

PAPER
4

**FINAL COURSE
STUDY MATERIAL
GROUP-II**

**DIRECT TAX LAWS &
INTERNATIONAL TAXATION
MODULE 3 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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DEDUCTION, COLLECTION AND RECOVERY OF TAX

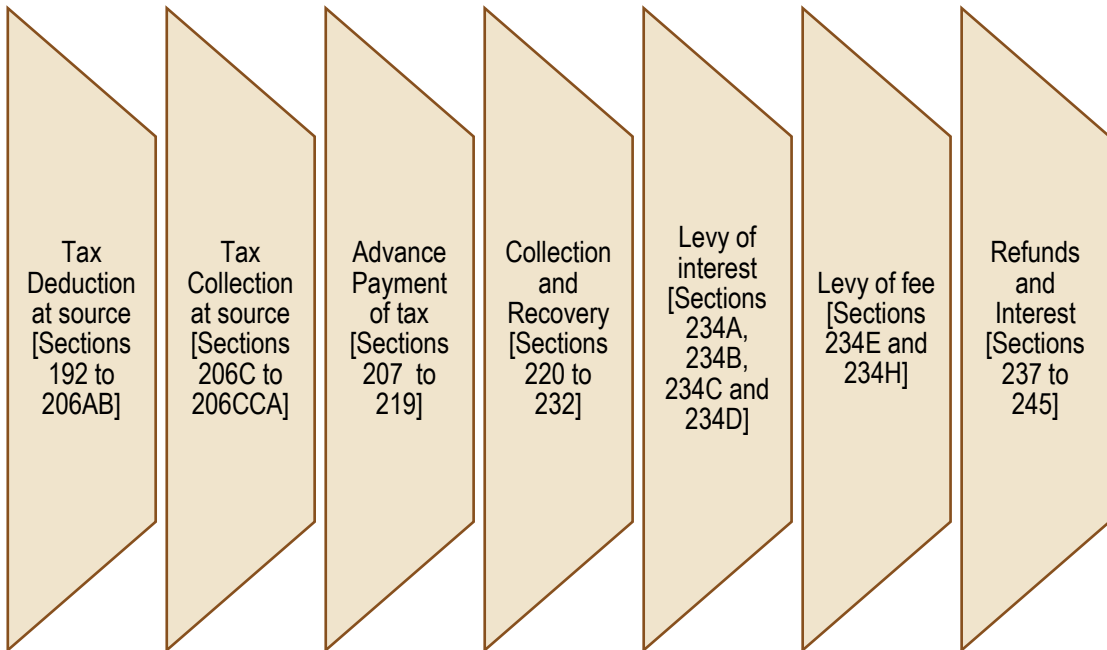


LEARNING OUTCOMES

After studying this chapter, you would be able to -

- ☐ **examine** the provisions relating to deduction and collection of tax at source to determine whether tax needs to be deducted/collected at source;
- ☐ **compute** the amount of tax to be deducted/collected at source;
- ☐ **analyse and apply** the provisions relating to deduction and collection of tax at source to address related issues;
- ☐ **examine** the provisions relating to advance tax obligations, the instalments and due dates, and interest and penal consequences of non-payment or delayed payment of advance tax; **analyse and apply** such provisions to determine the quantum of advance tax payment and interest liability, if any, and address related issues;
- ☐ **examine** the provisions relating to chargeability of interest for defaults in furnishing return of income, for non-payment of advance tax and deferral of advance tax; **analyse and apply** such provisions to compute interest and address related issues;
- ☐ **analyse and apply** the provisions relating to refunds to compute the refund due and address related issues.

CHAPTER OVERVIEW



Note – Provisions which are specifically related to non-residents and REITs and Invits are discussed in Chapter 21: Non-resident taxation and Chapter 10: Assessment of Trusts and Institutions, Political Parties and other special entities, respectively.



13.1 DEDUCTION AT SOURCE AND ADVANCE PAYMENT [SECTION 190]

The total income of an assessee for the previous year is taxable in the relevant assessment year. For example, the total income for the P.Y. 2023-24 is taxable in the A.Y. 2024-25. However, income-tax is recovered from the assessee in the previous year itself through –

- (1) Tax deduction at source (TDS)
- (2) Tax collection at source (TCS)
- (3) Payment of advance tax

**TDS, TCS and
Advance Tax**

Another mode of recovery of tax is from the employer through tax paid by him under section 192(1A) on the non-monetary perquisites provided to the employee.

These taxes are deductible from the total tax due from the assessee. The assessee, while filing his return of income, has to pay self-assessment tax under section 140A, if tax is due on the total income as per his return of income after adjusting, TDS, TCS, relief of tax claimed under section 89, relief of tax claimed under section 90, 90A or 91 on account of tax paid in a country outside India or specified territory outside India, tax credit claimed to be set off in accordance with the provisions of section 115JAA or section 115JD, any tax or interest payable according to the provisions of section 191(2) and advance tax.



13.2 DIRECT PAYMENT [SECTION 191]

(1) **Direct payment of tax [Section 191(1)]**- Section 191 provides that in the following cases, tax is payable by the assessee directly –

- (i) in the case of income in respect of which tax is not required to be deducted at source; and
- (ii) income in respect of which tax is liable to be deducted but is not actually deducted.

In view of this provision, the proceedings for recovery of tax necessarily had to be taken against the assessee whose tax was liable to be deducted, but not deducted.

Direct payment of Tax

In order to overcome this difficulty, *Explanation* to this section provides that if any person, including the principal officer of a company

- (i) who is required to deduct tax at source; or
- (ii) an employer paying tax on non-monetary perquisites under section 192(1A),

does not deduct or after deducting fails to pay such tax, or does not pay, the whole or part of the tax, then, such person shall be deemed to be an assessee-in-default.

However, if the assessee himself has paid the tax, this provision will not apply.

(2) Direct payment of tax, where income of the assessee includes value of specified security or sweat equity shares allotted or transferred free of cost or at a concessional rate to the assessee by an employer being an eligible start up [Section 191(2)] – In a case where the income of the assessee includes the value of any specified security or sweat equity shares allotted or transferred, directly or indirectly, by the current employer, being an eligible start-

up referred to in section 80-IAC, free of cost or at concessional rate to the assessee, the income-tax on such income has to be paid by the assessee within 14 days from the earliest of the following dates -

- after the expiry of 48 months from the end of the relevant assessment year; or
- from the date of the sale of such specified security or sweat equity share by the assessee; or
- from the date of the assessee ceasing to be the employee of the employer who allotted or transferred him such specified security or sweat equity shares.



13.3 DEDUCTION OF TAX AT SOURCE

13.3.1 Salary [Section 192]

(1) **Applicability of TDS under section 192**

This section casts an obligation on every person responsible for paying any income chargeable to tax under the head 'Salaries' to deduct income-tax at the time of payment on the amount payable.

SALARY

(2) **Manner of deduction of tax**

- (i) Such income-tax has to be calculated at the average rate of income-tax computed on the basis of the rates in force for the relevant financial year in which the payment is made, on the estimated total income of the **assessee where the employee intimates to the employer his intent to exercise the option of shifting out of the default tax regime under section 115BAC.**

Note - The liability to deduct tax at source in the case of salaries arises only at the time of payment.

- (ii) Average rate of income-tax means the rate arrived at by dividing the amount of income-tax calculated on the total income, by such total income.
- (iii) **With effect from A.Y. 2024-25, the income-tax in respect of the total income of an employee would be computed at the rates provided in section 115BAC(1A),**

subject to certain conditions, including the condition that the employee does not avail of specified exemptions and deductions. The new tax regime provided in section 115BAC is the default tax regime applicable, inter alia, to an individual.

However, under section 115BAC(6), an employee may exercise an option to opt out of this tax regime.

- (iv) *A deductor, being an employer, has to seek information from each of its employees having income under section 192 regarding their intended tax regime and each such employee shall intimate the same to the deductor, being his employer, regarding his intended tax regime for each year and upon intimation, the deductor shall compute his total income, and deduct tax at source thereon according to the option exercised.*

If intimation is not made by the employee, it shall be presumed that the employee continues to be in the default tax regime and has not exercised the option to opt out of the new tax regime. Accordingly, in such a case, the employer shall deduct tax at source, on income under section 192, in accordance with the rates provided under section 115BAC(1A).

It is also clarified that the intimation would not amount to exercising option under section 115BAC(6) and the person shall be required to do so separately in accordance with the provisions of that section [Circular No. 4/2023 dated 5.4.2023].

- (v) The concept of payment of tax on non-monetary perquisites has been provided in sections 192(1A) and (1B). These sections provide that the employer may pay this tax, at his option, in lieu of deduction of tax at source from salary payable to the employee. Such tax will have to be worked out at the average rate applicable to aggregate salary income of the employee and payment of tax will have to be made every month along with tax deducted at source on monetary payment of salary, allowances etc.
- (vi) An employer, being an eligible start up referred to in section 80-IAC, responsible for paying any income to the assessee by way of perquisite being any specified security or sweat equity shares allotted or transferred, directly or indirectly, free of cost or at concessional rate to the assessee, has to deduct or pay, as the case may be, tax on the value of such perquisite provided to its employee within 14 days from the earliest of the following dates -
- after the expiry of 48 months from the end of the relevant assessment year; or

- from the date of the sale of such specified security or sweat equity share by the assessee; or
- from the date of the assessee ceasing to be the employee of the employer who allotted such shares

Such tax has to deducted or paid on the basis of rates in force for the financial year in which the said specified security or sweat equity share is allotted or transferred.

- (vii) In cases where an assessee is simultaneously employed under more than one employer or the assessee takes up a job with another employer during the financial year after his resignation or retirement from the services of the former employer, he may furnish the details of the income under the head "Salaries" due or received by him from the other employer, the tax deducted therefrom and such other particulars to his current employer. Thereupon, the subsequent employer should take such information into consideration and then deduct the tax remaining payable in respect of the employee's remuneration from both the employers put together for the relevant financial year.
- (viii) For purposes of deduction of tax out of salaries payable in a foreign currency, the value of salaries in terms of rupees should be calculated at the prescribed rate of exchange as specified in Rule 26 of the Income-tax Rules, 1962.
- (ix) In respect of salary payments to employees of Government or to employees of companies, co-operative societies, local authorities, universities, institutions, associations or bodies, deduction of tax at source should be made after allowing relief under section 89(1), where eligible.
- (x) A tax payer having salary income in addition to other income chargeable to tax for that financial year, may send to the employer, the following particulars of:
 - (a) such other income and particulars of any tax deducted under any other provision;
 - (b) loss, if any, under the head 'Income from house property', ***if the assessee intimated to the employer his intent to exercise the option of shifting out of the default tax regime provided under section 115BAC(1A).***

The employer shall take the above particulars into account while calculating tax deductible at source.

- (xi) It is also provided that except in cases where loss from house property has been adjusted against salary income, the tax deductible from salary should not be reduced as a consequence of making the above adjustments. *Loss from house property would be adjusted against salary where the assessee intimated to the employer his intent to exercise the option of shifting out of the default tax regime provided under section 115BAC(1A).* However, loss under the head “income from house property” shall be allowed to be set off against salary and income under any other head subject to maximum of ₹ 2,00,000.

(3) *Furnishing of statement of particulars of perquisites or profits in lieu of salary by employer to employee*

Section 192(2C) provides that the employer shall furnish to the employee, a statement in Form No. 12BA giving correct and complete particulars of perquisites or profits in lieu of salary provided to him and the value thereof. The statement shall be in the prescribed form and manner. This requirement is applicable only where the salary paid/payable to an employee exceeds ₹ 1,50,000. For other employees, the particulars of perquisites/profits in lieu of salary shall be given in Form 16 itself.

(4) *Circular issued by CBDT*

Every year, the CBDT issues a circular giving details and direction to all employers for the purpose of deduction of tax from salaries payable to the employees during the relevant financial year. These instructions should be followed.

(5) *Requirement to obtain evidence/ proof/ particulars of claims from the employee by the employer*

Section 192(2D) casts responsibility on the person responsible for paying any income chargeable under the head “Salaries” to obtain from the assessee, the evidence or proof or particulars of prescribed claims (including claim for set-off of loss) under the provisions of the Act in the prescribed form and manner, for the purposes of –

- (1) estimating income of the assessee; or
- (2) computing tax deductible under section 192(1).

In case an employee has intimated his employer of his intent to exercise the option of shifting out of the default tax regime provided under section 115BAC(1A), Rule 26C requires



furnishing of evidence of the following claims by him to the person responsible for making payment under section 192(1) in Form No.12BB for the purpose of estimating his income or computing the amount of tax to be deducted at source:

S. No.	Nature of Claim	Evidence or particulars
1.	House Rent Allowance	Name, address and PAN of the landlord(s) where the aggregate rent paid during the previous year exceeds ₹ 1 lakh.
2.	Leave Travel Concession or Assistance	Evidence of expenditure
3.	Deduction of interest under the head "Income from house property"	Name, address and PAN of the lender
4.	Deduction under Chapter VI-A	Evidence of investment or expenditure.

ILLUSTRATION 1

LL Limited paid leave travel facility to its employees and considered exemption under section 10(5), based on the self-declaration furnished by the employees, who have exercised option to opt out of new tax regime under section 115BAC. The Assessing Officer held that the company as an employer ought to have verified the genuineness of the claim of exemption by obtaining from them, the proof of actual expenditure incurred by availing leave travel facility. Accordingly, the Assessing Officer treated the assessee company as assessee in default. Decide the correctness of action.

SOLUTION

Section 192 casts liability on the employer to deduct tax at source from the salary paid to its employees.

In this case, the employer has paid leave travel concession/facility to its employees and the said concession/ facility would be eligible for exemption subject to the conditions laid down in section 10(5) read with Rule 2B of the Income-tax Rules, 1962.

Section 192(2D) casts responsibility on the person responsible for paying any income chargeable under the head 'Salaries' to obtain from the assessee, the evidence or proof or particulars of prescribed claims under the provisions of the Act in the prescribed form and manner for the purposes of –

- (1) estimating income of the assessee; or
- (2) computing tax deductible under section 192(1).

Rule 26C of the Income-tax Rules, 1962 mandates a salaried assessee claiming, *inter alia*, leave travel concession or assistance to furnish evidence of expenditure incurred in relation thereto to the person responsible for making such for payment under section 192(1), for the purpose of estimating his income for computing the tax deductible under section 192.

In the given case, LL Limited paid leave travel concession to its employees and considered for exemption on the basis of mere self-declaration, instead of verifying and obtaining the evidence/ proof of actual expenditure. Thus, the action of the Assessing Officer is correct in law.

13.3.2 Premature withdrawal from Employees Provident Fund [Section 192A]

(1) **Compliance with Rule 9 of Part A of the Fourth Schedule: Certain Concerns**

- (i) Under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (EPF & MP Act, 1952), certain specified employers are required to comply with the Employees' Provident Fund Scheme, 1952 (EPFS). However, these employers are also permitted to establish and manage their own private provident fund (PF) scheme subject to fulfillment of certain conditions.
- (ii) The provident funds established under a scheme framed under EPF & MP Act, 1952 or Provident Fund exempted under section 17 of the said Act and recognised under the Income-tax Act, 1961 are termed as Recognised Provident fund (RPF) under the Act.
- (iii) Part A of the Fourth Schedule to the Income-tax Act, 1961 contains the provisions relating to RPFs. Under the existing provisions of Rule 8 of Part A of the Fourth Schedule, the withdrawal of accumulated balance by an employee from the RPF is exempt from taxation.
- (iv) For the purpose of discouraging pre-mature withdrawal and promoting long term savings, if the employee makes withdrawal before continuous service of five years (other than the cases of termination due to ill health, contraction or discontinuance of business, cessation of employment etc.) and does not opt for transfer of accumulated balance to the new employer, the withdrawal would be subject to tax.
- (v) Rule 9 of Part A of the Fourth Schedule provides the manner of computing the tax liability of the employee in respect of such pre-mature withdrawal. In order to ensure collection of tax in respect of such pre-mature withdrawals, Rule 10 of Part A of the

WITHDRAWAL OF EPF

Fourth Schedule casts responsibility on the trustees of the RPF to deduct tax as computed in Rule 9 at the time of payment.

- (vi) Rule 9 provides that the tax on withdrawn amount is required to be calculated by re-computing the tax liability of the years for which the contribution to RPF has been made by treating the same as contribution to unrecognized provident fund. The trustees of private provident fund schemes, are generally a part of the employer group and hence, have access to or can easily obtain the information regarding taxability of the employee making pre-mature withdrawal for the purposes of computation of the amount of tax liability under Rule 9. However, it may not always be possible for the trustees of EPFS to get the information regarding taxability of the employee such as year-wise amount of taxable income and tax payable for the purposes of computation of the amount of tax liability under Rule 9.

(2) Applicability and Rate of TDS

Section 192A provides for deduction of tax @10% on premature taxable withdrawal from employees provident fund scheme. Accordingly, in a case where the accumulated balance due to an employee participating in a recognized provident fund is includible in his total income owing to the provisions of Rule 8 of Part A of the Fourth Schedule not being applicable, the trustees of the Employees Provident Fund Scheme, 1952 or any person authorised under the scheme to make payment of accumulated balance due to employees are required to deduct income-tax @10%.

TDS@ 10%

(3) Time of tax deduction at source

Tax should be deducted **at the time of payment** of accumulated balance due to the employee.

(4) Non-applicability of TDS under section 192A

No tax deduction is to be made under this section, if the amount of such payment or aggregate amount of such payment to the payee is less than **₹ 50,000**.

ILLUSTRATION 2

Mr. Sharma, an employee of M/s. ABC Ltd. since 10-04-2020, resigned on 31-03-2024 and withdrew ₹ 60,000 being the balance in his EPF account. Discuss with reasons whether the provisions of Chapter XVII-B are attracted and if so, what is the net amount receivable by the payee, Mr. Sharma?

SOLUTION

As per section 192A, in a case where the accumulated balance due to an employee participating in a recognized provident fund is includible in his total income owing to the provisions of Rule 8 of Part A of the Fourth Schedule not being applicable, the trustees of the Employees' Provident Fund Scheme, 1952 or any person authorised under the scheme to make payment of accumulated balance due to employees are required to deduct income-tax@10% at the time of payment of accumulated balance due to the employee. Tax deduction at source has to be made only if the amount of such payment or aggregate amount of such payment of the payee is ₹ 50,000 or more.

Rule 8 of Part A of the Fourth Schedule, *inter alia*, provides that only if an employee has rendered continuous service of five years or more with the employer, then accumulated balance in a recognized provident fund payable to an employee would be excluded from the total income of that employee.

In the present case, Mr. Sharma has withdrawn an amount exceeding ₹ 50,000 on his resignation after rendering a continuous service of four years with M/s. ABC Ltd. Therefore, tax has to be deducted at source@10% under section 192A on ₹ 60,000, being the amount withdrawn on his resignation without rendering continuous service of a period of five years with M/s. ABC Ltd.

The net amount receivable by Mr. Sharma is ₹ 54,000 [i.e., ₹ 60,000 – ₹ 6,000, being tax deducted at source].

13.3.3 Interest on securities [Section 193]**(1) Person responsible for deduction of tax at source**

This section casts responsibility on every person responsible for paying to a resident any income by way of interest on securities.



**INTEREST ON
SECURITIES - TDS
@10%**

(2) Rate of TDS

Such person is vested with the responsibility to deduct income-tax at the rates in force from the amount of interest payable.

The rate at which tax is deductible under section 193 is **10%**, both in the case of domestic companies and resident non-corporate assessees.

(3) Time of tax deduction at source

Tax should be deducted at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier.

Where any income by way of interest on securities is credited to any account in the books of account of the person liable to pay such income, such crediting is deemed to be credit of such income to the account of the payee and tax has to be deducted at source. The account to which such interest is credited may be called "Interest Payable account" or "Suspense account" or by any other name.

(4) Non-applicability of TDS under section 193

No tax deduction is to be made from any interest payable:

- (i) on 4¼% National Defence Bonds 1972, where the bonds are held by an individual not being a non-resident;
- (ii) on 4¼% National Defence Loan, 1968 or 4¾% National Defence Loan, 1972, where the interest is payable to an individual;
- (iii) on National Development Bonds;
- (iv) on 7-year National Savings Certificates (IV Issue);
- (v) on debentures issued by any institution or authority or any public sector company or any co-operative society (including a co-operative land mortgage bank or a co-operative land development bank), as notified by the Central Government;

Non-applicability

Accordingly, the Central Government has, vide Notification No. 27 & 28/2018, dated 18-06-2018, notified-

- (i) "Power Finance Corporation Limited 54EC Capital Gains Bond" issued by Power Finance Corporation Limited {PFCL} and
- (ii) "Indian Railway Finance Corporation Limited 54EC Capital Gains Bond" issued by Indian Railway Finance Corporation Limited {IRFCL}

Thus, no tax is required to be deducted at source on interest payable on "Power Finance Corporation Limited 54EC Capital Gains Bond" and "Indian Railway Finance Corporation Limited 54EC Capital Gains Bond".

The benefit of this exemption would, however, be admissible in the case of transfer of such bonds by endorsement or delivery, only if the transferee informs PFCL/IRFCL by registered post within a period of sixty days of such transfer.

- (vi) on 6½% Gold Bonds, 1977 or 7% Gold Bonds, 1980, where the bonds are held by an individual (other than a non-resident), provided that the holders of the bonds make a written declaration that the total nominal value of the bonds held by him or on his

behalf did not in either case exceed ₹ 10,000 at any time during the period to which the interest relates;

- (vii) on any security of the Central Government or a State Government;

Note – It may be noted that tax has to be deducted at source in respect of interest payable on 8% Savings (Taxable) Bonds, 2003, or 7.75% Savings (Taxable) Bonds, 2018, only if such interest payable exceeds ₹ 10,000 during the financial year.

- (viii) on any debentures issued by the company in which the public are substantially interested to a resident individual or HUF. However,

- (a) the interest should be paid by the company by an account payee cheque;
- (b) the amount of such interest or the aggregate thereof paid or likely to be paid during the financial year by the company to such resident individual or HUF should not exceed ₹ 5,000.

- (ix) on securities to LIC, GIC, subsidiaries of GIC or any other insurer, provided –

- (a) the securities are owned by them or
- (b) they have full beneficial interest in such securities.

- (x) ***to a business trust by a special purpose vehicle on any security.***

13.3.4 Dividend [Section 194]

(1) ***Applicability of TDS under section 194***

The principal officer of a domestic company is required to deduct tax on dividend distributed or paid by it to its resident shareholders.

DIVIDEND - TDS @10%

The provisions of tax deduction at source under section 194, therefore, applies only to dividend distributed or paid to resident shareholders.

(2) ***Rate of TDS***

The rate of deduction of tax in respect of such dividend is **10%**.

(3) ***Time of tax deduction at source***

The deduction of tax has to be made before making any payment by any mode in respect of any dividend or before making any distribution or payment to a resident shareholder of any amount deemed as dividend under section 2(22)(a)/(b)/(c)/(d)/(e).

(4) Non-applicability of TDS under section 194

- (i) No tax is to be deducted in case of a shareholder, being an individual, where -
- (a) the dividend is paid by any mode other than cash; and
 - (b) the amount of such dividend or aggregate of dividend distributed or paid or likely to be distributed or paid during the financial year by the company to such shareholder does not exceed ₹ 5,000.
- (ii) The TDS provisions will **not** apply to such dividend credited or paid to
- LIC, GIC, subsidiaries of GIC or any other insurer provided the shares are owned by them, or they have full beneficial interest in such shares
 - a business trust by a special purpose vehicle
 - any other person as may be notified by the Central Government.

Non-applicability**13.3.5 Interest other than interest on securities [Section 194A]****(1) Applicability of TDS under section 194A**

This section applies only to interest, other than "interest on securities", credited or paid by assessee other than individuals or Hindu undivided family. However, an individual or Hindu undivided family whose total sales, gross receipts or turnover from the business or profession carried on by him exceed ₹ 1 crore in case of business and ₹ 50 lakhs in case of profession during the immediately preceding financial year is liable to deduct tax at source under this section.

Interest - TDS @10%

These provisions apply only to interest paid or credited to residents.

(2) Time of tax deduction at source

The deduction of tax must be made at the time of crediting such interest to the payee or at the time of its payment in cash or by any other mode, whichever is earlier.

Where any such interest is credited to any account in the books of account of the person liable to pay such income, such crediting is deemed to be credit of such income to the account of the payee and the tax has to be deducted at source. The account to which such interest is credited may be called "Interest Payable account" or "Suspense account" or by any other name.

Circular

Clarification regarding deduction of tax at source on payment of interest on time deposits under section 194A by banks following Core-branch Banking Solutions (CBS) software

The CBDT has, *vide Circular No.3/2010 dated 2.3.2010* clarified that *Explanation* to section 194A is not meant to apply in cases of banks where credit is made to provisioning account on daily/monthly basis for the purpose of macro monitoring only by the use of CBS software. It has been further clarified that since no constructive credit to the depositor's/ payee's account takes place while calculating interest on time deposits on daily or monthly basis in the CBS software used by banks, tax need not be deducted at source on such provisioning of interest by banks for the purposes of macro monitoring only. In such cases, tax shall be deducted at source on accrual of interest at the end of financial year or at periodic intervals as per practice of the bank or as per the depositor's/ payee's requirement or on maturity or on encashment of time deposits, whichever event takes place earlier, whenever the aggregate of amounts of interest income credited or paid or likely to be credited or paid during the financial year by the banks exceeds the limits specified in section 194A.

Note - The time for making the payment of tax deducted at source would reckon from the date of credit of interest made constructively to the account of the payee.

(3) Rate of TDS

The rate at which the deduction is to be made is given in Part II of the First Schedule to the Annual Finance Act.

TDS@ 10%

The rate at which tax is to be deducted is 10% both in the case of resident non-corporate assessees and domestic companies.

(4) Non-applicability of TDS under section 194A

No deduction of tax shall be made in the following cases:

- (a) If the aggregate amount of interest paid or credited during the financial year does not exceed ₹ 5,000.

This limit is ₹ 40,000 where the payer is a –

- (i) banking company;

- (ii) a co-operative society engaged in banking business; and
- (iii) post office and interest is credited or paid in respect of any deposit under notified schemes.

Non-applicability

In respect of (i), (ii) and (iii) above, the limit is **₹ 50,000, in case of payee, being a senior citizen.**

The limit will be calculated with respect to income credited or paid by a branch of a banking company or a co-operative society or a public company in case of:

- (i) time deposits with a banking company
- (ii) time deposits with a co-operative society carrying on the business of banking; and
- (iii) deposits with housing finance companies, provided:
 - they are public companies formed and registered in India
 - their main object is to carry on the business of providing long-term finance for construction or purchase of houses in India for residential purposes
 - they are eligible for deduction under section 36(1)(viii).

The threshold limit will be reckoned with reference to the total interest credited or paid by the banking company or the co-operative society or the public company, as the case may be, (and not with reference to each branch), where such banking company or co-operative society or public company has adopted core banking solutions.

