
- (b) A copy of the permission obtained under section 23(1)(a) of the Banking Regulation Act, 1949 or copy of permission or registration obtained under the International Financial Services Centre Authority Act, 2019 should also be furnished along with the return of income.

(10) Deduction in respect of inter-corporate dividends [Section 80M]

- (i) **Eligible assessee:** Deduction under this section would be allowable to a domestic company if its gross total income includes in any previous year, any income by way of dividends received from any other domestic company or foreign company or a business trust.
- (ii) **Quantum of deduction:** In computing the total income of such domestic company, a deduction of an amount equal to the amount of dividends received from other domestic company or foreign company or business trust as does not exceed the amount of dividend distributed by such domestic company on or before the due date.

In simple words, deduction under this section would be amount of dividend received from other domestic company/foreign company/business trust or dividend distributed by the domestic company, whichever is lower.

Example: X Ltd. a domestic company received dividend of ₹ 10 lakhs from “Y Ltd”, a domestic company (100% subsidiary of X Ltd.) during the previous year 2023-24. On 15th May, 2024, X Ltd. declared and distributed dividend of ₹ 5 lakhs.

In this case, X Ltd. would be eligible for deduction under section 80M in respect of dividend received from Y Ltd. to the extent of ₹ 5 lakhs, being the amount of dividend declared and distributed by X Ltd. Hence, the deduction under section 80M would be ₹ 5 lakhs.

- (iii) **Meaning of due date:** “Due date” means the date one month prior to the date for furnishing the return of income under section 139(1).

- (iv) **No deduction:** Where any deduction, in respect of the amount of dividend distributed by the domestic company, has been allowed under this section in any previous year, no deduction shall be allowed in respect of such amount in any other previous year.

Note - Deduction u/s 80M would be available to Indian company irrespective of the regime under which it pays tax.

(11) Deduction in respect of income of co-operative societies [Section 80P]

(i) **Applicability:**

Under this section, certain specified income of a co-operative society would be allowed as a deduction, provided such income is included in the gross total income of the society.

(ii) **Eligible income for deduction and quantum of deduction:**

Deduction in respect of profit attributable to certain specified activities

100% deduction shall be allowed in respect of profits and gains attributable to any one or more of the following activities to a co-operative society engaged in -

- (1) carrying on the business of banking or providing credit facilities to its members; or
- (2) a cottage industry; or
- (3) the marketing of the agricultural produce grown by its members; or
- (4) the purchase of agricultural implements, seeds, livestock or other articles intended for agriculture or for the purpose of supplying them to its members; or
- (5) the processing without the aid of power, of the agricultural produce of its members; or
- (6) the collective disposal of the labour to its member; or
- (7) fishing and other allied pursuits, such as catching, curing, processing, preserving, storing and marketing of fish or the purchase of materials and equipment in connection therewith for the purpose of supplying them to their members.

However, the exemption in respect of income referred to in (6) or (7) will be available only in the case of those co-operative societies which, under their rules and by-laws, restrict the voting rights to

- (i) members who contribute their labour force or who actually carry on the fishing or other allied activities,

- (ii) the co-operative credit societies which provide financial assistance to the society and
- (iii) the State Government.

Deduction in respect of profit of primary co-operative societies

100% of the profits and gains of the business would be allowed as deduction from the gross total income of the co-operative society in case of a primary co-operative society engaged in supplying milk, oilseeds, fruits or vegetables raised or grown by its members to –

- a federal co-operative society engaged in supplying milk, oilseeds, fruits or vegetables, as the case may be, or
- the Government or a local authority or
- a Government company as defined in section 617⁶ of the Companies Act, 1956 or a corporation established by or under a Central, State or Provincial Act (engaged in supplying milk, oilseeds, fruits or vegetables, as the case may be, to the public),

Deduction in respect of other activities

A co-operative society which is engaged in activities other than to those mentioned above either independently of, or in addition to, all or any of the activities so specified, is eligible for deduction upto ₹ 50,000 to the extent of its business income arising from other activities. The limit is ₹ 1,00,000 in the case of consumer co-operative societies.

For this purpose, consumer co-operative society means a society for the benefit of the consumers.

Deduction in respect of Interest or dividend income

Any income arising to a co-operative society by way of any interest and dividends derived from its investments with any other co-operative society is deductible in full under this section.

Deduction in respect of letting-out income for certain purpose

The income derived by a co-operative society from the letting out of godowns or warehouses for storage, processing or facilitating the marketing of commodities is fully allowable as deduction.

⁶ As defined in section 2(45) of the Companies Act, 2013

Deduction in respect of interest on securities and income from house property to certain co-operative societies

Any income arising to a co-operative society by way of 'Interest on securities' or 'Income from house property' (chargeable under section 22) is fully deductible under this section where the gross total income of the co-operative society does not exceed ₹ 20,000 and it is not a housing society or an urban consumer's society or a society carrying on transport business or a society engaged in the performance of any manufacturing operations with the aid of power. Thus, a majority of small co-operative societies would not have to pay any income-tax.

(iii) Meaning of urban consumers' co-operative society:

It means a society for the benefit of the consumers within the limits of a municipal corporation, municipality, municipal committee, notified area committee, town area or cantonment.

(iv) Deduction under other section of Chapter VI-A of the Act:

Where the co-operative society is also entitled to the deduction available under section 80-IA, the deduction under this section shall be allowed with reference to the gross total income as reduced by the deduction allowable under section 80-IA.

(v) Non-eligible co-operative societies:

Co-operative banks, other than primary agricultural credit societies (i.e. as defined in Part V of the Banking Regulation Act, 1949) and primary co-operative agricultural and rural development banks (i.e. societies having its area of operation confined to a taluk and the principal object of which is to provide for long-term credit for agricultural and rural development activities) are not eligible to claim deduction under section 80P. Moreover, the CBDT has, vide *Circular No. 6/2010 dated 20.9.2010* clarified that the Regional Rural Banks are not eligible for deduction under section 80P.

However, co-operative societies engaged in providing credit facilities solely to its members cannot be said to be a co-operative bank. Thus, such co-operative societies are eligible for deduction under section 80P [*PCIT v. Annasaheb Patil Mathadi Kamgar Sahakari Pathpedi Ltd. [2023] 454 ITR 117 (SC)*].

Note - In case of co-operative societies, deduction under section 80P would not be available if they opt for the special provisions u/s 115BAD/115BAE. In other words, deduction would be available only if they pay tax under the normal provisions of the Act.

(12) Deduction in respect of certain income of Producer Companies [Section 80PA]
(i) Applicability:

Under section 80P, 100% deduction is available in respect of profits of co-operative society which provide assistance to its members engaged in primary agricultural activities.

A similar benefit has been extended, by insertion of new section 80PA, to Farm Producer Companies (FPC), having a total turnover of less than ₹ 100 crore in any previous year, whose gross total income includes any profits and gains derived from eligible business.

(ii) Meaning of Eligible Business:

Eligible business means -

- (a) the marketing of agricultural produce grown by its members, or
- (b) the purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to its members, or
- (c) the processing of the agricultural produce of its members

(iii) Quantum of deduction:

100% of profits and gains attributable to eligible business for the previous year relevant to A.Y.2019-20 to A.Y.2024-25

In a case where the assessee is entitled also to deduction under any other provision of Chapter VI-A, the deduction under this section shall be allowed with reference to the income, if any, as referred to in this section included in the gross total income as reduced by the deductions under such other provision of this Chapter.

(iv) Meaning of certain terms:

	Term	Meaning
(i)	Member	A person or Producer institution (whether incorporated or not) admitted as a Member of a Producer Company and who retains the qualifications necessary for continuance as such. ⁷
(ii)	Producer Company	A body corporate having objects or activities specified in section 581B of the Companies Act, 1956 ⁸ and registered as Producer Company under that Act..

⁷ Section 378A of the Companies Act, 2013

⁸ 378B of the Companies Act, 2013

Note - In case of a producer company, deduction under section 80PA would not be available if it opts for the special provisions u/s 115BAA/115BAB. In other words, deduction would be available only if it pays tax under the normal provisions of the Act.

(13) Deduction in respect of royalty income, etc., of authors of certain books other than text books [Section 80QCB]

- (i) **Eligible assessee and Quantum of deduction:** Under section 80QCB, deduction of up to a maximum ₹ 3,00,000 is allowed to an individual resident in India, being an author including a joint author in respect of income derived by him in the exercise of his profession i.e., the deduction shall be the income derived as author or ₹ 3,00,000, whichever is less.
- (ii) **Eligible income:**
- (a) This income may be received either by way of a lumpsum consideration for the assignment or grant of any of his interests in the copyright of any book.
 - (b) Such book should be a work of literary, artistic or scientific nature, or of royalties or copyright fees (whether receivable in lump sum or otherwise) in respect of such book.
 - (c) This deduction shall not, however, be available in respect of royalty income from brochures, commentaries, diaries, guides, journals, magazines, newspapers, pamphlets, textbook for schools, tracts and other publications of similar nature.

Note - Where an assessee claims deduction under this section, no deduction in respect of the same income may be claimed under any other provision of the Income-tax Act, 1961.

- (iii) **Manner of computation of deduction:** For the purpose of calculating the deduction under this section, the amount of eligible income (royalty or copyright fee received otherwise than by way of lumpsum) before allowing expenses attributable to such income, shall not exceed 15% of the value of the books sold during the relevant previous year.

However, this condition is not applicable where the royalty or copyright fees is receivable in lump sum in lieu of all rights of the author in the book.

(iv) **Conditions:**

- (a) **Furnishing of certificate in prescribed form:** For claiming the deduction, the assessee shall have to furnish a certificate in the prescribed manner in the prescribed format, duly verified by the person responsible for making such payment, setting forth such particulars as may be prescribed.

- (b) **Period for repatriation of income earned outside India:** Where the assessee earns any income from any source outside India, he should bring such income into India in convertible foreign exchange within a period of six months from the end of the previous year in which such income is earned or within such further period as the competent authority may allow in this behalf for the purpose of claiming deduction under this section.

The competent authority shall mean the Reserve Bank of India or such other authority as is authorised under any law for the time being in force for regulating payments and dealings in foreign exchange.

Note - Deduction under section 80QQB would be available to an individual resident in India only if he exercises the option of shifting out of the default tax regime provided under section 115BAC(1A).

ILLUSTRATION 19

Mr. Aakash earned royalty of ₹ 2,88,000 from a foreign country for a book authored by him, being a work of literary nature. The rate of royalty is 18% of value of books. The expenditure incurred by him for earning this royalty was ₹ 40,000. The amount remitted to India till 30th September, 2024 is ₹ 2,30,000. The remaining amount was not remitted till 31st March, 2025. Compute the amount includible in the gross total income of Mr. Aakash and the amount of deduction which he will be eligible for under section 80QQB if he has exercised the option of shifting out of the default tax regime provided under section 115BAC(1A).

SOLUTION

The net royalty of ₹ 2,48,000 (i.e., royalty of ₹ 2,88,000 less ₹ 40,000, being expenditure to earn such income) is includible in gross total income. Deduction u/s 80QQB would be ₹ 1,90,000 as calculated hereunder –

	₹
Deduction u/s 80QQB:	
Royalty ₹ 2,88,000 × 15/18 = ₹ 2,40,000	
Restricted to	
Amount brought into India in convertible foreign exchange within the prescribed time	2,30,000
Less: Expenses already allowed as deduction while computing royalty income	40,000
Deduction u/s 80QQB	1,90,000

(15) Deduction in respect of royalty on patents [Section 80RRB]

- (i) **Eligible assessee:** This deduction shall be available only to a resident individual who is registered as the true and first inventor in respect of an invention under the Patents Act, 1970, including the co-owner of the patent and earning income by way of royalty of a patent registered on or after 1.4.2003.
- (ii) **Quantum of deduction:** This section allows deduction to a resident individual in respect of income by way of royalty of a patent registered on or after 1.4.03 up to an amount of **₹ 3 lakhs**.

Note - No deduction in respect of such income will be allowed under any other provision of the Income-tax Act, 1961

- (iii) **Eligible income:** This deduction shall be restricted to the royalty income including consideration for transfer of rights in the patent or for providing information for working or use of a patent, use of a patent or the rendering of any services in connection with these activities.

The deduction shall not be available on any consideration for sale of product manufactured with the use of the patented process or patented article for commercial use.

(iv) **Conditions:**

- (a) In respect of any such income which is earned from sources outside India, the deduction shall be restricted to such sum as is brought to India in convertible foreign exchange within a period of 6 months or extended period as is allowed by the competent authority (Reserve Bank of India).
- (b) For claiming this deduction the assessee shall be required to furnish a certificate in the prescribed form signed by the prescribed authority, alongwith the return of income.

- (v) **Rectification of assessment where patent is revoked subsequently:** Where the patent is subsequently revoked or the name of the assessee was excluded from the patents register as patentee in respect of that patent, the deduction allowed during the period shall be deemed to have been wrongly allowed and the assessment shall be rectified under the provisions of section 155.

The period of 4 years for rectification shall be reckoned from the end of the previous year in which the order of the revocation of the patent is passed.

Note - Deduction under section 80RRB would be available to an individual resident in India only if he exercises the option of shifting out of the default tax regime provided under section 115BAC(1A).



8.4 DEDUCTIONS IN RESPECT OF OTHER INCOME

(1) Deduction in respect of interest on deposits in savings accounts [Section 80TTA]

- (i) **Eligible assessee and Quantum of deduction:** Section 80TTA provides that in case the gross total income of an assessee, being an individual or a Hindu Undivided Family, includes any income by way of an interest on deposits in a saving account (not being time deposits, which are deposits repayable on expiry of fixed periods), deduction upto ₹ 10,000 in aggregate shall be allowed while computing the total income of such assessee. Such deduction shall be allowed in case the saving account is maintained with:
- (a) a banking company to which the Banking Regulation Act, 1949, applies (including any bank or banking institution referred to in section 51 of that Act);
 - (b) a co-operative society engaged in carrying on the business of banking (including a co-operative land mortgage bank or a co-operative land development bank); or
 - (c) a post office.

Note - Deduction under this section would, however, not be available to a senior citizen eligible for deduction under section 80TTB.

- (ii) **Restriction:** If the aforesaid income is derived from any deposit in a savings account held by, or on behalf of, a firm, an AOP/BOI, no deduction shall be allowed in respect of such income in computing the total income of any partner of the firm or any member of the AOP or any individual of the BOI.

In effect, the deduction under this section shall be allowed only in respect of the income derived in form of the interest on the saving bank deposit (other than time deposits) made by the individual or Hindu Undivided Family directly.

Note - Deduction under section 80TTA would be available to an individual/HUF only if he/it exercises the option of shifting out of the default tax regime provided under section 115BAC(1A).

(2) Deduction in respect of interest on deposits in case of senior citizens [Section 80TTB]

- (i) **Eligible assessee:** A senior citizen (a resident individual who is of the age of 60 years or more at any time during the relevant previous year), whose gross total income includes income by way of interest on deposits (both fixed deposits and saving accounts) with –

- (a) a banking company to which Banking Regulation Act, 1949 applies
 - (b) a co-operative society engaged in carrying on the business of banking (including a co-operative land mortgage bank or a co-operative land development bank)
 - (c) a Post Office.
- (ii) **Quantum of deduction:** Actual amount of interest on deposits or ₹ 50,000, whichever is lower.
- (iii) **Non-availability of deduction to partner/member, where deposit held by firm/AOP/BOI:**
Where interest income is derived from any deposit held by, or on behalf of, a firm, an AOP or a BOI, the partner of the firm or member of AOP/BOI would not be allowed deduction in respect of such income while computing their total income.

Note - Deduction under section 80TTB would be available an individual only if he exercises the option of shifting out of the default tax regime provided under section 115BAC(1A).

ILLUSTRATION 20

Mr. Shivpal, a resident individual aged about 64 years, has earned business income (computed) of ₹ 1,40,000, lottery income of ₹ 1,60,000 (gross) during the P.Y. 2023-24. He also has interest on Fixed Deposit of ₹ 51,000 with banks. He invested an amount of ₹ 1,50,000 in Public Provident Fund account. What is the total income of Mr. Shivpal for the A.Y.2024-25 if he has exercised the option of shifting out of the default tax regime provided under section 115BAC(1A)?

SOLUTION

Computation of total income of Mr. Shivpal for A.Y.2024-25

Particulars	₹	₹
Profits and gains of business or profession		1,40,000
Income from other sources		
- Interest on Fixed Deposit with banks		51,000
- lottery income		1,60,000
Gross Total Income		3,51,000
Less: Deductions under Chapter VIA [See Note below]		
Under section 80C		
- Deposit in Public Provident Fund	1,50,000	

Under section 80TTB		
- Interest on fixed deposits with banks, allowable as deduction to the extent of	50,000	
	2,00,000	
Restricted to		1,91,000
Total Income		1,60,000

Note: In case of resident individuals of the age of 60 years or more, interest on bank fixed deposits qualifies for deduction upto ₹ 50,000 under section 80TTB.

Though the aggregate of deductions under Chapter VI-A is ₹ 2,00,000, however, the maximum permissible deduction cannot exceed the gross total income exclusive of long term capital gains taxable under section 112 and section 112A, short-term capital gains covered under section 111A and winnings from lotteries of the assessee.

Therefore, the maximum permissible deduction under Chapter VI-A = ₹ 3,51,000 – ₹ 1,60,000 = ₹ 1,91,000.



8.5 OTHER DEDUCTIONS

Deduction in the case of a person with disability [Section 80U]

(1) Section 80U harmonizes the criteria for defining disability as existing under the Income-tax Rules with the criteria prescribed under the Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

(2) **Eligible assessee:** This section is applicable to a resident individual, who, at any time during the previous year, is certified by the medical authority to be a person with disability.

The benefit of deduction under this section has also been extended to persons suffering from autism, cerebral palsy and multiple disabilities.

(3) **Quantum of deduction** A deduction of ₹ 75,000 in respect of a person with disability and ₹ 1,25,000 in respect of a person with severe disability (having disability over 80%) is allowable under this section.

(4) **Conditions:**

(a) The assessee claiming a deduction under this section shall furnish a copy of the certificate issued by the medical authority in the form and manner, as may be

prescribed, along with the return of income under section 139, in respect of the assessment year for which the deduction is claimed.

- (b) Where the condition of disability requires reassessment, a fresh certificate from the medical authority shall have to be obtained after the expiry of the period mentioned on the original certificate in order to continue to claim the deduction.

Note - Deduction under section 80U would be available to an individual only if he exercises the option of shifting out of the default tax regime provided under section 115BAC(1A).



8.6 DEDUCTION UNDER SECTION 10AA

A deduction of profits and gains which are derived by an assessee being an entrepreneur from the export of articles or things or providing any service, shall be allowed from the total income of the assessee.

Note - In case of an individual, HUF, AoP (other than a co-operative society) or BoI or an artificial juridical person, deduction would be available only if such person has exercised the option of shifting out of the default tax regime provided under section 115BAC(1A). The deduction would be available only under the optional tax regime, where they pay tax under the normal provisions of the Act.

In case of companies and co-operative societies, deduction would not be available if they opt for the special provisions u/s 115BAA/ 115BAB and section 115BAD/ 115BAE, respectively. The deduction would be available if they pay tax under the normal provisions of the Act.

(1) Assesseees who are eligible for deduction

Deduction is available to all categories of assesseees who derive any profits or gains from an undertaking, being a unit, engaged in the manufacturing or production of articles or things or things or provision any service. Such assessee should be an entrepreneur referred to in section 2(j) of the SEZ Act, 2005 i.e., a person who has been granted a letter of approval by the Development Commissioner under section 15(9) of the said Act.

(2) Essential conditions to claim deduction

The deduction would be available to an undertaking which fulfils the following conditions:

- (i) It has begun to manufacture or produce articles or things or provide any service in any SEZ during the previous year relevant to A.Y.2006-07 or any subsequent assessment year but not later than A.Y.2020-21.

However, in case where letter of approval, required to be issued in accordance with the provisions of the SEZ Act, 2005, has been issued on or before 31st March, 2020 and the manufacture or production of articles or things or providing services has not begun on or before 31st March, 2020 then, the date for manufacture or production of articles or things or providing services has been extended to 31st March, 2021 or such other date after 31st March, 2021, as notified by the Central Government.

Example: If SEZ unit has received the necessary approval by 31.3.2020 and begins manufacture or production of articles or things or providing services on or before 31st March, 2021, then it would be deemed to have begun manufacture or production of articles or things or providing services during the A.Y. 2020-21 and would be eligible for exemption under section 10AA. [The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020]

- (ii) The assessee should furnish in the prescribed form, before the date specified in section 44AB i.e., one month prior to the due date for furnishing return of income u/s 139(1), the report of a chartered accountant certifying that the deduction has been correctly claimed.
- (iii) No deduction under section 10AA would be allowed to an assessee who does not furnish a return of income on or before the due date specified u/s 139(1).

Example: An individual, subject to tax audit u/s 44AB, claiming deduction u/s 10AA is required to furnish return of income on or before 31.10.2024 for A.Y. 2024-25 and the report of a chartered accountant before 30.9.2024, certifying the deduction claimed u/s 10AA.

- (iv) Deduction under section 10AA would be available to a Unit, if the proceeds from sale of goods or provision of services is received in, or brought into, India by the assessee in convertible foreign exchange, within a period of 6 months from the end of the previous year or, within such further period as the competent authority may allow in this behalf.

The export proceeds from sale of goods or provision of services shall be deemed to have been received in India where such export turnover is credited to a separate account maintained for that purpose by the assessee with any bank outside India with the approval of the Reserve Bank of India.

Meaning of Competent authority – Competent authority means RBI or such authority as is authorized under any law for the time being in force for regulating payments and dealings in foreign exchange.

(3) Period for which deduction is available

The unit of an entrepreneur, which begins to manufacture or produce any article or thing or provide any service in a SEZ on or after 1.4.2005, shall be allowed a deduction of:

- (i) 100% of the profits and gains derived from the export, of such articles or things or from services for a period of 5 consecutive assessment years beginning with the assessment year relevant to the previous year in which the Unit begins to manufacture or produce such articles or things or provide services, and
- (ii) 50% of such profits and gains for further 5 assessment years.
- (iii) so much of the amount not exceeding 50% of the profit as is debited to the profit and loss account of the previous year in respect of which the deduction is to be allowed and credited to a reserve account (to be called the "Special Economic Zone Re-investment Reserve Account") to be created and utilised in the manner laid down under section 10AA(2) for next 5 consecutive years.

However, *Explanation* below section 10AA(1) has been inserted to clarify that amount of deduction under section 10AA shall be allowed from the total income of the assessee computed in accordance with the provisions of the Act before giving effect to the provisions of this section and the deduction under section 10AA shall not exceed such total income of the assessee.

Example: An undertaking is set up in a SEZ and begins manufacturing on 15.10.2009. The deduction under section 10AA shall be allowed as under:

- (a) 100% of profits of such undertaking from exports from A.Y.2010-11 to A.Y.2014-15.
- (b) 50% of profits of such undertaking from exports from A.Y.2015-16 to A.Y. 2019-20.
- (c) 50% of profits of such undertaking from exports from A.Y.2020-21 to A.Y.2024-25 provided certain conditions are satisfied.

(4) Conditions to be satisfied for claiming deduction for further 5 years (after 10 years) [Section 10AA(2)]

Sub-section (2) provides that the deduction under (3)(iii) above shall be allowed only if the following conditions are fulfilled, namely:-

- (i) the amount credited to the Special Economic Zone Re-investment Reserve Account is utilized -
 - (1) for the purposes of acquiring machinery or plant which is first put to use before the expiry of a period of three years following the previous year in which the reserve was created; and
 - (2) until the acquisition of the machinery or plant as aforesaid, for the purposes of the business of the undertaking. However, it should not be utilized for
 - (i) distribution by way of dividends or profits; or
 - (ii) for remittance outside India as profits; or
 - (iii) for the creation of any asset outside India;
- (ii) the particulars, as may be specified by the CBDT in this behalf, have been furnished by the assessee in respect of machinery or plant. Such particulars include details of the new plant/ machinery, name and address of the supplier of the new plant/ machinery, date of acquisition and date on which new plant/machinery was first put to use. Such particulars have to be furnished along with the return of income for the assessment year relevant to the previous year in which such plant or machinery was first put to use.

(5) Consequences of mis-utilisation / non-utilisation of reserve [Section 10AA(3)]

Where any amount credited to the Special Economic Zone Re-investment Reserve Account -

- (i) has been utilised for any purpose other than those referred to in sub-section (2), the amount so utilized shall be deemed to be the profits in the year in which the amount was so utilised and charged to tax accordingly; or
- (ii) has not been utilised before the expiry of the said period of 3 years, the amount not so utilised, shall be deemed to be the profits in the year immediately following the said period of three years and be charged to tax accordingly.

(6) Computation of profit and gains from exports of such undertakings

The profits derived from export of articles or things or services (including computer software) shall be the amount which bears to the profits of the business of the undertaking, being the

unit, the same proportion as the export turnover in respect of such articles or things or computer software bears to the total turnover of the business carried on by the undertaking i.e.

$$\text{Profits of Unit in SEZ} \times \frac{\text{Export turnover of Unit SEZ}}{\text{Total turnover of Unit SEZ}}$$

Clarification on issues relating to export of computer software

Section 10AA provides deduction to assessees who derive any profits and gains from export of articles or things or services (including computer software) from the year in which the Unit begins to manufacture or produce such articles or things or provide services, as the case may be, subject to fulfillment of the prescribed conditions. The profits and gains derived from the on site development of computer software (including services for development of software) outside India shall be deemed to be the profits and gains derived from the export of computer software outside India.

Meaning of Export turnover: *It means the consideration in respect of export by the undertaking, being the unit of articles or things or services received in India or brought into India by the assessee in convertible foreign exchange within 6 months from the end of the previous year or within such further period as the competent authority may allow in this behalf.*

However, it does not include

- ✓ *freight*
- ✓ *telecommunication charges*
- ✓ *insurance*

attributable to the delivery of the articles or things outside India or expenses incurred in foreign exchange in rendering of services (including computer software) outside India

Computation of admissible deduction u/s 10AA of the Income-tax Act, 1961 [Circular No. 4/2018, Dated 14-8-2018]

As per the provisions of section 10AA(7), the profits derived from export of articles or things or services (including computer software) shall be the amount which bears to the profits of the business of the undertaking, being the Unit, the same proportion as the export turnover in respect of such articles or things or services bears to the total turnover of the business carried on by the undertaking.

Further as per clause (ia) to *Explanation 1* to section 10AA, "export turnover" means the consideration in respect of export by the undertaking, being the unit of articles or things or services received in India or brought into India by the assessee in convertible foreign exchange within 6 months from the end of the previous year or within such further period as the competent authority may allow in this behalf, but does not include freight, telecommunication charges or insurance attributable to the delivery of the articles or things outside India or expenses, if any, incurred in foreign exchange in rendering of services (including computer software) outside India.

The issue of whether freight, telecommunication charges and insurance expenses are to be excluded from both "export turnover" and "total turnover" while working out deduction admissible under section 10AA on the ground that they are attributable to delivery of articles or things outside India has been highly contentious. Similarly, the issue whether charges for rendering services outside India are to be excluded both from "export turnover" and "total turnover" while computing deduction admissible under section 10AA on the ground that such charges are relatable towards expenses incurred in convertible foreign exchange in rendering services outside India has also been highly contentious.

The controversy has been finally settled by the Hon'ble Supreme Court vide its judgment dated 24.4.2018 in the case of Commissioner of Income Tax, Central-III Vs. M/s HCL Technologies Ltd. (CA No. 8489-8490 of 2013, NJRS Citation 2018-LL-0424-40), in relation to section 10A.

The issue had been examined by CBDT and it is clarified, in line with the above decision of the Supreme Court, that **freight, telecommunication charges and insurance expenses are to be excluded both from "export turnover" and "total turnover", while working out deduction admissible under section 10AA to the extent they are attributable to the delivery of articles or things outside India.**

Similarly, expenses incurred in foreign exchange for rendering services outside India are to be excluded from both "export turnover" and "total turnover" while computing deduction admissible under section 10AA.

Note: Though this CBDT Circular is issued in relation to erstwhile section 10A, the same is also relevant in the context of section 10AA. Accordingly, the reference to section 10A in the Circular and the relevant sub-section and Explanation number thereto have been modified and given with reference to section 10AA and the corresponding sub-sections, Explanation number and clause of Explanation.

(7) Restriction on other tax benefits

- (i) During the period of deduction, depreciation is deemed to have been allowed on the assets. Written Down Value shall accordingly be reduced.
- (iii) No deduction under section 80-IA and 80-IB shall be allowed in relation to the profits and gains of the undertaking.
- (iv) Any unabsorbed depreciation under section 32(2) or business loss under section 72(1) or loss under the head “Capital gains” under section 74 of the undertaking, being the Unit shall be allowed to be carried forward or set off.
- (v) The conditions laid down in section 80-IA(8) (relating to inter-unit transfer) and in section 80-IA(10) (relating to showing excess profit from such unit) shall, so far as may be, apply in relation to the undertaking referred to in this section as they apply for the purposes of the undertaking referred to in section 80-IA.

Conditions laid down in section 80-IA(8): Where any goods or services held for the purposes of eligible business are transferred to any other business carried on by the assessee, or where any goods or service held for any other business carried on by the assessee are transferred to the eligible business and, in either case, if the consideration for such transfer as recorded in the accounts of the eligible business does not correspond to the market value thereof, then the profits eligible for deduction shall be computed by adopting market value of such goods or services on the date of transfer.

In case of exceptional difficulty in this regard, the profits shall be computed by the Assessing Officer on a reasonable basis as he may deem fit.

Conditions laid down in section 80-IA(10): Where due to the close connection between the assessee and the other person or for any other reason, it appears to the Assessing Officer that the profits of eligible business is increased to more than the ordinary profits, the Assessing Officer shall compute the amount of profits of such eligible business on a reasonable basis for allowing the deduction.

- (vii) Where a deduction under this section is claimed and allowed in relation to any specified business eligible for investment-linked deduction under section 35AD, no deduction shall be allowed under section 35AD in relation to such specified business for the same or any other assessment year.

(8) Deduction allowable in case of amalgamation and demerger

In the event of any undertaking, being the Unit which is entitled to deduction under this section, being transferred, before the expiry of the period specified in this section, to another undertaking, being the Unit in a scheme of amalgamation or demerger, -

- (i) no deduction shall be admissible under this section to the amalgamating or the demerged Unit for the previous year in which the amalgamation or the demerger takes place; and
- (ii) the provisions of this section would apply to the amalgamated or resulting Unit, as they would have applied to the amalgamating or the demerged Unit had the amalgamation or demerger had not taken place.

Circular No. 1/2013, dated 17.01.2013 provides certain clarifications in respect of following issues arising out of the said provisions:

	Issue	Clarification given by the CBDT
(1)	Would "On-site" development of computer software qualify as an export activity for tax benefit under section 10AA?	The software developed abroad at a client's place would be eligible for such benefit, because these would amount to 'deemed export'. However, it is necessary that there must exist a direct and intimate nexus or connection of development of software done abroad with the eligible units set up in India and such development of software should be pursuant to a contract between the client and the eligible unit.
(2)	Would receipts from deputation of technical manpower for such "On-site" software development abroad at the client's place be eligible for deduction under section 10AA?	<i>Explanation 2</i> to section 10AA clarifies that profits and gains derived from 'services for development of software' outside India would also be deemed as profits derived from export. Therefore, profits earned as a result of deployment of technical manpower at the client's place abroad specifically for software development work pursuant to a contract between the client and the eligible unit should not be denied benefit under section 10AA provided such deputation of manpower is for the development of such software and all the prescribed conditions are fulfilled.
(3)	Is it necessary to have separate master service agreement (MSA) for each work contract?	As per the practice prevalent in the software development industry, generally two types of agreement are entered into between the Indian software developer and the foreign client. Master Services Agreement (MSA) is an initial general agreement between a foreign client and the Indian software developer setting out the broad and general terms and conditions of business under the umbrella of which specific and individual Statement of Works (SOW) are formed. These SOWs,

		in fact, enumerate the specific scope and nature of the particular task or project that has to be rendered by a particular unit under the overall ambit of the MSA. Clarification has been sought whether more than one SOW can be executed under the ambit of a particular MSA and whether SOW should be given precedence over MSA. It is clarified that the tax benefits under section 10AA would not be denied merely on the ground that a separate and specific MSA does not exist for each SOW. The SOW would normally prevail over the MSA in determining the eligibility for tax benefits unless the Assessing Officer is able to establish that there has been splitting up or reconstruction of an existing business or non-fulfillment of any other prescribed condition.
(4)	Would tax benefit under section 10AA continue to be available in case of a slump sale of a unit?	The answer to this issue would depend on the facts of each case, such as how a slump-sale is made and what is its nature. It will also be important to ensure that the slump sale would not result into any splitting or reconstruction of existing business. It is, however, clarified that on the sole ground of change in ownership of an undertaking, the claim of exemption cannot be denied to an otherwise eligible undertaking and the tax holiday can be availed of for the unexpired period at the rates as applicable for the remaining years, subject to fulfillment of prescribed conditions.
(5)	Can tax benefits under section 10AA be enjoyed by an eligible SEZ unit consequent to its transfer to another SEZ?	It is clarified that the tax holiday should not be denied merely on the ground of physical relocation of an eligible SEZ unit from one SEZ to another in accordance with Instruction No. 59 of Department of Commerce, if all the prescribed conditions are satisfied under the Income-tax Act, 1961. It is further clarified that the unit so relocated will be eligible to avail of the tax benefit for the unexpired period at the rates applicable to such years.

ILLUSTRATION 21

ABC Ltd. furnishes you the following information for the year ended 31.3.2024:

Particulars	₹ (in lacs)
Total turnover of Unit A located in Special Economic Zone	120
Profit of the business of Unit A	45
Export turnover of Unit A received in India in convertible foreign exchange on or before 30.9.2024	60

Total turnover of Unit B located in Domestic Tariff Area (DTA)	225
Profit of the business of Unit B	25

Compute deduction under section 10AA for the A.Y. 2024-25, assuming that ABC Ltd. commenced operations in SEZ and DTA in the year 2019-20.