- (b) Interest paid or credited by a firm to any of its partners;
- (c) Interest paid or credited in respect of deposits under any scheme framed by the Central Government and notified by it in this behalf;
- (d) Interest income credited or paid in respect of deposits (other than time deposits made on or after 1.7.1995) with a banking company to which the Banking Regulation Act, 1949 applies; or
- (e) Income paid or credited by a co-operative society (other than a co-operative bank) to a member thereof or to such income credited or paid by a co-operative society to any other co-operative society;

- (f) Interest income credited or paid in respect of -
- (i) deposits with primary agricultural credit society or a primary credit society or a co-operative land mortgage bank or a co-operative land development bank;
 - (ii) deposit (other than time deposits made on or after 1.7.1995) with a co-operative society [other than cooperative society or bank referred to in (i)] engaged in carrying on the business of banking.

From a combined reading of (e) and (f), it can be inferred that a co-operative bank other than mentioned in (i) above is required to deduct tax at source on payment of interest on time deposit. However, it is not required to deduct tax from the payment of interest on time deposit, to a depositor, being a co-operative society.

However, a cooperative society referred to in (e) or (f) is liable to deduct tax if –

- (i) the total sales, gross receipts or turnover of the co-operative society exceeds ₹ 50 crore during the financial year immediately preceding the financial year in which interest is credited or paid; **and**
- (ii) the amount of interest or the aggregate amount of interest credited or paid, or is likely to be credited or paid, during the financial year is more than ₹ 50,000 in case of payee being a senior citizen and ₹ 40,000, in any other case.

Thus, such co-operative society is required to deduct tax under section 194A on interest credited or paid by it –

- (a) to its member or to any other co-operative society; or
 - (b) in respect of deposits with a primary agricultural credit society or a primary credit society or a co-operative land mortgage bank or a co-operative land development bank or
 - (c) in respect of deposits with a co-operative bank other than a co-operative society or bank, engaged in carrying on the business of banking
- (g) Interest income credited or paid by the Central Government under any provisions of the Income-tax Act, 1961.
- (h) Interest paid or credited to the following entities:
- (i) banking companies, or co-operative societies engaged in the business of banking, including co-operative land mortgage banks;

- (ii) financial corporations established under any Central, State or Provincial Act.
 - (iii) the Life Insurance Corporation of India.
 - (iv) companies and co-operative societies carrying on the business of insurance.
 - (v) the Unit Trust of India; and
 - (vi) notified institution, association, body or class of institutions, associations or bodies (National Skill Development Fund and Housing and Urban Development Corporation Ltd. (HUDCO), New Delhi have been notified by the Central Government for this purpose)
- (i) income credited by way of interest on the compensation amount awarded by the Motor Accidents Claims Tribunal;
 - (j) income paid by way of interest on the compensation amount awarded by the Motor Accidents Claims Tribunal where the amount of such income or, as the case may be, the aggregate of the amounts of such income paid during the financial year does not exceed ₹ 50,000.
 - (k) income paid or payable by an infrastructure capital company or infrastructure capital fund or infrastructure debt fund or public sector company or scheduled bank in relation to a zero coupon bond issued on or after 1.6.2005.
 - (l) income by way of interest paid by special purpose vehicle to business trust under section 10(23FC)

Notes

- (1) The expression “time deposits” [for the purpose of (4)(a), (d) and (f) above] means the deposits, **including** recurring deposits, repayable on the expiry of fixed periods.
- (2) 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.

(5) Power to the Central Government to issue notification

The Central Government is empowered to issue notification for non-deduction of tax at source or deduction of tax at a lower rate, from such payment to such person or class of persons, specified in that notification.

S. No.	Circulars & Notifications
1.	Applicability of provisions for deduction of tax at source under section 194A on interest on fixed deposit made in the name of the Registrar General of Court or the depositor of the Fund on directions of Courts [Circular No.23/2015, dated 28-12-2015] Section 194A stipulates deduction of tax at source (TDS) on interest other than interest on securities if the aggregate of amount of such interest credited or paid to the account of the payee during the financial year exceeds the specified amount. In the case of UCO Bank in <i>Writ Petition No. 3563 of 2012 and CM No. 7517/2012 vide judgment dated 11/11/2014</i>, the Hon'ble Delhi High Court has held that the provisions of section 194A do not apply to fixed deposits made in the name of Registrar General of the Court on the directions of the Court during the pendency of proceedings before the Court. In such cases, till the Court passes the appropriate orders in the matter, it is not known who the beneficiary of the fixed deposits will be. Amount and year of receipt is also unascertainable. The Delhi High Court, thus, held that the person who is ultimately granted the funds would be determined by orders that are passed subsequently. At that stage, undisputedly, tax would be required to be deducted at source to the credit of the recipient. The High Court has also quashed Circular No.8/2011. The CBDT has accepted the aforesaid judgment. Accordingly, it is clarified that interest on FDRs made in the name of Registrar General of the Court or the depositor of the fund on the directions of the Court, will not be subject to TDS till the matter is decided by the Court. However, once the Court decides the ownership of the money lying in the fixed deposit, the provisions of section 194A will apply to the recipient of the income.
2.	No deduction of tax at source 194A on payment made to a member of Schedule Tribe referred u/s 10(26) by a Scheduled Bank [Notification No. 110/2021, dated 17.09.2021] In exercise of the power provided under section 197A(1F), the Central Government notified that no tax is required to be deducted on the following payment under section 194A, namely payment in the nature of interest, other than interest on securities, made by a Scheduled Bank located in a specified area to a member of Scheduled Tribe residing in any specified area as referred to in section 10(26) [Refer Chapter 3 in Module 1 for detail regarding specified area], subject to the following conditions: (i) the payer satisfies itself that the receiver is a member of Scheduled Tribe residing in any specified area, and the payment as referred above is accruing or arising to the receiver as referred to in section 10(26), during the previous year relevant for the assessment year in which the payment is

	made, by obtaining necessary documentary evidences in support of the same; (ii) the payer reports the above payment in the statements of deduction of tax as referred to in section 200(3) (iii) the payment made or aggregate of payments made during the previous year does not exceed ₹ 20 lakh.
3.	Deduction of tax at source on interest income accrued to minor child, where both the parents have deceased [Notification No. 05/2017, dated 29.05.2017] Under Rule 31A(5) of the Income-tax Rules, 1962, the Director General of Income-tax (Systems) is authorized to specify the procedures, formats and standards for the purposes of furnishing and verification of, <i>inter alia</i>, the statements and shall be responsible for the day-to-day administration in relation to furnishing and verification of the statements in the manner so specified. The Principal Director General of Income-tax (Systems) has, in exercise of the powers delegated by the CBDT under Rule 31A(5), specified that in case of minors where both the parents have deceased, TDS on the interest income accrued to the minor is required to be deducted and reported against PAN of the minor child unless a declaration is filed under Rule 37BA(2) that credit for tax deducted has to be given to another person.
4.	Deduction of tax at source on interest on deposits made under Capital Gains Accounts Scheme, 1988 where depositor has deceased [Notification No. 08/2017, dated 13.09.2017] The Principal Director General of Income-tax (Systems) has, in exercise of the powers delegated by the CBDT under Rule 31A(5), vide this notification, specified that in case of deposits under the Capital Gains Accounts Scheme, 1988 where the depositor has deceased: (i) TDS on the interest income accrued for and upto the period of death of the depositor is required to be deducted and reported against PAN of the depositor, and (ii) TDS on the interest income accrued for the period after death of the depositor is required to be deducted and reported against PAN of the legal heir, unless a declaration is filed under Rule 37BA(2) that credit for tax deducted has to be given to another person.

ILLUSTRATION 3

Examine the TDS implications under section 194A in the cases mentioned hereunder –

- (i) On 1.10.2023, Mr. Harish, aged 45 years, made a six-month fixed deposit of ₹ 10 lakh@9% p.a. with ABC Co-operative Bank. The fixed deposit matures on 31.3.2024.

- (ii) On 1.6.2023, Mr. Ganesh, aged 35 years, made three nine months fixed deposits of ₹ 3 lakh each, carrying interest @9% p.a. with Dwarka Branch, Janakpuri Branch and Rohini Branch of XYZ Bank, a bank which has adopted CBS. The fixed deposits mature on 28.2.2024.
- (iii) On 1.10.2023, Mr. Rajesh, aged 40 years, started a six months recurring deposit of ₹ 2,00,000 per month @8% p.a. with PQR Bank. The recurring deposit matures on 31.3.2024.

SOLUTION

- (i) ABC Co-operative Bank has to deduct tax at source@10% on the interest of ₹ 45,000 ($9\% \times ₹ 10 \text{ lakh} \times \frac{1}{2}$) under section 194A. The tax deductible at source under section 194A from such interest is, therefore, ₹ 4,500.
- (ii) XYZ Bank has to deduct tax at source@10% u/s 194A, since the aggregate interest on fixed deposit with the three branches of the bank is ₹ 60,750 [$3,00,000 \times 3 \times 9\% \times 9/12$], which exceeds the threshold limit of ₹ 40,000. Since XYZ Bank has adopted CBS, the aggregate interest credited/paid by all branches has to be considered. Since the aggregate interest of ₹ 60,750 exceeds the threshold limit of ₹ 40,000, tax has to be deducted@10% u/s 194A.
- (iii) No tax has to be deducted under section 194A by PQR Bank on the interest of ₹ 28,000 falling due on recurring deposit on 31.3.2024 to Mr. Rajesh, since such interest does not exceed the threshold limit of ₹ 40,000.

ILLUSTRATION 4

Maya Bank credited ₹ 73,50,000 towards interest on the deposits in a separate account for macro-monitoring purposes by using Core-branch Banking Solutions (CBS) software. No tax was deducted at source in respect of interest on deposits so credited even where the interest in respect of some depositors exceeded the limit of ₹ 40,000.

The Assessing Officer disallowed 30% of interest expenditure, where the interest on time deposits credited exceeded the limit of ₹ 40,000 and also levied penalty under section 271C.

Decide the correctness of action of the Assessing Officer.

SOLUTION

The Explanation to section 194A provides that where any income by way of interest other than interest on securities is credited to any account, whether called 'interest payable account' or 'suspense account' or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and provisions of section 194A, shall, thus, apply.

However, the CBDT has, vide *Circular No.3/2010 dated 2.3.2010*, clarified that *Explanation* to section 194A will not apply in cases of banks where credit is made to provisioning account on daily/monthly basis for the purpose of macro monitoring only by the use of CBS software.

Since no constructive credit to the depositor's/ payee's account takes place while calculating interest on daily / monthly basis in the CBS software used by banks, tax need not be deducted at source on such provisioning of interest by banks for the purposes of macro monitoring only.

In such cases, tax shall be deducted at source on accrual of interest at the end of the financial year or at periodic intervals as per practice of the bank or as per the depositor's or payee's requirement or on maturity or on encashment of time deposit, whichever event takes place earlier and wherever the aggregate amount of interest income credited or paid or likely to be credited or paid during the financial year by the bank exceeds the limits specified in section 194A i.e., ₹ 40,000.

In view of the above, the action of the Assessing Officer in disallowing the interest expenditure credited in a separate account for macro monitoring purpose is not valid and consequent initiation of penalty proceedings under section 271C is not tenable in law.

13.3.6 Winnings from lotteries, crossword puzzles etc. and horse races [Sections 194B and 194BB]

(1) **Rate of tax**

Any income by way of winnings from lotteries, crossword puzzles, card game and other game of any sort, or from gambling or betting of any form or nature whatsoever, races including horse races, etc. will be charged to income-tax at a flat rate of **30%** [Section 115BB].

**Winnings from
lotteries - TDS
@30%**

(2) **TDS on winning from lotteries, crossword puzzles etc.**

According to the provisions of section 194B, every person responsible for paying to any person, whether resident or non-resident, any income by way of winnings from lottery or crossword puzzle or card game and other game of any sort, **or from gambling or betting of any form or nature whatsoever**, is required to deduct income-tax therefrom at the rate of **30%** **if the amount or aggregate of amounts of payment exceeds ₹ 10,000** during the financial year. Winnings by way of jack pot would also fall within the scope of section 194B.

(3) **Cases where winnings are partly in kind and partly in cash**

In a case where the winnings are wholly in kind or partly in cash and partly in kind but the

part in cash is not sufficient to meet the liability of deduction of tax in respect of whole of the winnings, the person responsible for paying shall, before releasing the winnings, ensure that tax has been paid in respect of the winnings.

W.e.f. 1st April 2023, the provisions of section 194B are not applicable in respect of winnings from any online game.

(4) Person responsible for deduction of tax under section 194BB

Section 194BB casts responsibility on the following persons to deduct tax at source -

- (i) a bookmaker; or
- (ii) a person to whom a license has been granted by the Government under any law for the time being in force -
 - (a) for horse racing in any race course; or
 - (b) for arranging for wagering or betting in any race course.

(5) Threshold limit and rate of TDS under section 194BB

The obligation to deduct tax at source under section 194BB arises when the abovementioned persons make payment to any person of any income by way of winnings from any horse race in excess of the amount **or aggregate of amount of ₹ 10,000** during the financial year. The rate applicable for deduction of tax at source is **30%**.

Threshold limit > ₹10,000

Similarly, in cases where the book-maker or other person responsible for paying the winnings, credits such winnings and debits the losses to the individual account of the punter, tax has to be deducted **@30%** on winnings before set-off of losses. Thereafter, the net amount, after deduction of tax and losses, has to be paid to the winner.

(6) Meaning of the expression “horse race”

In the context of the provisions of section 194BB, the expression ‘any horse race’ used therein must be taken to include, wherever the circumstances so necessitate, more than one horse race.

ILLUSTRATION 5

Mr. Govind won the first prize in a lottery ticket and the prize was a Maruti car worth ₹ 5 lakhs. What is the procedure to be adopted before handing over the Maruti Car to Mr. Govind?

SOLUTION

Section 194B provides that the person responsible for paying to any person, any income by way of

winnings from any lottery or crossword puzzle, card game or any other game of any sort and the amount of winning exceeds ₹ 10,000, tax shall be deducted at source @30%.

However, in case where the winning is wholly in kind, the person responsible for paying the prize shall before releasing the winning, ensure that the tax has been paid in respect of such winning.

The Karnataka High Court in the case of *CIT v. Hindustan Lever Ltd. (2014) 361 ITR 1* has held that where the winnings are wholly in kind, the responsibility cast under section 194B is to ensure that the tax is paid by the winner of the prize before the prize is released in his favour. In this regard, the *CBDT Circular No.763 dated 18/2/1998* clarifies that the person responsible for paying the winnings shall, before releasing such winnings, ensure that the tax is paid by the winner. He can do so, for example, by collecting from the winner a sum equal to the tax deductible at source on the winnings in kind, before releasing the winnings. For this purpose, the value of the winnings in kind shall be taken as the cost incurred by the payer in acquiring the said winnings in kind.

Therefore, in this case since the entire winning is in kind, it must be ensured that the sum equal to the tax deductible at source (i.e., ₹ 1,50,000, being @ 30% of ₹ 5 lakhs) is paid by Mr. Govind, before the car is released in his favour. This can be done by collecting ₹ 1,50,000 from Mr. Govind before releasing the Maruti car to him and remitting the said sum to the Government account or verifying the tax payment by the winner and thereafter releasing the prize.

13.3.7 Winnings from online games [Section 194BA]

- (1) **TDS on winnings from online games:** Any person responsible for paying to any person (whether resident or non-resident) any income by way of winnings from any online game during the financial year shall deduct income-tax on the net winnings in his user account, computed in the manner as may be prescribed, **at the end of the financial year at the rates in force i.e., 30%** [Section 194BA(1)]

**Winnings from
online games -
TDS @30%**

However, in a case where **there is a withdrawal from user account** during the financial year, the income-tax shall be **deducted at the time of such withdrawal** on the net winnings comprised in such withdrawal, **as well as on the remaining amount** of net winnings in the user account, computed in the manner as may be prescribed, **at the end of the financial year** [Proviso to section 194BA(1)].

- (2) **Winnings wholly in kind or partly in cash or partly in kind:** Where the net winnings are wholly in kind or partly in cash, and partly in kind but the part in cash is not sufficient to meet the

liability of deduction of tax in respect of whole of the net winnings, the person responsible for paying shall, before releasing the winnings, ensure that tax has been paid in respect of the net winnings.

(3) **Meaning of certain terms:**

Term	Meaning
Computer resource	Computer, computer system, computer network, data, computer data base or software [Section 2(1)(e) of Information Technology Act, 2000]
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.
Online game	A game that is offered on the internet and is accessible by a user through a computer resource including any telecommunication device.
Online gaming intermediary	An intermediary that offers one or more online games.
User	Any person who accesses or avails any computer resource of an online gaming intermediary.
User Account	Account of a user registered with an online gaming intermediary.

(4) **Manner for computation of net winnings:** In exercise of powers conferred by section 115BBJ read with section 194BA, the CBDT has, vide Notification No. 28/2023 dated 22.5.2023 inserted Rule 133 to prescribe the manner for computation of net winnings:

Rule 133

Section 115BBJ provides that any income by way of winnings from online game, would be chargeable to tax @30%. The tax would be calculated on net winnings from such online games computed in the prescribed manner.

Accordingly, Rule 133 prescribes the following manner for computation of net winnings:

Sub-rule	Provision
(1)	<u>Computation of net winnings for the previous year:</u> Net winnings from online games during the previous year, for the purposes of section 115BBJ, shall be calculated using the following formula, namely -

	Net winnings = (A + D) - (B + C) <i>A = Aggregate amount withdrawn from the user account during the financial year.</i> <i>B = Aggregate amount of non-taxable deposit made in the user account by the assessee during the financial year.</i> <i>C = Opening balance of the user account at the beginning of the financial year.</i> <i>D = Closing balance of the user account at the end of the financial year.</i>
(2)	<u>Computation of net winnings at the time of first withdrawal during the F.Y.</u> <i>Net winnings comprised in the first withdrawal during the financial year, for the purposes of section 194BA, shall be calculated using the following formula -</i> Net winnings = A - (B + C) <i>A = Amount withdrawn from the user account.</i> <i>B = Aggregate amount of non-taxable deposit made in the user account by the owner of such account during the financial year, till the time of such withdrawal.</i> <i>C = Opening balance of the user account at the beginning of the financial year.</i> Note - If the sum of amounts B and C is equal to or greater than the amount A, net winnings would be considered as zero [Sub-rule (3)].
(4)	<u>Computation of net winnings at the time of each subsequent withdrawal</u> <i>Net winnings comprised in each subsequent withdrawal during the financial year, for the purposes of section 194BA, shall be calculated using the following formula -</i> Net winnings = A - (B + C + E) <i>A = Aggregate amount withdrawn from the user account during the financial year till the time of subsequent withdrawal including the amount of such subsequent withdrawal.</i> <i>B = Aggregate amount of non-taxable deposit made in the user account by the owner of such account during the financial year, till the time of such subsequent withdrawal.</i> <i>C = Opening balance of the user account at the beginning of the financial year.</i> <i>E = Net winnings comprised in the earlier withdrawal or withdrawals computed under sub-rule (2), or under this sub-rule, during the financial year till the time of subsequent withdrawal if tax has been deducted in accordance with the provision of section 194BA on winnings comprised in such withdrawal or withdrawals.</i>

	Note - Net winnings would be zero, if the sum of amounts B, C and E is equal to or greater than the amount A [Sub-rule (5)]
(6)	<u>Computation of net winnings at the end of the financial year:</u> Net winnings comprised in the user account at the end of the financial year, for the purposes of section 194BA, shall be calculated using the following formula, namely - Net winnings = (A + D) - (B + C + E) A = Aggregate amount withdrawn from the user account during the financial year. B = Aggregate amount of non-taxable deposit made in the user account by the owner of such account during the financial year. C = Opening balance of the user account at the beginning of the financial year. D = Closing balance of the user account at the end of the financial year. E = Net winnings comprised in the earlier withdrawal or withdrawals computed under sub-rule (2), or sub-rule (4), during the financial year if tax has been deducted in accordance with the provision of section 194BA on winnings comprised in such withdrawal or withdrawals. Note - Net winnings would be zero, if the sum of amounts B, C and E is equal to or greater than the sum of amount A and D [Sub-rule (7)].

Meaning of certain terms:

Term	Meaning
Non-taxable deposit	The amount deposited by the user in his user account and which is not taxable.
Taxable deposit	Any amount deposited in the user account which is not a non-taxable deposit and includes any amount paid directly to the user not through the user account.
Withdrawal	Any amount withdrawn by the user from any user account.

Important points for consideration

User Account: User account shall include every account of user, by whatever name called, which is registered with the online gaming intermediary and where any taxable deposit, non-taxable deposit or the winnings made by the user is credited and withdrawal by the user is debited.

User Account

- (a) **Multiple user accounts:** Whenever there are multiple user accounts of the same user, each user account shall be considered for the purposes of calculating net winnings and the deposit, withdrawal or balance in the user account shall mean aggregate of deposit, withdrawal or balance in all user accounts.
- (b) **Transfer from one user account to another user account:** Whenever there are multiple user accounts of the same user, transfer from one user account to another user account, maintained with the same online gaming intermediary, of the same user shall not be considered as withdrawal or deposit, as the case may be, for the purposes of deducting tax under section 194BA.

Payment in cash or kind

Whenever there is payment to the user in kind or in cash, or partly in kind and partly in cash, which is not from the user account, the provisions of this rule shall apply to calculate net winnings by deeming that the money equivalent to such payment has been deposited as taxable deposit in the user account and the equivalent amount has been withdrawn from the user account at the same time and shall accordingly be included in amount A;

Taxable deposit in the form of bonus

- Whenever there is taxable deposit in the form of bonus, referral bonus, incentives, promotional money, discount by whatever name called; and such deposit can only be used for playing the online games and not for withdrawal or any other purposes, such deposit shall be ignored for the purposes of calculation of net winnings and shall not be included in amount B or amount C or amount D; and
- Whenever any bonus, referral bonus, incentives, promotional money, discount, by whatever name called, is not considered as part of amount B or amount C or amount D under clause (e) and subsequently they are recharacterized and allowed to be withdrawn, they shall be deemed as taxable deposit at the time of such recharacterization and it shall be deemed that the equivalent amount has been deposited in the user account at that time.

- (5) **Power of CBDT to issue Guidelines [Section 194BA(3)]:** If any difficulty arises in giving effect to the provisions of this section, the CBDT may, with the previous approval of the Central Government, issue guidelines for the purposes of removing the difficulty.

Every guideline issued by the CBDT shall, as soon as may be after it is issued, be laid before each House of Parliament, and shall be binding on the income-tax authorities and on the person liable to deduct income-tax.

Guidelines

Accordingly, the CBDT has, vide Circular No. 5/2023 dated 22.5.2023, issued the following guidelines:

Question 1: There are multiple wallets under one user. How "net winnings" is to be computed with respect to multiple wallets of one use.

Answer: *It has been clarified in the Rule 133 that user account shall include every account of user, by whatever name called, which is registered with online gaming intermediary and where any taxable deposit, non-taxable deposit or the winning of the user is credited and withdrawal by the user is debited. Thus, each wallet which qualifies as user account shall be considered as user account for the purposes of computing net winnings. It has further been clarified in the Rule 133 that whenever there are multiple user accounts of the same user, each user account shall be considered for the purposes of calculating net winnings. The deposit, withdrawal or balance in the user account shall mean aggregate of deposits, withdrawals or balances in all user accounts.*

For illustration, a user has multiple user accounts under one deductor (one TAN). For the purposes of calculating tax required to be deducted under section 194BA, each of these user accounts is to be considered. Deposit in any of these user accounts would be considered as deposit (non-taxable or taxable as per the definition in Rule 133) and withdrawal from any user accounts would be considered as withdrawal.

Let us suppose that there is first withdrawal from any of these user accounts. Net winnings for the purposes of calculating tax required to be deducted under section 194BA shall be calculated as under

Net winnings = A - (B + C)

A = Amount withdrawn from the user account.

B = Aggregate amount of non-taxable deposit made in the user account by the owner of such account during the financial year, till the time of such withdrawal.

C = Opening balance of the user account at the beginning of the financial year.

Here for the purposes of calculating amount B, the non-taxable deposits in all of the user accounts under that deductor (one TAN) is to be aggregated. Same would apply for calculating all other amount for calculation under Rule 133.

However, if the one deductor (one TAN) is having multiple platforms and it is not technologically feasible for him to integrate multiple user accounts across platforms then he may, at his option, calculate tax required to be deducted for the purposes of section 194BA for each platform separately. But even in that case all the user accounts under one user in one platform need to be considered for the purposes of calculating net winnings in the formulas provided in Rule 133.

It may also be noted that Rule 133 has also clarified that transfer from one user account to another user account, maintained with the same online gaming intermediary, of the same user shall not be considered as withdrawal or deposit, as the case may be. However, if the deductor is deducting tax under section 194BA for each platform separately, as discussed in the immediately preceding paragraph, transfer from one user account to another user account under same online gaming intermediary **across platforms** shall be considered as withdrawal or deposit for the purposes of calculation of net winnings under Rule 133.

Question 2: If a user borrows some money and deposits in his user account, will it be considered taxable deposit or non-taxable deposit?

Answer: For non-taxable deposit it is necessary that the amount deposited by the user is not taxable i.e., it is from already taxed income or it is not chargeable to tax. In a case where user borrows the money and deposit in his user account, it shall be considered as non-taxable deposit.

Question 3: How will bonus, referral bonus, incentives etc. be treated?

Answer: Bonus, referral bonus, incentives etc are given by the online game intermediary to the user. They are to be considered as taxable deposit under Rule 133. The taxable deposit will increase the balance in user account and is not allowed to be deducted in calculation of net winnings as only non-taxable deposits are allowed to be deducted. Thus any deposit in the form of bonus, referral bonus, incentives etc would form part of net winnings and tax under section 194BA is liable to be deducted at the time of withdrawal as well as at the end of the financial year.

Some deposit could be money equivalent too like coins, coupons, vouchers, counters etc. In such a situation the equivalence in money of such deposit shall be considered as taxable deposit and would accordingly form part of balance in user account.

However, it is seen that there is some incentives/bonus which is credited in user account only for the purposes of playing and they cannot be withdrawn or used for any other purposes. Rule 133 has provided that such deposit shall be ignored for calculation of net winnings. Thus

they shall not be included in non-taxable deposit and they shall also not be included in opening balance or closing balance of user account. Thus, to the extent they will not be part of net winnings. However, person liable to deduct tax under section 194BA must keep separate accounts of such deposits.

Further, if and when these incentive/bonus are recharacterized and they are allowed to be withdrawn, they would be treated as taxable deposit at the time when they are recharacterized. Thus, they will become part of net winnings in the year of recharacterization.

Question 4: At what point we consider that amount has been withdrawn?

Answer: As stated earlier, it has also been clarified in the Rule 133 that transfer from one user account to another user account, maintained with the same online gaming intermediary, of the same user shall not be considered as withdrawal or deposit, as the case may be. However, when the amount is withdrawn from the user account to any other account, it shall be considered as withdrawal. With respect to deductor, any account of user which is not registered with the online game intermediary (for which he is a deductor) is an account which is not a user account and any transfer from user account to such account is a withdrawal. When in consideration of amount in user account, some coupons etc are issued for purchase of goods or services, or some item in kind is issued, that will also be considered as withdrawal. It is the duty of the person who is required to deduct tax at source under section 194BA to ensure that the tax, as required to be deducted, is deducted at source under section 194BA, before issuing such coupons or items in kind.

The clarification provided in answer to Question no 1 is also needed to be kept in mind. It has been clarified that if the deductor is deducting tax under section 194BA for each platform separately, transfer from one user account to another user account under same online gaming intermediary across platform shall be considered as withdrawal or deposit for the purposes of calculation of net winnings under Rule 133.

Question 5: There are a large number of gamers who play with very insignificant amount and withdraw also very small amount. Deducting tax at source under section 194BA for each insignificant withdrawal would increase compliance for tax deductor. Can there be relaxation to ease compliance?

Answer: In order to remove difficulty in deducting tax at source under section 194BA for insignificant withdrawal, it is clarified that tax may not be deducted on withdrawal on satisfaction of all of the following conditions, namely:-

- (i) net winnings comprised in the amount withdrawn does not exceed Rs 100 in a month;

- (ii) tax not deducted on account of this concession is deducted at a time when the net winnings comprised in withdrawal exceeds Rs 100 in the same month or subsequent month or if there is no such withdrawal, at the end of the financial year; and
- (iii) the deductor undertakes responsibility of paying the difference if the balance in the user account at the time of tax deduction under section 194BA is not sufficient to discharge the tax deduction liability calculated in accordance with Rule 133.

Question 6: When the net winnings is in kind how will tax deduction under section 194BA operate?

Answer: At the outset, it may be clarified that where money in user account is used to buy an item in kind and given to user then it is net winnings in cash only and the deductor is required to deduct tax at source under section 194BA accordingly.

However, there could be a situation where the winning of the game is a prize in kind. In that situation provision of section 194BA(2) will operate.

According to this where the net winnings are wholly in kind or partly in cash, and partly in kind but the part in cash is not sufficient to meet the liability of deduction of tax in respect of whole of the net winnings. In these situations, the person responsible for paying, shall, before releasing the winnings, ensure that tax has been paid in respect of the net winnings. In the above situation, the deductor will release the net winnings in kind after the deductee provides proof of payment of such tax (e.g., Challan details etc.). This year Form 26Q also has included provisions for reporting such transactions under section 194BA (vide Notification no. 28/2023 dated 22.5.2023).

In the alternative, as an option to remove difficulty if any, the deductor may deduct the tax under section 194BA and pay to the Government. In the Form 26Q the deductor will need to show this as tax deducted by him on net winning under section 194BA.

Question 7: How will the valuation of winnings in kind required to be carried out?

Answer: The valuation would be based on fair market value of the winnings in kind except in following cases:-

- (i) The online game intermediary has purchased the winnings before providing it to the user. In that case the purchase price shall be the value for winnings.
- (ii) The online game intermediary manufactures such items given as winnings. In that case, the price that it charges to its customers for such items shall be the value for such winnings.

No TDS on GST

It is further clarified that **GST will not be included for the purposes of valuation** of winnings for TDS under section 194BA.

Question 8: These guidelines have been issued after 1.4.2023 while the law has come into effect from 1.4.2023. Will there be any relaxation on penal consequences in the intervening period i.e., between 1.4.2023 and the date on which the Rules/guidelines are issued?

Answer: Taxpayers were expected to deduct tax at source under section 194BA even before issuance of the Rule 133 or this guidance. It is expected that they have carried out that responsibility. However, if there is a shortfall in deduction of tax due to time lag in issuance of Rule 133 or this Circular, for the month of April, 2023 that shortfall may be deposited with the tax deduction for the month of May 2023 by 7th June 2023. In that case there will not be any penal consequences.

13.3.8 Payments to contractors and sub-contractors [Section 194C]

(1) **Applicability of TDS under section 194C**

Section 194C provides for deduction of tax at source from the payment made to resident contractors and sub-contractors.

Contract payments

Tax has to be deducted at source under section 194C by any person responsible for paying any sum to a resident contractor for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract between the contractor and the –

- (i) the Central Government or any State Government; or
- (ii) any local authority; or
- (iii) any statutory corporation; or
- (iv) any company; or
- (v) any co-operative society; or
- (vi) any statutory authority dealing with housing accommodation; or
- (vii) any society registered under the Societies Registration Act, 1860; or
- (viii) any trust; or
- (ix) any university established under a Central, State or Provincial Act and an institution declared to be a university under the UGC Act, 1956; or

- (x) any firm; or
- (xi) any Government of a foreign State or foreign enterprise or any association or body established outside India; or
- (xii) any person, being an individual, HUF, AOP or BOI, who has total sales, gross receipts

Turnover

or turnover from the business or profession carried on by him **exceeding ₹ 1 crore in case of business** and **₹ 50 lakhs in case of profession** during the financial year immediately preceding the financial year in which

such sum is credited or paid to the account of the contractor.

(2) *Time of deduction*

Tax has to be deducted at the time of payment of such sum or at the time of credit of such sum to the account of the contractor, whichever is earlier.

Where any such sum is credited to any account in the books of account of the person liable to pay such income, such crediting is deemed to be credit of such income to the account of the payee and the tax has to be deducted at source. The account to which such sum is credited may be called "Suspense account" or by any other name.

However, no tax has to be deducted at source in respect of payments made by individuals/HUF to a contractor exclusively for personal purposes.

(3) *Rate of TDS*

The rate of TDS under section 194C on payments to contractors would be **1%**, where the payee is an individual or HUF and **2%** in respect of other payees. The same rates of TDS would apply for both contractors and sub-contractors.

The applicable rates of TDS under section 194C are as follows –

Payee	TDS rate
Individual/HUF contractor/sub-contractor	1%
Other than individual / HUF contractor/sub-contractor	2%
Contractor in transport business (if PAN is furnished)	Nil
Sub-contractor in transport business (if PAN is furnished)	Nil

(4) Threshold limit for deduction of tax at source under section 194C

No deduction will be required to be made if the consideration for the contract does not exceed ₹ 30,000. However, to prevent the practice of composite contracts being split up into contracts valued at less than ₹ 30,000 to avoid tax deduction, it has been provided that tax will be required to be deducted at source where the amount credited or paid or likely to be credited or paid to a contractor or sub-contractor exceeds ₹ 30,000 in a single payment or ₹ 1,00,000 in the aggregate during a financial year.

Threshold limit

Therefore, even if a single payment to a contractor does not exceed ₹ 30,000, TDS provisions under section 194C would be attracted where the aggregate of the amounts of such sums credited or paid or likely to be credited or paid to the contractor during the financial year exceeds ₹ 1,00,000.

ILLUSTRATION 6

ABC Ltd. makes the following payments to Mr. X, a contractor, for contract work during the P.Y.2023-24 –

₹ 20,000 on 1.5.2023

₹ 25,000 on 1.8.2023

₹ 28,000 on 1.12.2023

On 1.3.2024, a payment of ₹ 30,000 is due to Mr. X on account of a contract work.

Discuss whether ABC Ltd. is liable to deduct tax at source under section 194C from payments made to Mr. X.

SOLUTION

In this case, the individual contract payments made to Mr. X does not exceed ₹ 30,000. However, since the aggregate amount paid to Mr. X during the P.Y.2023-24 exceeds ₹ 1,00,000 (on account of the last payment of ₹ 30,000, due on 1.3.2024, taking the total from ₹ 73,000 to ₹ 1,03,000), the TDS provisions under section 194C would get attracted. Tax has to be deducted @1% on the entire amount of ₹ 1,03,000 from the last payment of ₹ 30,000 and the balance of ₹ 28,970 (i.e., ₹ 30,000 – ₹ 1030) has to be paid to Mr. X.

(5) Definition of work

Work includes –

- (a) advertising;

- (b) broadcasting and telecasting including production of programmes for such broadcasting or telecasting;
- (c) carriage of goods or passengers by any mode of transport other than by railways;
- (d) catering
- (e) manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer or its associate, being a person related to the customer in such manner as defined u/s 40A(2)(b) (i.e., the customer would be in the place of assessee; and the associate would be the related person(s) mentioned in that section).

Definition of work

However, “work” shall not include manufacturing or supplying a product according to the requirement or specification of a customer by using raw material purchased from a person, other than such customer or associate of such customer, as such a contract is a contract for ‘sale’. However, this will not be applicable to a contract which does not entail manufacture or supply of an article or thing (e.g., a construction contract).

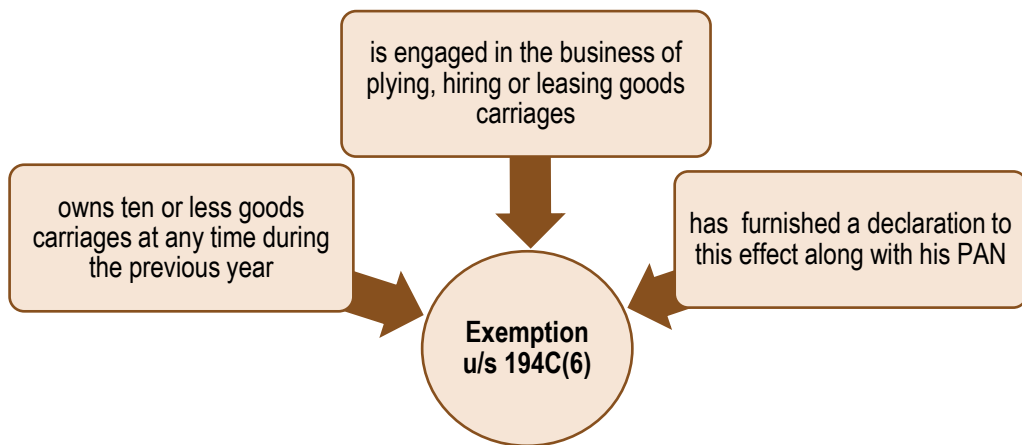
It may be noted that the term “work” would include manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer or its associate. In such a case, tax shall be deducted on the invoice value excluding the value of material purchased from such customer or its associate, if such value is mentioned separately in the invoice. Where the material component has not been separately mentioned in the invoice, tax shall be deducted on the whole of the invoice value.

(6) ***Non-applicability of TDS under section 194C***

No deduction is required to be made from the sum credited or paid or likely to be credited or paid during the previous year to the account of a contractor, during the course of the business of plying, hiring or leasing goods carriages, if he furnishes his PAN to the deductor.

In order to convey the true intent of law, it has been clarified that this relaxation from the requirement to deduct tax at source shall only be applicable to the payment in the nature of transport charges (whether paid by a person engaged in the business of transport or otherwise) made to a contractor fulfils the following three conditions cumulatively -

Non-applicability

**Meaning of “Goods carriage”:**

“Goods carriage” means -

- (i) any motor vehicle constructed or adapted for use solely for the carriage of goods; or
- (ii) any motor vehicle not so constructed or adapted, when used for the carriage of goods.

The term “motor vehicle” does not include vehicles having less than four wheels and with engine capacity not exceeding 25cc as well as vehicles running on rails or vehicles adapted for use in a factory or in enclosed premises.

(7) Important points

- (i) The deduction of income-tax at source from payments made to non-resident contractors will be governed by the provisions of section 195.
- (ii) The deduction of income-tax will be made from sums paid for carrying out any work or for supplying labour for carrying out any work. In other words, the section will apply only in relation to ‘works contracts’ and ‘labour contracts’ and will not cover contracts for sale of goods.
- (iii) Contracts for rendering professional services by lawyers, physicians, surgeons, engineers, accountants, architects, consultants etc., cannot be regarded as contracts for carrying out any “work” and, accordingly, no deduction of income-tax is to be made from payments relating to such contracts under this section. Separate provisions for fees for professional services have been made under section 194J.

S. No.	Circulars & Notifications
1.	<i>Deduction of tax at source on payment of gas transportation charges by the purchaser of natural gas to the seller of gas [Circular No. 9/2012 dated 17.10.2012]</i> In case the Owner/Seller of the natural gas sells as well as transports the gas to the purchaser till the point of delivery, where the ownership of gas to the purchaser is simultaneously transferred, the manner of raising the sale bill (whether the transportation charges are embedded in the cost of gas or shown separately) does not alter the basic nature of such contract which remains essentially a 'contract for sale' and not a 'works contract' as envisaged in section 194C. Therefore, in such circumstances, the provisions of Chapter XVII-B are not applicable on the component of Gas Transportation Charges paid by the purchaser to the Owner/Seller of the gas. Further, the use of different modes of transportation of gas by Owner/Seller will not alter the position. However, transportation charges paid to a third party transporter of gas, either by the Owner/Seller of the gas or purchaser of the gas or any other person, shall continue to be governed by the appropriate provisions of the Act and tax shall be deductible at source on such payment to the third party at the applicable rates.
2.	<i>Applicability of TDS provisions on payments by broadcasters or Television Channels to production houses for production of content or programme for telecasting [Circular No. 04/2016, dated 29-2-2016]</i> The issue under consideration is whether payments made by the broadcaster/telecaster to production houses for production of content/programme are payments under a 'work contract' liable for tax deduction at source under section 194C or a contract for 'professional or technical services' liable for tax deduction at source under section 194J. In this regard, the CBDT has clarified that while applying the relevant provisions of TDS on a contract for content production, a distinction is required to be made between: (i) a payment for production of content/programme as per the specifications of the broadcaster/telecaster; and (ii) a payment for acquisition of broadcasting/ telecasting rights of the content already produced by the production house. In the first situation where the content is produced as per the specifications provided by the broadcaster/ telecaster and the copyright of the content/programme also gets transferred to the telecaster/ broadcaster, such contract is covered by the definition of the term 'work'

	in section 194C and, therefore, subject to TDS under that section. However, in a case where the telecaster/broadcaster acquires only the telecasting/ broadcasting rights of the content already produced by the production house, there is no contract for “carrying out any work”, as required in section 194C(1). Therefore, such payments are not liable for TDS under section 194C. However, payments of this nature may be liable for TDS under other sections of Chapter XVII-B of the Act.
3.	<i>TDS on Goods and Services Tax (GST) component comprised in payments made to residents [Circular No. 23/2017 dated 19.07.2017]</i> The CBDT had, vide Circular No. 1/2014 dated 13.01.2014, clarified that wherever in terms of the agreement or contract between the payer and the payee, the service tax component comprised in the amount payable to a resident is indicated separately, tax shall be deducted at source on the amount paid or payable without including such service tax component. In order to harmonize the same treatment with the new system for taxation of services under the GST regime w.e.f. 01.07.2017, the CBDT has, vide this circular, clarified that wherever in terms of the agreement or contract between the payer and the payee, the component of 'GST on services' comprised in the amount payable to a resident is indicated separately, tax shall be deducted at source on the amount paid or payable without including such 'GST on services' component. GST shall include Integrated Goods and Services Tax, Central Goods and Services Tax, State Goods and Services Tax and Union Territory Goods and Services Tax. Further, for the purposes of this Circular, any reference to “service tax” in an existing agreement or contract which was entered into prior to 01.07.2017 shall be treated as “GST on services” with respect to the period from 01.07.2017 onward till the expiry of such agreement or contract. <i>Note – The clarification given in the above circular applies to any amount paid or payable to a resident on which tax is deductible at source as per the provisions of Chapter XVII-B.</i>
4.	<i>Applicability of TDS provisions on payments by the transporter to truck operators or owners for hiring the vehicles [Shree Choudhary Transport Co. v ITO [2020] 426 ITR 0289(SC)]</i> The assessee-firm entered into contract with a cement company for transporting cement to various places in India. As the assessee did not have transport vehicles of its own, it engaged the services of other transporters for the said purpose. The cement company effected payments to the assessee towards transportation charges after due deduction of tax at source. In its return of income, the assessee showed

the income arising out of the business of transport contracts. While making payment to the truck operators or owners, the assessee had not deducted tax at source.

The Supreme Court observed that the nature of the contract entered into by the assessee with the consignor company (cement company) makes it clear that it was the responsibility of the assessee to transport the goods (cement) of the company; and how to accomplish this task of transportation was a matter exclusively within the domain of the assessee.

There is no privity of contract between the transporters and the consignor company (cement company). Hiring the services of the transporters for this purpose could have only been under a contract between the assessee and the transporters, irrespective of whether such a contract was reduced into writing or not.

If a particular truck was not engaged, there existed no contract but when any truck got engaged for the purpose of execution of the work undertaken by the assessee and freight charges were payable to its operator or owner upon execution of the work, i. e., transportation of the goods, all the essentials of a contract existed; and the truck operator or owner became a sub-contractor.

The Supreme Court opined that the assessee was not acting as a facilitator or intermediary between the consignor company and the truck operators or owners because those two parties had no privity of contract between them. The contract of the company for transportation of its goods was only with the assessee and it was the assessee who hired the services of the trucks. The payment made by the assessee to such transporter was clearly a payment made to a sub-contractor.

The Supreme Court, thus, held that section 194C was applicable and the assessee was under obligation to deduct tax at source in relation to the payments made by it to the truck operators or owners for hiring the vehicles for the purpose of its business of transportation of goods.

ILLUSTRATION 7

Bharathi Cements Ltd. purchased jute bags from Raj Kumar & Co. The latter has to supply the jute bags with the logo and address of the assessee, printed on it. From 01.09.2023 to 20.03.2024, the value of jute bags supplied is ₹ 8,00,000, for which the invoice has been raised on 20.03.2024. While effecting the payment for the same, is the assessee bound to deduct tax at source, assuming that the value of the printing component involved is ₹ 1,10,000. You are informed that the assessee has not sold any material to Raj Kumar & Co. and that the latter has to manufacture the jute bags in its plant using raw materials purchased by it from outsiders.

SOLUTION

As per the definition under section 194C, "work" shall not include manufacturing or supplying a product according to the requirement or specification of a customer by using raw material purchased from a person, other than such customer or associate of such customer. This is regardless of the quantum of expenditure incurred towards printing or processing comprised in the bill amount.

The problem clearly states that Raj Kumar & Co. has to manufacture the jute bags using raw materials purchased from outsiders and that the assessee Bharathi Cements Ltd has not sold any material to them. Therefore, in this case, it is a contract of sale. Hence, the provisions of section 194C are **not** attracted and no liability to deduct tax at source would arise.

ILLUSTRATION 8

Alap Ltd. has made following payments on various dates in financial year 2023-24 to Vilambit Ltd. towards work done under different contracts:

Contract Number	Date of payment	Amount (₹)
1.	5.5.2023	20,000
2.	6.6.2023	15,000
3.	8.8.2023	25,000
4.	10.12.2023	25,000
5.	29.01.2024	17,000

Alap Ltd. claims that it is not liable for deduction of tax at source under section 194C. Examine the correctness of the claim made by the company. What would be the position if the value of the contract no. 5 is ₹ 14,000 only and there was no further contract during the year?

SOLUTION

As per section 194C(5), tax has to be deducted at source where the amount credited or paid or likely to be credited or paid to a contractor or sub-contractor exceeds ₹ 30,000 in a single payment or ₹ 1,00,000 in aggregate during the financial year.

Therefore, in the given case, even though the value of each individual contract does not exceed ₹ 30,000, the aggregate amount exceeds ₹ 1,00,000. Hence, Alap Ltd's contention is not correct and tax is required to be deducted at source on the whole amount of ₹ 1,02,000 from the last payment of ₹ 17,000 towards Contract No.5 on account of which the aggregate amount exceeded ₹ 1,00,000.

However, no tax deduction is to be made if the value of the last contract is ₹ 14,000 as the aggregate amount in such case would only be ₹ 99,000, which is below the aggregate monetary limit of ₹ 1,00,000.

13.3.9 Insurance Commission [Section 194D]

(1) *Applicability of TDS under section 194D*

Section 194D casts responsibility on any person responsible for paying to a resident any income by way of remuneration or reward, whether by way of commission or otherwise, for soliciting or procuring insurance business (including the business relating to the continuance, renewal or revival of policies of insurance) to deduct tax at source.

**Insurance
Commission - TDS
@ 5% or 10%**

(2) *Rate of TDS*

Such person is required to deduct income-tax at the rate of **5%** in case of resident other than a domestic company and **10%** in case of a domestic company.

(3) *Time of deduction*

The deduction is to be made at the time of the credit of the income to the account of the payee or at the time of making the payment (by whatever mode) to the payee, whichever is earlier.

(4) *Threshold limit*

The tax under this section has to be deducted at source only if the amount of such income or the aggregate of the amounts of such income credited or paid during the financial year to the account of the payee exceeds **₹ 15,000**.

Threshold limit

13.3.10 Payment in respect of life insurance policy [Section 194DA]

(1) *Taxability of sum received under a life insurance policy*

LIP – TDS @5%

Under section 10(10D), any sum received under a life insurance policy, including the sum allocated by way of bonus on such policy is exempt subject to fulfillment of conditions specified under the said section.

Consequently, the sum received under a life insurance policy which does not fulfill the conditions specified under section 10(10D) is taxable.

(2) Rate of TDS

For ensuring a proper mechanism for reporting of transactions and collection of tax in respect of sum paid under life insurance policies which are not exempt under section 10(10D), section 194DA provides for deduction of tax at the rate of **5%** on the amount of income comprised therein i.e., after deducting the amount of insurance premium paid by the resident assessee from the total sum received.

(3) Threshold limit

Tax deduction is required only if the payment or aggregate payment under a life insurance policy, including the sum allocated by way of bonus in a financial year to an assessee is

Threshold limit

₹ 1,00,000 or more. This is for alleviating the compliance burden on the small tax payers.

ILLUSTRATION 9

Examine the applicability of the provisions for tax deduction at source under section 194DA in the following cases -

- (i) *Mr. X, a resident, is due to receive ₹ 4.50 lakhs on 31.3.2024, towards maturity proceeds of LIC policy taken on 1.4.2021, for which the sum assured is ₹ 4 lakhs and the annual premium is ₹ 1,25,000.*
- (ii) *Mr. Y, a resident, is due to receive ₹ 4.10 lakhs on 31.3.2024 on LIC policy taken on 31.3.2012, for which the sum assured is ₹ 3.70 lakhs and the annual premium is ₹ 30,100.*
- (iii) *Mr. Z, a resident, is due to receive ₹ 95,000 on 1.8.2023 towards maturity proceeds of LIC policy taken on 1.8.2017 for which the sum assured is ₹ 90,000 and the annual premium is ₹ 10,000.*

SOLUTION

- (i) Since the annual premium exceeds 10% of sum assured in respect of a policy taken after 31.3.2012, the maturity proceeds of ₹ 4.50 lakhs due on 31.3.2024 are not exempt under section 10(10D) in the hands of Mr. X. Therefore, tax is required to be deducted @5% under section 194DA on the amount of income comprised therein i.e., on ₹ 75,000 (₹ 4,50,000, being maturity proceeds - ₹ 3,75,000, being the aggregate amount of insurance premium paid).

- (ii) Since the annual premium is less than 20% of sum assured in respect of a policy taken before 1.4.2012, the sum of ₹ 4.10 lakhs due to Mr. Y would be exempt under section 10(10D) in his hands. Hence, no tax is required to be deducted at source under section 194DA on such sum payable to Mr. Y.
- (iii) Even though the annual premium exceeds 10% of sum assured in respect of a policy taken after 31.3.2012, and consequently, the maturity proceeds of ₹ 95,000 due on 1.8.2023 would not be exempt under section 10(10D) in the hands of Mr. Z. However, tax deduction at source provisions under section 194DA are not attracted since the maturity proceeds are less than ₹ 1 lakh.

13.3.11 Payments in respect of deposits under National Savings Scheme etc. [Section 194EE]

(1) **Rate of TDS**

The person responsible for paying to any person any amount from National Savings Scheme Account shall deduct income-tax thereon at the rate of **10%** at the time of payment.

**Deposits under
NSS TDS @10%**

(2) **Threshold limit**

No such deduction shall be made where the amount of payment or the aggregate amount of payments in a financial year is less than **₹ 2,500**.

(3) **Non-applicability of TDS under section 194EE**

The provisions of this section shall not apply to the payments made to the heirs of the assessee.

13.3.12 Commission etc. on the sale of lottery tickets [Section 194G]

(1) **Applicability and Rate of TDS**

Under section 194G, the person responsible for paying to any person, who is or has been stocking, distributing, purchasing or selling lottery tickets, any income by way of commission, remuneration or prize (by whatever name called) on lottery tickets in an amount exceeding **₹ 15,000** shall deduct income-tax thereon at the rate of **5%**.

(2) **Time of deduction of tax**

Such deduction should be made at the time of credit of such income to the account of the

payee or at the time of payment of such income by cash, cheque, draft or any other mode, whichever is earlier.

Where any such income is credited to any account, whether called "Suspense Account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section shall apply accordingly.

**Commission on
sale of lottery
tickets - TDS
@5%**

13.3.13 Commission or brokerage [Section 194H]

(1) *Applicability and Rate of TDS*

Any person other than an individual or HUF, who is responsible for paying any income by way of commission (other than insurance commission) or brokerage to a resident shall deduct income tax at the rate of **5%**.

**Commission or
brokerage – TDS
@5% Commission or
brokerage – TDS
@5%**

However, an individual or HUF whose total sales, gross receipts or turnover from the business or profession carried on by him exceed **₹ 1 crore in case of business and ₹ 50 lakhs in case of profession** during the financial year immediately preceding financial year in which such commission or brokerage is credited or paid, is liable to deduct tax at source.

(2) *Time of deduction*

The deduction shall be made at the time such income is credited to the account of the payee or at the time of payment in cash or by issue of cheque or draft or by any other mode, whichever is earlier.

Even where income is credited to some other account, whether called "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit to the account of the payee for the purposes of this section.

(3) *Threshold limit*

No deduction is required if the amount of such income or the aggregate of such amount does not exceed **₹ 15,000** during the financial year.

(4) Meaning of “Commission or brokerage”

“Commission or brokerage” includes any payment received or receivable, directly or indirectly, by a person acting on behalf of another person for services rendered, or for any services in the course of buying or selling of goods, or in relation to any transaction relating to any asset, valuable article or thing, **other than securities**.

(5) Non-applicability of TDS under section 194H

- (i) This section is not applicable to professional services. “Professional Services” means services rendered by a person in the course of carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or such other profession as notified by the CBDT for the purpose of compulsory maintenance of books of account under section 44AA.
- (ii) Further, there would be no requirement to deduct tax at source on commission or brokerage payments by BSNL or MTNL to their public call office (PCO) franchisees.

Non-applicability**Circular**

Applicability of TDS provisions on payments by television channels and publishing houses to advertisement companies for procuring or canvassing for advertisements [Circular No. 05/2016, dated 29-2-2016]

There are two types of payments involved in the advertising business:

- (i) Payment by client to the advertising agency, and
- (ii) Payment by advertising agency to the television channel/newspaper company

The applicability of TDS on these payments has already been dealt with in Circular No. 715 dated 8-8-1995, where it has been clarified in Question Nos. 1 & 2 that while TDS under section 194C (as work contract) will be applicable on the first type of payment, there will be no TDS under section 194C on the second type of payment e.g. payment by advertising agency to the media company.