SOLUTION

100% of the profit derived from export of articles or things or services is eligible for deduction under section 10AA, since F.Y.2023-24 falls within the first five year period commencing from the year of manufacture or production of articles or things or provision of services by the Unit in SEZ. As per section 10AA(7), the profit derived from export of articles or things or services shall be the amount which bears to the profits of the business of the undertaking, being the Unit, the same proportion as the export turnover in respect of articles or things or services bears to the total turnover of the business carried on by the undertaking.

Deduction under section 10AA

$$\begin{aligned}
 &= \text{Profit of the business of Unit A} \times \frac{\text{Export Turnover of Unit A}}{\text{Total Turnover of Unit A}} \\
 &\quad ₹45 \text{ lakhs} \quad \times \quad \frac{₹ 60 \text{ lakhs}}{₹ 120 \text{ lakhs}} \quad = ₹ 22.5 \text{ lakhs}
 \end{aligned}$$

Note – No deduction under section 10AA is allowable in respect of profits of business of Unit B located in DTA.

SIGNIFICANT SELECT CASES

S. No.	Case Law	
1.	CIT v. Reliance Energy Ltd. (2022) 441 ITR 346 (SC)	
	Issue	Analysis & Decision
	Does profit-linked deduction under Chapter VI-A have to be restricted to income computed under the head "Profits and gains of business or profession"?	For the purpose of calculating profit-linked deduction under any section of Chapter VI-A, loss sustained in other divisions or units cannot be taken into account, as only profits from the eligible business have to be taken into account as if it was the only source of income. Profits and gains from eligible business cannot be reduced by the loss suffered in any other business owned by the assessee for consideration of deduction, <i>inter alia</i>, under section 80-IA. The deduction admissible under section 80-IA could not be limited to income under the head "Profits and gains of business or profession", by setting-off losses from non-eligible business against profits from eligible business. Note – The issue arises in a case where loss from non-eligible business is being set-off against profits from eligible business, which results in income under the head "Profits and gains of business and profession" being lower than the profits from eligible business. In such a case, deduction under Chapter VI-A in respect of profits from eligible business would not be restricted to income computed under the head "Profits and gains of business and profession". The same would however be restricted to gross total income as per the requirement in section 80A(2). For example, let us take the case of XYZ Ltd., an Indian company, for P.Y.2023-24. The following are the particulars relating to the said company – (i) Profits from eligible business - ₹ 90 lakhs, (ii) Loss from non-eligible business - ₹ 20 lakhs (which is set-off against profits from eligible business) (iii) Income under the head "Profits and gains of business or profession" – ₹ 70 lakhs [₹ 90 lakhs – ₹ 20 lakhs] (iv) Income from Other Sources, comprising of interest income - ₹ 15 lakhs (v) Gross total income – ₹ 85 lakhs In this case, assuming deduction under section 80-IA is the only deduction under Chapter VI-A for XYZ Ltd., the same

		would not be restricted to ₹ 70 lakhs (being the income under the head “Profits and gains of business or profession”). However, the same would be restricted to ₹ 85 lakhs, being the gross total income as per the requirement in section 80A(2). If, in the above example, the gross total income was ₹ 95 lakhs (instead of ₹ 85 lakhs), then, the entire profits of ₹ 90 lakhs from eligible business would be allowed as deduction u/s 80-IA.
2.	CIT v. Container Corporation of India Limited (2018) 404 ITR 397 (SC)	
	Issue	Analysis & Decision
	Can Inland Container Depots (ICDs) be treated as infrastructure facility, for profits derived therefrom to be eligible for deduction u/s 80-IA?	Inland Container Depots function for the benefit of exporters and importers located in industrial centres which are situated at distance from sea ports. The purpose of establishing them was to promote the export and import in the country as these depots act as a facilitator and reduce inconvenience to the exporter or importer. Section 80-IA provides for a deduction of profits derived from operation of an infrastructure facility. The definition of “infrastructure facility” in <i>Explanation</i> to section 80-IA(4)(i) includes an inland port. Considering the nature of work such as custom clearance carried out at inland container depots, it can be considered as an inland port within the meaning of section 80-IA(4).
3.	CIT v. Meghalaya Steels Ltd (2016) 383 ITR 217 (SC)	
	Issue	Analysis & Decision
	Can transport subsidy, interest subsidy and power subsidy received from the Government be treated as profits “derived from” business or undertaking to qualify for deduction u/s 80-IE?	There is a direct nexus between profits and gains of the undertaking or business, and reimbursement of such subsidies. Transport subsidy, interest subsidy and power subsidy from Government were revenue receipts which were reimbursed to the assessee for elements of cost relating to manufacture or sale of their products. Thus, the subsidies were only in order to reimburse, wholly or partially, costs actually incurred by the assessee in the manufacturing and selling of its products. Accordingly, these subsidies qualify for deduction u/s 80-IE. Note – Though this decision was in relation to deduction under section 80-IB, presently, it is relevant in the context of section 80-IE.

4.	<i>CIT v. Orchev Pharma P. Ltd. (2013) 354 ITR 227 (SC) [Liberty India v. CIT (2009) 317 ITR 218 (SC) followed]</i>	
	Issue	Analysis & Decision
	Can Duty Drawback be treated as profit derived from the business of the eligible business to be eligible for deduction u/s 80-IE?	DEPB / Duty drawback are incentives which flow from the schemes framed by the Central Government or from section 75 of the Customs Act, 1962. Section 80-IE provides for allowing of deduction in respect of profits and gains derived by undertaking from business mentioned therein. However, incentive profits are not profits derived from eligible business u/s 80-IE. They belong to the category of ancillary profits of such undertaking. Profits derived by way of incentives such as DEPB/Duty drawback cannot be credited against the cost of manufacture of goods debited in the statement of profit and loss and they do not fall within the expression "profits derived from undertaking from manufacturing" u/s 80-IE. Hence, Duty drawback receipts and DEPB benefits do not form part of the profits derived by undertaking from manufacturing business for the purpose of the deduction u/s 80-IE. <i>Note – Though this decision was in relation to deduction under section 80-IB, presently, it is relevant in the context of section 80-IE.</i>
5.	<i>CIT v. Swarnagiri Wire Insulations Pvt. Ltd. (2012) 349 ITR 245 (Kar.)</i>	
	Issue	Analysis & Decision
	Can unabsorbed depreciation of a business of an industrial undertaking eligible for deduction u/s 80-IA be set off against income of another non-eligible business of the assessee?	The deeming provision contained in section 80-IA(5) cannot override the provisions of section 70(1). The assessee had incurred loss in eligible business after claiming depreciation. Hence, section 80-IA becomes insignificant, since there is no profit from which this deduction can be claimed. It is thereafter that section 70(1) comes into play, whereby the assessee is entitled to set off the losses from one source against income from another source under the same head of income. Therefore, the assessee was entitled to the benefit of set off of loss of eligible business against the profits of non-eligible business. However, once set-off is allowed u/s 70(1) against income from another source under the same head, a deduction to such extent is not possible in any subsequent assessment year i.e., the loss

		(arising on account of balance depreciation of eligible business) so set-off u/s 70(1) has to be first deducted while computing profits eligible for deduction u/s 80-IA in the subsequent year.
6.	<i>CIT v. Sunil Vishwambharnath Tiwari (2016) 388 ITR 630 (Bom)</i>	
	Issue	Decision
	Is the increase in gross total income consequent to disallowance u/s 40(a)(ia) eligible for profit-linked deduction under Chapter VI-A?	The assessee is entitled to claim deduction u/s 80-IBA in respect of the enhanced gross total income as a consequence of disallowance of expenditure u/s 40(a)(ia). Note - The CBDT has, in its Circular No.37/2016 dated 2.11.2016, mentioned that the courts have generally held that if the expenditure disallowed is related to the business activity against which the Chapter VI-A deduction has been claimed, the deduction needs to be allowed on the enhanced profits. Thus, the settled position is that the disallowances made under sections 32, 40(a)(ia), 40A(3), 43B, etc. and other specific disallowances, relating to the business activity against which the Chapter VI-A deduction has been claimed, result in enhancement of the profits of the eligible business, and that deduction under Chapter VI-A is admissible on the profits so enhanced on account of such disallowance.
7.	<i>CIT v. Nestor Pharmaceuticals Ltd. / Sidwal Refrigerations Ind Ltd. v. DCIT (2010) 322 ITR 631 (Delhi)</i>	
	Issue	Analysis & Decision
	Does the period of exemption u/s 80-IE commence from the year of trial production or year of commercial production? Would it make a difference if sale was effected from out of the trial production?	The assessee had started trial production in March 2015 whereas commercial production started only in April, 2015. With mere trial production, the manufacture for the purpose of marketing the goods had not started which starts only with commercial production, namely, when the final product to the satisfaction of the manufacturer has been brought into existence and is fit for marketing. However, in this case, since the assessee had effected sale in March 2015, it had crossed the stage of trial production and the final saleable product had been manufactured and sold. The quantum of commercial sale and the purpose of sale (namely, to obtain registration of excise / sales-tax) is not material. With the sale of those articles, marketable quality was established. Therefore, the conditions stipulated in section 80-IE were fulfilled with the

		commercial sale of the two items in that assessment year, and hence the ten year period has to be reckoned from A.Y.2015-16. Note – Though this decision was in relation to deduction under section 80-IA, as it stood prior to its substitution by the Finance Act, 1999 w.e.f. 1.4.2000, presently, it is relevant in the context of section 80-IE.
8.	CIT v. Chetak Enterprises Pvt. Ltd. [2020] 423 ITR 267 (SC)	
	Issue	Analysis & Decision
	Can an agreement entered into by a firm with a State Government and work done in pursuance thereof survive upon its conversion into a company and be considered compliant with sub-clauses (a) and (b) of section 80-IA(4)(i), to qualify for deduction thereunder?	Section 80-IA(4)(i) requires that the assessee must be an enterprise carrying on business of (i) developing, (ii) maintaining and operating or (iii) developing, maintaining and operating any infrastructure facility, which enterprise is owned by a company registered in India fulfilling the conditions mentioned in sub-clauses (a) to (c) thereunder. Sub-clause (a) requires that the enterprise should be owned by a company registered in India. Sub-clause (b) requires that the enterprise should have entered into an agreement with the Central Government or State Government or local authority or any other statutory body for developing, operating and maintaining or developing, operating and maintaining a new infrastructure facility. Sub-clause (c) requires that the enterprise should start operating and maintaining infrastructure facility on or after 1.4.1995. The assessee-company Memorandum of Association states that its main object was to acquire as a going concern, and continue the business carried on by the firm. The effect of conversion of the firm into a company was that all the properties of the firm, in law, vested in the company and the firm ceased to exist and assumed the status of a company after its registration as a company. Accordingly, the assessee-company is qualified for the deduction under section 80-IA being an enterprise carrying on the stated business pertaining to infrastructure facility and owned by a company registered in India on the basis of the agreement executed with the State Government to which the assessee-company has succeeded in law after conversion of the partnership firm into a company.
9.	Praveen Soni v. CIT (2011) 333 ITR 324 (Delhi)	
	Issue	Analysis & Decision
	Can an assessee who has not claimed	On this issue, the Delhi High Court held that the provisions of section 80-IE nowhere stipulated a condition that the

	deduction under section 80-IE in the initial years, start claiming deduction thereunder for the remaining years during the period of eligibility, if the conditions are satisfied?	claim for deduction under this section had to be made from the first year of qualification of deduction failing which the claim will not be allowed in the remaining years of eligibility. Therefore, the deduction under section 80-IE should be allowed to the assessee for the remaining years up to the period for which his entitlement would accrue, provided the conditions mentioned under section 80-IE are fulfilled. Note – <i>Though this decision was in relation to deduction under section 80-IB, presently, it is relevant in the context of section 80-IE.</i>
10.	PCIT v. Annasaheb Patil Mathadi Kamgar Sahakari Pathpedi Ltd. [2023] 454 ITR 117 (SC)	
	Issue	Analysis & Decision
	Would a co-operative society engaged in providing credit facilities solely to its members be eligible for deduction under section 80P?	Merely because a co-operative society gives credit to its members, it cannot be said to be a co-operative bank under the Banking Regulation Act, 1949. Banking activities under that Act are altogether different activities. There is a vast difference between credit societies giving credit to their own members only and banks providing banking services including the credit to the public at large also. Considering the CBDT Circulars and the definition of bank under the Banking Regulation Act, the assessee cannot be said to be a co-operative bank/bank, and, therefore, section 80P(4) denying benefit of deduction to a co-operative bank would not be applicable in this case. Accordingly, the assessee could not be termed as a bank or cooperative bank. Being a credit society, it is entitled to deduction under section 80P.
11.	CIT v. Cognizant Technology Solutions of India Pvt. Ltd. [2023] 454 ITR 1 (SC)	
	Issue	Analysis & Decision
	Is deduction under section 10AA available in respect of foreign exchange gain solely relating to the export business of the assessee?	In order to avail deduction under section 10AA, benefit earned by the assessee derived by virtue of export made by the assessee is considered. The exchange value based on upward or downward of the rupee value is not in the hands of the assessee. The assessee does not determine the exchange value of the Indian rupee. But for the fact that, the assessee is an export house, there was no question of earning any foreign exchange. Therefore, when the fluctuation in foreign exchange rate was solely relatable to the export business of the assessee and the higher rupee value was earned by virtue of such

		exports carried out by the assessee, the deduction under section 10AA would be available in respect of such foreign exchange gains.
12	<i>CIT v. HCL Technologies Limited (2018) 404 ITR 719 (SC)</i>	
	Issue	Analysis & Decision
	Can expenditure incurred in foreign exchange for provision of technical services outside India, which is deductible for computing export turnover, be excluded from total turnover also for the purpose of computing deduction u/s 10AA?	Deduction u/s 10AA is based on the profit from export business, thus, expenses excluded from “export turnover” must also be excluded from “total turnover”, since one of the components of “total turnover” is export turnover. Expenses incurred in foreign exchange for providing the technical services outside are thus, to be excluded from total turnover also. If deductions in respect of freight, telecommunication charges and insurance attributable to delivery of articles, things etc. or expenditure incurred in foreign exchange in rendering of services outside India are allowed only against export turnover but not from the total turnover for computing deduction u/s 10AA, then, it would give rise to inadvertent, unlawful, meaningless and illogical results causing grave injustice, which could have never have been the intent of the Legislature. Hence, such expenditure incurred in foreign exchange for providing technical services outside India is deductible from total turnover also.

TEST YOUR KNOWLEDGE**Questions**

1. Mr. Srinivasan, aged 61 years, furnishes the following particulars for the year ending 31.03.2024:
 - (a) Life Insurance Premium paid – ₹ 15,000, actual capital sum of the policy assured for ₹ 2,30,000. The insurance policy was taken on 31.03.2012;
 - (b) Contribution to Public Provident Fund – ₹ 40,000 in the name of father;
 - (c) Tuition fee payment – ₹ 8,000 each for 2 sons pursuing full time graduation course in Calcutta; Tuition fee for daughter pursuing PHD in Kellogg University, USA – ₹ 2.50 lakhs;
 - (d) Housing loan principal repayment – ₹ 32,000 to Axis Bank. This property is under construction at Calcutta as on 31.03.2024;
 - (e) Principal repayment of housing loan taken from a relative – ₹ 70,000. The property is self-occupied situated at Pune;
 - (f) Deposit under Senior Citizens Savings Scheme – ₹ 15,000;
 - (g) Five-year deposits in an account under Post Office Time Deposit Scheme – ₹ 50,000;
 - (h) Investment in National Savings Certificate – ₹ 70,000;

Compute the deduction eligible under appropriate provisions of section 80C for A.Y. 2024-25 if he shifts out of the default tax regime under section 115BAC.
2. X Ltd. has two units, unit 'N' and unit 'Y'. Unit 'N' engaged in the business of power generation installed a windmill in March, 2024 and had a profit of ₹ 100 lakhs in Assessment Year 2024-25. X Ltd. claimed depreciation of ₹ 120 lakhs on windmill against the profit of ₹ 100 lakhs from power generation business which was eligible for deduction under section 80-IA. Unit 'Y', engaged in manufacturing of wires, non-eligible business, had a profit of ₹ 70 lakhs for Assessment Year 2024-25. The loss of ₹ 20 lakhs, i.e., balance depreciation not set off pertaining to unit 'N' was set-off against the profits of unit 'Y' carrying on non-eligible business, by the assessee, X Ltd. The Assessing Officer was of the view that depreciation relating to a business eligible for deduction under section 80-IA cannot be set-off against

non-eligible business income. Hence, unabsorbed depreciation should be carried forward to the subsequent year to be set off against eligible business income of the assessee of that year.

Examine the correctness of the action of the Assessing Officer.