However, another issue has been raised in various cases as to whether the fees/charges taken or retained by advertising companies from media companies for canvassing/booking advertisements (typically 15% of the billing) is 'commission' or 'discount' for attracting the provisions of section 194H.

The CBDT has clarified that no TDS is attracted on payments made by television channels/newspaper companies to the advertising agency for booking or procuring of or canvassing for advertisements. It is also further clarified that 'commission' referred to in Question No.27 of the CBDT's Circular No. 715 dated 8-8-1995 does not refer to payments by media companies to advertising companies for booking of advertisements but to payments for engagement of models, artists, photographers, sportspersons, etc. and, therefore, is not relevant to the issue of TDS referred to in this Circular.

ILLUSTRATION 10

Moon TV, a television channel, made payment of ₹ 50 lakhs to a production house for production of programme for telecasting as per the specifications given by the channel. The copyright of the programme is also transferred to Moon TV. Would such payment be liable for tax deduction at source under section 194C? Discuss.

Also, examine whether the provisions of tax deduction at source under section 194C would be attracted if the payment was made by Moon TV for acquisition of telecasting rights of the content already produced by the production house.

SOLUTION

In this case, since the programme is produced by the production house as per the specifications given by Moon TV, a television channel, and the copyright is also transferred to the television channel, the same falls within the scope of definition of the term 'work' under section 194C. Therefore, the payment of ₹ 50 lakhs made by Moon TV to the production house would be subject to tax deduction at source under section 194C.

If, however, the payment was made by Moon TV for acquisition of telecasting rights of the content already produced by the production house, there is no contract for "carrying out any work", as required in section 194C(1). Therefore, such payment would not be liable for tax deduction at source under section 194C.

13.3.14 Rent [Section 194-I]

(1) **Applicability and Rate of TDS**

Any person other than individual or HUF, who is responsible for paying to a resident any income by way of rent, shall deduct income tax at the rate of:

- (i) **2%** in respect of rent for plant, machinery or equipment;
- (ii) **10%** in respect of other rental payments (i.e., rent for use of any land or building, including factory building or land appurtenant to a building, including factory building, or furniture or fittings).

**TDS @ 2%
(P & M & eqpt)
TDS@10%
(Other rental
payments)**

However, an individual or HUF whose total sales, gross receipts or turnover from the business or profession carried on by him exceed ₹ 1 crore in case of business and ₹ 50 lakhs in case of profession during the F.Y. immediately preceding the F.Y. in which such rent was credited or paid, is liable to deduct tax at source.

Further, no deduction shall be made under this section from rent credited or paid to a business trust, being a REIT, in respect of any real estate asset owned directly by it.

(2) **Time of deduction**

This deduction is to be made at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of cheque or draft or by any other mode, whichever is earlier.

Where any such income is credited to any account, whether called "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of the payee and the provisions of this section will apply accordingly.

(3) **Threshold limit**

No deduction need be made where the amount of such income or the aggregate of the amounts of such income credited or paid or likely to be credited or paid during the financial year to the account of the payee does not exceed **₹ 2,40,000**.

**Threshold limit
₹ 2,40,000**

(4) **Meaning of Rent**

"Rent" means any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of (either separately or together) any –

- (a) land; or
- (b) building (including factory building); or

- (c) land appurtenant to a building (including factory building); or
- (d) machinery; or
- (e) plant; or
- (f) equipment; or
- (g) furniture; or
- (h) fittings,

whether or not any or all of the above are owned by the payee.

Circulars & Notifications

Applicability/non-applicability of TDS under section 194-I on certain payments

Nature of Payment	Analysis	Conclusion
<i>Payments made by the customers on account of <u>cooling charges to the cold storage owners.</u> [Circular No.1/2008 dated 10.1.2008]</i>	The main function of the cold storage is to preserve perishable goods by means of a mechanical process, and storage of such goods is only incidental in nature. The customer is also not given any right to use any demarcated space/place or the machinery of the cold store and thus does not become a tenant. Therefore, the provisions of 194-I are not applicable to the cooling charges paid by the customers of the cold storage. However, <u>since the arrangement between the customers and cold storage owners are basically contractual in nature,</u> the provision of section 194C will be applicable to the amounts paid as cooling charges by the customers of the cold storage.	No tax to be deducted under section 194-I. However, tax to be deducted under section 194C.
Remittance of Passenger Service Fees (PSF) by an Airline to an Airport Operator [Circular No. 21/2017, dated 12.06.2017]	Section 194-I requires deduction of tax at source at specified percentage on any income payable to a resident by way of rent. Explanation to this section defines the term "rent" as any payment, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of any (a) land; or (b) building; or (c) land appurtenant to a building; or (d) machinery; (e) plant; (f) equipment (g) furniture; or (h) fitting, whether or not any or all of	The provisions of section 194-I shall not be applicable.

	them are owned by the payee. On the issue of whether payment of PSF by an airline to an Airport Operator qualifies as rent to attract TDS under section 194-I, the Bombay High Court relied on the Apex Court ruling in Japan Airlines and Singapore Airlines case, wherein it was observed that the primary requirement for any payment to qualify as rent is that the payment must be for the use of land and building and mere incidental/minor/insignificant use of the same while providing other facilities and service would not make it a payment for use of land and buildings so as to attract section 194-I. Accordingly, the Bombay High Court declined to admit the ground relating to applicability of the provisions of section 194-I on PSF charges holding that no substantial question of law arises.	
Payment of lease rent or supplemental lease rent, made by a 'lessee' to a lessor, being a Unit located in International Financial Services Center for lease of an aircraft [Notification No. 65/2022, dated 16.06.2022]	<i>The Central Government has, vide Notification No. 65/2022, dated 16.06.2022 specified that no tax is required to be deducted under section 194-I on payment in the nature of lease rent or supplemental lease rent, as the case may be, made by a lessee to a lessor, being a Unit located in IFSC, for lease of an aircraft subject to the following conditions-</i> (a) <i>The lessor has to, -</i> (i) <i>furnish a statement-cum-declaration to the lessee giving details of previous years relevant to the ten consecutive assessment years for which the lessor opts for claiming deduction under section 80LA(1A) read with section 80LA(2); and</i> (ii) <i>such statement-cum-declaration has to be furnished for each previous year relevant to the ten consecutive assessment years for which the lessor opts for claiming deduction.</i> (b) <i>The lessee would –</i> (i) <i>not deduct tax on payment made or credited to lessor after the date of receipt of copy of statement cum-declaration from the lessor; and</i>	No tax is required to be deducted under section 194-I The above relaxation is available to the lessor during the said previous years relevant to the ten consecutive assessment years as declared by the lessor for which deduction under section 80LA is being opted. The lessee shall be liable to

	(ii) furnish the particulars of all the payments made to lessor on which tax has not been deducted in view of this notification in the statement of deduction of tax.	deduct tax on payment of lease rent for any other year.
TDS on GST component of rental income [Circular No.4/2008 dated 15.4.2008]	Service tax paid by the tenant doesn't partake the nature of income of the landlord. The landlord only acts as a collecting agency for Government for collection of service tax. Therefore, tax deduction at source under section 194-I would be required to be made on the amount of rent paid/payable without including the service tax. Note - It is possible to take a view that the clarification given in Circular No. 4/2008 would apply in the GST regime also.	TDS to be deducted only on the amount of rent excluding rent
Lumpsum lease premium paid for acquisition of long-term lease [Circular No.35/2016, dated 13-10-2016]	The CBDT has, clarified that lump sum lease premium or one-time upfront lease charges, which are not adjustable against periodic rent, paid or payable for acquisition of long-term leasehold rights over land or any other property are not payments in the nature of rent within the meaning of section 194-I.	Not liable for TDS under section 194-I.

ILLUSTRATION 11

ABC Ltd. took on sub-lease a building from J, an individual, with effect from 1.9.2023 on a rent of ₹ 25,000 per month. It also took on hire machinery from J with effect from 1.10.2023 on hire charges of ₹ 15,000 per month. ABC Ltd. entered into two separate agreements with J for sub-lease of building and hiring of machinery. The rent of building and hire charges of machinery for the financial year 2023-24 were ₹ 1,75,000 and ₹ 90,000, respectively, which were credited by ABC Ltd. to the account of J in its books of account on 31.3.2024. Examine the obligation of ABC Ltd. with regard to deduction of tax at source in respect of the rent and hire charges.

SOLUTION

As per section 194-I dealing with deduction of tax at source from payment of rent, the rate of TDS applicable is 2% for machinery hire charges and 10% for building lease rent. The scope of the section includes within its ambit, rent for machinery, plant and equipment. Tax is required to be deducted at source from payment of rent, by whatever name called, under any lease, sub-lease, tenancy or any other agreement or arrangement for the use of building and machinery, irrespective of whether such assets are owned or not by the payee.

The limit of ₹ 2,40,000 for tax deduction at source will apply to the aggregate rent of all the assets. Even if two separate agreements are entered into, one for sub-lease of building and another for hiring of machinery, rent and hire charges under the two agreements have to be aggregated for the purpose of application of the threshold limit of ₹ 2,40,000. In this case, since the payment for rent and hire charges credited to the account of J, the payee, aggregates to ₹ 2,65,000 (₹ 1,75,000 + ₹ 90,000), tax is deductible at source under section 194-I. Tax is deductible @10% on ₹ 1,75,000 (rent of building) and @2% on ₹ 90,000 (hire charges of machinery).

13.3.15 Payment on transfer of certain immovable property other than agricultural land [Section 194-IA]

(1) **Applicability and Rate**

Every transferee responsible for paying any sum as consideration for transfer of immovable property (land, other than agricultural land, or building or part of building) to a resident transferor shall deduct tax, at the rate of **1%** of **such sum or the stamp duty value of such property, whichever is higher.**

**Transfer of
Immovable property
TDS @1%**

“Agricultural land”, for the purpose of this section, means rural agricultural land. In other words, transfer of urban agricultural land, will attract the provision of section 194-IA, if the consideration or the stamp duty value of such land is ₹ 50 lakhs or more.

(2) **Time of deduction**

The deduction is to be made at the time of credit of such sum to the account of the resident transferor or at the time of payment of such sum to a resident transferor, whichever is earlier.

(3) **Threshold limit**

Tax is not required to be deducted at source where the total amount of consideration for the transfer of immovable property and the stamp duty value of such property, are both is less than **₹ 50 lakhs**.

Threshold limit

(4) **Non-applicability of TDS under section 194-IA**

Since tax deduction at source for compulsory acquisition of immovable property is covered under section 194LA, the provisions of section 194-IA do not get attracted in the hands of the transferee in such cases.

(5) No requirement to obtain TAN

The provisions of section 203A containing the requirement of obtaining Tax deduction account number (TAN) shall not apply to the person required to deduct tax in accordance with the provisions of section 194-IA.

(6) Meaning of consideration for transfer of any immovable property

Consideration for transfer of any immovable property includes all charges of the nature of club membership fee, car parking fee, electricity or water facility fee, maintenance fee, advance fee or any other charges of similar nature, which are incidental to transfer of the immovable property.

ILLUSTRATION 12

Mr. X sold his house property in Bangalore as well as his rural agricultural land for a consideration of ₹ 60 lakh and ₹ 15 lakh, respectively, to Mr. Y on 1.8.2023. He has purchased the house property and the land in the year 2022 for ₹ 40 lakh and ₹ 10 lakh, respectively. The stamp duty value on the date of transfer, i.e., 1.8.2023, is ₹ 85 lakh and ₹ 20 lakh for the house property and rural agricultural land, respectively. Examine the tax implications in the hands of Mr. X and Mr. Y and the TDS implications, if any, in the hands of Mr. Y, assuming that both Mr. X and Mr. Y are resident Indians.

SOLUTION

(i)	<u>Tax implications in the hands of Mr. X</u>
	As per section 50C, the stamp duty value of house property (i.e., ₹ 85 lakh) would be deemed to be the full value of consideration arising on transfer of property since stamp duty value exceeds 110% of the consideration received. Therefore, ₹ 45 lakh (i.e., ₹ 85 lakh – ₹ 40 lakh, being the purchase price) would be taxable as short-term capital gains in the A.Y.2024-25. Since rural agricultural land is not a capital asset, the gains arising on sale of such land is not taxable in the hands of Mr. X.
(ii)	<u>Tax implications in the hands of Mr. Y</u>
	In case immovable property is received for inadequate consideration, the difference between the stamp value and actual consideration would be taxable under section 56(2)(x), if such difference exceeds higher of ₹ 50,000 and 10% of the consideration. Therefore, in this case ₹ 25 lakh (₹ 85 lakh – ₹ 60 lakh) would be taxable in the hands of Mr. Y under section 56(2)(x). Since agricultural land is not a capital asset, the provisions of section 56(2)(x) are not attracted in respect of receipt of agricultural land for inadequate consideration, since the definition of “property” under section 56(2)(x) includes only capital assets specified thereunder.

(iii)	TDS implications in the hands of Mr. Y
	Since the sale consideration and stamp duty value of house property both are not less than ₹ 50 lakhs, Mr. Y is required to deduct tax at source under section 194-IA. The tax to be deducted under section 194-IA would be ₹ 85,000, being 1% of ₹ 85 lakh (higher of ₹ 60 lakhs and ₹ 85 lakhs). TDS provisions under section 194-IA are not attracted in respect of transfer of rural agricultural land.

13.3.16 Payment of rent by certain individuals or Hindu undivided family [Section 194-IB]

(1) **Applicability and Rate of TDS**

Section 194-IB requires any person, being individual or HUF, other than those individual or HUF whose total sales, gross receipts or turnover from the business or profession exceeds ₹ 1 crore in case of business and ₹ 50 lakhs in case of profession in the financial year immediately preceding the financial year in which such rent was credited or paid, responsible for paying to a resident any income by way of rent, to deduct income tax at the rate of **5%**.

**Rent by an Individual
or HUF- TDS @5%**

(2) **Threshold limit**

Under this section, tax has to be deducted at source only if the amount of such rent exceeds **₹ 50,000** for a month or part of a month during the previous year.

Threshold limit

(3) **Time of deduction**

This deduction is to be made at the time of credit of such rent, for the last month of the previous year or the last month of tenancy, if the property is vacated during the year, as the case may be, to the account of the payee or at the time of payment thereof in cash or by issue of cheque or draft or by any other mode, whichever is earlier.

(4) **No requirement to obtain TAN**

The provisions of section 203A containing the requirement of obtaining Tax deduction account number (TAN) shall not apply to the person required to deduct tax in accordance with the provisions of section 194-IB.

(5) **Meaning of "Rent"**

"Rent" means any payment, by whatever name called, under any lease, sub-lease, tenancy

or any other agreement or arrangement for the use of any land or building or both.

(6) Deduction not to exceed rent for last month

Where the tax is required to be deducted as per the provisions of section 206AA, such deduction shall not exceed the amount of rent payable for the last month of the previous year or the last month of the tenancy, as the case may be. [Section 206AA provides for deduction of tax at source at a higher rate which is discussed at length later on in this chapter]

ILLUSTRATION 13

Mr. X, a salaried individual, pays rent of ₹55,000 per month to Mr. Y from June, 2023. Is he required to deduct tax at source? If so, when is he required to deduct tax? Also, compute the amount of tax to be deducted at source.

Would your answer change if Mr. X vacated the premises on 31st December, 2023?

Also, what would be your answer if Mr. Y does not provide his PAN to Mr. X?

SOLUTION

Since Mr. X pays rent exceeding ₹ 50,000 per month in the F.Y. 2023-24, he is liable to deduct tax at source @5% of such rent for F.Y. 2023-24 under section 194-IB. Thus, ₹ 27,500 [₹ 55,000 x 5% x 10] has to be deducted from rent payable for March 2024.

If Mr. X vacated the premises in December, 2023, then tax of ₹ 19,250 [₹ 55,000 x 5% x 7] has to be deducted from rent payable for December, 2023.

In case Mr. Y does not provide his PAN to Mr. X, tax would be deductible @20%, instead of 5%.

In case 1 above, this would amount to ₹ 1,10,000 [₹ 55,000 x 20% x 10] but the same has to be restricted to ₹ 55,000, being rent for March, 2024.

In case 2 above, this would amount to ₹ 77,000 [₹ 55,000 x 20% x 7] but the same has to be restricted to ₹ 55,000, being rent for December, 2023.

13.3.17 Payment under specified agreement [Section 194-IC]

(1) Applicability and Rate

This section casts responsibility on any person responsible for paying to a resident any sum by way of consideration, not being consideration in kind, under a specified agreement under section 45(5A), to deduct income-tax at the rate of **10%**.

(2) Time of deduction

This deduction is to be made at the time of credit of such sum to the account of the payee or at the time

Specified Agreements - TDS @10%

of payment thereof in cash or by issue of cheque or draft or by any other mode, whichever is earlier.

(3) Non-applicability of section 194-IA

Since tax deduction at source for specified agreement under section 45(5A) is covered under section 194-IC, the provisions of section 194-IA do not get attracted in the hands of the transferee in such cases.

(4) Meaning of specified agreement

Specified agreement under section 45(5A):

- It means a registered agreement in which a person owning land or building or both, agrees to allow another person to develop a real estate project on such land or building or both.
- The consideration, in this case, is a share, being land or building or both in such project; part of the consideration may also be in cash.

13.3.18 Fees for professional or technical services [Section 194J]

(1) Applicability and Rate of TDS

Every person other than an individual or a HUF, who is responsible for paying to a resident any sum by way of –

- (i) fees for professional services; or
- (ii) fees for technical services; or
- (iii) any remuneration or fees or commission, by whatever name called, other than those on which tax is deductible under section 192, to a director of a company; or
- (iv) royalty, or
- (v) non-compete fees referred to in section 28(va)

shall deduct tax at source at the rate of

- (a) **2%** in case of fees for technical services (not being professional services) or royalty where such royalty is in the nature of consideration for sale, distribution or exhibition of cinematographic films; and
- (b) **10%** in other cases.

FTS or royalty for cinematographic films - TDS @2%
Others - TDS @10%
[Payee is in operation of call centre – TDS @2%]

However, in case of a payee, engaged only in the business of operation of call centre, the tax shall be deducted at source @ **2%**

(2) Time of deduction

The deduction is to be made at the time of credit of such sum to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier.

Where any sum is credited to any account, whether called suspense account or by any other name, in the books of accounts of the person liable to pay such sum, such crediting shall be deemed to be credit of such sum to the account of the payee and tax has to be deducted accordingly.

(3) Threshold limit

No tax deduction is required if the amount of fees or the aggregate of the amounts of fees credited or paid or likely to be credited or paid during a financial year does not exceed **₹ 30,000** in the case of fees for professional services, **₹ 30,000** in the case of fees for technical services, **₹ 30,000** in the case of royalty and **₹ 30,000** in the case of non-compete fees.

Threshold limit

The limit of ₹ 30,000 under section 194J is applicable separately for fees for professional services, fees for technical services, royalty and non-compete fees referred to in section 28(va). It implies that if the payment to a person towards each of the above is less than ₹ 30,000, no tax is required to be deducted at source, even though the aggregate payment or credit exceeds ₹ 30,000 to such person. However, there is no such exemption limit for deduction of tax on any remuneration or fees or commission payable to director of a company.

Summary of rates and threshold limit u/s 194J for deduction of tax at source

Nature of payment	TDS rate	Separate Limit
Fees for technical services (not being professional services)	2%	₹ 30,000
Fees for professional services	10%	₹ 30,000
Royalty in the nature of consideration for sale, distribution or exhibition of cinematographic films	2%	₹ 30,000
Other royalty	10%	
Any remuneration or fees or commission, by whatever name called, other than those on which tax is deductible under section 192, to a director of a company	10%	Nil

Non-compete fees	10%	₹ 30,000
Note - In case of a payee, engaged only in the business of operation of call centre, the tax shall be deducted at source @2%		

ILLUSTRATION 14

XYZ Ltd. makes a payment of ₹ 28,000 to Mr. Ganesh on 2.8.2023 towards fees for professional services and another payment of ₹ 25,000 to him on the same date towards fees for technical services. Discuss whether TDS provisions under section 194J are attracted.

SOLUTION

TDS provisions under section 194J would not get attracted, since the limit of ₹ 30,000 is applicable for fees for professional services and fees for technical services, separately. It is assumed that there is no other payment to Mr. Ganesh towards fees for professional services and fees for technical services during the P.Y.2023-24.

(4) Non-applicability of TDS under section 194J

- (i) An individual or a Hindu undivided family is not liable to deduct tax at source.

Non-applicability

However, an individual or HUF, whose total sales, gross receipts or turnover from business or profession carried by him exceeds ₹ 1 crore in case of business or ₹ 50 lakhs in case of profession in the financial year immediately preceding the financial year in which the **fees for professional services or fees for technical services** is credited or paid is required to deduct tax on such fees.

Note - It may be noted that since this provision requires such individuals/HUFs to deduct tax at source only in respect of fees for professional services or fees for technical services, it can be inferred that individuals and HUFs are not required to deduct tax at source under section 194J on royalty and non-compete fees.

- (ii) Further, an individual or Hindu Undivided family, shall not be liable to deduct income-tax on the sum payable by way of fees for professional services, in case such sum is credited or paid exclusively for personal purposes.

(5) **Meaning of “Professional services”**

“Professional services” means services rendered by a person in the course of carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or advertising or such other profession as is notified by the CBDT for the purposes of section 44AA or of this section.

Professional services

Other professions notified for the purposes of section 44AA are as follows:

- (a) Profession of “authorised representatives”;
- (b) Profession of “film artist”;
- (c) Profession of “company secretary”.
- (d) Profession of “Information technology”

The CBDT has notified the services rendered by following persons in relation to the sports activities as Professional Services for the purpose of the section 194J:

- (i) Sports Persons,
- (ii) Umpires and Referees,
- (iii) Coaches and Trainers,
- (iv) Team Physicians and Physiotherapists,
- (v) Event Managers,
- (vi) Commentators,
- (vii) Anchors and
- (viii) Sports Columnists.

Accordingly, the requirement of TDS as per section 194J would apply to all the aforesaid professions. The term “profession”, as such, is of a very wide import. However, the term has been defined in this section exhaustively. For the purposes of TDS, therefore, all other professions would be outside the scope of section 194J. For example, this section will not apply to professions of teaching, sculpture, painting etc. unless they are notified.

(6) Meaning of “Fees for technical services”

Explanation (b) to section 194J provides that the term ‘fees for technical services’ shall have the same meaning as in *Explanation 2* to section 9(1)(vii). The term ‘fees for technical services’ as defined in *Explanation 2* to section 9(1)(vii) means any consideration (including any lump sum consideration) for rendering of any of the following services:



- (i) Managerial services;
- (ii) Technical services;
- (iii) Consultancy services;
- (iv) Provision of services of technical or other personnel.

It is expressly provided that the term ‘fees for technical services’ will not include following types of consideration:

- (i) Consideration for any construction, assembly, mining or like project, or
- (ii) Consideration which is chargeable under the head ‘Salaries’.

(7) TPAs liable to deduct tax under section 194J on payment to hospitals on behalf of insurance companies

The CBDT has, through *Circular No.8/2009 dated 24.11.2009*, clarified that TPAs (Third Party Administrator's) who are making payment on behalf of insurance companies to hospitals for settlement of medical/insurance claims etc. under various schemes including cashless schemes are liable to deduct tax at source under section 194J on all such payments to hospitals etc. This is because the services rendered by hospitals to various patients are primarily medical services and, therefore, the provisions of section 194J are applicable to payments made by TPAs to hospitals etc.



Whether transaction charges paid by the members of the stock exchange for availing fully automated online trading facility, being a facility provided by the stock exchange to all its members, constitute fees for technical services to attract the provisions of tax deduction at source under section 194J [CIT v. Kotak Securities Ltd (2016) 383 ITR 1 (SC)]

The Supreme Court observed that technical services like managerial and consultancy service are in the nature of specialised services made available by the service provider to cater to the special needs of the customer-user as may be felt necessary. It is the above feature that would distinguish or identify a service provider from a facility offered.

The Apex Court, accordingly, held that the service provided by the BSE for which

transaction charges are paid failed to satisfy the test of specialized, exclusive and individual requirement of the user or the consumer who may approach the service provider for such assistance or service.

Therefore, the transaction charges paid to BSE by its members are not for technical services but are in the nature of payments made for facilities provided by the stock exchange. Such payments would, therefore, not attract the provisions of tax deduction at source under section 194J.

(8) Consideration for use or right to use of computer software is royalty within the meaning of section 9(1)(vi)

As per section 9(1)(vi), any income payable by way of royalty in respect of any right, property or information is deemed to accrue or arise in India. The term “royalty” means consideration for transfer of all or any right in respect of certain rights, property or information.

As per *Explanation 4* to section 9(1)(vi), the consideration for use or right to use of computer software would be royalty. This *Explanation* clarifies

Royalty

that, transfer of all or any rights in respect of any right, property or information includes and has always included transfer of all or any right for use or right to use a computer software (including granting of a licence) irrespective of the medium through which such right is transferred.

Consequently, the provisions of tax deduction at source under section 194J and section 195 would be attracted in respect of consideration for use or right to use computer software since the same falls within the definition of royalty as per the provisions of the Income-tax Act, 1961.

Note - The Central Government has, vide *Notification No.21/2012 dated 13.6.2012*, effective from 1st July, 2012, exempted certain software payments from the applicability of tax deduction under section 194J. Accordingly, where payment is made by the transferee for acquisition of software from a resident-transferor, the provisions of section 194J would **not** be attracted if -

- (1) the software is acquired in a subsequent transfer without any modification by the transferor;
- (2) tax has been deducted either under section 194J or under section 195 on payment for any previous transfer of such software; and
- (3) the transferee obtains a declaration from the transferor that tax has been so deducted along with the PAN of the transferor.

ILLUSTRATION 15

East Bengal Club, a renowned football club, has engaged Raghu, a resident in India, as its coach at a remuneration of ₹ 6 lakhs per annum. The club wants to know from you whether it is liable to deduct tax at source from such remuneration.

SOLUTION

Section 194J requires deduction of tax at source @10% from the amount credited or paid by way of fees for professional services, where such amount or aggregate of such amounts credited or paid to a person exceeds ₹ 30,000 in the F.Y. 2023-24. As per *Explanation (a)* to section 194J, professional services include services rendered by a person in the course of carrying on such other profession as is notified by the CBDT for the purposes of section 194J.

Accordingly, the CBDT has, vide *Notification No.88 dated 21.8.2008*, notified the services rendered by coaches and trainers in relation to the sports activities as professional services for the purposes of section 194J.

Therefore, the club is liable to deduct tax at source under section 194J from the remuneration payable to the Coach, Raghu.

13.3.19 Income in respect of units [Section 194K]**(1) Applicability and rate of tax**

Section 194K provides for deduction of tax at source @10% by any person responsible for paying to a resident any income in respect of –

**Payment in respect of
Units TDS @10%**

- (i) units of a Mutual fund specified under section 10(23D)
- (ii) units from Administrator of the specified undertaking
- (iii) units from the specified company, being a company whose entire capital is subscribed by financial institutions or banks as notified by the Central Government

(2) Time of deduction

The deduction is to be made at the time of credit of such sum to the account of the payee or at the time of payment by any mode, whichever is earlier.