3. From the following details, compute the total income of Mr. A, Mr. B and Mr. C for A.Y.2024-25 if they shift out of the default tax regime under section 115BAC –

Particulars		Mr. A	Mr. B	Mr. C
		₹	₹	₹
(i)	Salary (computed)	9,25,000	10,45,000	11,15,000
(ii)	Interest income (on fixed deposits)	75,000	85,000	95,000

The particulars of their other investments/payments made during the P.Y.2023-24 are given hereunder –

	Particulars				₹
(1)	Deposit in Public Provident Fund (PPF) by Mr. A				1,50,000
(2)	Life insurance premium paid by Mr. C, the details of which are as follows –				
	Date of issue of policy	Person insured	Actual capital sum assured (₹)	Insurance premium paid during 2023-24 (₹)	
	31/3/2012	Self	2,48,000	15,000	
	11/6/2018	Spouse	1,25,000	15,000	
	31/7/2019	Handicapped son (Section 80U disability)	2,00,000	32,000	
(3)	Payment of medical insurance premium by the following persons to insure their health:				
	Payer	Amount in ₹	Mode of payment		
	Mr. A (aged 55 years)	30,000	Account payee cheque		
	Mr. B (aged 52 years)	15,000	Cash		
	Mr. C (aged 48 years)	20,000	Crossed cheque		

(4)	Mr. B paid interest on loan taken for the purchase of house in which he currently resides. He is claiming benefit of self-occupation under section 23(2) in respect of this house. He does not own any other house. Repayment of principal amount of loan taken for purchase of the said house	2,20,000 1,70,000
(5)	Contribution by Mr. A by cheque to National Children's Fund during the year.	30,000
(6)	Mr. B makes the following donations during the P.Y.2023-24 -	
	Donation to BJP by crossed cheque	50,000
	Donation to Electoral trust by cash	50,000

4. Following issues have been raised by Navi Limited in connection with its eligibility for claiming deduction under Chapter VI-A for your consideration and advice for the assessment year 2024-25:

- (i) It operates two separate undertakings. One undertaking is eligible for deduction under section 80-IB, while the other undertaking is not eligible for such deduction. If the eligible undertaking has profit and the other undertaking has loss, should it claim deduction after setting off the loss of the other undertaking against profit of the eligible undertaking?
- (ii) Its profit from one undertaking in North Eastern States which is eligible for deduction u/s 80-IE includes sale of import entitlement, duty drawback and interest from customers for delayed payment. Is it permissible to claim deduction u/s 80-IE on these items of income?

5. PQR Co-operative Bank, a co-operative society, having its area of operation confined to Gubbi Taluk and the principal object of which is to provide for long-term credit for agricultural and rural development activities, has received the following amounts during the year ending 31.3.2024:

- (i) Interest amounting to ₹ 1,00,000 from its members on loans advanced to them.
- (ii) Interest amounting to ₹ 1,50,000 on deposits with other co-operative societies.
- (iii) Rent amounting to ₹ 2,00,000 from letting out its godowns for storage of commodities.

PQR Co-operative Bank seeks your advice in the matter of eligibility for deduction, if any, in respect thereof for the assessment year 2024-25.

Answers

1. Computation of eligible deduction under section 80C for A.Y.2024-25

Particulars	₹
Life Insurance Premium (See Note 1)	15,000
Contribution to Public Provident fund (See Note 2)	Nil
Tuition fee of 2 sons for graduation course (See Note 3)	16,000
Housing loan principal repayment (See Notes 4 & 5)	Nil
Senior Citizen Savings Scheme deposit (See Note 6)	15,000
Post Office Time Deposit Scheme (See Note 6)	50,000
Investment in National Savings Certificate (See Note 6)	70,000
Total Investment	1,66,000
Eligible deduction under section 80C restricted to	1,50,000

Notes:

- Any amount of life insurance premium paid in excess of the specified percentage of actual capital sum assured shall be ignored for the purpose of deduction under section 80C. In the given case, since the insurance policy has been issued before 1.04.2012, therefore, premium paid upto 20% of actual capital sum assured i.e., ₹ 46,000 shall be allowed as deduction. Hence, the premium of ₹ 15,000 paid during the year is allowable as deduction under section 80C.
- In the case of an individual, contribution to PPF can be made in his name or in the name of his spouse or children to qualify for deduction under section 80C. **As the contribution was made in the name of his father, deduction is not allowable.**
- Tuition fee paid is eligible for deduction under section 80C for a maximum of two children. Therefore, ₹ 16,000 shall be allowed as deduction. **Tuition fee paid to an educational institution situated outside India is not eligible for deduction.**
- In order to claim the principal repayment on loan borrowed for house property as deduction, the construction of such property should have been completed and should be chargeable to tax under the head "Income from house property". In the given case, since the property is under construction, principal repayment does not qualify for deduction.

5. Repayment of principal on housing loan is not allowed as deduction in case the loan is borrowed from friends, relatives etc. In order to qualify for deduction, the loan should have been obtained from Central Government / State Government / bank / specified employer / institution.
6. The following investments are also eligible for deduction under section 80C:-
 - (1) five year time deposit in an account under Post Office Time Deposit Rules, 1981; and
 - (2) deposit in an account under the Senior Citizens Savings Scheme Rules, 2004.
 - (3) investment in National Savings Certificate.
2. In *CIT v. Swarnagiri Wire Insulations Pvt. Ltd.* (2012) 349 ITR 245, the Karnataka High Court observed that it is a generally accepted principle that the deeming provision of a particular section cannot be breathed into another section. Therefore, the deeming provision contained in section 80-IA(5) cannot override the provisions of section 70(1).

In this case, X Ltd. had incurred loss in eligible business (power generation) on account of claiming depreciation of ₹ 120 lakhs. Hence, section 80-IA becomes insignificant, since there is no profit from which this deduction can be claimed.

It is, thereafter, that section 70(1) comes into play, whereby an assessee is entitled to set off the losses from one source against income from another source under the same head of income. Accordingly, X Ltd. is entitled to the benefit of set off of loss of ₹ 20 lakhs (representing balance depreciation not set-off) pertaining to Unit N engaged in eligible business of power generation against profit of ₹ 70 lakhs of Unit Y carrying on non-eligible business. Therefore, the net profit of ₹ 50 lakhs would be taxable in the A.Y.2024-25.

However, once set-off is allowed under section 70(1) against income from another source under the same head, a deduction to such extent is not possible in any subsequent assessment year i.e., the loss (arising on account of balance depreciation of eligible business) so set-off under section 70(1) has to be first deducted while computing profits eligible for deduction under section 80-IA in the subsequent year. Accordingly, in the A.Y.2025-26, the net profits of Unit N has to be reduced by ₹ 20 lakhs for computing the profits eligible for deduction under section 80-IA in that year.

The action of the Assessing Officer in not permitting set-off of loss of eligible business against profits of non-eligible business in this case is, therefore, not correct.

3.

Computation of total income for A.Y.2024-25

	Particulars	Mr. A	Mr. B	Mr. C
		₹	₹	₹
(A)	Salary	9,25,000	10,45,000	11,15,000
	Income from house property [See Note 4]		(2,00,000)	
	Income from other sources (Interest)	75,000	85,000	95,000
	Gross total income	10,00,000	9,30,000	12,10,000
	Less: Deductions under Chapter VIA			
	<u>Under section 80C</u>			
	Deposit in PPF [See Note 3]	1,50,000		
	LIC premium paid [See Note 1]			57,500
	Principal repayment of housing loan (restricted to ₹ 1,50,000) [See Note 4]		1,50,000	
	<u>Under section 80D</u>			
	Medical insurance premium [See Note 2]	25,000	Nil	20,000
	<u>Under section 80G</u>			
	Contribution to National Children's Fund [See Note 5]	30,000		
	<u>Under section 80GGC [See Note 6]</u>			
	Donation to BJP by crossed cheque		50,000	
	Cash donation to Electoral Trust		Nil	
(B)	Total deduction under Chapter VIA	2,05,000	2,00,000	77,500
(C)	Total Income (A) – (B)	7,95,000	7,30,000	11,32,500

Notes:

(1)	Deduction u/s 80C in respect of life insurance premium paid by Mr. C					
	Date of issue of policy	Person insured	Actual capital sum assured	Insurance premium paid during 2023-24	Restricted to % of sum assured	Deduction u/s 80C
	31/3/2012	Self	2,48,000	15,000	20%	15,000
	11/6/2018	Spouse	1,25,000	15,000	10%	12,500
	31/7/2019	Handicapped Son (section 80U disability)	2,00,000	32,000	15%	30,000
	Total					57,500
(2)	Medical Insurance Premium					
	(i) Medical insurance premium of ₹ 30,000 paid by account payee cheque by Mr. A is allowed as a deduction under section 80D, subject to a maximum of ₹ 25,000.					
	(ii) Medical insurance premium paid by cash is not allowable as deduction. Hence, Mr. B is not eligible for deduction under section 80D in respect of medical insurance premium of ₹ 15,000 paid in cash.					
	(iii) Mr. C is eligible for deduction of ₹ 20,000 under section 80D in respect of medical insurance premium paid by crossed cheque.					
(3)	The maximum amount eligible for deduction under section 80C shall not exceed ₹ 1,50,000. Mr. A would be eligible for deduction of ₹ 1,50,000 in respect of PPF under section 80C.					
(4)	Deduction in respect of interest and principal repayment of housing loan					
	Mr. B is eligible for a maximum deduction of ₹ 2,00,000 under section 24 in respect of interest on housing loan taken in respect of a self-occupied property, for which he is claiming benefit of "Nil" annual value. Therefore, ₹ 2,00,000 would represent his loss from house property.					
	Further, the maximum amount eligible for deduction under section 80C should not exceed ₹ 1,50,000. Since, Mr. B has no other investment under section 80C during the previous year 2023-24, he would be eligible for deduction of ₹ 1,50,000 in respect of principal repayment of housing loan.					
(5)	Contribution to National Children's Fund qualifies for 100% deduction under section 80G. Therefore, Mr. A is entitled to 100% deduction of the sum of ₹ 30,000 contributed by him by way of cheque to National Children's Fund.					
(6)	Mr. B is eligible for deduction under section 80GGC in respect of donation to a political party made otherwise than by way of cash. However, cash donations to electoral trust do not qualify for deduction under section 80GGC.					

4. (i) Section 80-IB(13) provides that the provisions contained in section 80-IA(5) shall, so far as may be, apply to the eligible business under section 80-IB. Accordingly, for the purpose of computing the deduction under section 80-IB, the profits and gains of an eligible business shall be computed as if such eligible business was the only source of income of the assessee.

Therefore, Navi Limited should claim deduction under section 80-IB on profit from the eligible undertaking without considering the set off of losses suffered in the other undertaking. It may be noted that the aggregate deduction under Chapter VI-A, however, cannot exceed the gross total income of the assessee. It was held in in case of *Reliance Energy Ltd. (2022) 441 ITR 346 (SC)*.

- (ii) Under section 80-IE, where the gross total income of an assessee includes any profits and gains derived by an undertaking referred to in the section, there shall be allowed, in computing the total income of the assessee, a deduction from such profits and gains at the specified percentage and for such number of years as specified in the section. In *CIT vs. Sterling Foods (1999) 237 ITR 579 (SC)* and *Liberty India vs. CIT (2009) 317 ITR 218 (SC)*, it was held that sale of import entitlement and duty drawback cannot be construed as income derived from undertaking. Therefore, such income cannot be included in computing income for the purpose of deduction under section 80-IE.

Interest income derived by an undertaking on delayed collection of sale proceeds shall be treated as income derived from the undertaking, and therefore, the same would be eligible for deduction under section 80-IE. [*Phatela Cotgin Industries Private Limited vs CIT (2008) 303 ITR 411 (P & H)*].

5. Sub-section (4) of section 80P provides that section 80P shall not apply to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank.

Explanation to section 80P(4) defines a primary co-operative agricultural and rural development bank to mean a society having its area of operation confined to a taluk and the principal object of which is to provide for long-term credit for agricultural and rural development activities.

PQR Co-operative Bank is a primary co-operative agricultural and rural development bank as defined in the said *Explanation* since it is a co-operative society having its area of operation

confined to Gubbi Taluk and its principal object is to provide long-term credit for agricultural and rural development activities. Therefore, it is eligible for deduction under section 80P.

Interest of ₹ 1,00,000 received by the bank on loans advanced to its members is eligible for deduction in full under section 80P(2)(a)(i).

Interest of ₹ 1,50,000 received by the bank from deposits with other co-operative societies qualifies for deduction in full under section 80P(2)(d).

Rent of ₹ 2,00,000 received by the bank from letting out its godowns for storage of commodities is eligible for deduction in full under section 80P(2)(e).

ANNEXURE

Annexure – 1

A. Income Computation and Disclosure Standard I relating to accounting policies **Preamble**

This Income Computation and Disclosure Standard is applicable for computation of income chargeable under the head “Profits and gains of business or profession” or “Income from other sources” and not for the purpose of maintenance of books of accounts.

In the case of conflict between the provisions of the Income-tax Act, 1961 (‘the Act’) and this Income Computation and Disclosure Standard, the provisions of the Act shall prevail to that extent.

Scope

1. This Income Computation and Disclosure Standard deals with significant accounting policies.

Fundamental Accounting Assumptions

2. The following are fundamental accounting assumptions, namely:—

(a) Going Concern

“Going concern” refers to the assumption that the person has neither the intention nor the necessity of liquidation or of curtailing materially the scale of the business, profession or vocation and intends to continue his business, profession or vocation for the foreseeable future.

(b) Consistency

“Consistency” refers to the assumption that accounting policies are consistent from one period to another;

(c) Accrual

“Accrual” refers to the assumption that revenues and costs are accrued, that is, recognised as they are earned or incurred (and not as money is received or paid) and recorded in the previous year to which they relate.

Accounting Policies

3. The accounting policies refer to the specific accounting principles and the methods of applying those principles adopted by a person.

Considerations in the Selection and Change of Accounting Policies

4. Accounting policies adopted by a person shall be such so as to represent a true and fair view of the state of affairs and income of the business, profession or vocation. For this purpose,

- (i) the treatment and presentation of transactions and events shall be governed by their substance and not merely by the legal form; and
 - (ii) marked to market loss or an expected loss shall not be recognised unless the recognition of such loss is in accordance with the provisions of any other Income Computation and Disclosure Standard.
5. An accounting policy shall not be changed without reasonable cause.

Disclosure of Accounting Policies

6. All significant accounting policies adopted by a person shall be disclosed.
7. Any change in an accounting policy which has a material effect shall be disclosed. The amount by which any item is affected by such change shall also be disclosed to the extent ascertainable. Where such amount is not ascertainable, wholly or in part, the fact shall be indicated. If a change is made in the accounting policies which has no material effect for the current previous year but which is reasonably expected to have a material effect in later previous years, the fact of such change shall be appropriately disclosed in the previous year in which the change is adopted and also in the previous year in which such change has material effect for the first time.
8. Disclosure of accounting policies or of changes therein cannot remedy a wrong or inappropriate treatment of the item.
9. If the fundamental accounting assumptions of Going Concern, Consistency and Accrual are followed, specific disclosure is not required. If a fundamental accounting assumption is not followed, the fact shall be disclosed.

Transitional Provisions

10. All contract or transaction existing on the 1st day of April, 2016 or entered into on or after the 1st day of April, 2016 shall be dealt with in accordance with the provisions of this standard after taking into account the income, expense or loss, if any, recognised in respect of the said contract or transaction for the previous year ending on or before the 31st March, 2016.

B. Income Computation and Disclosure Standard II relating to valuation of inventories

Preamble

This Income Computation and Disclosure Standard is applicable for computation of income chargeable under the head "Profits and gains of Business or profession" or "Income from other sources" and not for the purpose of maintenance of books of accounts.

In the case of conflict between the provisions of Income Tax Act, 1961 ('the Act') and this Income Computation and Disclosure Standard, the provisions of the Act shall prevail to that extent.

Scope

1. This Income Computation and Disclosure Standard shall be applied for valuation of inventories, except :
 - (a) Work-in-progress arising under 'construction contract' including directly related service contract which is dealt with by the Income Computation and Disclosure Standard on construction contracts;
 - (b) Work-in-progress which is dealt with by other Income Computation and Disclosure Standard;
 - (c) Shares, debentures and other financial instruments held as stock-in-trade which are dealt with by the Income Computation and Disclosure Standard on securities;
 - (d) Producers' inventories of livestock, agriculture and forest products, mineral oils, ores and gases to the extent that they are measured at net realisable value;
 - (e) Machinery spares, which can be used only in connection with a tangible fixed asset and their use is expected to be irregular, shall be dealt with in accordance with the Income Computation and Disclosure Standard on tangible fixed assets.

Definitions

- 2 (1) The following terms are used in this Income Computation and Disclosure Standard with the meanings specified:
 - (a) **"Inventories"** are assets:
 - (i) held for sale in the ordinary course of business;
 - (ii) in the process of production for such sale;
 - (iii) in the form of materials or supplies to be consumed in the production process or in the rendering of services.
 - (b) **"Net realisable value"** is the estimated selling price in the ordinary course of business less the estimated costs of completion and the estimated costs necessary to make the sale.
- (2) Words and expressions used and not defined in this Income Computation and Disclosure Standard but defined in the Act shall have the meanings assigned to them in that Act.

Measurement

3. Inventories shall be valued at cost, or net realisable value, whichever is lower.

Cost of Inventories

4. Cost of inventories shall comprise of all costs of purchase, costs of services, costs of conversion and other costs incurred in bringing the inventories to their present location and condition.

Costs of Purchase

5. The costs of purchase shall consist of purchase price including duties and taxes, freight inwards and other expenditure directly attributable to the acquisition. Trade discounts, rebates and other similar items shall be deducted in determining the costs of purchase.

Costs of Services

6. The costs of services shall consist of labour and other costs of personnel directly engaged in providing the service including supervisory personnel and attributable overheads.

Costs of Conversion

7. The costs of conversion of inventories shall include costs directly related to the units of production and a systematic allocation of fixed and variable production overheads that are incurred in converting materials into finished goods. Fixed production overheads shall be those indirect costs of production that remain relatively constant regardless of the volume of production. Variable production overheads shall be those indirect costs of production that vary directly or nearly directly, with the volume of production.
8. The allocation of fixed production overheads for the purpose of their inclusion in the costs of conversion shall be based on the normal capacity of the production facilities. Normal capacity shall be the production expected to be achieved on an average over a number of periods or seasons under normal circumstances, taking into account the loss of capacity resulting from planned maintenance. The actual level of production shall be used when it approximates to normal capacity. The amount of fixed production overheads allocated to each unit of production shall not be increased as a consequence of low production or idle plant. Unallocated overheads shall be recognised as an expense in the period in which they are incurred. In periods of abnormally high production, the amount of fixed production overheads allocated to each unit of production is decreased so that inventories are not measured above the cost. Variable production overheads shall be assigned to each unit of production on the basis of the actual use of the production facilities.
9. Where a production process results in more than one product being produced simultaneously and the costs of conversion of each product are not separately identifiable, the costs shall be allocated between the products on a rational and

consistent basis. Where by-products, scrap or waste material are immaterial, they shall be measured at net realisable value and this value shall be deducted from the cost of the main product.

Other Costs

10. Other costs shall be included in the cost of inventories only to the extent that they are incurred in bringing the inventories to their present location and condition
11. Interest and other borrowing costs shall not be included in the costs of inventories, unless they meet the criteria for recognition of interest as a component of the cost as specified in the Income Computation and Disclosure Standard on borrowing costs.

Exclusions from the Cost of Inventories

12. In determining the cost of inventories in accordance with paragraphs 4 to paragraphs 11, the following costs shall be excluded and recognised as expenses of the period in which they are incurred, namely:—
 - (a) Abnormal amounts of wasted materials, labour, or other production costs;
 - (b) Storage costs, unless those costs are necessary in the production process prior to a further production stage;
 - (c) Administrative overheads that do not contribute to bringing the inventories to their present location and condition ;
 - (d) Selling costs.

Cost Formulae

13. The Cost of inventories of items
 - (i) that are not ordinarily interchangeable; and
 - (ii) goods or services produced and segregated for specific projects shall be assigned by specific identification of their individual costs.
14. 'Specific identification of cost' means specific costs are attributed to identified items of inventory.
15. Where there are a large numbers of items of inventory which are ordinarily interchangeable, specific identification of costs shall not be made.

First-in First-out and Weighted Average Cost Formula

16. Cost of inventories, other than the inventory dealt with in paragraph 13, shall be assigned by using the First-in First-out (FIFO), or weighted average cost formula. The formula used shall reflect the fairest possible approximation to the cost incurred in bringing the items of inventory to their present location and condition.

17. The FIFO formula assumes that the items of inventory which were purchased or produced first are consumed or sold first, and consequently the items remaining in inventory at the end of the period are those most recently purchased or produced. Under the weighted average cost formula, the cost of each item is determined from the weighted average of the cost of similar items at the beginning of a period and the cost of similar items purchased or produced during the period. The average shall be calculated on a periodic basis, or as each additional shipment is received, depending upon the circumstances.

Techniques for the Measurement of Cost

- 18 (1) Techniques for the measurement of the cost of inventories, such as the standard cost method or the retail method, may be used for convenience if the results approximate the actual cost. Standard costs take into account normal levels of consumption of materials and supplies, labour, efficiency and capacity utilisation. They are regularly reviewed and, if necessary, revised in the light of the current conditions.
- (2) The retail method can be used in the retail trade for measuring inventories of large number of rapidly changing items that have similar margins and for which it is impracticable to use other costing methods. The cost of the inventory is determined by reducing from the sales value of the inventory, the appropriate percentage gross margin. The percentage used takes into consideration inventory, which has been marked down to below its original selling price. An average percentage for each retail department is to be used.

Net Realisable Value

19. Inventories shall be written down to net realisable value on an item-by-item basis. Where 'items of inventory' relating to the same product line having similar purposes or end uses and are produced and marketed in the same geographical area and cannot be practicably evaluated separately from other items in that product line, such inventories shall be grouped together and written down to net realisable value on an aggregate basis.
20. Net realisable value shall be based on the most reliable evidence available at the time of valuation. The estimates of net realisable value shall also take into consideration the purpose for which the inventory is held. The estimates shall take into consideration fluctuations of price or cost directly relating to events occurring after the end of previous year to the extent that such events confirm the conditions existing on the last day of the previous year.
21. Materials and other supplies held for use in the production of inventories shall not be written down below the cost, where the finished products in which they shall be incorporated are expected to be sold at or above the cost. Where there has been a

decline in the price of materials and it is estimated that the cost of finished products will exceed the net realisable value, the value of materials shall be written down to net realisable value which shall be the replacement cost of such materials.

Value of Opening Inventory

22. The value of the inventory as on the beginning of the previous year shall be
- (i) the cost of inventory available, if any, on the day of the commencement of the business when the business has commenced during the previous year; and
 - (ii) the value of the inventory as on the close of the immediately preceding previous year, in any other case.

Change of Method of Valuation of Inventory

23. The method of valuation of inventories once adopted by a person in any previous year shall not be changed without reasonable cause.

Valuation of Inventory in Case of Certain Dissolutions

24. In case of dissolution of a partnership firm or association of person or body of individuals, notwithstanding whether business is discontinued or not, the inventory on the date of dissolution shall be valued at the net realisable value.

Transitional Provisions

25. Interest and other borrowing costs, which do not meet the criteria for recognition of interest as a component of the cost as per para 11, but included in the cost of the opening inventory as on the 1st day of April, 2016, shall be taken into account for determining cost of such inventory for valuation as on the close of the previous year beginning on or after 1st day of April, 2016 if such inventory continue to remain part of inventory as on the close of the previous year beginning on or after 1st day of April, 2016.

Disclosure

26. The following aspects shall be disclosed, namely:—
- (a) the accounting policies adopted in measuring inventories including the cost formulae used. Where Standard Costing has been used as a measurement of cost, details of such inventories and a confirmation of the fact that standard cost approximates the actual cost; and
 - (b) the total carrying amount of inventories and its classification appropriate to a person.

C. Income Computation and Disclosure Standard III relating to construction contracts

Preamble

This Income Computation and Disclosure Standard is applicable for computation of income chargeable under the head “Profits and gains of business or profession” or “Income from other sources” and not for the purpose of maintenance of books of accounts.

In the case of conflict between the provisions of the Income-tax Act, 1961(‘the Act’) and this Income Computation and Disclosure Standard, the provisions of the Act shall prevail to that extent.

Scope

1. This Income Computation and Disclosure Standard should be applied in determination of income for a construction contract of a contractor.

Definitions

- 2 (1) The following terms are used in this Income Computation and Disclosure Standard with the meanings specified:
 - (a) **“Construction contract”** is a contract specifically negotiated for the construction of an asset or a combination of assets that are closely interrelated or interdependent in terms of their design, technology and function or their ultimate purpose or use and includes :
 - (i) contract for the rendering of services which are directly related to the construction of the asset, for example, those for the services of project managers and architects;
 - (ii) contract for destruction or restoration of assets, and the restoration of the environment following the demolition of assets.
 - (b) **“Fixed price contract”** is a construction contract in which the contractor agrees to a fixed contract price, or a fixed rate per unit of output, which may be subject to cost escalation clauses.
 - (c) **“Cost plus contract”** is a construction contract in which the contractor is reimbursed for allowable or otherwise defined costs, plus a mark up on these costs or a fixed fee.
 - (d) **“Retentions”** are amounts of progress billings which are not paid until the satisfaction of conditions specified in the contract for the payment of such amounts or until defects have been rectified.
 - (e) **“Progress billings”** are amounts billed for work performed on a contract whether or not they have been paid by the customer.

- (f) **“Advances”** are amounts received by the contractor before the related work is performed.
- (2) Words and expressions used and not defined in this Income Computation and Disclosure Standard but defined in the Act shall have the meaning respectively assigned to them in the Act.
- 3. A construction contract may be negotiated for the construction of a single asset. A construction contract may also deal with the construction of a number of assets which are closely interrelated or interdependent in terms of their design, technology and function or their ultimate purpose or use.
- 4. Construction contracts are formulated in a number of ways which, for the purposes of this Income Computation and Disclosure Standard, are classified as fixed price contracts and cost plus contracts. Some construction contracts may contain characteristics of both a fixed price contract and a cost plus contract, for example, in the case of a cost plus contract with an agreed maximum price.

Combining and Segmenting Construction Contracts

- 5. The requirements of this Income Computation and Disclosure Standard shall be applied separately to each construction contract except as provided for in paragraphs 6, 7 and 8 herein. For reflecting the substance of a contract or a group of contracts, where it is necessary, the Income Computation and Disclosure Standard should be applied to the separately identifiable components of a single contract or to a group of contracts together.
- 6. Where a contract covers a number of assets, the construction of each asset should be treated as a separate construction contract when:
 - (a) separate proposals have been submitted for each asset;
 - (b) each asset has been subject to separate negotiation and the contractor and customer have been able to accept or reject that part of the contract relating to each asset; and
 - (c) the costs and revenues of each asset can be identified.
- 7. A group of contracts, whether with a single customer or with several customers, should be treated as a single construction contract when:
 - (a) the group of contracts is negotiated as a single package;
 - (b) the contracts are so closely interrelated that they are, in effect, part of a single project with an overall profit margin; and
 - (c) the contracts are performed concurrently or in a continuous sequence.

8. Where a contract provides for the construction of an additional asset at the option of the customer or is amended to include the construction of an additional asset, the construction of the additional asset should be treated as a separate construction contract when:
- (a) the asset differs significantly in design, technology or function from the asset or assets covered by the original contract; or
 - (b) the price of the asset is negotiated without having regard to the original contract price.

Contract Revenue

9. Contract revenue shall be recognised when there is reasonable certainty of its ultimate collection.
10. Contract revenue shall comprise of:
- (a) the initial amount of revenue agreed in the contract, including retentions; and
 - (b) variations in contract work, claims and incentive payments:
 - (i) to the extent that it is probable that they will result in revenue; and
 - (ii) they are capable of being reliably measured.
11. Where contract revenue already recognised as income is subsequently written off in the books of accounts as uncollectible, the same shall be recognised as an expense and not as an adjustment of the amount of contract revenue.

Contract Costs

12. Contract costs shall comprise of :
- (a) costs that relate directly to the specific contract;
 - (b) costs that are attributable to contract activity in general and can be allocated to the contract;
 - (c) such other costs as are specifically chargeable to the customer under the terms of the contract; and
 - (d) allocated borrowing costs in accordance with the Income Computation and Disclosure Standard on Borrowing Costs.

These costs shall be reduced by any incidental income, not being in the nature of interest, dividends or capital gains, that is not included in contract revenue.

13. Costs that cannot be attributed to any contract activity or cannot be allocated to a contract shall be excluded from the costs of a construction contract.

14. Contract costs include the costs attributable to a contract for the period from the date of securing the contract to the final completion of the contract. Costs that are incurred in securing the contract are also included as part of the contract costs, provided

- (a) they can be separately identified; and
- (b) it is probable that the contract shall be obtained.

When costs incurred in securing a contract are recognised as an expense in the period in which they are incurred, they are not included in contract costs when the contract is obtained in a subsequent period.

15. Contract costs that relate to future activity on the contract are recognised as an asset. Such costs represent an amount due from the customer and are classified as contract work in progress.

Recognition of Contract Revenue and Expenses

16. Contract revenue and contract costs associated with the construction contract should be recognised as revenue and expenses respectively by reference to the stage of completion of the contract activity at the reporting date.

17. The recognition of revenue and expenses by reference to the stage of completion of a contract is referred to as the percentage of completion method. Under this method, contract revenue is matched with the contract costs incurred in reaching the stage of completion, resulting in the reporting of revenue, expenses and profit which can be attributed to the proportion of work completed.

18. The stage of completion of a contract shall be determined with reference to:
- (a) the proportion that contract costs incurred for work performed upto the reporting date bear to the estimated total contract costs; or
 - (b) surveys of work performed; or
 - (c) completion of a physical proportion of the contract work.

Progress payments and advances received from customers are not determinative of the stage of completion of a contract.

19. When the stage of completion is determined by reference to the contract costs incurred upto the reporting date, only those contract costs that reflect work performed are included in costs incurred upto the reporting date. Contract costs which are excluded are:
- (a) contract costs that relate to future activity on the contract; and
 - (b) payments made to subcontractors in advance of work performed under the subcontract.

20. During the early stages of a contract, where the outcome of the contract cannot be estimated reliably contract revenue is recognised only to the extent of costs incurred. The early stage of a contract shall not extend beyond 25 % of the stage of completion.

Changes in Estimates

21. The percentage of completion method is applied on a cumulative basis in each previous year to the current estimates of contract revenue and contract costs. Where there is change in estimates, the changed estimates shall be used in determination of the amount of revenue and expenses in the period in which the change is made and in subsequent periods.

Transitional Provisions

- 22.1 Contract revenue and contract costs associated with the construction contract, which commenced on or after 1st day of April, 2016 shall be recognised in accordance with the provisions of this standard.
- 22.2 Contract revenue and contract costs associated with the construction contract, which commenced on or before the 31st day of March, 2016 but not completed by the said date, shall be recognised based on the method regularly followed by the person prior to the previous year beginning on the 1st day of April, 2016.

Disclosure

23. A person shall disclose:
- (a) the amount of contract revenue recognised as revenue in the period; and
 - (b) the methods used to determine the stage of completion of contracts in progress.
24. A person shall disclose the following for contracts in progress at the reporting date, namely:—
- (a) amount of costs incurred and recognised profits (less recognised losses) upto the reporting date;
 - (b) the amount of advances received; and
 - (c) the amount of retentions.

D. Income Computation and Disclosure Standard IV relating to revenue recognition

Preamble

This Income Computation and Disclosure Standard is applicable for computation of income chargeable under the head “Profits and gains of business or profession” or “Income from other sources” and not for the purpose of maintenance of books of accounts.

In the case of conflict between the provisions of the Income-tax Act, 1961 (‘the Act’) and this Income Computation and Disclosure Standard, the provisions of the Act shall prevail to that extent.

Scope

- 1 (1) This Income Computation and Disclosure Standard deals with the bases for recognition of revenue arising in the course of the ordinary activities of a person from
 - (i) the sale of goods;
 - (ii) the rendering of services;
 - (iii) the use by others of the person's resources yielding interest, royalties or dividends.
- (2) This Income Computation and Disclosure Standard does not deal with the aspects of revenue recognition which are dealt with by other Income Computation and Disclosure Standards.

Definitions

- 2 (1) **The following term is used in this Income Computation and Disclosure Standard with the meanings specified:**
 - (a) **“Revenue”** is the gross inflow of cash, receivables or other consideration arising in the course of the ordinary activities of a person from the sale of goods, from the rendering of services, or from the use by others of the person's resources yielding interest, royalties or dividends. In an agency relationship, the revenue is the amount of commission and not the gross inflow of cash, receivables or other consideration.
- (2) Words and expressions used and not defined in this Income Computation and Disclosure Standard but defined in the Act shall have the meanings assigned to them in that Act.

Sale of Goods

3. In a transaction involving the sale of goods, the revenue shall be recognised when the seller of goods has transferred to the buyer the property in the goods for a price or all significant risks and rewards of ownership have been transferred to the buyer and the seller retains no effective control of the goods transferred to a degree usually associated with ownership. In a situation, where transfer of property in goods does not coincide with the transfer of significant risks and rewards of ownership, revenue in such a situation shall be recognised at the time of transfer of significant risks and rewards of ownership to the buyer.
4. Revenue shall be recognised when there is reasonable certainty of its ultimate collection.

5. Where the ability to assess the ultimate collection with reasonable certainty is lacking at the time of raising any claim for escalation of price and export incentives, revenue recognition in respect of such claim shall be postponed to the extent of uncertainty involved.

Rendering of Services

6. Subject to Para 7, revenue from service transactions shall be recognised by the percentage completion method. Under this method, revenue from service transactions is matched with the service transaction costs incurred in reaching the stage of completion, resulting in the determination of revenue, expenses and profit which can be attributed to the proportion of work completed. Income Computation and Disclosure Standard on construction contract also requires the recognition of revenue on this basis. The requirements of that Standard shall *mutatis mutandis* apply to the recognition of revenue and the associated expenses for a service transaction. However, when services are provided by an indeterminate number of acts over a specific period of time, revenue may be recognised on a straight line basis over the specific period.
7. Revenue from service contracts with duration of not more than ninety days may be recognised when the rendering of services under that contract is completed or substantially completed.

The Use of Resources by Others Yielding Interest, Royalties or Dividends

8.
 - (1) Subject to sub paragraph (2), interest shall accrue on the time basis determined by the amount outstanding and the rate applicable.
 - (2) Interest on refund of any tax, duty or cess shall be deemed to be the income of the previous year in which such interest is received.
 - (3) Discount or premium on debt securities held is treated as though it were accruing over the period to maturity.
9. Royalties shall accrue in accordance with the terms of the relevant agreement and shall be recognised on that basis unless, having regard to the substance of the transaction, it is more appropriate to recognise revenue on some other systematic and rational basis.
10. Dividends are recognised in accordance with the provisions of the Act.