Where any income in respect of units of a mutual fund, Administrator of the specified undertaking or the specified company is credited to any account in the books of account of the person liable to pay such income, such crediting is deemed to be credit of such income

to the account of the payee and tax has to be deducted at source. The account to which such income is credited may be called "Suspense account" or by any other name.

(3) Non-applicability of section 194K

No tax is required to be deducted if -

- (i) the amount of such income or the aggregate of the amounts of such income credited or paid or likely to be credited or paid during a financial year does not exceed ₹ 5,000; or
- (ii) the income is of the nature of capital gains.

Non-applicability

13.3.20 Payment of compensation on acquisition of certain immovable property [Section 194LA]

(1) Applicability

Section 194LA provides for deduction of tax at source by a person responsible for paying to a resident any sum in the nature of -

- (i) compensation or the enhanced compensation or
- (ii) the consideration or the enhanced consideration

on account of compulsory acquisition, under any law for the time being in force, of any immovable property (other than agricultural land).

Immovable property means any land (other than agricultural land) or any building or part of a building.

"Agricultural land" for the purpose of this section means any land situated in India including urban agricultural land.

**Compensation on
compulsory acquisition
-TDS @10%**

(2) Rate of TDS

The amount of tax to be deducted is 10% of such sum mentioned in (1) above.

(3) Time of deduction

The tax should be deducted at the time of payment of such sum in cash or by issue of a cheque or draft or by any other mode, whichever is earlier.

(4) Threshold limit

No tax is required to be deducted where the amount of

Threshold limit

such payment or, as the case may be, the aggregate amount of such payments to a resident during the financial year does not exceed ₹ 2,50,000.

(5) Non-applicability of TDS under section 194LA

No tax is required to be deducted where payment is made in respect of any award or agreement which has been exempted from levy of income tax under section 96 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

13.3.21 Payment made by an individual or a HUF for contract work or by way of commission or brokerage or fees for professional services [Section 194M]

(1) Applicability and rate of TDS

Section 194M provides for deduction of tax at source @5% by an individual or a HUF responsible for paying any sum during the financial year to any resident –

**Contract payment,
Commission/brokerage and
fee for prof. services made by
an indl. or HUF - TDS @5%**

- (i) for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract; or
- (ii) by way of commission (not being insurance commission referred to in section 194D) or brokerage; or
- (iii) by way of fees for professional services.

It may be noted that only individuals and HUFs (other than those who are required to deduct income-tax as per the provisions of section 194C or 194H or 194J) are required to deduct tax in respect of the above sums payable during the financial year to a resident.

(2) Time of deduction

The tax should be deducted at the time of credit of such sum or at the time of payment of such sum, whichever is earlier.

(3) Threshold limit

No tax is required to be deducted where such sum or, as the case may be, aggregate amount of such sums credited or paid to a resident during the financial year does not exceed ₹ 50,00,000.

Threshold limit

(4) Non-applicability of TDS under section 194M

An individual or a Hindu undivided family is not liable to deduct tax at source under section 194M, if –

- (i) they are required to deduct tax at source u/s 194C for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract i.e., an individual or a HUF whose total sales, gross receipts or turnover from the business or profession carried on by him exceeds ₹ 1 crore in case of business and ₹ 50 lakhs in case of profession during the immediately preceding financial year and such amount is not

Non-applicability

exclusively credited or paid for personal purposes of such individual or HUF.

- (ii) they are required to deduct tax at source u/s 194H on commission (not being insurance commission referred to in section 194D) or brokerage i.e., an individual or a HUF whose total sales, gross receipts or turnover from the business or profession carried on by him exceeds ₹ 1 crore in case of business and ₹ 50 lakhs in case of profession during the immediately preceding financial year.
- (iii) they are required to deduct tax at source u/s 194J on fees for professional services i.e., an individual or a HUF whose total sales, gross receipts or turnover from the business or profession carried on by him exceeds ₹ 1 crore in case of business and ₹ 50 lakhs in case of profession during the immediately preceding financial year and such amount is not exclusively credited or paid for personal purposes of such individual or HUF.

(5) No requirement to obtain TAN

The provisions of section 203A containing the requirement of obtaining Tax deduction account number (TAN) shall not apply to the person required to deduct tax in accordance with the provisions of section 194M.

Note - For the meaning of the terms “Work”, “Professional services” and “Commission or brokerage” refer sub-heading “15.3.7 Payments to contractors and sub-contractors [Section 194C]”, “15.3.18 Fees for professional or technical services [Section 194J]” and “15.3.13 Commission or brokerage [Section 194H]”, respectively.

ILLUSTRATION 16

Examine whether TDS provisions would be attracted in the following cases, and if so, under which section. Also, specify the rate of TDS applicable in each case. Assume that all payments are made to residents.

	Particulars of the payer	Nature of payment	Aggregate of payments made in the F.Y.2023-24
1.	Mr. Ganesh, an individual carrying on retail business with turnover of ₹ 2.5 crores in the P.Y.2022-23	Contract Payment for repair of residential house	₹ 5 lakhs
		Payment of commission to Mr. Vallish for business purposes	₹ 80,000
2.	Mr. Rajesh, a wholesale trader whose turnover was ₹ 95 lakhs in P.Y. 2022-23.	Contract Payment for reconstruction of residential house (made during the period January-March, 2024)	₹ 20 lakhs in January, 2024, ₹ 15 lakhs in Feb 2024 and ₹ 20 lakhs in March 2024.
3.	Mr. Satish, a salaried individual	Payment of brokerage for buying a residential house in March, 2024	₹ 51 lakhs
4.	Mr. Dheeraj, a pensioner	Contract payment made during October-November 2023 for reconstruction of residential house	₹ 48 lakhs

SOLUTION

	Particulars of the payer	Nature of payment	Aggregate of payments in the F.Y.2023-24	Whether TDS provisions are attracted?
1.	Mr. Ganesh, an individual carrying on retail business with turnover of ₹ 2.5 crores in the P.Y.2022-23	Contract Payment for repair of residential house	₹ 5 lakhs	No; TDS under section 194C is not attracted since the payment is for personal purpose. TDS under section 194M is not attracted as aggregate of contract payment to the payee in the P.Y.2023-24 does not exceed ₹ 50 lakhs.
		Payment of commission to Mr. Vallish for	₹ 80,000	Yes, u/s 194H, since the payment exceeds ₹ 15,000, and Mr. Ganesh's turnover

		business purposes		exceeds from business ₹ 1 crore in the P.Y.2022-23.
2.	Mr. Rajesh, a wholesale trader whose turnover was ₹ 95 lakhs in P.Y.2022-23	Contract Payment for reconstruction of residential house	₹ 55 lakhs	Yes, under section 194M, since the aggregate of payments (i.e., ₹ 55 lakhs) exceed ₹ 50 lakhs. Since, his turnover from business does not exceed ₹ 1 crore in the P.Y.2022-23, TDS provisions under section 194C are not attracted in respect of payments made in the P.Y.2023-24.
3.	Mr. Satish, a salaried individual	Payment of brokerage for buying a residential house	₹ 51 lakhs	Yes, under section 194M, since the payment of ₹ 51 lakhs made in March 2024 exceeds the threshold of ₹ 50 lakhs. Since Mr. Satish is a salaried individual, the provisions of section 194H are not applicable in this case.
4.	Mr. Dheeraj, a pensioner	Contract payment for reconstruction of residential house	₹ 48 lakhs	TDS provisions under section 194C are not attracted since Mr. Dheeraj is a pensioner. TDS provisions under section 194M are also not applicable in this case, since the payment of ₹ 48 lakhs does not exceed the threshold of ₹ 50 lakhs.

13.3.22 TDS on cash withdrawal [Section 194N]

(1) *Applicability and rate of TDS*

Section 194N provides that every person, being

- a banking company to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred under section 51 of that Act)
- a co-operative society engaged in carrying on the business of banking; or

Cash withdrawals -TDS @2%

- a post office

who is responsible for paying **any sum**, being the amount or aggregate of amounts, as the case may be, **in cash exceeding ₹ 1 crore during the previous year**, to any person from one or more accounts maintained by such recipient-person with it, shall deduct tax at source **@2% of such sum**

Where the recipient is a co-operative society, the higher threshold limit of ₹ 3 crores is applicable for cash withdrawals.

(2) Time of deduction

This deduction is to be made at the time of payment of such sum.

(3) Modification in rate of TDS and threshold limit of withdrawal for recipient who has not furnished return of income for last 3 years

If the recipient has not furnished the returns of income for all the three assessment years relevant to the three previous years, for which the time limit for filing return of income under section 139(1) has expired, immediately preceding the previous year in which the payment of the sum is made, **the sum shall mean the amount or the aggregate of amounts, as the case may be, in cash > ₹ 20 lakhs during the previous year**, and the tax shall be deducted at the rate of -

- **2%** of the sum, where the amount or aggregate of amounts, as the case may be, being paid in cash **> ₹ 20 lakhs but ≤ ₹ 1 crore (₹ 3 crores in case the recipient is a co-operative society)**
- **5%** of the sum, where the amount or aggregate of amounts, as the case may be, being paid in cash **> ₹ 1 crore (₹ 3 crores in case the recipient is a co-operative society).**

However, the Central Government is empowered to specify, with the consultation of RBI, by notification, the recipient in whose case this provision shall not apply or apply at reduced rate, subject to the satisfaction of the conditions specified in such notification.

(4) Non-applicability of TDS under section 194N

Liability to deduct tax at source under section 194N shall **not** be applicable to any payment made to –

- (i) the Government

- (ii) any banking company or co-operative society engaged in carrying on the business of banking or a post-office
- (iii) any business correspondent of a banking company or co-operative society engaged in carrying on the business of banking, in accordance with the RBI guidelines
- (iv) any white label ATM operator of a banking company or co-operative society engaged in carrying on the business of banking, in accordance with the authorisation issued by the RBI under the Payment and Settlement Systems Act, 2007

Non-applicability

The Central Government may specify, with the consultation of RBI, by notification, the recipient in whose case section 194N shall not apply or apply at reduced rate, subject to the satisfaction of the conditions specified in such notification. Accordingly, the Central Government has, after consultation with the Reserve Bank of India (RBI), specified –

- (i) **Cash Replenishment Agencies (CRA's) and franchise agents of White Label Automated Teller Machine Operators (WLATMO's)** – For availing exemption from applicability of TDS u/s 194N, CRA's and franchise agents of WLATMO's should maintain a separate bank account from which withdrawal is made only for the purposes of replenishing cash in the Automated Teller Machines (ATM's) operated by such WLATMO's. Further, the WLATMO should furnish a certificate every month to the bank certifying that the bank account of the CRA's and the franchise agents of the WLATMO's have been examined and the amounts being withdrawn from their bank accounts has been reconciled with the amount of cash deposited in the ATM's of the WLATMO's.
- (ii) **Commission agent or trader, operating under Agriculture Produce Market Committee (APMC), and registered under any law relating to Agriculture Produce Market of the concerned State** - For availing exemption from the applicability of TDS u/s 194N, the commission agent/trader should intimate to the banking company or co-operative society or post office, his account number through which he wishes to withdraw cash in excess of ₹ 1 crore in the previous year along with his Permanent Account Number (PAN) and the details of the previous year. Also, he should certify to the banking company or co-operative society or post office that the withdrawal of cash from the account in excess of ₹ 1 crore during the previous year is for the purpose of making payments to the farmers on account of purchase of agriculture produce. Further, the banking company or co-operative society or post office has to ensure that the PAN quoted is correct and the commission agent or trader is registered with the

APMC, and for this purpose, collect necessary evidences and place the same on record.

- (iii) (a) the authorised dealer and its franchise agent and sub-agent; and
- (b) Full-Fledged Money Changer (FFMC) licensed by the RBI and its franchise agent;

Such persons should maintain a separate bank account from which withdrawal is made only for the purposes of -

- (i) purchase of foreign currency from foreign tourists or non-residents visiting India or from resident Indians on their return to India, in cash as per the directions or guidelines issued by RBI; or
- (ii) disbursement of inward remittances to the recipient beneficiaries in India in cash under Money Transfer Service Scheme (MTSS) of the RBI;

The exemption from the requirement to deduct tax u/s 194N would be available only if a certificate is furnished by the authorised dealers and their franchise agent and sub-agent, and the Full-Fledged Money Changers (FFMC) and their franchise agent to the bank that withdrawal is only for the purposes specified above and the directions or guidelines issued by the RBI have been adhered to.

“Authorised dealer” means any person who is authorised by the RBI as an authorised dealer to deal in foreign exchange [Section 10(1) of the Foreign Exchange Management Act, 1999].

- (5) ***Person to whom credit is to be given for tax deducted and paid:*** Rule 37BA provides the manner of giving credit for tax deducted and remitted to the Central Government i.e., it specifies the person to whom credit for tax deducted is to be given and also the assessment year for which the credit may be given. Accordingly, sub-rule (3A) has been inserted in Rule 37BA, to provide that, for the purposes of section 194N, credit for tax deducted at source shall be given to the person from whose account tax is deducted and paid to the Central Government account for the assessment year relevant to the previous year in which such tax deduction is made.

- (6) ***Furnishing particulars in case of no deduction of tax in consequence of exemption [Rule 31A]***

Every person has to furnish particulars of amount paid or credited on which tax was not deducted in view of the exemption provided in point (4) above. [Rule 31A].

Example

The persons referred to in (i) to (vi) in Column (2) of the table below have always been filing their returns of income on or before the due date u/s 139(1). The persons mentioned in (vii) to (x) in Column (2) of the table below have not filed their returns of income for the last five years. Determine the liability of deduction of tax at source u/s 194N by the bank/co-operative bank referred to in column (3) of the table below in each of the following individual cases, assuming that this is the only withdrawal in the P.Y.2023-24 by the persons referred to in Column (2).

(1)	(2)	(3)	(4)	(5)	(6)
	Person making the withdrawal	Bank/Co-operative Bank from which money is withdrawn	Date of withdrawal	Amount of withdrawal (₹)	TDS u/s 194N (₹)
(i)	Mr. Harshit	SBI	1.7.2023	1,10,00,000	₹10,00,000 x 2% = ₹20,000
(ii)	Mr. Pranav	SBI	1.8.2023	90,00,000	Nil (since withdrawals < ₹1 crore)
(iii)	ABC Co-operative Society	SBI	1.9.2023	2,70,00,000	Nil (since withdrawals < ₹3 crore)
(iv)	XYZ Co-operative Society	MNO Co-operative bank	1.9.2023	3,10,00,000	₹10,00,000 x 2% = ₹20,000
(v)	Mr. Vaibhav	MNO Co-operative bank	1.9.2023	2,10,00,000	₹1,10,00,000 x 2% = ₹2,20,000
(vi)	A Ltd.	MNO Co-operative bank	1.10.2023	1,05,00,000	₹5,00,000 x 2% = ₹10,000
(vii)	M/s. DEF & Co., a firm	MNO Co-operative bank	1.2.2024	90,00,000	₹70,00,000 x 2% = ₹1,40,000
(viii)	Mr. Varun	BOI	1.2.2024	1,20,00,000	₹80,00,000 x 2% (+) ₹20,00,000 x 5% = ₹2,60,000
(ix)	Mr. Rakesh	BOI	1.2.2024	45,00,000	₹25,00,000 x 2% = ₹50,000

(x)	PQR Co-operative Society	BOI	1.2.2024	3,30,00,000	$\text{₹ } 2,80,00,000 \times 2\%$ $(+)$ $\text{₹ } 30,00,000 \times 5\% =$ $\text{₹ } 7,10,000$

13.3.23 TDS on certain payment by e-commerce operator to e-commerce participant [Section 194-O]

(1) Applicability and rate of TDS

Section 194-O provides that where sale of goods or provision of services of an e-commerce participant is facilitated by an e-commerce operator through its digital or electronic facility or platform, such e-commerce operator is liable to deduct tax at source @1% of the gross amount of such sales or services or both.

**Payment by e-commerce operator-
TDS @1%**

(2) Time of deduction

The deduction is to be made at the time of credit of amount of such sale or services or both to the account an e-commerce participant or at the time of payment thereof to such e-commerce participant by any mode, whichever is earlier.

(3) Deemed credit

Any payment made by a purchaser of goods or recipient of services directly to an e-commerce participant for the sale of goods or provision of services or both, facilitated by an e-commerce operator, would be deemed to be amount credited or paid by the e-commerce operator to the e-commerce participant. Accordingly, such payment would be included in the gross amount of such sales or services for the purpose of deduction of income-tax under this section.

(4) Non-applicability of TDS under section 194-O

No tax is required to be deducted under section 194-O in case of any sum credited or paid to an e-commerce participant, being an individual or HUF, where the gross amount of such sale or services or both during the previous year does not exceed ₹ 5 lakh and such e-commerce participant has furnished his PAN/ Aadhaar number to e-commerce operator.

Non-applicability

(5) **Non-applicability of TDS under any other section**

A transaction in respect of which tax has been deducted by the e-commerce operator under this section or which is not liable to tax deduction under this section on account of the exemption discussed in point (4) above, would not be liable to tax deduction at source under any other provision of this Chapter.

However, this exemption from TDS under this would not apply to any amount or aggregate of amounts received or receivable by an e-commerce operator for hosting advertisements or providing any other services which are not in connection with the sale of goods or services referred to in point (1) above.

(6) **Power of CBDT to issue guidelines**

In case any difficulty arises in giving effect to the provisions of this section, 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 e-commerce operator.

Guidelines

Accordingly, the CBDT has, vide Circular no. 17/2020 dated 29.9.2020 and Circular no. 20/2021 dated 25.11.2021, issued the following guidelines for removing certain difficulties-

1. **Applicability on transactions carried through various Exchanges:**

In order to remove practical difficulties in implementing section 194-O in case of certain exchanges and clearing corporations, it has been provided that section 194-O shall **not be applicable** in relation to-

- transactions in securities and commodities which are traded through recognized stock exchanges or cleared and settled by the recognized clearing corporation, including recognized stock exchanges or recognized clearing corporation located in International Financial Service Centre;
- transactions in electricity, renewable energy certificates and energy saving certificates traded through power exchanges registered in accordance with Regulation 21 of the CERC (Central Electricity Regulatory Commission).

2. **Applicability on payment gateway:**

In e-commerce transactions, the payments are generally facilitated by payment gateways. Consequently, it is possible that there may be applicability of section 194-O twice i.e., once on the main ecommerce operator who is facilitating sale of goods or provision of services or both and once on payment gateway who also happen to qualify as e-commerce operator for facilitating service. To illustrate, a buyer buys goods worth ₹ 1 lakh on e-commerce website "XYZ". He makes payment of ₹ 1 lakh through digital platform of "ABC". On these facts, liability to deduct tax under section 194-O may fall on both "XYZ" and "ABC".

In order to remove this difficulty, it is provided that the payment gateway will not be required to deduct tax under section 194-O on a transaction, if the tax has been deducted by the e commerce operator under section 194-O, on the same transaction. Hence, in the above example, if "XYZ" has deducted tax under section 194-O on ₹ 1 lakh, "ABC" will not be required to deduct tax under section 194-O on the same transaction. To facilitate proper implementation, "ABC" may take an undertaking from XYZ" regarding deduction of tax.

3. **Applicability on insurance agent or insurance aggregator:**

Insurance agents or insurance aggregators in many cases have no involvement in transactions between the insurance company and the buyer for subsequent years. Therefore, in subsequent years, the liability to deduct tax may arise on the insurance agents or insurance aggregators, even if the transactions have been completed directly with the insurance company. This may result into hardship for the insurance agents/aggregators.

In order to remove difficulty, it is provided that in years subsequent to the first year, if the insurance agent or insurance aggregator has no involvement in transactions between the insurance company and the buyer of insurance policy, he would not be liable to deduct tax under section 194-O for those subsequent years. However, the insurance company shall be required to deduct tax on commission payment, if any, made to the insurance agent or insurance aggregator for those subsequent years under the relevant provision of the Act.

4. **Applicability on E-auction services carried out by e-auctioneers through electronic portal:** The provisions of section 194-O **would not** apply in relation to e-auction activities carried out by e-auctioneers if all the facts listed in (a) to (f) are satisfied:

- (a) The e-auctioneer conducts e-auction services for its clients in its electronic portal and is responsible for the **price discovery only** which is reported to the client.
- (b) The price so discovered through e-auction process is not necessarily the price at which the transaction takes place and it is up to the discretion of the client to accept the price or to directly negotiate with the counter-party.
- (c) The transaction of purchase/sale takes place directly between the buyer and the seller party outside the electronic portal maintained by the e-auctioneer and **price discovery only acts as the starting point** for negotiation and conclusion of purchase/sale.
- (d) The e-auctioneer is **not responsible for facilitating the purchase and sale of goods** for which e-auction was conducted on its electronic portal except to the extent of price discovery.
- (e) Payments for the transactions are carried out directly between the buyer and the seller outside the electronic portal and the **e-auctioneer does not have any information about the quantum and the schedule of payment** which is decided mutually by the client and the counterparty.
- (f) For payment made to e-auctioneer for providing e-auction services, the client deducts tax under the relevant provisions of the Act other than section 194-O.

If any of these facts are not satisfied, the provisions of section 194-O will apply. Further, the buyer and seller would still be liable to deduct/collect tax as per the provisions of section 194Q and 206C(IH), as the case may be.

(7) Person responsible for paying

For the purpose of this section, e-commerce operator shall be deemed to be the person responsible for paying to e-commerce participant.

(8) Meaning of certain terms

Term	Meaning
Electronic commerce	The supply of goods or service or both, including digital products, over digital or electronic network.
E-commerce operator	A person who owns, operates or manages digital or electronic facility or platform for electronic commerce.
E-commerce	A person resident in India selling goods or providing services or both,

participant	including digital products, through digital or electronic facility or platform for electronic commerce.
Services	It includes fees for technical services and fees for professional services as defined in section 194J.

13.3.24 Deduction of tax by a specified bank in case of specified senior citizen [Section 194P]

(1) *Applicability and rate of TDS*

- (i) **Where the deductee exercises the option to shift out of the default tax regime under section 115BAC:** Section 194P requires deduction of tax at source on the basis of rates in force by a specified bank, being a notified banking company, on the total income of specified senior citizen for the relevant assessment year, computed after giving effect to -

Tax to be deducted by specified bank

- deduction allowable under Chapter VI-A; and
- rebate allowable under section 87A.

- (ii) **Where the deductee does not exercise the option to shift out of the default tax regime under section 115BAC:** In such case, the specified bank shall deduct tax at source in accordance with the rates provided under section 115BAC(1A) subject to certain conditions, including the condition that the specified senior citizen does not avail of specified exemptions and deductions.

(2) *Exemption from filing return of income*

The specified senior citizen is exempted from filing his return of income for the assessment year relevant to the previous year in which the tax has been deducted under this section.

(3) *Meaning of certain terms*

Term	Meaning
Specified bank	A banking company which is a scheduled bank and has been appointed as agents of Reserve Bank of India under section 45 of the Reserve Bank of India Act, 1934.
Specified senior citizen	An individual, being a resident in India, who

	1. is of the age of 75 years or more at any time during the previous year; 2. is having pension income [Also, he should have no other income except interest income received or receivable from any account maintained by such individual in the same specified bank in which he is receiving his pension income]; and 3. has furnished a declaration to the specified bank containing such particulars, in the prescribed form and verified in the prescribed manner. Accordingly, CBDT has inserted Rule 26D to prescribe the form and manner for furnishing the declaration discussed below.

(4) Prescribed form and manner for furnishing declaration with the bank [Rule 26D]

Sub-rule	Provision
1	Form No. and manner of furnishing the form: The declaration required to be furnished by the specified senior citizen to the specified bank shall be in Form no. 12BBA to be furnished in paper form duly verified.
2 & 3	Specified bank deduct tax at source considering the declaration furnished: On furnishing of the declaration in Form No. 12BBA, the specified bank would compute the total income of such specified senior citizen for the relevant assessment year, after giving effect to the deduction allowable under Chapter VI-A and rebate allowable under section 87A and deduct income-tax on such total income on the basis of the rates in force. The effect to the deduction allowable under Chapter VI-A has to be given based on the evidence furnished by the specified senior citizen during the previous year.
4	Specified bank responsible for keeping and maintaining declaration and evidence furnished by the senior citizen: The declaration referred to in sub-rule (1) and evidence for claiming deduction under Chapter VI-A referred to in sub-rule (3) shall be properly maintained by the Specified Bank and shall be made available to the Principal Chief Commissioner of Income-tax or Chief Commissioner of Income-tax, as and when required

ILLUSTRATION 17

Mr. Sharma, a resident Indian aged 77 years, gets pension of ₹52,000 per month from the UP State Government. The same is credited to his savings account in SBI, Lucknow Branch. In addition, he gets interest@8% on fixed deposit of ₹20 lakhs with the said bank. Out of the deposit of ₹20 lakhs, ₹2 lakh represents five-year term deposit made by him on 1.4.2023. Interest on savings bank credited to his SBI savings account for the P.Y.2023-24 is ₹9,500.

- (I) From the above facts, compute the total income and tax liability of Mr. Sharma for the A.Y. 2024-25 in the manner more beneficial to him.
- (II) What would be the amount of tax deductible at source by SBI, assuming that the same is a specified bank? Is Mr. Sharma required to file his return of income for A.Y.2024-25, if tax deductible at source has been fully deducted? Examine.
- (III) Is Mr. Sharma required to file his return of income for A.Y.2024-25, if the fixed deposit of ₹ 20 lakhs was with Canara Bank instead of SBI, other facts remaining the same?

SOLUTION

- (I) (i) **Computation of total income of Mr. Sharma for A.Y.2024-25**

	Particulars	₹	₹
I	Salaries		
	Pension (52,000 x 12)	6,24,000	
	Less: Standard deduction u/s 16(ia)	50,000	
			5,74,000
II	Income from Other Sources		
	Interest on fixed deposit (₹ 20 lakhs x 8%)	1,60,000	
	Interest on savings account	9,500	1,69,500
	Gross total income		7,43,500
Less:	Deductions under Chapter VI-A [Deduction under section 80C and 80TTB would not be available under default regime under section 115BAC]		Nil
	Total Income		7,43,500
	Computation of tax liability		
	Tax payable		
	Upto ₹ 3,00,000	Nil	
	₹ 3,00,001 to ₹ 6,00,000 [5% of ₹ 3,00,000]	15,000	
	₹ 6,00,001 to ₹ 7,43,500 [10% of ₹ 1,43,500]	14,350	29,350
	Add: Health and Education Cess@4%		1,174
	Tax liability		30,524
	Tax liability (rounded off)		30,520

- (ii) **Computation of total income of Mr. Sharma for A.Y.2024-25, if he shifts out of the default regime provided under section 115BAC**

	Particulars	₹	₹
I	Salaries		
	Pension (52,000 x 12)	6,24,000	
	Less: Standard deduction u/s 16(ia)	50,000	
			5,74,000
II	Income from Other Sources		
	Interest on fixed deposit (₹ 20 lakhs x 8%)	1,60,000	
	Interest on savings account	9,500	1,69,500
	Gross total income		7,43,500
Less:	Deductions under Chapter VI-A		
	Under Section 80C		
	Five years term deposit (₹ 2 lakh, restricted to ₹ 1.5 lakh)	1,50,000	
	Under section 80TTB		
	Interest on fixed deposit and savings account, restricted to ₹ 50,000, since Mr. Sharma is a resident Indian of the age of 77 years.	50,000	2,00,000
	Total Income		5,43,500
	Computation of tax liability		
	Tax payable [₹ 43,500 x 20% + ₹ 10,000]		18,700
	Add: Health and Education Cess@4%		748
	Tax liability		19,448
	Tax liability (rounded off)		19,450

Since Mr. Sharma's tax liability is higher under the default regime under section 115BAC, he should exercise option to shift out of the default regime. In such case, his tax liability would be ₹ 19,450.