Transitional Provisions

11. The transitional provisions of Income Computation and Disclosure Standard on construction contract shall *mutatis mutandis* apply to the recognition of revenue and the associated costs for a service transaction undertaken on or before the 31st day of March, 2016 but not completed by the said date.

12. Revenue for a transaction, other than a service transaction referred to in Para 10, undertaken on or before the 31st day of March, 2016 but not completed by the said date shall be recognised in accordance with the provisions of this standard for the previous year commencing on the 1st day of April, 2016 and subsequent previous year. The amount of revenue, if any, recognised for the said transaction for any previous year commencing on or before the 1st day of April, 2015 shall be taken into account for recognising revenue for the said transaction for the previous year commencing on the 1st day of April, 2016 and subsequent previous years.

Disclosure

13. Following disclosures shall be made in respect of revenue recognition, namely:—
- (a) in a transaction involving sale of good, total amount not recognised as revenue during the previous year due to lack of reasonably certainty of its ultimate collection along with nature of uncertainty;
 - (b) the amount of revenue from service transactions recognised as revenue during the previous year;
 - (c) the method used to determine the stage of completion of service transactions in progress; and
 - (d) for service transactions in progress at the end of previous year:
 - (i) amount of costs incurred and recognised profits (less recognised losses) upto end of previous year;
 - (ii) the amount of advances received; and
 - (iii) the amount of retentions.

E. Income Computation and Disclosure Standard V relating to tangible fixed assets

Preamble

This Income Computation and Disclosure Standard is applicable for computation of income chargeable under the head “Profits and gains of business or profession” or “Income from other sources” and not for the purpose of maintenance of books of accounts.

In the case of conflict between the provisions of the Income-tax Act, 1961 (‘the Act’) and this Income Computation and Disclosure Standard, the provisions of the Act shall prevail to that extent.

cope

1. This Income Computation and Disclosure Standard deals with the treatment of tangible fixed assets.

Definitions

- 2 (1) **The following terms are used in this Income Computation and Disclosure Standard with the meanings specified:**
- (a) **“Tangible fixed asset”** is an asset being land, building, machinery, plant or furniture held with the intention of being used for the purpose of producing or providing goods or services and is not held for sale in the normal course of business.
 - (b) **“Fair value”** of an asset is the amount for which that asset could be exchanged between knowledgeable, willing parties in an arm’s length transaction.
- (2) Words and expressions used and not defined in this Income Computation and Disclosure Standard but defined in the Act shall have the meanings assigned to them in that Act.

Identification of Tangible Fixed Assets

- 3. The definition in clause (a) of sub-paragraph (1) of paragraph 2 provides criteria for determining whether an item is to be classified as a tangible fixed asset.
- 4. Stand-by equipment and servicing equipment are to be capitalised. Machinery spares shall be charged to the revenue as and when consumed. When such spares can be used only in connection with an item of tangible fixed asset and their use is expected to be irregular, they shall be capitalised.

Components of Actual Cost

- 5. The actual cost of an acquired tangible fixed asset shall comprise its purchase price, import duties and other taxes, excluding those subsequently recoverable, and any directly attributable expenditure on making the asset ready for its intended use. Any trade discounts and rebates shall be deducted in arriving at the actual cost.
- 6. The cost of a tangible fixed asset may undergo changes subsequent to its acquisition or construction on account of
 - (i) price adjustment, changes in duties or similar factors; or
 - (ii) exchange fluctuation as specified in Income Computation and Disclosure Standard on the effects of changes in foreign exchange rates.
- 7. Administration and other general overhead expenses are to be excluded from the cost of tangible fixed assets if they do not relate to a specific tangible fixed asset. Expenses which are specifically attributable to construction of a project or to the acquisition of a tangible fixed asset or bringing it to its working condition, shall be included as a part of the cost of the project or as a part of the cost of the tangible fixed asset.

8. The expenditure incurred on start-up and commissioning of the project, including the expenditure incurred on test runs and experimental production, shall be capitalised. The expenditure incurred after the plant has begun commercial production, that is, production intended for sale or captive consumption, shall be treated as revenue expenditure.

Self-constructed Tangible Fixed Assets

9. In arriving at the actual cost of self-constructed tangible fixed assets, the same principles shall apply as those described in paragraphs 5 to 8. Cost of construction that relate directly to the specific tangible fixed asset and costs that are attributable to the construction activity in general and can be allocated to the specific tangible fixed asset shall be included in actual cost. Any internal profits shall be eliminated in arriving at such costs.

Non-monetary Consideration

10. When a tangible fixed asset is acquired in exchange for another asset, the fair value of the tangible fixed asset so acquired shall be its actual cost.
11. When a tangible fixed asset is acquired in exchange for shares or other securities, the fair value of the tangible fixed asset so acquired shall be its actual cost.

Improvements and Repairs

12. An Expenditure that increases the future benefits from the existing asset beyond its previously assessed standard of performance is added to the actual cost.
13. The cost of an addition or extension to an existing tangible fixed asset which is of a capital nature and which becomes an integral part of the existing tangible fixed asset is to be added to its actual cost. Any addition or extension, which has a separate identity and is capable of being used after the existing tangible fixed asset is disposed of, shall be treated as separate asset.

Valuation of Tangible Fixed Assets in Special Cases

14. Where a person owns tangible fixed assets jointly with others, the proportion in the actual cost, accumulated depreciation and written down value is grouped together with similar fully owned tangible fixed assets.
15. Where several assets are purchased for a consolidated price, the consideration shall be apportioned to the various assets on a fair basis.

Transitional Provisions

16. The actual cost of tangible fixed assets, acquisition or construction of which commenced on or before the 31st day of March, 2016 but not completed by the said date, shall be recognised in accordance with the provisions of this standard. The

amount of actual cost, if any, recognised for the said assets for any previous year commencing on or before the 1st day of April, 2015 shall be taken into account for recognising actual cost of the said assets for the previous year commencing on the 1st day of April, 2016 and subsequent previous years.

Depreciation

- 17. Depreciation on a tangible fixed asset shall be computed in accordance with the provisions of the Act.**

Transfers

- 18. Income arising on transfer of a tangible fixed asset shall be computed in accordance with the provisions of the Act.**

Disclosures

- 19. Following disclosure shall be made in respect of tangible fixed assets, namely:—**
- (a) description of asset or block of assets;
 - (b) rate of depreciation;
 - (c) actual cost or written down value, as the case may be;
 - (d) additions or deductions during the year with dates; in the case of any addition of an asset, date put to use; including adjustments on account of—
 - (i) Central Value Added Tax credit claimed and allowed under the CENVAT Credit Rules, 2004;
 - (ii) change in rate of exchange of currency;
 - (iii) subsidy or grant or reimbursement, by whatever name called;
 - (e) depreciation Allowable; and
 - (f) written down value at the end of year.

F. Income Computation and Disclosure Standard VI relating to the effects of changes in foreign exchange rates

Preamble

This Income Computation and Disclosure Standard is applicable for computation of income chargeable under the head “Profits and gains of business or profession” or “Income from other sources” and not for the purpose of maintenance of books of accounts.

In the case of conflict between the provisions of the Income-tax Act, 1961 (‘the Act’) and this Income Computation and Disclosure Standard, the provisions of the Act shall prevail to that extent.

Scope

1. This Income Computation and Disclosure Standard deals with:
 - (a) treatment of transactions in foreign currencies;
 - (b) translating the financial statements of foreign operations;
 - (c) treatment of foreign currency transactions in the nature of forward exchange contracts.

Definitions

2. (1) The following terms are used in this Income Computation and Disclosure Standard with the meanings specified:
 - (a) **“Average rate”** is the mean of the exchange rates in force during a period.
 - (b) **“Closing rate”** is the exchange rate at the last day of the previous year.
 - (c) **“Exchange difference”** is the difference resulting from reporting the same number of units of a foreign currency in the reporting currency of a person at different exchange rates.
 - (d) **“Exchange rate”** is the ratio for exchange of two currencies.
 - (e) **“Foreign currency”** is a currency other than the reporting currency of a person.
 - (f) **“Foreign operations of a person”** is a branch, by whatever name called, of that person, the activities of which are based or conducted in a country other than India.
 - (g) **“Foreign currency transaction”** is a transaction which is denominated in or requires settlement in a foreign currency, including transactions arising when a person:—
 - (i) buys or sells goods or services whose price is denominated in a foreign currency; or
 - (ii) borrows or lends funds when the amounts payable or receivable are denominated in a foreign currency; or
 - (iii) becomes a party to an unperformed forward exchange contract; or
 - (iv) otherwise acquires or disposes of assets, or incurs or settles liabilities, denominated in a foreign currency.

- (h) **“Forward exchange contract”** means an agreement to exchange different currencies at a forward rate, and includes a foreign currency option contract or another financial instrument of a similar nature;
 - (i) **“Forward rate”** is the specified exchange rate for exchange of two Currencies at a specified future date;
 - (j) **“Indian currency”** shall have the meaning as assigned to it in section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999);
 - (k) **“Monetary items”** are money held and assets to be received or liabilities to be paid in fixed or determinable amounts of money. Cash, receivables, and payables are examples of monetary items;
 - (l) **“Non-monetary items”** are assets and liabilities other than monetary items. Fixed assets, inventories, and investments in equity shares are examples of non-monetary items;
 - (m) **“Reporting currency”** means Indian currency except for foreign operations where it shall mean currency of the country where the operations are carried out.
- (2) Words and expressions used and not defined in this Income Computation and Disclosure Standard but defined in the Act shall have the meaning assigned to them in the Act.

Foreign Currency Transactions Initial Recognition

- 3 (1) A foreign currency transaction shall be recorded, on initial recognition in the reporting currency, by applying to the foreign currency amount the exchange rate between the reporting currency and the foreign currency at the date of the transaction.
- (2) An average rate for a week or a month that approximates the actual rate at the date of the transaction may be used for all transaction in each foreign currency occurring during that period. If the exchange rate fluctuates significantly, the actual rate at the date of the transaction shall be used.

Conversion at Last Date of Previous Year

4. At last day of each previous year:—
- (a) foreign currency monetary items shall be converted into reporting currency by applying the closing rate;
 - (b) where the closing rate does not reflect with reasonable accuracy, the amount in reporting currency that is likely to be realised from or required to disburse, a foreign currency monetary item owing to restriction on remittances or the

closing rate being unrealistic and it is not possible to effect an exchange of currencies at that rate, then the relevant monetary item shall be reported in the reporting currency at the amount which is likely to be realised from or required to disburse such item at the last date of the previous year; and

- (c) non-monetary items in a foreign currency shall be converted into reporting currency by using the exchange rate at the date of the transaction.
- (d) non-monetary item being inventory which is carried at net realisable value denominated in a foreign currency shall be reported using the exchange rate that existed when such value was determined.

Recognition of Exchange Differences

- 5. (i) In respect of monetary items, exchange differences arising on the settlement thereof or on conversion thereof at last day of the previous year shall be recognised as income or as expense in that previous year.
- (ii) In respect of non-monetary items, exchange differences arising on conversion thereof at the last day of the previous year shall not be recognised as income or as expense in that previous year.

Exceptions to Paragraphs 3, 4 and 5

- 6. Notwithstanding anything contained in paragraph 3, 4 and 5; initial recognition, conversion and recognition of exchange difference shall be subject to provisions of section 43A of the Act or Rule 115 of Income-tax Rules, 1962, as the case may be.

Financial Statements of Foreign Operations

- 7. The financial statements of a foreign operation shall be translated using the principles and procedures in paragraphs 3 to 6 as if the transactions of the foreign operation had been those of the person himself.

Forward Exchange Contracts

- 8. (1) Any premium or discount arising at the inception of a forward exchange contract shall be amortised as expense or income over the life of the contract. Exchange differences on such a contract shall be recognised as income or as expense in the previous year in which the exchange rates change. Any profit or loss arising on cancellation or renewal shall be recognised as income or as expense for the previous year.
- (2) The provisions of sub-para (1) shall apply provided that the contract:
 - (a) is not intended for trading or speculation purposes; and
 - (b) is entered into to establish the amount of the reporting currency required or available at the settlement date of the transaction.

- (3) The provisions of sub-para (1) shall not apply to the contract that is entered into to hedge the foreign currency risk of a firm commitment or a highly probable forecast transaction. For this purpose, firm commitment, shall not include assets and liabilities existing at the end of the previous year.
- (4) The premium or discount that arises on the contract is measured by the difference between the exchange rate at the date of the inception of the contract and the forward rate specified in the contract. Exchange difference on the contract is the difference between:
 - (a) the foreign currency amount of the contract translated at the exchange rate at the last day of the previous year, or the settlement date where the transaction is settled during the previous year; and
 - (b) the same foreign currency amount translated at the date of inception of the contract or the last day of the immediately preceding previous year, whichever is later.
- (5) Premium, discount or exchange difference on contracts that are intended for trading or speculation purposes, or that are entered into to hedge the foreign currency risk of a firm commitment or a highly probable forecast transaction shall be recognised at the time of settlement.

Transitional Provisions

- 9.
 - (1) All foreign currency transactions undertaken on or after 1st day of April, 2016 shall be recognised in accordance with the provisions of this standard.
 - (2) Exchange differences arising in respect of monetary items or non-monetary items, on the settlement thereof during the previous year commencing on the 1st day of April, 2016 or on conversion thereof at the last day of the previous year commencing on the 1st day of April, 2016, shall be recognised in accordance with the provisions of this standard after taking into account the amount recognised on the last day of the previous year ending on the 31st March, 2016 for an item, if any, which is carried forward from said previous year.
 - (3) The financial statements of foreign operations for the previous year commencing on the 1st day of April, 2016 shall be translated using the principles and procedures specified in this standard after taking into account the amount recognised on the last day of the previous year ending on the 31st March, 2016 for an item, if any, which is carried forward from said previous year.
 - (4) All forward exchange contracts existing on the 1st day of April, 2016 or entered on or after 1st day of April, 2016 shall be dealt with in accordance with the

provisions of this standard after taking into account the income or expenses, if any, recognised in respect of said contracts for the previous year ending on or before the 31st March, 2016.

G. Income Computation and Disclosure Standard VII relating to government grants

Preamble

This Income Computation and Disclosure Standard is applicable for computation of income chargeable under the head “Profits and gains of business or profession” or “Income from other sources” and not for the purpose of maintenance of books of account.

In case of conflict between the provisions of the Income Tax Act, 1961 (‘the Act’) and this Income Computation and Disclosure Standard, the provisions of the Act shall prevail to that extent.

Scope

1. This Income Computation and Disclosure Standard deals with the treatment of Government grants. The Government grants are sometimes called by other names such as subsidies, cash incentives, duty drawbacks, waiver, concessions, reimbursements, etc.
2. This Income Computation and Disclosure Standard does not deal with:—
 - (a) Government assistance other than in the form of Government grants; and
 - (b) Government participation in the ownership of the enterprise.

Definitions

- 3 (1) The following terms are used in the Income Computation and Disclosure Standard with the meanings specified:
 - (a) **“Government”** refers to the Central Government, State Governments, agencies and similar bodies, whether local, national or international.
 - (b) **“Government grants”** are assistance by Government in cash or kind to a person for past or future compliance with certain conditions. They exclude those forms of Government assistance which cannot have a value placed upon them and the transactions with Government which cannot be distinguished from the normal trading transactions of the person.
- (2) Words and expressions used and not defined in this Income Computation and Disclosure Standard but defined in the Act shall have the meaning assigned to them in the Act.

Recognition of Government Grants

- 4 (1) Government grants should not be recognised until there is reasonable assurance that
 - (i) the person shall comply with the conditions attached to them, and (ii) the grants shall be received.
- (2) Recognition of Government grant shall not be postponed beyond the date of actual receipt.

Treatment of Government Grants

5. Where the Government grant relates to a depreciable fixed asset or assets of a person, the grant shall be deducted from the actual cost of the asset or assets concerned or from the written down value of block of assets to which concerned asset or assets belonged to.
6. Where the Government grant relates to a non-depreciable asset or assets of a person requiring fulfillment of certain obligations, the grant shall be recognised as income over the same period over which the cost of meeting such obligations is charged to income.
7. Where the Government grant is of such a nature that it cannot be directly relatable to the asset acquired, so much of the amount which bears to the total Government grant, the same proportion as such asset bears to all the assets in respect of or with reference to which the Government grant is so received, shall be deducted from the actual cost of the asset or shall be reduced from the written down value of block of assets to which the asset or assets belonged to.
8. The Government grant that is receivable as compensation for expenses or losses incurred in a previous financial year or for the purpose of giving immediate financial support to the person with no further related costs, shall be recognised as income of the period in which it is receivable.
9. The Government grants other than covered by paragraph 5, 6, 7, and 8 shall be recognised as income over the periods necessary to match them with the related costs which they are intended to compensate.
10. The Government grants in the form of non-monetary assets, given at a concessional rate, shall be accounted for on the basis of their acquisition cost.

Refund of Government Grants

11. The amount refundable in respect of a Government grant referred to in paragraphs 6, 8 and 9 shall be applied first against any unamortised deferred credit remaining in respect of the Government grant. To the extent that the amount refundable exceeds any such deferred credit, or where no deferred credit exists, the amount shall be charged to profit and loss statement.

12. The amount refundable in respect of a Government grant related to a depreciable fixed asset or assets shall be recorded by increasing the actual cost or written down value of block of assets by the amount refundable. Where the actual cost of the asset is increased, depreciation on the revised actual cost or written down value shall be provided prospectively at the prescribed rate.