- (II) SBI, being a specified bank, is required to deduct tax at source u/s 194P and remit the same to the Central Government. In such a case, Mr. Sharma would not be required to file his return of income u/s 139.
- (III) If the fixed deposit of ₹ 20 lakh is with a bank other than SBI, which is the bank where his pension is credited, then, Mr. Sharma would not qualify as a "specified senior citizen". In this

case, Mr. Sharma would have to file his return of income u/s 139, since his total income (without giving effect to *deduction* under Chapter VI-A) exceeds the basic exemption limit.

13.3.25 Deduction of tax at source on purchase of goods [Section 194Q]

(1) Applicability and rate of TDS

Section 194Q requires any person, being a **buyer who is responsible for paying any sum to any resident-seller for purchase of goods** of the value or aggregate of such value exceeding ₹ 50 lakhs in a previous year, to deduct tax at source **@0.1% of such sum exceeding ₹ 50 lakhs**.

**Purchase of goods - TDS
@ 0.1% of sum > ₹ 50
lakhs**

(2) Time of deduction

The deduction is to be made at the time of credit of such sum to the account of the resident-seller or at the time of payment thereof by any mode, whichever is earlier.

Where such sum is credited to any account in the books of account of the person liable to pay such income, such credit of income is deemed to be credit of such income to the account of the payee and tax has to be deducted at source. The account to which such sum is credited may be called "Suspense account" or by any other name.

(3) Non-applicability of TDS under section 194Q [Section 194Q(5)]

Tax is **not** required to be deducted under this section in respect of a transaction on which -

- (a) tax is deductible under any of the provisions of this Act; and
- (b) tax is collectible under the provisions of section 206C, other than section 206C(1H).

Non-applicability

In case of a transaction to which both section 206C(1H) and section 194Q applies, tax is required to be deducted under section 194Q.

(4) Meaning of buyer

Buyer means a person whose **total sales, gross receipts or turnover** from the business carried on by him **exceed ₹ 10 crores** during the financial year immediately preceding the financial year in which the purchase of goods is carried out.

Turnover > ₹ 10 crores

However, buyer does not include a person as notified by the Central Government for this purpose, subject to fulfillment of the stipulated conditions.

(5) **Power of the CBDT to issue guidelines**

In case of any difficulty arises in giving effect to the provisions of this section, the CBDT is empowered to issue guidelines, with the approval of the Central Government, for the purpose of removing the difficulty.

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 person liable to deduct tax.

Accordingly, the CBDT has, vide **Circular no. 13/2021 dated 30.6.2021 and Circular No. 20/2021 dated 25.11.2021,** issued the following guidelines for removing certain difficulties-

Guidelines

1. **Applicability on transactions carried through various Exchanges**

There are practical difficulties in implementing the provisions of TDS contained in section 194-Q in case of certain exchanges and clearing corporations. In these transactions, sometimes, there is no one to one contract between the buyers and the sellers.

In order to remove such difficulties, it is provided that the provisions of section 194Q would **not** be applicable in relation to,-

- (i) transactions in securities and commodities which are traded through recognized stock exchanges or cleared and settled by the recognized clearing corporation, including recognized stock exchanges or recognized clearing corporation located in International Financial Service Centre (IFSC)
- (ii) transactions in electricity, renewable energy certificates and energy saving certificates traded through registered power exchanges.

2. **Adjustment for GST, various state levies and taxes other than GST, purchase returns**

Vide Circular No.17/2020 dated 29.9.2020, it was clarified that no adjustment on account of GST is required to be made for collection of tax under section 206C(1H), since the collection is made with reference to receipt of amount of sale consideration.

However, the situation is different so far as TDS is concerned. It has been clarified in Circular No.23/2017 dated 19th July 2017 as under –

GST

“Wherever in terms of the agreement or contract between the payer and the payee, the component of 'GST on services' comprised in the amount payable to a resident is indicated separately, tax shall be deducted at source under Chapter XVII-B on the amount paid or payable without including such 'GST on services' component. GST for these purposes shall include Integrated Goods and Services Tax, Central Goods and Services Tax, State Goods and Services Tax and Union Territory Goods and Services Tax.”

Treatment of tax deduction on GST component included in the invoice and in case of purchase of goods which are not covered within the purview of GST, but which are subject to VAT/Sales tax/Excise duty/CST has been clarified vide CBDT Circular No. 13/2021 dated 30.6.2021 and Circular No. 20/2021 dated 25.11.2021, respectively.

	Condition	Amount on which tax is to be deducted u/s 194Q
(i)	<i>Where tax is deducted at the time of credit of amount in the account of the seller and In terms of the agreement or contract between the buyer and seller, component of GST is indicated separately in the invoice and where purchase of goods are not covered within the purview of GST, VAT/ Sales tax/ Excise duty/ CST is indicated separately in the invoice</i>	<i>Tax has to be deducted on the amount credited (without including such GST/ VAT/ Sales tax/ Excise duty/ CST)</i>
(ii)	<i>Where tax is deducted on payment basis (if payment is earlier than the credit)</i>	<i>Tax has to be deducted on the whole amount (since it is not possible to identify the payment with the tax component to be invoiced in the future)</i>
(iii)	<i>In case of purchase returns, where the money is refunded by the seller</i>	<i>Tax deducted earlier u/s 194Q on such purchase (which is now returned) may be adjusted against the next purchase from the same seller</i>

(iv)	<i>In case of purchase returns, where goods are replaced by the seller</i>	<i>No adjustment is required as in that case the purchase on which tax was deducted under section 194Q has been completed with goods replaced</i>

3. Can non-resident be a buyer under section 194Q?

The provisions of section 194Q would **not** apply to a non-resident whose purchase of goods from seller resident in India is not effectively connected with the permanent establishment of such non-resident in India. For this purpose, "permanent establishment" shall mean to include a fixed place of business through which the business of the enterprise is wholly or partly carries on.

4. Should tax be deducted when the seller is a person whose income is exempt?

The provisions of section 194Q would **not** apply on purchase of goods from a person, being a seller, who as a person is exempt from income tax under the Act (like person exempt under section 10) or under any other Act passed by the Parliament (Like RBI Act, ADB Act etc.).

Similarly, with respect to section 206C(1H) [discussed later in the chapter], it is clarified that the provisions thereof would not apply to sale of goods to a person, being a buyer, who as a person is exempt from income-tax under the Act (like person exempt under section 10) or under any other Act passed by the Parliament (like RBI Act, ADB Act etc.).

The above clarifications would not apply if only part of the income of the person (being a seller or being a buyer, as the case may be) is exempt.

5. Should tax be deducted on advance payment?

Since the provisions apply on payment or credit whichever is earlier, the provisions of section 194Q shall apply to advance payment made by the buyer to the seller.

6. Would provisions of section 194Q apply to buyer in the year of incorporation?

Under section 194Q, a buyer is required to have total sales or gross receipts or turnover from the business carried on by him exceeding ₹ 10 crore during the financial year immediately preceding the financial year in which the purchase of goods is carried out. Since this condition would not be satisfied in the year of incorporation, the provisions of section 194Q shall **not** apply in the year of incorporation.

7. **Would provisions of section 194Q apply to buyer if the turnover from business is ₹ 10 crore or less?**

As regards whether the provisions of section 194Q would apply to a buyer who has turnover or gross receipts exceeding ₹ 10 crore but total sales or gross receipts or turnover from business is ₹ 10 crore or less, it is clarified that, for the purposes of section 194Q, a buyer is required to have total sales or gross receipts or turnover **from the business carried on by him** exceeding ₹ 10 crore during the financial year immediately preceding the financial year in which the purchase of goods is carried out. **Hence, the sales or gross receipts or turnover from business carried on by him must exceed ₹ 10 crore.** His turnover or receipts from non-business activity is not to be counted for this purpose.

8. **Applicability of the provisions of section 194Q in case of department of Government not being a public sector undertaking or corporation**

As per the provisions of section 194Q, for a person to be considered as a buyer, following conditions are required to be fulfilled:

- (a) Such person shall be carrying out a business/ commercial activity;
- (b) The total sales, gross receipts or turnover from such business/ commercial activity shall be more than ₹ 10 crore during the financial year immediately preceding the financial year in which goods are being purchased by such person.

	Issue	Would TDS u/s 194Q be attracted?
(i)	Can Department of Government be a "buyer" for the purposes of section 194Q?	
	- If it is carrying on business/ commercial activity	Yes (subject to fulfillment of other conditions)
	- If it is not carrying on any business/ commercial activity	No, since it will not be considered as a buyer
(ii)	Can Department of Central/State Government be considered as "seller" for the purpose of section 194Q?	No [Hence, no tax can be deducted u/s 194Q by the buyer]

Note - A Public sector Undertaking or corporation established under Central or State Act or any other such body, authority or entity, would, however, be required to comply with the provisions of section 194Q and tax shall be deducted accordingly.

13.3.26 Deduction of tax at source on benefit or perquisite in respect of business or profession [Section 194R]

(1) **Applicability and rate of TDS [Section 194R(1)]**

Any person who is responsible for providing, to a resident,

- any benefit or perquisite whether convertible into money or not,
- arising from business or the exercise of a profession, by such resident

**Benefit or perquisite
- TDS @10%**

has to, before providing such benefit or perquisite, as the case may be, to such resident, ensure that tax has been deducted in respect of such benefit or perquisite **@10% of the value or aggregate of value of such benefit or perquisite.**

The provisions of section 194R(1) would apply to any benefit or perquisite whether in cash or in kind or partly in cash and partly in kind.

(2) **Meaning of “Person responsible for providing” [Explanation 1 to section 194R]**

“Person responsible for providing” means the person providing such benefit or perquisite. In case of a company, it means the company itself including the principal officer thereof.

(3) **Cases where benefit or perquisite is wholly in kind or partly in kind and partly in cash [First Proviso to section 194R(1)]**

Where the benefit or perquisite, as the case may be, is wholly in kind or partly in cash and partly in kind but the part in cash is not sufficient to meet the liability of deduction of tax in respect of whole of such benefit or perquisite, the person responsible for providing such benefit or perquisite has to, before releasing the benefit or perquisite, ensure that tax required to be deducted has been paid in respect of the benefit or perquisite.

(4) **Cases where no tax is required to be deducted under section 194R [Second and Third Proviso to section 194R(1)]**

No tax is required to be deducted under section 194R in the following cases –

- In case of a resident, where the value or aggregate of value of the benefit or perquisite provided or likely to be provided to such resident during the financial year does not exceed ₹ 20,000;
or
- Where a person responsible for providing such benefit or perquisite is an individual or HUF, whose total sales, gross receipts or turnover from business or profession does not exceed ₹ 1 crore in case of business or ₹ 50 lakhs in case of profession, during the financial year immediately preceding the financial year in which such benefit or perquisite, as the case may be, is provided by such person.

Non-applicability

(5) Power of CBDT to issue guidelines [Section 194R(2)/(3)]

In case any difficulty arises in giving effect to the provisions of this section, the CBDT may issue guidelines for the purpose of removing the difficulty with the previous approval of the Central Government.

Every guidelines issued by the CBDT would be laid before each House of Parliament, and would be binding on the income-tax authorities and on the person providing such benefit or perquisite.

Accordingly, the CBDT has, with the prior approval of the Central Government, vide Circular no. 12/2022 dated 16.6.2022 and Circular no. 18/2022 dated 13.9.2022, issued the following guidelines –

Guidelines

Question 1: Is it necessary that the person providing benefit or perquisite needs to check if the amount is taxable under section 28(iv), before deducting tax under section 194R?

Answer: No. The deductor is not required to check whether the amount of benefit or perquisite that he is providing would be taxable in the hands of the recipient under section 28(iv). The amount could be taxable under any other section like section 41(1) etc. Section 194R casts an obligation on the person responsible for providing any benefit or perquisite to a resident, to deduct tax at source @10%. There is no further requirement to check whether the amount is taxable in the hands of the recipient or under which section it is taxable.

In the context of section 195 it is a requirement to know whether the payment made by the deductor is income in the hands of the non-resident recipient as section 195 requires deduction on any other sum chargeable under the provisions of this Act at the rates in force. Thus, there is requirement that deductor needs to verify if the “sum is chargeable under the

Income-tax Act". The term "rate in force" is defined under section 2(37A) and it allows benefit of agreement under section 90 or section 90A, if eligible, in determining the rate of tax at which the tax is to be deducted at source. Hence, there is further requirement of checking if the amount is taxable under tax treaty and if yes, at what rate. Such a requirement is not there in section 194R, in the absence of these two terms in this section. Hence, there is no requirement for deductor to verify whether the amount is taxable in the hands of the recipient or section under which it is taxable.

These two terms are also not there in section 194E and the Supreme Court in the case of PILCOM vs. CIT West Bengal, held that tax is to be deducted under section 194E at a specific rate indicated there in and there is no need to see the taxability or the rate of taxability in the hands of the non-resident.

Question 2: Is it necessary that the benefit or perquisite must be in kind for section 194R to operate?

Answer: Tax under section 194R is required to be deducted whether the benefit or perquisite is in cash or in kind.

First proviso to section 194R(1) clearly indicates the intent of legislature that there could also be situations where benefit or perquisite is in cash or the benefit or perquisite is in kind or partly in cash and partly in kind. Thus, section 194R clearly brings in its scope the situation where the benefit or perquisite is in cash or in kind or partly in cash or partly in kind.

Question 3: Is there any requirement to deduct tax under section 194R, when the benefit or perquisite is in the form of capital asset?

Answer: As has been stated in answer to question no 1, there is no requirement to check whether the perquisite or benefit is taxable in the hands of the recipient and the section under which it is taxable.

Further, Courts have held many benefits or perquisites to be taxable even though one can argue that they are in the nature of capital asset. The following judgments illustrate this point:

- Assessee entered into an agreement with "J" for purchase of a plot of land and certain amount was paid as earnest money. However, possession of land was not given to assessee and seller entered into another agreement with a third party to develop the said plot. Assessee filed suit in which a consent decree was passed and in pursuance of same certain amount as paid to assessee. On appeal it was held that such sum received in pursuance of consent decree was liable to tax as business income under section 28(iv) [*Ramesh Babulal Shah v CIT (2015) 53 taxmann.com 277(Bom)*].

- The amount representing principal loan waived by bank under one time settlement scheme would constitute income falling under section 28(iv) relating to value of any benefit or perquisite, arising from business or exercise of profession [*CIT v Ramaniyam Homes (P) Ltd (2016) 68 taxmann.com 289 (Mad)*].
- Value of rent free accommodation, furniture and fixtures given to director was held as taxable under section 28(iv). *CIT v Subrata Roy (2016) 385 ITR 547 (All)*.
- Where a car was given to an assessee by his disciple, who had been benefited from his preaching, the value of car was held to be taxable in the hands of the assessee being a receipt from the exercise of the vocation carried on by him [*CIT (Addl) v Ram Kripal Tripathi (1980) 125 ITR 408 (All)*].
- The assessee was a director of a company. In terms of an agreement with the promoters, shares were allotted to the director. On these facts, it was held that the shares received by the director were benefit or perquisite received from a company by the director and it was a benefit assessable to tax [*D. M. Neterwala v CIT (1986) 122 ITR 880 (Bom)*].
- Value of gift of land was held as a receipt by the assessee in carrying on of his vocation and was held as taxable [*Amarendra Nath Chakraborty v CIT (1971) 79 ITR 342 (Cal)*]

Thus, the asset given as benefit or perquisite may be capital asset in general sense of the term like car, land etc but in the hands of the recipient it is benefit or perquisite and has accordingly been held to be taxable. In any case, as stated earlier, the deductor is not required to check if the benefit or perquisite is taxable in the hands of recipient. Thus, the deductor is required to deduct tax under section 194R in all cases where benefit or perquisite (of whatever nature) is provided.

If loan settlement/waiver by a bank is to be treated as benefit/ perquisite, it would lead to hardship as the bank would need to incur the additional cost of tax deduction in addition to the haircut that he has taken. Will section 194R apply in such a situation?

As per the judgment of *CIT v. Ramaniyam Homes (P) Ltd (2016) 68 taxmann.com 289 (Mad)* mentioned above, the amount representing principal loan waived by bank under one time settlement scheme would constitute income falling under section 28(iv) relating to value of any benefit or perquisite, arising from business or exercise of profession

However, it has been clarified, vide Circular no. 18/2022 dated 13.9.2022, that one-time loan settlement with borrowers or waiver of loan granted on reaching settlement with the borrowers by the following would not be subjected to tax deduction at source under section 194R:

- (i) Public Financial Institution
- (ii) Scheduled Bank
- (iii) Cooperative bank (other than a primary agricultural credit society)
- (iv) Primary co-operative Agricultural and Rural Development Bank
- (v) State Financial Corporation
- (vi) State Industrial Investment Corporation being a Government company, engaged in the business of providing long-term finance for industrial projects;
- (vii) Deposit taking Non-Banking Financial Company
- (viii) Systemically Important Non-deposit Taking Non-Banking Financial Company
- (ix) Public company engaged in providing long term finance for construction or purchase of houses in India for residential purpose and which is registered in accordance with the guidelines/ direction issued by the National Housing Bank formed under National Housing Bank Act 1987;
- (x) Registered Asset Reconstruction Companies

This clarification is only for the purposes of section 194R. The treatment of such settlement/ waiver in the hands of the person who had got benefitted by such waiver would not be impacted by this clarification. Taxability of such settlement/ waiver in the hands of the beneficiary will be governed by the relevant provisions of the Act.

Question 4: Whether sales discount, cash discount and rebates are benefit or perquisite?

Answer: Sales discounts, cash discount or rebates allowed to customers from the listed retail price represent lesser realization of the sale price itself. To that extent purchase price of customer is also reduced.

These are also benefits though related to sales/purchase. Since TDS under section 194R is applicable on all forms of benefit/perquisite, tax is required to be deducted. However, subjecting these to tax deduction would put seller to difficulty. To remove such difficulty it has been clarified that no tax is required to be deducted under section 194R on sales discount, cash discount and rebates allowed to customers.

Discounts

Where a seller is selling its items from its stock in trade to a buyer, the seller offers two items

free with purchase of 10 items. In substance, the seller is actually selling 12 items at a price of 10 items. Let us assume that the price of each item is ₹ 12. In this case, the selling price for the seller would be ₹ 120 for 12 items. For buyer, he has purchased 12 items at a price of 10. Just like seller, the purchase price for the buyer is ₹ 120 for 12 items and he is expected to record so in his books.

In such a situation, again there could be difficulty in applying section 194R provision. Hence, to remove difficulty it has been clarified that on the above facts no tax is required to be deducted under section 194R.

It has been clarified that situation is different when free samples are given and the above relaxation would not apply to a situation of free samples.

Similarly, this relaxation should not be extended to other benefits provided by the seller in connection with its sale. To illustrate, the following are some of the examples of benefits/perquisites on which tax is required to be deducted under section 194R (the list is not exhaustive):

- When a person gives incentives (other than discount, rebate) in the form of cash or kind such as car, TV, computers, gold coin, mobile phone etc.
- When a person sponsors a trip for the recipient and his/her relatives upon achieving certain targets
- When a person provides free ticket for an event
- When a person gives medicine samples free to medical practitioners.

The above examples are only illustrative. The relaxation provided from non-deduction of tax for sales discount and rebate is only on those items and should not be extended to others.

It has been further clarified that these benefits/perquisites may be used by owner/ director/ employee of the recipient entity or their relatives who in their individual capacity may not be carrying on business or exercising a profession. However, the tax is required to be deducted by the person in the name of recipient entity since the usage by owner/ director/ employee/ relative is by virtue of their relation with the recipient entity and in substance the benefit/perquisite has been provided by the person to the recipient entity.

To illustrate, the free medicine sample may be provided by a company to a doctor who is an employee of a hospital. The TDS under section 194R is required to be deducted by the company in the hands of hospital as the benefit/perquisite is provided to the doctor on account of him being the employee of the hospital. Thus, in substance, the benefit/perquisite is

provided to the hospital. The hospital may subsequently treat this benefit/perquisite as the perquisite given to its employees (if the person who used it is his employee) under section 17 and deduct tax under section 192. In such a case it would be first taxable in the hands of the hospital and then allowed as deduction as salary expenditure. Thus, ultimately the amount would get taxed in the hands of the employee and not in the hands of the hospital. Hospital can get credit of tax deducted under section 194R by furnishing its tax return. It has been further clarified that the threshold of ₹ 20,000 is also required to be seen with respect to the recipient entity.

Similarly, the tax is required to be deducted under section 194R if the benefit or perquisite is provided to a doctor who is working as a consultant in the hospital. In this case the benefit or perquisite provider may deduct tax under section 194R with hospital as recipient and then hospital may again deduct tax under section for providing the same benefit or perquisite to the consultant. To remove difficulty, as an alternative, the original benefit or perquisite provider may directly deduct tax under section 194R in the case of the consultant as a recipient.

The provisions of section 194R would not apply if the benefit or perquisite is being provided to a Government entity, like Government hospital, not carrying on business or profession.

Question 5: How is the valuation of benefit/perquisite required to be carried out?

Answer: The valuation would be based on fair market value of the benefit or perquisite except in following cases:-

Valuation

	Situation	Value for such benefit/perquisite
(i)	The benefit/perquisite provider has purchased the benefit/perquisite before providing it to the recipient	purchase price
(ii)	The benefit/perquisite provider manufactures such items given as benefit/perquisite	the price that it charges to its customers for such items

No TDS on GST

It has been further clarified that GST would not be included for the purposes of valuation of benefit/perquisite for TDS under section 194R.

Question 6: Many a times, a social media influencer is given a product of a manufacturing company so that he can use that product and make audio/video to speak

about that product in social media. Is this product given to such influencer a benefit or perquisite?

Answer: Whether this is benefit or perquisite will depend upon the facts of the case.

In case of benefit or perquisite being a product like car, mobile, outfit, cosmetics etc. and if the product is returned to the manufacturing company after using for the purpose of rendering service, then it will not be treated as a benefit/perquisite for the purposes of section 194R.

However, if the product is retained then it would be in the nature of benefit/perquisite and tax is required to be deducted accordingly under section 194R.

Question 7: Whether reimbursement of out of pocket expense incurred by service provider in the course of rendering service is benefit/perquisite?

Answer: Any expenditure which is the liability of a person carrying out business or profession, if met by the other person is in effect benefit/perquisite provided by the second person to the first person in the course of business/profession.

Reimbursement

For example, a consultant is rendering service to a person "X" for which he is receiving consultancy fee. In the course of rendering that service, he has to travel to different city from the place where is regularly carrying on business or profession. For this purpose, he pays for boarding and lodging expense incurred exclusively for the purposes of rendering the service to "X". Ordinarily, the expenditure incurred by the consultant is part of his business expenditure which is deductible from the fee that he receives from company "X". In such a case, the fee received by the consultant is his income and the expenditure incurred on travel is his expenditure deductible from such income in computing his total income.

If this travel expenditure is met by the company "X", it is benefit or perquisite provided by "X" to the consultant.

However, sometimes the invoice is obtained in the name of "X" and accordingly, if paid by the consultant, is reimbursed by "X". In this case, since the expense paid by the consultant (for which reimbursement is made) is incurred wholly and exclusively for the purposes of rendering services to "X" and the invoice is in the name of "X", then the reimbursement made by "X" being the service recipient will not be considered as benefit/perquisite for the purposes of section 194R.

If the invoice is not in the name of "X" and the payment is made by "X" directly or reimbursed, it is the benefit/perquisite provided by "X" to the consultant for which deduction is required to be made under section 194R.

However, it has been clarified, vide circular no. 18/2022 dated 13.9.2022, that in case of a supplier who is a "pure agent" fulfilling the following conditions, the reimbursement would not be treated as benefit/ perquisite for the purpose of section 194R -

- i. the supplier acts as a pure agent of the recipient of the supply, when he makes payment to the third party on authorization by such recipient;
- ii. the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and
- iii. the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.

In case these conditions are not satisfied, such expenditure incurred is included in the value of supply under GST. However, in the abovementioned case of "pure agent", if all the conditions are satisfied, the GST input credit is allowed to the recipient and it is not considered as supply of the pure agent. In such a case, it is clarified that amount incurred by such "pure agent" for which he is reimbursed by the recipient would not be treated as benefit/perquisite for the purpose of section 194R.

Meaning of "Pure Agent" – A "pure agent" means a person who

- a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;
- b) neither intends to hold nor holds any title to the goods or services or both, so procured or provided as pure agent of the recipient of supply;
- c) does not use for his own interest such goods or services so procured; and
- d) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.

Tax deduction under section 194C and 194J is required to be made from the gross amount of bill including the reimbursement. A person has provided service to a company and out of pocket expenses are charged by him to the company along with service fee in the same bill. Company deducts tax under section 194J on both service

fee component as well as on out of pocket expense. Is there a noncompliance with the provision of section 194R?

If out of pocket expenses (reimbursement) are already part of the consideration in the bill on which tax is deducted under the relevant provisions of the Act, other than section 194R, it is clarified, vide circular no. 18/2022 dated 13.9.2022, that there will not be further liability for tax deduction under section 194R.

In the above example, out of pocket expense is part of the consideration in the bill for professional fee that is charged to the company and the tax is deducted under section 194J on the entire consideration including on out of pocket expense. In such a case, the out of pocket expense is already included as part of professional fee. Hence, there is no further benefit/perquisite which requires tax deduction under section 194R.

Question 8: If there is a dealer conference to educate the dealers about the products of the company - Is it benefit/perquisite?

Answer: The expenditure pertaining to dealer/ business conference would not be considered as benefit/ perquisite for the purposes of section 194R in a case where dealer/ business conference is held with the prime object to educate dealers/customers about any of the following or similar aspects:

Dealer conference

- (i) new product being launched
- (ii) discussion as to how the product is better than others
- (iii) obtaining orders from dealers/customers
- (iv) teaching sales techniques to dealers/customers
- (v) addressing queries of the dealers/customers
- (vi) reconciliation of accounts with dealers/customers

However, such conference must not be in the nature of incentives/ benefits to select dealers/customers who have achieved particular targets.