Transitional Provisions

13. All the Government grants which meet the recognition criteria of para 4 on or after 1st day of April, 2016 shall be recognised for the previous year commencing on or after 1st day of April, 2016 in accordance with the provisions of this standard after taking into account the amount, if any, of the said Government grant recognised for any previous year ending on or before 31st day of March, 2016.

Disclosures

14. Following disclosure shall be made in respect of Government grants, namely:—
 - (a) nature and extent of Government grants recognised during the previous year by way of deduction from the actual cost of the asset or assets or from the written down value of block of assets during the previous year;
 - (b) nature and extent of Government grants recognised during the previous year as income;
 - (c) nature and extent of Government grants not recognised during the previous year by way of deduction from the actual cost of the asset or assets or from the written down value of block of assets and reasons thereof; and
 - (d) nature and extent of Government grants not recognised during the previous year as income and reasons thereof.

H. Income Computation and Disclosure Standard VIII relating to securities

Preamble

This Income Computation and Disclosure Standard is applicable for computation of income chargeable under the head “Profits and gains of business or profession” or “Income from other sources” and not for the purpose of maintenance of books of account.

In the case of conflict between the provisions of the Income-tax Act, 1961 (‘the Act’) and this Income Computation and Disclosure Standard, the provisions of the Act shall prevail to that extent.

Part A

Scope

1. This part of Income Computation and Disclosure Standard deals with securities held as stock-in-trade.

- 2 This part of Income Computation and Disclosure Standard does not deal with:
- (a) the bases for recognition of interest and dividends on securities which are covered by the Income Computation and Disclosure Standard on revenue recognition;
 - (b) securities held by a person engaged in the business of insurance;
 - (c) securities held by mutual funds, venture capital funds, banks and public financial institutions formed under a Central or a State Act or so declared under the Companies Act, 1956 (1 of 1956) or the Companies Act, 2013 (18 of 2013).

Definitions

- 3 (1) The following terms are used in this part of Income Computation and Disclosure Standard with the meanings specified:
- (a) **“Fair value”** is the amount for which an asset could be exchanged between a knowledgeable, willing buyer and a knowledgeable, willing seller in an arm’s length transaction.
 - (b) **“Securities”** shall have the meaning assigned to it in clause (h) of Section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) and shall include share of a company in which public are not substantially interested but shall not include derivatives referred to in sub-clause (ia) of that clause (h).
- (2) Words and expressions used and not defined in this part of Income Computation and Disclosure Standard but defined in the Act shall have the meaning respectively assigned to them in the Act.

Recognition and Initial Measurement of Securities

- 4. **A security on acquisition shall be recognised at actual cost.**
- 5. **The actual cost of a security shall comprise of its purchase price and include acquisition charges such as brokerage, fees, tax, duty or cess.**
- 6. **Where a security is acquired in exchange for other securities,** the fair value of the security so acquired shall be its actual cost.
- 7. Where a security is acquired in exchange for another asset, the fair value of the security so acquired shall be its actual cost.
- 8. Where unpaid interest has accrued before the acquisition of an interest-bearing security and is included in the price paid for the security, the subsequent receipt of interest is allocated between pre-acquisition and post-acquisition periods; the pre-acquisition portion of the interest is deducted from the actual cost.

Subsequent Measurement of Securities

9. At the end of any previous year, securities held as stock-in-trade shall be valued at actual cost initially recognised or net realisable value at the end of that previous year, whichever is lower.
10. For the purpose of para 9, the comparison of actual cost initially recognised and net realisable value shall be done categorywise and not for each individual security. For this purpose, securities shall be classified into the following categories, namely:-
 - (a) shares;
 - (b) debt securities;
 - (c) convertible securities; and
 - (d) any other securities not covered above.
11. The value of securities held as stock-in-trade of a business as on the beginning of the previous year shall be:
 - (a) the cost of securities available, if any, on the day of the commencement of the business when the business has commenced during the previous year; and
 - (b) the value of the securities of the business as on the close of the immediately preceding previous year, in any other case.
12. Notwithstanding anything contained in para 9, 10 and 11, at the end of any previous year, securities not listed on a recognised stock exchange; or listed but not quoted on a recognised stock exchange with regularity from time to time, shall be valued at actual cost initially recognised.
13. For the purposes of para 9, 10 and 11 where the actual cost initially recognised cannot be ascertained by reference to specific identification, the cost of such security shall be determined on the basis of first-in-first-out method or weighted average cost formula.

Part B

Scope

1. This part of Income Computation and Disclosure Standard deals with securities held by a scheduled bank or public financial institutions formed under a Central or a State Act or so declared under the Companies Act, 1956 (1 of 1956) or the Companies Act, 2013 (18 of 2013).

Definitions

- 2 (1) The following terms are used in this part of Income Computation and Disclosure Standard with the meanings specified:

- (a) **“Scheduled Bank”** shall have the meaning assigned to it in clause (ii) of the Explanation to clause (viia) of sub-section (1) of section 36 of the Act.
- (b) **“Securities”** shall have the meaning assigned to it in clause (h) of Section 2 of the Securities Contract (Regulation) Act, 1956 (42 of 1956) and shall include share of a company in which public are not substantially interested;
- (2) Words and expressions used and not defined in this part of Income Computation and Disclosure Standard but defined in the Act shall have the meaning respectively assigned to them in the Act.

Classification, Recognition and Measurement of Securities

- 3. Securities shall be classified, recognised and measured in accordance with the extant guidelines issued by the Reserve Bank of India in this regard and any claim for deduction in excess of the said guidelines shall not be taken into account. To this extent, the provisions of Income Computation and Disclosure Standard VI on the effect of changes in foreign exchange rates relating to forward exchange contracts shall not apply.”

I. Income Computation and Disclosure Standard IX relating to borrowing costs Preamble

This Income Computation and Disclosure Standard is applicable for computation of income chargeable under the head “Profits and gains of business or profession” or “Income from other sources” and not for the purpose of maintenance of books of account.

In the case of conflict between the provisions of the Income-tax Act, 1961 (‘the Act’) and this Income Computation and Disclosure Standard, the provisions of the Act shall prevail to that extent.

Scope

- 1. (1) This Income Computation and Disclosure Standard deals with treatment of borrowing costs.
- (2) This Income Computation and Disclosure Standard does not deal with the actual or imputed cost of owners’ equity and preference share capital.

Definitions

- 2. (1) The following terms are used in this Income Computation and Disclosure Standard with the meanings specified:
 - (a) **“Borrowing costs”** are interest and other costs incurred by a person in connection with the borrowing of funds and include:
 - (i) commitment charges on borrowings;

- (ii) amortised amount of discounts or premiums relating to borrowings;
 - (iii) amortised amount of ancillary costs incurred in connection with the arrangement of borrowings;
 - (iv) finance charges in respect of assets acquired under finance leases or under other similar arrangements.
- (b) **“Qualifying asset”** means:
- (i) land, building, machinery, plant or furniture, being tangible assets;
 - (ii) know-how, patents, copyrights, trade marks, licences, franchises or any other business or commercial rights of similar nature, being intangible assets;
 - (iii) inventories that require a period of twelve months or more to bring them to a saleable condition.
- (2) Words and expressions used and not defined in this Income Computation and Disclosure Standard but defined in the Act shall have the meaning assigned to them in the Act.

Recognition

3. Borrowing costs that are directly attributable to the acquisition, construction or production of a qualifying asset shall be capitalised as part of the cost of that asset. The amount of borrowing costs eligible for capitalisation shall be determined in accordance with this Income Computation and Disclosure Standard. Other borrowing costs shall be recognised in accordance with the provisions of the Act.
4. For the purposes of this Income Computation and Disclosure Standard, “capitalisation” in the context of inventory referred to in item (iii) of clause (b) of sub-paragraph (1) of paragraph 2 means addition of borrowing cost to the cost of inventory.

Borrowing Costs Eligible for Capitalisation

5. Subject to paragraph 8, the extent to which funds are borrowed specifically for the purposes of acquisition, construction or production of a qualifying asset, the amount of borrowing costs to be capitalised on that asset shall be the actual borrowing costs incurred during the period on the funds so borrowed.

“6. Subject to Para 8, in respect of borrowing other than those referred to in Para 5, if any, the amount of borrowing costs to be capitalised shall be computed in accordance with the following formula namely :—

$$A \times \frac{B}{C} -$$

Where

A = borrowing costs incurred during the previous year except on borrowings referred to in Para 5 above;

B = (i) the average of costs of qualifying asset as appearing in the balance sheet of a person on the first day and the last day of the previous year;
 (ii) in case the qualifying asset does not appear in the balance sheet of a person on the first day, half of the cost of qualifying asset; or
 (iii) in case the qualifying asset does not appear in the balance sheet of a person on the last day of the previous year, the average of the costs of qualifying asset as appearing in the balance sheet of a person on the first day of the previous year and on the date of put to use or completion, as the case may be, excluding the extent to which the qualifying assets are directly funded out of specific borrowings;

C = the average of the amount of total assets as appearing in the balance sheet of a person on the first day and the last day of the previous year, other than assets to the extent they are directly funded out of specific borrowings;

Explanation — For the purpose of this paragraph, a qualifying asset shall be such asset that necessarily require a period of twelve months or more for its acquisition, construction or production.

Commencement of Capitalisation

7. The capitalisation of borrowing costs shall commence:

- (a) in a case referred to in paragraph 5, from the date on which funds were borrowed;
- (b) in a case referred to in paragraph 6, from the date on which funds were utilised.

Cessation of Capitalisation

8. Capitalisation of borrowing costs shall cease:

- (a) in case of a qualifying asset referred to in item (i) and (ii) of clause (b) of sub-paragraph (1) of paragraph 2, when such asset is first put to use;
- (b) in case of inventory referred to in item (iii) of clause (b) of sub-paragraph (1) of paragraph 2, when substantially all the activities necessary to prepare such inventory for its intended sale are complete.

9. When the construction of a qualifying asset is completed in parts and a completed part is capable of being used while construction continues for the other parts, capitalisation of borrowing costs in relation to a part shall cease:—
- (a) in case of part of a qualifying asset referred to in item (i) and (ii) of clause (b) of sub-paragraph (1) of paragraph 2, when such part of a qualifying asset is first put to use;
 - (b) in case of part of inventory referred to in item (iii) of clause (b) of sub-paragraph (1) of paragraph 2, when substantially all the activities necessary to prepare such part of inventory for its intended sale are complete.

Transitional Provisions

10. All the borrowing costs incurred on or after 1st day of April, 2016 shall be capitalised for the previous year commencing on or after 1st day of April, 2016 in accordance with the provisions of this standard after taking into account the amount of borrowing costs capitalised, if any, for the same borrowing for any previous year ending on or before 31st day of March, 2016.

Disclosure

11. The following disclosure shall be made in respect of borrowing costs, namely:—
- (a) the accounting policy adopted for borrowing costs; and
 - (b) the amount of borrowing costs capitalised during the previous year.

J. Income Computation and Disclosure Standard X relating to provisions, contingent liabilities and contingent assets

Preamble

This Income Computation and Disclosure Standard is applicable for computation of income chargeable under the head “Profits and gains of business or profession” or “Income from other sources” and not for the purpose of maintenance of books of accounts.

In the case of conflict between the provisions of the Income-tax Act, 1961 (‘the Act’) and this Income Computation and Disclosure Standard, the provisions of the Act shall prevail to that extent.

Scope

1. This Income Computation and Disclosure Standard deals with provisions, contingent liabilities and contingent assets, except those:
- (a) resulting from financial instruments;

- (b) resulting from executory contracts;
 - (c) arising in insurance business from contracts with policyholders; and
 - (d) covered by another Income Computation and Disclosure Standard.
2. This Income Computation and Disclosure Standard does not deal with the recognition of revenue which is dealt with by Income Computation and Disclosure Standard - Revenue Recognition.
3. The term 'provision' is also used in the context of items such as depreciation, impairment of assets and doubtful debts which are adjustments to the carrying amounts of assets and are not addressed in this Income Computation and Disclosure Standard.

Definitions

- 4 (1) The following terms are used in this Income Computation and Disclosure Standard with the meanings specified:
- (a) **“Provision”** is a liability which can be measured only by using a substantial degree of estimation.
 - (b) **“Liability”** is a present obligation of the person arising from past events, the settlement of which is expected to result in an outflow from the person of resources embodying economic benefits.
 - (c) **“Obligating event”** is an event that creates an obligation that results in a person having no realistic alternative to settling that obligation.
 - (d) **“Contingent liability”** is:
 - (i) a possible obligation that arises from past events and the existence of which will be confirmed only by the occurrence or nonoccurrence of one or more uncertain future events not wholly within the control of the person; or
 - (ii) a present obligation that arises from past events but is not recognised because:
 - (A) it is not reasonably certain that an outflow of resources embodying economic benefits will be required to settle the obligation; or
 - (B) a reliable estimate of the amount of the obligation cannot be made.
 - (e) **“Contingent asset”** is a possible asset that arises from past events the existence of which will be confirmed only by the occurrence or

nonoccurrence of one or more uncertain future events not wholly within the control of the person.

- (f) **“Executory contracts”** are contracts under which neither party has performed any of its obligations or both parties have partially performed their obligations to an equal extent.
 - (g) **“Present obligation”** is an obligation if, based on the evidence available, its existence at the end of the previous year is considered reasonably certain.
- (2) Words and expressions used and not defined in this Income Computation and Disclosure Standard but defined in the Act shall have the meaning respectively assigned to them in the Act.

Recognition Provisions

5. A provision shall be recognised when:
- (a) a person has a present obligation as a result of a past event;
 - (b) it is reasonably certain that an outflow of resources embodying economic benefits will be required to settle the obligation; and
 - (c) a reliable estimate can be made of the amount of the obligation. If these conditions are not met, no provision shall be recognised.
6. No provision shall be recognised for costs that need to be incurred to operate in the future.
7. It is only those obligations arising from past events existing independently of a person's future actions, that is the future conduct of its business, that are recognised as provisions
8. Where details of a proposed new law have yet to be finalised, an obligation arises only when the legislation is enacted.

Contingent Liabilities

9. A person shall not recognise a contingent liability.

Contingent Assets

10. A person shall not recognise a contingent asset.
11. Contingent assets are assessed continually and when it becomes reasonably certain that inflow of economic benefit will arise, the asset and related income are recognised in the previous year in which the change occurs.

Measurement Best Estimate

12. The amount recognised as a provision shall be the best estimate of the expenditure required to settle the present obligation at the end of the previous year. The amount of a provision shall not be discounted to its present value.
13. The amount recognised as asset and related income shall be the best estimate of the value of economic benefit arising at the end of the previous year. The amount and related income shall not be discounted to its present value.

Reimbursements

14. Where some or all of the expenditure required to settle a provision is expected to be reimbursed by another party, the reimbursement shall be recognised when it is reasonably certain that reimbursement will be received if the person settles the obligation. The amount recognised for the reimbursement shall not exceed the amount of the provision.
15. Where a person is not liable for payment of costs in case the third party fails to pay, no provision shall be made for those costs.
16. An obligation, for which a person is jointly and severally liable, is a contingent liability to the extent that it is expected that the obligation will be settled by the other parties.

Review

17. Provisions shall be reviewed at the end of each previous year and adjusted to reflect the current best estimate. If it is no longer reasonably certain that an outflow of resources embodying economic benefits will be required to settle the obligation, the provision should be reversed.
18. An asset and related income recognised as provided in para 11 shall be reviewed at the end of each previous year and adjusted to reflect the current best estimate. If it is no longer reasonably certain that an inflow of economic benefits will arise, the asset and related income shall be reversed.

Use of Provisions

19. A provision shall be used only for expenditures for which the provision was originally recognised.

Transitional Provisions

20. All the provisions or assets and related income shall be recognised for the previous year commencing on or after 1st day of April, 2016 in accordance with the provisions of this standard after taking into account the amount recognised, if any, for the same for any previous year ending on or before 31st day of March, 2016.

Disclosure

- 21 (1) Following disclosure shall be made in respect of each class of provision, namely:-
- (a) a brief description of the nature of the obligation;
 - (b) the carrying amount at the beginning and end of the previous year;
 - (c) additional provisions made during the previous year, including increases to existing provisions;
 - (d) amounts used, that is incurred and charged against the provision, during the previous year;
 - (e) unused amounts reversed during the previous year; and
 - (f) the amount of any expected reimbursement, stating the amount of any asset that has been recognised for that expected reimbursement.
- (2) Following disclosure shall be made in respect of each class of asset and related income recognised as provided in para 11, namely:—
- (a) a brief description of the nature of the asset and related income;
 - (b) the carrying amount of asset at the beginning and end of the previous year;
 - (c) additional amount of asset and related income recognised during the year, including increases to assets and related income already recognised; and
 - (d) amount of asset and related income reversed during the previous year.

ANNEXURE – 2

Rule 11UAB - Determination of fair market value for inventory.