Further, in the following cases the expenditure would be considered as benefit or perquisite for the purposes of section 194R -

- (i) Expense attributable to leisure trip or leisure component, even if it is incidental to the dealer/ business conference.

- (ii) Expenditure incurred for family members accompanying the person attending dealer/ business conference
- (iii) Expenditure on participants of dealer/ business conference for days which are on account of prior stay or overstay beyond the dates of such conference. However, a day immediately prior to actual start date of conference and a day immediately following the actual end date of conference would not be considered as over stay.

If there is a dealer conference to educate the dealers about the products of the company - (i) is there a requirement that all dealers must be invited in the conference, (ii) how to identify benefit against individual dealers in a group activity?

It has been clarified, vide circular no. 18/2022 dated 13.9.2022, that it is not necessary that all dealers are required to be invited in a dealer/business conference for the expenses to be not considered as benefit/perquisite for the purposes of tax deduction under section 194R.

There may be expenses during such dealer/business conference which need to be classified as benefit/perquisite and tax is required to be deducted under section 194R. However, there may be practical difficulties in identifying such benefit/perquisite to actual recipient due to the fact that it is a group activity and reasonable allocation is not possible. Non compliance of the provision of section 194R, in such a case, would not only result in disallowance under section 40(ia) but may also result in treating the benefit/perquisite provider as assessee in default under section 201 with all other consequences.

In order to remove these practical difficulties, it has been clarified that if benefit/perquisite is provided in a group activity in a manner that it is difficult to match such benefit/perquisite to each participant using a reasonable allocation key, the benefit/perquisite provider may at his option not claim the expense, representing such benefit/perquisite, as deductible expenditure for calculating his total income. If he decides to opt so, he will not be required to deduct tax under section 194R on such benefit/perquisite and therefore he will not be treated as assessee in default under section 201. Thus, in such a case he must add back the expenditure, representing such benefit/perquisite, to calculate his total income if such expenditure is debited in the account.

Question 9: Section 194R provides that if the benefit/ perquisite is in kind or partly in kind (and cash is not sufficient to meet TDS) then the person responsible for providing such benefit or perquisite is required to ensure that tax required to be deducted has been paid in respect of the benefit or perquisite, before releasing the benefit or perquisite. How can such person be satisfied that tax has been deposited?

Answer: The requirement of law is that if a person is providing benefit in kind to a recipient and tax is required to be deducted under section 194R, the person is required to ensure that tax required to be deducted has been paid by the recipient. Such recipient would pay tax in the form of advance tax. The tax deductor may rely on a declaration along with a copy of the advance tax payment challan provided by the recipient confirming that the tax required to be deducted on the benefit/perquisite has been deposited. This would be then required to be reported in TDS return along with challan number. This year Form 26Q has included provisions for reporting such transactions.

Benefit in kind

In the alternative, as an option to remove difficulty if any, the benefit provider may deduct the tax under section 194R and pay to the Government. The tax should be deducted after taking into account the fact the tax paid by him as TDS is also a benefit under section 194R. In the Form 26Q he will need to show it as tax deducted on benefit provided.

Company “A” gifts a car to its dealer “B” and deducted tax on this benefit under section 194R. Dealer “B” uses this car in his business. Will he get deduction for depreciation in calculating his income under the head “profits and gains of business or profession” ?

It has been clarified, vide circular no. 18/2022 dated 13.9.2022, that once Company “A” has deducted tax on gifting of car in accordance with section 194R (or released the car after dealer “B” showed him payment of tax on such benefit) and dealer “B” has included this benefit as income in his income tax return, it would be deemed that the "actual cost" of the car for the purposes of section 32 shall be the amount of benefit included by dealer “B” as income in his income-tax return. Hence, dealer “B” can get depreciation on fulfilment of other conditions for claiming depreciation.

Question 11: Whether Embassy/High Commissions are required to deduct tax under section 194R?

Answer: It has been clarified, vide circular no. 18/2022 dated 13.9.2022, that the provision of section 194R is not applicable on benefit/perquisite provided by, an organization in scope of The United Nations (Privileges and Immunity Act) 1947, an international organization whose income is exempt under specific Act of Parliament (such as the Asian Development Bank Act 1966), an embassy, a High Commission, legation, commission, consulate and the trade representation of a foreign state.

Question 12: Whether issuance of bonus share/right share is a benefit or perquisite if issued by a company in which the public are substantially interested and whether tax is required to be deducted under section 194R?

Answer: In case of bonus shares which are issued to all shareholders by a company in which the public are substantially interested as defined in clause (18) of section 2 of the Act, it has been represented that this does not result in any benefit to shareholders as the overall value and ownership of their holding does not change. Further cost of acquisition of bonus share is taken as nil for capital gains computation when this share is sold. Similar representations have been received seeking clarity on issuance of right shares.

It has been clarified, vide circular no. 18/2022 dated 13.9.2022, that the tax under section 194R is not required to be deducted on issuance of bonus or right shares by a company in which the public are substantially interested, where bonus shares are issued to all shareholders by such a company or right shares are offered to all shareholders by such a company, as the case may be.

13.3.27 Non-applicability of TDS provisions on payments made to Corporations whose income is exempt under section 10(26BBB) [Circular No.7/2015, dated 23-04-2015]

The CBDT had earlier issued *Circular No.4/2002 dated 16.07.2002* which laid down that there would be no requirement for tax deduction at source in respect of payments made to such entities, whose income is unconditionally exempt under section 10 of the Income-tax Act, 1961 and who are statutorily not required to file return of income as per the section 139. The said Circular also lists the entities which are unconditionally exempt under section 10 and who are statutorily not required to file return of income as per section 139.

Non-applicability

Section 10(26BBB) provides that any income of a corporation established by a Central, State or Provincial Act for the welfare and economic upliftment of ex-servicemen being the citizens of India does not form part of the total income. The corporations covered under section 10(26BBB) are also statutorily not required to file return of income as per the section 139.

The corporations covered under section 10(26BBB) satisfy the two conditions of Circular No. 4/2002 i.e., such corporations are statutorily not required to file return of income as per section 139 and their income is also unconditionally exempt under section 10 of the Income-tax Act, 1961. Accordingly, the CBDT has examined the matter and extended the benefit of the said Circular to such corporations whose income is exempt under section 10(26BBB). Hence, there would be no

requirement for tax deduction at source from the payments made to such corporations, since their income is anyway exempt under the Income-tax Act, 1961.

13.3.28 Income payable “net of tax” [Section 195A]

- (1) Where, under an agreement or other arrangement, the tax chargeable on any income referred to in the foregoing provisions of this Chapter is to be borne by the person by whom the income is payable, then, for the purposes of deduction of tax under those provisions such income shall be increased to such amount as would, after deduction of tax thereon, be equal to the net amount payable under such agreement or arrangement.
- (2) However, no grossing up is required in the case of tax paid under section 192(1A) by an employer on the non-monetary perquisites provided to the employee.

Net of tax

ILLUSTRATION 18

'X' while making payment "net of tax" to a non-resident for providing technical services on a world bank aided project had deducted tax out of such payments as per rates prescribed but says that the payee is not entitled for the TDS certificate. Examine.

SOLUTION

A payment made of 'net of tax' in terms of section 195A, refers to an agreement/arrangement, where the tax chargeable on any income is borne by the payer of the income, and for the purpose of deduction of tax at source, such income is increased to such an amount as would after deduction of tax thereon, be equal to the net amount payable under the agreement.

As per section 198, any sum deducted in accordance with the provisions of Chapter XVII-B of the Income-tax Act, 1961 is deemed to be income received while computing the income of the payee. Further, section 199 provides that credit for the tax deducted at source and paid to the Central Government shall be given to the person from whose income the deduction was made on the production of certificate furnished under section 203 of the Income-tax Act.

As per section 203, every person deducting tax at source shall furnish to the payee a certificate in the prescribed form within the prescribed time.

Even in a case where X undertakes to pay the tax on the grossed up amount, the non-resident shall be entitled for issue of certificate for tax deducted at source in respect of payment made 'net of tax'. This has been clarified vide CBDT Circular No.785 dated 24.11.1999.

Therefore, X has a legal obligation to issue TDS certificate to the non-resident, even if he has made payment of income “net of tax” to him.

13.3.29 Interest or dividend or other sums payable to Government, Reserve Bank or certain corporations [Section 196]

- (1) No deduction of tax shall be made by any person from any sums payable to –
- (i) the Government; or
 - (ii) the Reserve Bank of India; or
 - (iii) a corporation established by or under a Central Act, which is, under any law for the time being in force, exempt from income-tax on its income; or
 - (iv) a Mutual Fund specified under section 10(23D).
- (2) This provision for non-deduction is applicable when such sum is payable to the above entities by way of –
- (i) interest or dividend in respect of securities or shares –
 - (a) owned by the above entities; or
 - (b) in which they have full beneficial interest or
 - (ii) any other income accruing or arising to them.

No TDS

The following is the summary of those TDS provisions which are discussed in detail in other chapters of the Study Material as mentioned in Column (4):

Section	Nature of payment	Rate of TDS	Chapter
(1)	(2)	(3)	(4)
194E	Income referred to under section 115BBA payable to non-resident sportsmen/sports association or an entertainer	20%	21: Non-resident Taxation (Module 4)
194LB	Interest payable by infrastructure debt fund to a non-corporate non-resident or foreign company	5%	
194LBA(1)/(2)	Distribution of any interest income, received or receivable by a business trust from a SPV, to its unit holders.	10% (resident) 5% (Non-resident and foreign company)	10: Assessment of Trusts, Political

	Distribution of any dividend income, received or receivable by business trust from a SPV exercising option to pay tax at concessional rate under section 115BAA, to its unit holders. However, if the SPV is not exercising the option to pay tax at concessional rate under section 115BAA, dividend income would be exempt in the hands of unit holders and tax would not be deductible at source.	10% (resident, non-resident and foreign Co.)	Parties and other Special Entities (Module 2)
194LBA(1)/(3)	Distribution of any income received from renting or leasing or letting out any real estate asset directly owned by the business trust, to its unit holders.	10% (resident)	
194LBB	Investment fund paying income to a unit holder [other than income which is exempt under section 10(23FBB)].	At the rates in force (Non-resident and foreign company)	
194LBC(1)/(2)	Income in respect of investment made in a securitisation trust (specified in <i>Explanation</i> to section 115TCA)	25% (resident individual/HUF), 30% (resident other than individual/HUF) At the rates in force (Non-resident and foreign company)	
194LC	Interest payable by an Indian Company or a business trust to a non-corporate non-resident or foreign company - in respect of money borrowed in foreign currency from a source outside India • under a loan agreement between 1.7.2012 and 30.6.2023 or • by way of issue of long-term infrastructure bonds during the period between 1.7.2012 and 30.9.2014 • by way of issue of long term bonds (including long term infrastructure bond) between 1.10.2014 and 30.6.2023 as approved by Central Government or	5%	21: Non resident Taxation (Module 4)

	- in respect of money borrowed from source outside India by way of rupee denominated bond on or before 30.6.2023		
	Interest payable by an Indian company or a business trust to a non-corporate non-resident or foreign company, in respect of monies borrowed by it from a source outside India by way of issue of any long-term bond or rupee denominated bond - (i) between 1.4.2020 and 30.6.2023, which is listed only on a recognised stock exchange located in any International Financial Services Centre.	4%	
	(ii) on or after 1.7.2023, which is listed only on a recognised stock exchange located in any International Financial Services Centre.	9%	
	Interest payable by an Indian company or a business trust to a non-resident, including a foreign company, in respect of rupee denominated bond issued outside India during the period from 17.9.2018 to 31.3.2019	Nil (Since such interest is exempt u/s 10(4C), no tax is deductible u/s 194LC)	
194LD	On interest payable - between 1.6.2013 and 30.6.2023 on • rupee denominated bond of an Indian Company or • Government securities or - between 1.4.2020 and 30.6.2023 on municipal debt securities to a Foreign Institutional Investor or a Qualified Foreign Investor	5%	
194S	Payment of any sum to any resident by way of consideration for transfer of virtual digital asset	1%	12: Taxation of digital transactions (Module 2)

195	Any other sum payable to a non-resident	At the rates in force	21: Non resident Taxation (Module 4)
196A	Income on units of a mutual fund specified under section 10(23D) or from the specified company referred to in section 10(35) payable to non-corporate non-resident or foreign company	20% or the rates specified in DTAA, whichever is lower (provided tax residency certificate is furnished by the non-resident)	
196B	Income from units of a mutual fund or UTI purchased in foreign currency (including long term capital gain on transfer of such units) payable to an Offshore Fund	10%	
196C	Income by way of interest or dividend on bonds of an Indian company or public sector company sold by the Government and purchased by a non-resident in foreign currency or GDRs referred to in section 115AC (including long term capital gain on transfer of such bonds or GDRs) payable to a non-resident	10%	
196D	Income of Foreign Institutional Investors (FIIs) from securities (not being income by way of interest referred to in section 194LD or capital gain arising from such securities)	20% In case DTAA applies to FII, and if FII furnishes a TRC, tax would be deducted @20% or rate provided in DTAA, whichever is lower.	
	Income of specified fund from securities [not being income by way of interest referred to in section 194LD or capital gain arising from such securities or income exempt u/s 10(4D)]	10%	

Note: In the above cases, wherever payment is made to a non-corporate non-resident or a foreign company, the rate of TDS would be further increased by surcharge, wherever applicable, and health and education cess @4%.



13.4 CERTIFICATE FOR DEDUCTION OF TAX AT A LOWER RATE [SECTION 197]

- (1) This section applies where, in the case of any income of any person or sum payable to any person, income-tax is required to be deducted at the time of credit or payment, as the case may be at the rates in force as per the provisions of sections 192, 193, 194, 194A, 194C, 194D, 194G, 194H, 194-I, 194J, 194K, 194LA, **194LBA**, 194LBB, 194LBC, 194M, 194-O and 195.
- (2) In such cases, the assessee can make an application to the Assessing Officer for deduction of tax at a lower rate or for non-deduction of tax.
- (3) If the Assessing Officer is satisfied that the total income of the recipient justifies the deduction of income-tax at lower rates or no deduction of income-tax, as the case may be, he may give to the assessee such certificate, as may be appropriate.
- (4) Where the Assessing Officer issues such a certificate, then the person responsible for paying the income shall deduct income-tax at such lower rates specified in the certificate or deduct no tax, as the case may be, until such certificate is cancelled by the Assessing Officer.
- (5) Enabling powers have been conferred upon the CBDT to make rules for prescribing the procedure in this regard.

TDS at lower rate



13.5 NO DEDUCTION IN CERTAIN CASES [SECTION 197A]

- (1) **Enabling provision for filing of declaration for receipt of dividend and NSS payment without deduction of tax [Sub-section (1)]**
 - (i) This section enables an individual, who is resident in India and whose estimated total income of the previous year is less than the basic exemption limit, to receive dividends and any sum out of National Savings Scheme Account, without deduction of tax at source under sections 194 and 194EE, on furnishing a declaration in duplicate in the prescribed form and verified in the prescribed manner.
 - (ii) The declaration in the above form is to be furnished in writing in duplicate by the declarant to the person responsible for paying any income of the nature referred to in sections 194 or 194EE. The declaration will have to be to the effect that the tax on the estimated total income of the declarant of the previous year in which such income is to be included in computing his total income will be **Nil**.

- (2) **Enabling provision for filing of declaration for non-deduction of tax under section 192A or 193 or 194A or 194D or 194DA or 194-I or 194K by persons, other than companies and firms [Sub-section (1A)]**

No deduction of tax shall be made under the above provisions of the Act, where a person, who is not a company or a firm, furnishes to the person responsible for paying any income of the nature referred to in these sections, a declaration in writing in duplicate in the prescribed form to the effect that the tax on his estimated total income of the previous year in which such income is to be included in computing his total income will be Nil

No TDS

- (3) **Filing declaration not permissible if income/aggregate of incomes exceed basic exemption limit [Sub-section (1B)]**

Declaration cannot be furnished as per the above provisions, where -

- (i) payments of dividend; or
- (ii) payments in respect of deposits under National Savings Schemes, etc.; or
- (iii) payment of premature withdrawal from Employee Provident Fund; or
- (iv) income from interest on securities or
- (v) interest other than "interest on securities" or units; or
- (vi) insurance commission; or
- (vii) payment in respect of life insurance policy; or
- (viii) rent; or
- (ix) income from units; or
- (x) the aggregate of the amounts of such incomes in (i) to (ix) above

credited or paid or likely to be credited or paid during the previous year in which such income is to be included exceeds the basic exemption limit.

- (4) **Enabling provision for filing of declaration by resident senior citizens for non-deduction of tax at source [Sub-section (1C)]**

For a resident senior citizen, who is of the age of 60 years or more at any time during the previous year, no deduction of tax shall be made under section 192A or section 193 or section 194 or section 194A or section 194D or section 194DA or section 194EE or

Form 15H

section 194-I or section 194K, if such individual furnishes a declaration in writing in duplicate in Form 15H to the payer, that tax on his estimated total income of the previous year in which such income is to be included in computing his total income is **Nil**. The restriction contained in sub-section (1B) will not apply to resident senior citizens.

Further, declaration in Form 15H can also be made in a case where income of the assessee, who is eligible for rebate of income-tax under section 87A, is higher than the basic exemption limit (after allowing for deduction(s) under Chapter VI-A, if any, or set off of loss, if any, under the head "Income from house property" for which, the declarant is eligible) but his tax liability would be "Nil" after taking into account the rebate available to him under section 87A.

(5) Non-deduction of tax in certain cases

(i) Interest payments by an Offshore Banking Unit to a non-resident/not ordinarily resident in India [Sub-section (1D)]

No deduction of tax shall be made by an Offshore Banking Unit from the interest paid on -

- (a) deposit made by a non-resident/not-ordinarily resident on or after 1.4.2005; or
- (b) borrowing from a non-resident/not-ordinarily resident on or after 1.4.2005.

Applicability of section 197A(1D) and section 10(15)(viii) to interest paid by IFSC Banking Units (IBUs) [Circular No 26/2016 dated 4.7.2016]

The CBDT Circular clarifies that in accordance with the provisions of section 197A(1D), tax is not required to be deducted on interest paid by IFSC Banking Units, on deposit made on or after 1.4.2005 by a non-resident or a person who is not ordinarily resident in India, or on borrowings made on or after 1.4.2005 from such persons.

(ii) Payment to any person for, or on behalf of, the NPS Trust [Sub-section (1E)]

No deduction of tax at source shall be made from any payment to any person for, or on behalf of, the New Pension System Trust referred in section 10(44).

(iii) Payments to notified institutions/class of institutions etc. [Sub-section (1F)]

No deduction of tax shall be made or deduction of tax shall be made at such lower rate, from such payment to such person or class of persons, including institution, association or body or class of institutions or associations or bodies as may be notified by the Central Government in the Official Gazette in this behalf. Therefore, in respect

of such payments made to notified person or class of persons, no tax is to be deducted at source or tax is to be deducted at lower rate.

(6) Time limit for delivery of one copy of declaration [Sub-section (2)]

On receipt of the declaration referred to in sub-sections (1), (1A) or (1C), the person responsible for making the payment will be required to deliver or cause to be delivered to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, one copy of the declaration **on or before the 7th of the month following the month in which the declaration is furnished** to him.



13.6 MISCELLANEOUS PROVISIONS

13.6.1 Tax deducted is income received [Section 198]

- (1) All sums deducted in accordance with the foregoing provisions shall, for the purpose of computing the income of an assessee, be deemed to be income received.

Deemed income

- (2) However, the following tax paid or deducted would not be deemed to be income received by the assessee for the purpose of computing the total income—
- (i) the tax paid by an employer under section 192(1A) on non-monetary perquisites provided to the employees
 - (ii) tax deducted under section 194N.

13.6.2 Credit for tax deducted at source [Section 199]

- (1) Tax deducted at source in accordance with the above provisions and paid to the credit of the Central Government shall be treated as payment of tax on behalf of the—
- (i) person from whose income the deduction was made; or
 - (ii) owner of the security; or
 - (iii) depositor; or
 - (iv) owner of property; or
 - (v) unit-holder; or
 - (vi) shareholder.

- (2) Any sum referred to in section 192(1A) and paid to the Central Government, shall be treated as the tax paid on behalf of the person in respect of whose income, such payment of tax has been made.
- (3) The CBDT is empowered to frame rules for the purpose of giving credit in respect of tax deducted or tax paid under Chapter XVII. The CBDT also has the power to make rules for giving credit to a person other than the persons mentioned in (1) and (2) above. Further, the CBDT can specify the assessment year for which such credit may be given.
- (4) **Rule 37BA – Credit for tax deducted at source for the purposes of section 199**

Rule 37BA(1) provides that credit for tax deducted at source and paid to the Central Government shall be given to the person to whom the payment has been made or credit has been given (i.e., the deductee) on the basis of information relating to deduction of tax furnished by the deductor to the income-tax authority or the person authorized by such authority.

Rule 37BA(2) provides that where under any provision of the Act, the whole or any part of the income on which tax has been deducted at source is assessable in the hands of a person other than the deductee, credit for the whole or any part of the tax deducted at source, as the case may be, shall be given to the other person and not to the deductee.

Rule 37BA

However, the deductee should file a declaration with the deductor and the deductor should report the tax deduction in the name of the other person in the information relating to deduction of tax referred to in Rule 37BA(1).

Rule 37BA(3), provides that credit for tax deducted at source and paid to the Central Government, shall be given for the assessment year for which such income is assessable.

Where tax has been deducted at source and paid to the Central Government and the income is assessable over a number of years, credit for tax deducted at source shall be allowed across those years in the same proportion in which the income is assessable to tax.

Rule 37BA(3A), provides that, for the purposes of section 194N, credit for tax deducted at source shall be given to the person from whose account tax is deducted and paid to the Central Government account for the assessment year relevant to the previous year in which such tax deduction is made.

13.6.3 Duty of person deducting tax [Section 200]

- (1) The persons responsible for deducting the tax at source should deposit the sum so deducted to the credit of the Central Government or as the Board directs, within the prescribed time [Sub-section (1)].
- (2) Further, an employer paying tax on non-monetary perquisites provided to employees in accordance with section 192(1A), should deposit within the prescribed time, the tax to the credit of the Central Government or as the Board directs [Sub-section (2)].
- (3) For the purpose of improving the reporting of payment of TDS made through book entry and to make existing mechanism enforceable, section 200(2A) provides that where the tax deducted or tax referred to in section 192(1A) has been paid without the production of a challan, the Pay and Accounts Officer or the Treasury Officer or the Cheque Drawing and Disbursing Officer (PAO/TO/CDDO) or any other person, by whatever name called, who is responsible for crediting such sum to the credit of the Central Government, shall deliver or cause to be delivered within the prescribed time a statement in the prescribed form, verified in the prescribed manner and setting forth prescribed particulars to the prescribed income-tax authority or the person authorised by such authority.
- (4) Sub-section (3) casts responsibility on the following persons for preparing such statements for such periods as may be prescribed, after paying the tax deducted to the credit of the Central Government within the prescribed time –
 - (i) any person deducting any sum on or after 1st April, 2005 in accordance with the foregoing provisions of this chapter; or,
 - (ii) any person being an employer referred to in section 192(1A).
- (5) Such statements have to be delivered or caused to be delivered to the prescribed income-tax authority or the person authorised by such authority.
- (6) Such statements should be in the prescribed form and verified in the prescribed manner.
- (7) It should set forth such particulars and should be delivered within such time as may be prescribed.
- (8) The deductor may also deliver to the prescribed authority, a correction statement –
 - (a) for rectification of any mistake; or

Deposit of TDS

Statement for deposit of TDS

- (b) to add, delete or update the information furnished in the statement delivered under section 200(3).

Note – Refer diagram on page no.13.115 for time limit for payment of TDS to Government account or tax paid under section 192(1A) prescribed under section 200(1)/(2) read with Rule 30 and furnishing statement of TDS under section 200(3) read with Rule 31A

13.6.4 Consequences of failure to deduct or pay

1. **Deemed assessee-in-default [Section 201(1)]**

Any person including the principal officer of a company,

- (i) who is required to deduct any sum in accordance with the provisions of the Act; or

- (ii) an employer paying tax on non-monetary perquisites under section 192(1A)

would be deemed to be an assessee-in-default, if he does not deduct, or does not pay or after deducting, fails to pay, the whole or any part of the tax, as required by or under the provisions of the Income-tax Act, 1961.

Assessee-in-default

(2) **Non-applicability of deeming provision**

Any person (including the principal officer of the company) who fails to deduct the whole or any part of the tax on the amount credited or paid to a payee shall not be deemed to be an assessee-in-default in respect of such tax if 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.

(3) **No penalty under section 221**

No penalty shall be charged under section 221 from such person unless the Assessing Officer is satisfied that such person has failed to deduct and pay the tax without good and sufficient reasons.

(4) Interest Liability

- (i) A person deemed to be an assessee-in-default under section 201(1), for failure to deduct tax or to pay the tax after deduction, is liable to pay simple interest
- **@1% for every month or part of month** on the amount of such tax from the date on which tax was deductible to the date on which such tax was actually deducted and
 - **@1½% for every month or part of month** from the date on which tax was deducted to the date on which such tax is actually paid [Section 201(1A)].

ILLUSTRATION 19

An amount of ₹ 40,000 was paid to Mr. X on 1.7.2023 towards fees for professional services without deduction of tax at source. Subsequently, another payment of ₹ 50,000 was due to Mr. X on 28.2.2024, from which tax @10% (amounting to ₹ 9,000) on the entire amount of ₹ 90,000 was deducted. However, this tax of ₹ 9,000 was deposited only on 22.6.2024. Compute the interest chargeable under section 201(1A).

SOLUTION

Interest under section 201(1A) would be computed as follows –

Particulars	₹
1% on tax deductible but not deducted i.e., 1% on ₹ 4,000 for 8 months	320
1½% on tax deducted but not deposited i.e. 1½% on ₹ 9,000 for 4 months ¹	540
	860

- (ii) Such interest should be paid before furnishing the statements in accordance with section 200(3).
- (iii) Where the payer fails to deduct the whole or any part of the tax on the amount credited or payment made to a payee and is not deemed to be an assessee-in-default under section 201(1) on account of payment of taxes by such payee, interest under section 201(1A)(i) i.e., @1% p.m. or part of month, shall be payable by the payer from the date on which such tax was deductible to the date of furnishing of return of income by such payee. The date of deduction and payment of taxes by the payer shall be deemed to

¹ TRACES, the TDS Centralised Processing Cell, however, calculates interest @1½% for 5 months in the above case.

be the date on which return of income has been furnished by the payee.

- (iv) Where any order is made by the Assessing Officer for the default under section 201(1), the interest shall be paid by the person in accordance with such order.
- (v) Where the tax has not been paid after it is deducted, the amount of the tax together with the amount of simple interest thereon shall be a charge upon all the assets of the person or the company, as the case may be.