- (1) *For the purposes of clause (via) of section 28 of the Act, the fair market value of the inventory,—*
- (i) *being an immovable property, being land or building or both, shall be the value adopted or assessed or assessable by any authority of the Central Government or a State Government for the purpose of stamp duty in respect of such immovable property on the date on which the inventory is converted into, or treated, as a capital asset;*
 - (ii) *being jewellery, archaeological collections, drawings, paintings, sculptures, any work of art, shares or securities referred to in rule 11UA, shall be the value determined in the manner provided in sub-rule (1) of rule 11UA and for this purpose the reference to the valuation date in the rule 11U and rule 11UA shall be the date on which the inventory is converted into, or treated, as a capital asset;*
 - (iii) *being the property, other than those specified in clause (i) and clause (ii), the price that such property would ordinarily fetch on sale in the open market on the date on which the inventory is converted into, or treated, as a capital asset.*

ANNEXURE – 3

Rule – 11U Meaning of expressions used in determination of fair market value.

11U. For the purposes of this rule and rule 11UA,—

- (b) *"balance-sheet", in relation to any company, means,—*
- (i) *for the purposes of sub-rule (2) of rule 11UA, the balance-sheet of such company (including the notes annexed thereto and forming part of the accounts) as drawn up on the valuation date which has been audited by the auditor of the company appointed under section 224 of the Companies Act, 1956 (1 of 1956) and where the balance-sheet on the valuation date is not drawn up, the balance-sheet (including the notes annexed thereto and forming part of the accounts) drawn up as on a date immediately preceding the valuation date which has been approved and adopted in the annual general meeting of the shareholders of the company; and*
 - (ii) *in any other case,—*
 - (A) *in relation to an Indian company, the balance-sheet of such company (including the notes annexed thereto and forming part of the accounts) as drawn up on the valuation date which has been audited by the auditor of the company appointed under the laws relating to companies in force; and*
 - (B) *in relation to a company, not being an Indian company, the balance-sheet of the company (including the notes annexed thereto and forming part of the accounts) as drawn up on the valuation date which has been audited by the auditor of the company, if any, appointed under the laws in force of the country in which the company is registered or incorporated;]*
- (c) *"merchant banker" means category I merchant banker registered with Securities and Exchange Board of India established under section 3 of the Securities and Exchange Board of India Act, 1992 (15 of 1992);*
- (d) *"quoted shares or securities" in relation to share or securities means a share or security quoted on any recognized stock exchange with regularity from time to time, where the quotations of such shares or securities are based on current transaction made in the ordinary course of business;*
- (e) *"recognized stock exchange" shall have the same meaning as assigned to it in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);*
- (f) *"registered dealer" means a dealer who is registered under Central Sales Tax Act, 1956 or General Sales Tax Law for the time being in force in any State including value added tax laws;*

- (g) *"registered valuer" shall have the same meaning as assigned to it in section 34AB of the Wealth-tax Act, 1957 (27 of 1957) read with rule 8A of Wealth-tax Rules, 1957;*
- (h) *"securities" shall have the same meaning as assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);*
- (i) *"unquoted shares and securities", in relation to shares or securities, means shares and securities which is not a quoted shares or securities;*
- (j) *"valuation date" means the date on which the property or consideration, as the case may be, is received by the assessee.*

Rule 11UA - Determination of fair market value.

- (1) *For the purposes of section 56 of the Act, the fair market value of a property, other than immovable property, shall be determined in the following manner, namely,—*
 - (a) *valuation of jewellery,—*
 - (i) *the fair market value of jewellery shall be estimated to be the price which such jewellery would fetch if sold in the open market on the valuation date;*
 - (ii) *in case the jewellery is received by the way of purchase on the valuation date, from a registered dealer, the invoice value of the jewellery shall be the fair market value;*
 - (iii) *in case the jewellery is received by any other mode and the value of the jewellery exceeds rupees fifty thousand, then assessee may obtain the report of registered valuer in respect of the price it would fetch if sold in the open market on the valuation date;*
 - (b) *valuation of archaeological collections, drawings, paintings, sculptures or any work of art,—*
 - (i) *the fair market value of archaeological collections, drawings, paintings, sculptures or any work of art (hereinafter referred as artistic work) shall be estimated to be price which it would fetch if sold in the open market on the valuation date;*
 - (ii) *in case the artistic work is received by the way of purchase on the valuation date, from a registered dealer, the invoice value of the artistic work shall be the fair market value;*
 - (iii) *in case the artistic work is received by any other mode and the value of the artistic work exceeds rupees fifty thousand, then assessee may obtain the report of registered valuer in respect of the price it would fetch if sold in the open market on the valuation date;*

(c) *valuation of shares and securities,—*

(a) *the fair market value of quoted shares and securities shall be determined in the following manner, namely,—*

(i) *if the quoted shares and securities are received by way of transaction carried out through any recognized stock exchange, the fair market value of such shares and securities shall be the transaction value as recorded in such stock exchange;*

(ii) *if such quoted shares and securities are received by way of transaction carried out other than through any recognized stock exchange, the fair market value of such shares and securities shall be,—*

(a) *the lowest price of such shares and securities quoted on any recognized stock exchange on the valuation date, and*

(b) *the lowest price of such shares and securities on any recognized stock exchange on a date immediately preceding the valuation date when such shares and securities were traded on such stock exchange, in cases where on the valuation date there is no trading in such shares and securities on any recognized stock exchange;*

(b) *the fair market value of unquoted equity shares shall be the value, on the valuation date, of such unquoted equity shares as determined in the following manner, namely:—*

*the fair market value of unquoted equity shares = (A+B+C+D - L) × (PV)/(PE),
where,*

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

(i) *any amount of income-tax paid, if any, less the amount of income-tax refund claimed, if any; and*

(ii) *any amount shown as asset including the unamortised amount of deferred expenditure which does not represent the value of any asset;*

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

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

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

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

- (i) the paid-up capital in respect of equity shares;*
- (ii) the amount set apart for payment of dividends on preference shares and equity shares where such dividends have not been declared before the date of transfer at a general body meeting of the company;*
- (iii) reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation;*
- (iv) any amount representing provision for taxation, other than amount of income-tax paid, if any, less the amount of income-tax claimed as refund, if any, to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto;*
- (v) any amount representing provisions made for meeting liabilities, other than ascertained liabilities;*
- (vi) any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares;*

PV = the paid up value of such equity shares;

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

- (c) the fair market value of unquoted shares and securities other than equity shares in a company which are not listed in any recognized stock exchange shall be estimated to be price it would fetch if sold in the open market on the valuation date and the assessee may obtain a report from a merchant banker or an accountant in respect of which such valuation.*

(2) Notwithstanding anything contained in sub-clause (b) or sub-clause (c), as the case may be, of clause (c) of sub-rule (1):—

- (A) the fair market value of unquoted equity shares for the purposes of sub-clause (i) of clause (a) of the Explanation to clause (viib) of sub-section (2) of section 56 shall be the value, on the valuation date, of such unquoted equity shares, as shall be determined under sub-clause (a), sub-clause (b), sub-clause (c) or sub-clause (e), at the option of the assessee, where the consideration received by the assessee is from a resident ; and*

under sub-clauses (a) to (e) at the option of the assessee, where the consideration received by the assessee is from a non-resident, in the following manner:—

(a) *the fair market value of unquoted equity shares = (A-L) × [PV/PE], where,*

A = book value of the assets in the balance-sheet as reduced by any amount of tax paid as deduction or collection at source or as advance tax payment as reduced by the amount of tax claimed as refund under the Income-tax Act and any amount shown in the balance-sheet as asset including the unamortised amount of deferred expenditure which does not represent the value of any asset;

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

- (i) the paid-up capital in respect of equity shares;*
- (ii) the amount set apart for payment of dividends on preference shares and equity shares where such dividends have not been declared before the date of transfer at a general body meeting of the company;*
- (iii) reserves and surplus, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation;*
- (iv) any amount representing provision for taxation, other than amount of tax paid as deduction or collection at source or as advance tax payment as reduced by the amount of tax claimed as refund under the Income-tax Act, to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto;*
- (v) any amount representing provisions made for meeting liabilities, other than ascertained liabilities;*
- (vi) any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares;*

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

PV = the paid up value of such equity shares; or

- (b) the fair market value of the unquoted equity shares determined by a merchant banker as per the Discounted Free Cash Flow method;*
- (c) where any consideration is received by a venture capital undertaking for issue of unquoted equity shares, from a venture capital fund or a venture capital company*

or a specified fund, the price of the equity shares corresponding to such consideration may, at the option of such undertaking, be taken as the fair market value of the equity shares to the extent the consideration from such fair market value does not exceed the aggregate consideration that is received from a venture capital fund or a venture capital company or a specified fund:

Provided that the consideration has been received by the undertaking from a venture capital fund or a venture capital company or a specified fund, within a period of ninety days before or after the date of issue of shares which are the subject matter of valuation.

Explanation.—For the purposes of this clause,-

- (i) "specified fund" shall have the same meaning as assigned to it in clause (aa) of Explanation to clause (viib) of sub-section (2) of section 56;*
- (ii) "venture capital company", "venture capital fund" and "venture capital undertaking" shall have the same meaning assigned to them in clause (b) of Explanation to clause (viib) of sub-section (2) of section 56.*

Illustration: If a venture capital undertaking receives a consideration of fifty thousand rupees from a venture capital company for issue of one hundred shares at the rate of five hundred rupees per share, then such an undertaking can issue one hundred shares at this rate to any other investor within a period of ninety days before or after the receipt of consideration from venture capital company.

- (d) the fair market value of the unquoted equity shares determined by a merchant banker in accordance with any of the following methods:*
 - (i) Comparable Company Multiple Method;*
 - (ii) Probability Weighted Expected Return Method;*
 - (iii) Option Pricing Method;*
 - (iv) Milestone Analysis Method;*
 - (v) Replacement Cost Methods;*
- (e) where any consideration is received by a company for issue of unquoted equity shares, from any entity notified under clause (ii) of the first proviso to clause (viib) of sub-section (2) of section 56, the price of the equity shares corresponding to such consideration may, at the option of such company, be taken as the fair market value of the equity shares to the extent the consideration from such fair market value does not exceed the aggregate consideration that is received from the notified entity:*

Provided that the consideration has been received by the company from the entity notified under clause (ii) of the first proviso to clause (viib) of sub-section (2) of section 56, within a period of ninety days before or after the date of issue of shares which are the subject matter of valuation.

- (B) *the fair market value of compulsorily convertible preference shares for the purposes of sub-clause (i) of clause (a) of the Explanation to clause (viib) of sub-section (2) of section 56 shall be the value, on the valuation date, as determined-*
- (i) *in accordance with the provisions of sub-clause (b), sub-clause (c), or sub-clause (e) of clause (A), at the option of the assessee, or based on the fair market value of unquoted equity shares determined in accordance with sub-clause (a), sub-clause (b), sub-clause (c), or sub-clause (e) of clause (A), at the option of the assessee, where such consideration is received from a resident; and*
 - (ii) *in accordance with the provisions of sub-clauses (b) to (e) of clause (A), at the option of the assessee, or based on the fair market value of unquoted equity shares determined in accordance with sub-clauses (a) to (e) of clause (A), at the option of the assessee, where such consideration is received from a non-resident.*
- (3) *Where the date of valuation report by the merchant banker for the purposes of sub-rule (2) is not more than ninety days prior to the date of issue of shares which are the subject matter of valuation, such date may, at the option of the assessee, be deemed to be the valuation date:*
- Provided that where such option is exercised under this sub-rule, the provisions of clause (j) of rule 11U shall not apply.*
- (4) *For the purposes of clause (A) or clause (B) of sub-rule (2), where the issue price of the shares exceeds the value of shares as determined in accordance with -*
- (i) *sub-clause (a) or sub-clause (b) of clause (A), for consideration received from a resident, by an amount not exceeding ten per cent. of the valuation price, the issue price shall be deemed to be the fair market value of such shares;*
 - (ii) *sub-clause (a) or sub-clause (b) or sub-clause (d) of clause (A), for consideration received from a non- resident, by an amount not exceeding ten per cent. of the valuation price, the issue price shall be deemed to be the fair market value of such shares.*

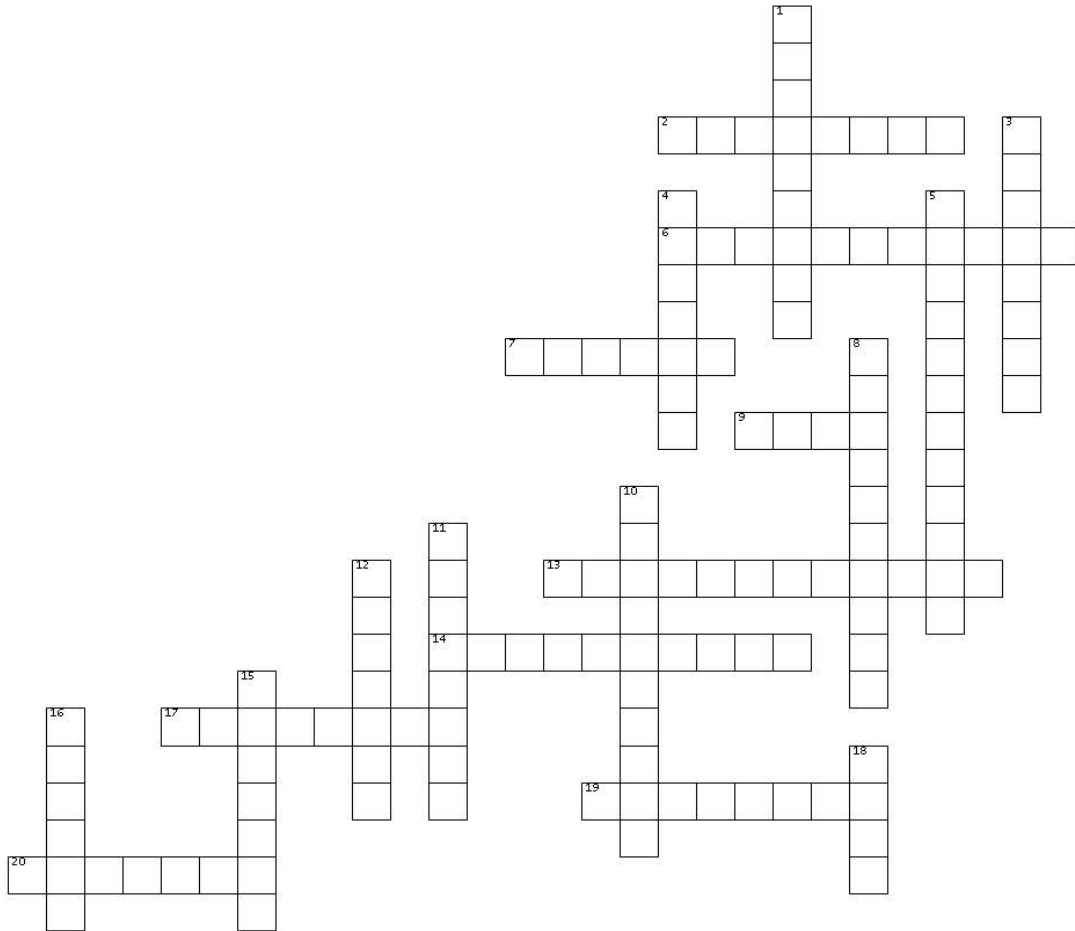
Explanation.—For the purposes of this sub-rule, 'issue price' means the consideration received by the company for one share.]

Rule 11UAA - Determination of Fair Market Value for share other than quoted share.

For the purposes of section 50CA, the fair market value of the share of a company other than a quoted share, shall be determined in the manner provided in sub-clause (b) or sub-clause (c), as the case may be, of clause (c) of sub-rule (1) of rule 11UA and for this purpose the reference to valuation date in the rule 11U and rule 11UA shall mean the date on which the capital asset, being share of a company other than a quoted share, referred to in section 50CA, is transferred.



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2. The Rule is commonly known as the Heydon's Rule.
6. Section 79A prohibits set-off of losses against income brought to tax consequent to search, requisition and survey.
7. Section 80-IBA provides for deduction of 100% of profits and gains derived, *inter alia*, from the business of developing and building housing project.

9. Deduction under section 80LA would be available, *inter alia*, in respect of income of a Unit of an (acronym)
13. Section 35DD provides for amortisation of expenditure incurred by an Indian company wholly and exclusively for the purpose of, *inter alia*, ...
14. Section 80U provides deduction in case of a person with
17. Section 80EEB provides for deduction in respect of interest payable on loan taken for purchase of vehicle.
19. Explanations and provisos are examples of aids to construction
20. Section 80CCD provides for deduction in respect of contribution to scheme notified by the Central Government.

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1. As per section 73A, there is no time limit for carry forward of losses from business.
3. Circulars and explanatory memorandum are examples of aids to construction
4. Section 46A deals with Capital Gains on of securities
5. ICDS III deals with contracts
8. ICDS VIII deals with
10. As per ICDS IX, Inventories that require a period of 12 months or more to bring them to a saleable condition are assets.
11. Section 80PA provides deduction in respect of certain income of companies.
12. The Rule of interpretation stipulates that the intention of the legislation must be found in the words used by the legislature itself and attention must be given to what has been said and also what has not been said.
15. provisions in the Income-tax Act, 1961 are intended to enlarge the scope of chargeability of income under a particular head.
16. The Rule allows a judge to depart from a word's normal meaning in order to avoid an absurd result.
18. Section 45(1B) provides for taxability of receipt under a (acronym) issued on or after 1.2.2021, to which exemption under section 10(10D) does not apply on account of premium payable exceeding ₹ 2,50,000 for any of the previous years during the term of such policy.



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