Guidelines for waiver of interest charged under section 201(1A) of the Income-tax Act, 1961 – [Circular No. 11/2017, dated 24.03.2017]

Circular

In exercise of the powers conferred under section 119(2)(a), the CBDT has directed that the Chief Commissioner of Income-tax and Director General of Income-tax may reduce or waive interest charged under section 201(1A)(i) in the classes of cases specified below for the period and to the extent the Chief Commissioner of Income-tax/Director General of Income-tax may deem fit. However, no reduction or waiver of such interest shall be ordered unless the principal demand under sections 200A, 201(1) or 234E, as the case may be, stands fully paid or satisfactory arrangements for payment of the principal demand under these sections have been made. The Chief Commissioner of Income-tax or Director General of Income-tax may also impose any other condition as deemed fit for the said reduction or waiver of interest.

The class of cases in which the reduction or waiver of interest under section 201(1A)(i) can be considered, are as follows:

- (a) Where during the course of proceedings for search and seizure under section 132, or otherwise, the books of account and other documents necessary for making deduction under Chapter XVII-B of the Act were seized and the assessee was not able to, within the time specified, deduct tax at source from any sum credited to any account (whether called "suspense account" or by any other name) in his books of account.
- (b) Where any sum paid or payable was not liable for deduction of tax at source in the case of a deductor on the basis of any order passed by the jurisdictional High Court, and as a result, he did not deduct tax at source in relation to such sum, and subsequently, in consequence of any retrospective amendment of law or a decision of the Supreme Court of India or a decision of a Larger Bench of the jurisdictional High Court (which was not challenged before the Supreme Court and has become final) in any proceedings, as the case may be, tax was held to be deductible or the tax deducted by the deductor during such financial year was found to be less than the tax

deductible on such sums paid or payable.

- (c) Where the default under section 201 relates to non-deduction or a lower deduction of tax under section 195 in respect of a payment made to a non-resident (including a foreign company) being a resident of a country or specified territory outside India with whom India has entered into an agreement referred to in section 90 or 90A of the Act, and where —
- (i) a dispute regarding the tax payable in India in respect of the said payment had been referred to the Competent Authority in India mentioned in Rule 44H of the Income-tax Rules, 1962 under the said agreement under section 90 or 90A of the Act;
 - (ii) such reference had been received by the Competent Authority in India within a period of two years of the date on which the notice of demand determining the tax payable was received by the person in default under section 201;
 - (iii) the dispute has been settled by way of a resolution arrived at under the Mutual Agreement Procedure (MAP) provided in the said agreement; and
 - (iv) the person in default under section 201 has given his acceptance to the resolution and has withdrawn his appeal(s) pending on the issue, within the meaning of Rule 44H(4) of the Income-tax Rules, within a period of one month of the date on which the resolution is communicated to him.

Even if the interest under section 201(1A)(i) has already been paid by the deductor, the same can be considered for waiver, subject to the conditions above and a refund may be given to the deductor, if waiver is ordered.

The Chief Commissioner of Income-tax or Director General of Income-tax examining an application for waiver of interest under this order shall pass a speaking order after providing adequate opportunity of being heard to the applicant.

The CBDT reserves the power to examine any grievance arising out of an order passed or not passed by Chief Commissioner of Income-tax or Director General of Income-tax, as the case may be, and issue suitable directions to these authorities for proper implementation of this order. However, no review of or appeal against the orders passed on merits by such authorities would be entertained by the CBDT.

(5) *Time limit for deeming a person to be an assessee-in-default for failure to deduct tax at source*

No order under section 201(1), deeming a person to be an assessee-in-default for failure to deduct the whole or any part of the tax from a person resident in India, shall be passed at any time after the expiry of

- seven years from the end of the financial year in which the payment is made or credit is given; or
- two years from the end of the financial year in which the correction statement is delivered under the proviso to section 200(3)

whichever is later.

Further, the exclusions from the time limit, as specified in *Explanation 1* to section 153, would also apply to the above time limit for passing an order deeming a person to be an assessee-in-default. Also, the time limit would not apply to an order passed consequent to the direction contained in an order of the Commissioner under sections 263 and 264, Commissioner (Appeals) under section 250, Appellate Tribunal under section 254, Supreme Court/National Tax Tribunal under section 260 and Supreme Court under section 262. Thus, the time limit would be extended where effect is to be given to various appellate proceedings or where proceedings are stayed.

(6) *Non-specification of time limit where tax has been deducted but not paid*

Section 201(1) deems a person to be an assessee-in-default if he –

- (i) does not deduct tax; or
- (ii) does not pay; or
- (iii) after so deducting fails to pay

the whole or any part of the tax, as required by or under this Act.

Thus, section 201(1) contemplates three types of defaults. The default contemplated in (ii) is covered by the default contemplated in (iii). However, the time limit has been specified only for passing of orders relating to default contemplated in (i) above. There is no time limit specified in respect of the other defaults.

Therefore, no time-limits have been prescribed for the order under section 201(1) where –

- (i) the deductor has deducted but not deposited the tax deducted at source, as this would be a case of defalcation of government dues,
- (ii) the employer has failed to pay the tax wholly or partly, under section 192(1A), as the employee would not have paid tax on such perquisites,
- (iii) the deductee is a non-resident as it may not be administratively possible to recover the tax from the non-resident.

13.6.5 Deduction only one mode of recovery [Section 202]

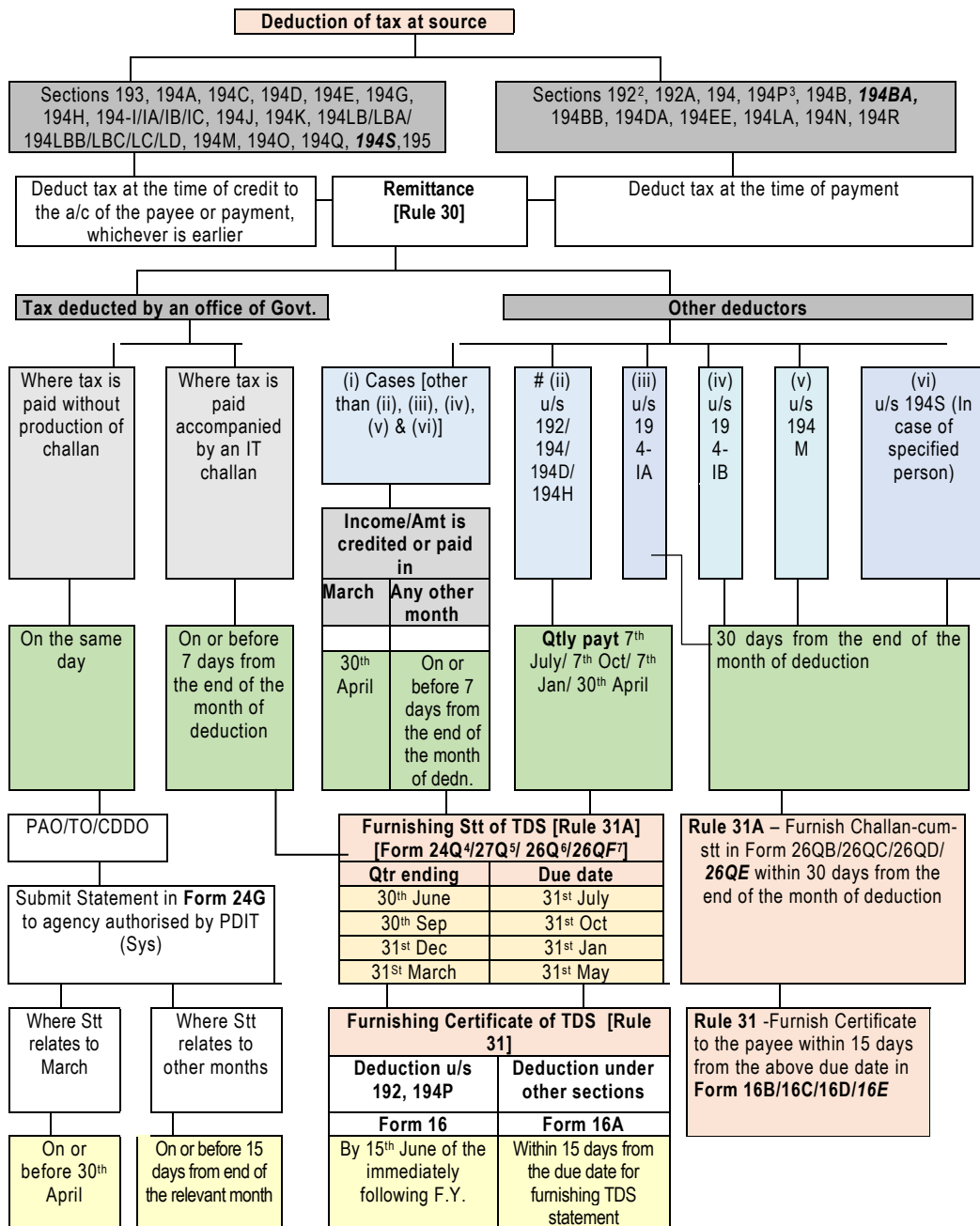
- (1) Recovery of tax through deduction at source is only one method of recovery.
- (2) The Assessing Officer can use any other prescribed methods of recovery in addition to tax deducted at source.

13.6.6 Certificate for tax deducted [Section 203]

- (1) Every person deducting tax at source shall issue a certificate to the effect that tax has been deducted and specify the amount so deducted, the rate at which tax has been deducted and such other particulars as may be prescribed.
- (2) Every person, being an employer, referred to in section 192(1A) shall, within such period, as may be prescribed, furnish to the person in respect of whose income such payment of tax has been made, a certificate to the effect that tax has been paid to the Central Government, and specify the amount so paid, the rate at which the tax has been paid and such other particulars as may be prescribed

TDS Certificate

[Refer diagram given on next page for TDS certificate under section 203 read with Rule 31].



[#] In special cases, the A.O. may, with the prior approval of the JC, permit quarterly payment of TDS

² Except in case of TDS on perquisite of ESOP provided by eligible start-up

³ TDS required to be deducted at the time of payment, if declaration is furnished by the specified senior citizen in Form No. 12BBA

⁴ If deduction of tax is u/s 192 and section 194P

⁵ If deduction of tax is u/s 193 to 196D other than section 194P in respect of deductee who is non corporate non resident or a foreign company or RNOR

⁶ If deduction of tax is u/s 193 to 196D other than section 194P in respect of all other deductees

⁷ If deduction of tax is u/s 194S by an Exchange in accordance with guidelines u/s 194S(6)

13.6.7 Common number for TDS and TCS [Section 203A]

- (1) **Application for TAN:** Persons responsible for deducting tax or collecting tax at source should apply to the Assessing Officer for the allotment of a “tax-deduction and collection-account number”.
- (2) **Quoting of TAN:** Section 203A(2) enlists the documents/ certificates/ returns/ challans in which the “tax deduction account number” or “tax collection account number” or “tax deduction and collection account number” has to be compulsorily quoted. They are -
- (i) challans for payment of any sum in accordance with the provisions of section 200 or section 206C(3);
 - (ii) certificates furnished under section 203 or section 206C(5);
 - (iii) statements prepared and delivered or caused to be delivered in accordance with the provisions of section 200(3) or section 206C(3);
 - (iv) returns delivered in accordance with the provisions of section 206 or section 206C(5A) or section 206C(5B); and
 - (v) in all other documents pertaining to such transactions as may be prescribed in the interests of revenue.
- (3) **No requirement to obtain TAN in notified cases:** The requirement of obtaining and quoting of TAN under section 203A shall not apply to such person, as may be notified by the Central Government in this behalf.
- (4) **Penalty for failure to comply with the provisions of section 203A:** Penalty under section 272BB would be imposable of ₹ 10,000 for
- failure to comply with the provisions of section 203A or
 - Quoting false TAN willfully in challans/certificates/statements/other documents referred to in section 203A(2).

**Tax deduction and collection
of Account Number (TAN)**

Such penalty imposable by Assessing Officer. However, no penalty is imposable unless the person on whom penalty is to be imposed is given an opportunity of being heard in the matter.

13.6.8 Person responsible for paying tax deducted at source [Section 204]

For purposes of deduction of tax at source the expression “person responsible for paying” means:

	Nature of income/payment	Person responsible for paying tax
(1)	Salary (other than payment of salaries by the Central or State Government)	(i) the employer himself; or (ii) if the employer is a company, the company itself, including the principal officer thereof.
(2)	Interest on securities (other than payments by or on behalf of the Central or State Government)	the local authority, corporation or company, including the principal officer thereof.
(3)	Any sum payable to a non-resident Indian, representing consideration for the transfer by him of any foreign exchange asset, which is not a short term capital asset	the “Authorised Person” responsible for remitting such sum to the non-resident Indian or for crediting such sum to his Non-resident (External) Account maintained in accordance with the Foreign Exchange Management Act, 1999 and any rules made thereunder.
(4)	furnishing of information relating to payment to a non corporate non-resident, or to a foreign company, of any sum, whether or not chargeable under the provisions of this Act	(i) the payer himself; or (ii) if the payer is a company, the company itself including the principal officer thereof.
(5)	Credit/payment of any other sum chargeable under the provisions of the Act	(i) the payer himself; or (ii) if the payer is a company, the company itself including the principal officer thereof.
(6)	Credit/payment of any sum chargeable under the provisions of the Act made by or on behalf of the Central Government or the Government of a State.	(i) the drawing and disbursing officer; or (ii) any other person, by whatever name called, responsible for crediting, or as the case may be, paying such sum.
(7)	In case of a person not resident in India (irrespective of the nature of payment or income)	(i) the person himself; or (ii) any person authorized by such person; or (iii) the agent of such person in India including any person treated as an agent under section 163.

13.6.9 Bar against direct demand on assessee [Section 205]

Where tax is deductible at source under any of the aforesaid sections, the assessee shall not be called upon to pay the tax himself to the extent to which tax has been deducted from that income.

13.6.10 Furnishing of statements in respect of payment of any income to residents without deduction of tax [Section 206A]

- (1) This section casts responsibility on every banking company or co-operative society or public company referred to in the proviso to section 194A(3)(i) [i.e., a 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 residential houses in India and which is eligible for deduction under section 36(1)(viii)] to prepare such statement, for such period as may be prescribed –
 - if they are responsible for paying to a resident,
 - the payment should be of any income not exceeding ₹ 40,000, where the payer is a banking company or a co-operative society, and ₹ 5,000 in any other case.
 - such income should be by way of interest (other than interest on securities)
- (2) The statements have to be delivered or caused to be delivered to the prescribed income-tax authority or the person authorised by such authority.
- (3) The statements have to be in the prescribed form, containing such particulars verified in the prescribed manner. The statement has to be filed within the prescribed time.
- (4) The CBDT may cast responsibility on any person other than a person mentioned in (1) above, who is responsible for paying to a resident any income liable for deduction of tax at source.
- (5) Such persons may be required to prepare statement for such period as may be prescribed in the prescribed form and deliver or cause to be delivered such statement within the prescribed time to the prescribed income-tax authority or the person authorized by such authority.
- (6) Such statements should be in the prescribed form, containing such particulars and verified in the prescribed manner.
- (7) Such person referred to in (1) and (4) above may also deliver to the prescribed authority, a correction statement -
 - (a) for rectification of any mistake; or
 - (b) to add, delete or update the information furnished in the statement delivered referred in (2) & (5) above.

- (8) Penalty under section 272A(2) would be levied for failure to deliver or to be delivered the statement within the time specified of **₹ 500** for every day during which default continues.

Penalty

13.6.11 Mandatory requirement to furnish PAN [Section 206AA]

- (1) The non-furnishing of PAN by deductees in many cases led to delay in issue of refund on account of problems in the processing of returns of income and in granting credit for tax deducted at source.
- (2) With a view to strengthening the PAN mechanism, section 206AA provides that any person whose receipts are subject to deduction of tax at source i.e., the deductee, shall mandatorily furnish his PAN to the deductor failing which the deductor shall deduct tax at source at higher of the following rates –
 - (i) the rate prescribed in the Act;
 - (ii) at the rate in force i.e., the rate mentioned in the Finance Act; or
 - (iii) at the rate of 20% **[5%]**, in case tax is required to be deducted at source u/s 194-O and u/s 194Q]

Higher TDS for non-furnishing of PAN

Example: In case of rental payment for plant and machinery, where the payee does not furnish his PAN to the payer, tax would be deductible @20% instead of @2% prescribed under section 194-I.

However, non-furnishing of PAN by the deductee in case of income by way of winnings from lotteries, card games etc., would result in tax being deducted at the existing rate of 30% under section 194B. Therefore, wherever tax is deductible at a rate higher than 20%, this provision would not have any impact.

- (3) Tax would be deductible at the rates mentioned above also in cases where the taxpayer files a declaration in Form 15G or 15H (under section 197A) but does not provide his PAN.
- (4) Further, no certificate under section 197 will be granted by the Assessing Officer unless the application contains the PAN of the applicant.
- (5) Both the deductor and the deductee have to compulsorily quote the PAN of the deductee in all correspondence, bills, vouchers and other documents exchanged between them.

- (6) If the PAN provided to the deductor is invalid or it does not belong to the deductee, it shall be deemed that the deductee has not furnished his PAN to the deductor. Accordingly, tax would be deductible at the rate specified in (2) above.
- (7) The provisions of section 206AA shall not apply in respect of payment of interest on long-term bonds, as referred to in section 194LC, to a non-corporate non-resident or to a foreign company.
- (8) **Non-applicability of section 206AA to non-residents subject to fulfilment of certain conditions [Rule 37BC]:**

For the purpose of reducing the compliance burden, Rule 37BC provides for relaxation to a non-corporate non-resident or a foreign company not having PAN in respect of payment in the nature of interest, royalty, fees for technical services, dividends and payments on transfer of any capital asset, subject to the deductee furnishing the following details and documents to the deductor, namely:-

Non-applicability

- a. name, e-mail id, contact number;
- b. address in the country or specified territory outside India of which the deductee is a resident;
- c. a certificate of his being resident in any country or specified territory outside India from the Government of that country or specified territory if the law of that country or specified territory provides for issuance of such certificate;
- d. Tax Identification Number of the deductee in the country or specified territory of his residence and in case no such number is available, then a unique number on the basis of which the deductee is identified by the Government of that country or the specified territory of which he claims to be a resident.

13.6.12 Higher rate of TDS for non-filers of income-tax return [Section 206AB]

- (1) Section 206AB requires tax to be deducted at source under the provisions of this Chapter on any sum or income or amount paid, or payable or credited, by a person **to a specified person**, at higher of the following rates –
- (i) at twice the rate prescribed in the relevant provisions of the Act;

Higher TDS for non-filers

- (ii) at twice the rate or rates in force i.e., the rate mentioned in the Finance Act; or
- (iii) at 5%

However, section 206AB is **not** applicable in case of tax deductible at source under sections 192, 192A, 194B, **194BA**, 194BB, 194-IA, 194-IB, 194LBC, 194M and 194N.

- (2) In case the provisions of section 206AA are also applicable to the specified person, in addition to the provisions of this section, then, tax is required to be deducted at higher of the two rates provided in section 206AA and section 206AB.

- (3) **Meaning of “specified person”** – A person who has not furnished the return of income

Specified Person

- for the assessment year relevant to the previous year immediately preceding the financial year in which tax is required to be deducted, for which the time limit for furnishing the return of income under section 139(1) has expired and
- the aggregate of tax deducted at source and tax collected at source in his case is **₹ 50,000 or more** in the said previous year.

However, the specified person does not include

- **a non-resident who does not have a permanent establishment in India or**
- **a person and who is not required to furnish the return of income for the assessment year relevant to the previous year and is notified by the Central Government.**



13.7 TAX COLLECTION AT SOURCE

- (1) **Applicability and Rates**

- (I) **Sale of certain goods [Section 206C(1)]**

Under section 206C(1), sellers of certain goods are required to collect tax from the buyers at the specified rates. The specified percentage for collection of tax at source is as follows:

TCS

	Nature of Goods	Percentage
(a)	Alcoholic liquor for human consumption	1%
(b)	Tendu leaves	5%

(c)	Timber obtained under a forest lease	2.5%
(d)	Timber obtained by any mode other than (c)	2.5%
(e)	Any other forest produce not being timber or tendu leaves	2.5%
(f)	Scrap	1%
(g)	Minerals, being coal or lignite or iron ore	1%

Non-applicability of TCS [Section 206C(1A)]

No collection of tax shall be made under section 206C(1) in the case of a resident buyer, if such buyer furnishes to the person responsible for collecting tax, a declaration in writing in duplicate in the prescribed form and verified in the prescribed manner to the effect that goods referred to in above table are to be utilised for the purpose of manufacturing, processing or producing articles or things or for the purposes of generation of power and not for trading purposes.

Non-applicability

Furnishing of copy of declaration within specified time [Section 206C(1B)]

The person responsible for collecting tax under this section shall deliver or cause to be delivered to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner one copy of the declaration referred to in 206C (1A) on or before 7th of the month next following the month in which the declaration is furnished to him.

(II) Lease or a licence of parking lot, toll plaza or mine or a quarry [Section 206C(1C)]

Parking lot

Section 206C(1C) provides for collection of tax by every person who grants a lease or a licence or enters into a contract or otherwise transfers any right or interest in any -

- parking lot or
- toll plaza or
- a mine or a quarry

to another person (other than a public sector company) for the use of such parking lot or toll plaza or mine or quarry for the purposes of business. The tax shall be collected as provided, from the licensee or lessee of any such licence, contract or lease of the specified nature, at the rate of 2%.

Note – Mining and quarrying excludes mining and quarrying of mineral oil. Mineral oil includes petroleum and natural gas. Thus, mining and quarrying excludes mining and quarrying of

petroleum and natural gas. Consequently, the oil exploration and incidental services are relieved from the applicability of TCS provisions, since these services are in the organized sector.

(III) **Sale of motor vehicle of value exceeding ₹ 10 lakhs**
[Section 206C(1F)]

Motor car

Section 206C(1F) provides that every person, being a seller, who receives any amount as consideration for sale of a motor vehicle of the value exceeding ₹ 10 lakhs, shall collect tax from the buyer @1% of the sale consideration.

Clarification relating to certain issues with respect to section 206C(1F) [Circular No. 22/2016 dated 8.6.2016]

Circular

The CBDT has, vide Circular No. 22/2016 dated 8.6.2016, clarified the following issues in “Question & Answer (Q & A)” format.

Q.1 Whether TCS @1% is on sale of motor vehicle at retail level or also on sale of motor vehicles by manufacturers to dealers/ distributors?

A. To bring high value transactions within the tax net, section 206C has been amended to provide that the seller shall collect the tax @ 1% from the purchaser on sale of motor vehicle of the value exceeding ₹ 10 lakhs. This is brought to cover all transactions of retail sales and accordingly, section 206C(1F) **will not apply on sale of motor vehicles by manufacturers to dealers/distributors.**

Q.2 Whether TCS @1% on sale of motor vehicle is applicable only to luxury cars?

A. No, as per section 206C(1F), the seller shall collect tax @1% from the purchaser on sale of any motor vehicle of the value exceeding ₹ 10 lakhs.

Q.3 Whether TCS @1% is applicable in the case of sale to Government Departments, Embassies, Consulates and United Nation Institutions, of motor vehicle or any other goods or provision of services?

A. Government, institutions notified under United Nations (Privileges and Immunities) Act 1947, and Embassies, Consulates, High Commission, Legation, Commission and trade representation of a foreign State shall not be liable to levy of TCS @1% under section 206C(1F).

Q.4 Whether TCS is applicable on each sale of motor vehicle or on aggregate value of sale during the year?

- A. Tax is to be collected at source @1% on sale consideration of a motor vehicle exceeding ₹ 10 lakhs. It is applicable to each sale and not to aggregate value of sale made during the year.

Q.5 Whether TCS @1% on sale of motor vehicle is applicable in case of an individual?

- A. The definition of "Seller" as given in clause (c) of the *Explanation* below sub-section (11) of section 206C shall be applicable in the case of sale of motor vehicles also.

Q.6 How would the provisions of TCS on sale of motor vehicle be applicable in a case where part of the payment is made in cash and part is made by cheque?

- A. The provisions of TCS on sale of motor vehicle exceeding ₹ 10 lakhs is not dependent on mode of payment. Any sale of motor vehicle exceeding ₹ 10 lakhs would attract TCS @1%.

Meaning of certain terms referred in Para (I) to (III)

Term	Meaning
Buyer	<u>For section 206C(1):</u> A person who obtains in any sale, by way of auction, tender, or any other mode, goods of the nature specified in the Table in point (1) or the right to receive any such goods but does not include – (A) a public sector company, the Central Government, a State Government, and an embassy, a high commission, legation, commission, consulate and the trade representation, of a foreign State and a club, or (B) a buyer in the retail sale of such goods purchased by him for personal consumption [<i>Explanation</i> to section 206C] <u>For section 206C(1F):</u> A person who obtains in any sale, goods of the nature specified therein, but does not include – (A) the Central Government, a State Government and an embassy, a High Commission, legation, commission, consulate and the trade representation of a foreign State; or (B) a local authority; or (C) a public sector company which is engaged in the business of carrying passengers. [<i>Explanation</i> to section 206C]
Seller	<u>For section 206C(1) and section 206C(1F):</u> (i) The Central Government, (ii) a State Government or

	(iii) any local authority or (iv) corporation or (v) authority established by or under a Central, State or Provincial Act, or (vi) any company or (vii) firm or (viii) co-operative society Seller also includes an individual or a HUF whose total sales, gross receipts or turnover from the business or profession carried on by him exceed ₹ 1 crore in case of business and ₹ 50 lakhs in case of profession during the financial year immediately preceding the financial year in which the goods of the nature specified in the Table in point (1) are sold. [Explanation to section 206C]
Scrap	Waste and scrap from the manufacture or mechanical working of materials which is definitely not usable as such because of breakage, cutting up, wear and other reasons. [Explanation to section 206C]

(IV) **Overseas remittance or an overseas tour package [Section 206C(1G)]**

As per section 206C(1G), every person,

- being **an authorized dealer**, who receives amount, under the Liberalised Remittance Scheme of the RBI, for remittance from a buyer, being a person remitting such amount;
- being **a seller of an overseas tour programme package**, who receives any amount from the buyer who purchases the package

Overseas Remittances

is required to collect tax at source on such amount received from the buyer.

Tax has to be collected at the time of debiting the amount payable by the buyer or at the time of receipt of such amount from the said buyer, by any mode, whichever is earlier.

Rate of TCS in case of collection by an authorized dealer

S. No.	Particulars	Rate of TCS	
		Before 1.10.2023	On or after 1.10.2023
(i)	Remittances for the purpose of education [other than (ii) below] or medical treatment;	No TCS upto ₹ 7 lakhs 5% of the amt or agg. of amts in excess of ₹ 7 lakh	
(ii)	Remittances out of loan obtained from any financial institution as referred	No TCS upto ₹ 7 lakhs	

	<i>under section 80E, for the purpose of pursuing any education</i>	0.5% of the amt or agg. of amts in excess of ₹ 7 lakh	
(iii)	<i>Remittances for purposes other than mentioned in (i) to (ii)</i>	No TCS upto ₹ 7 lakhs 5% on the amount or aggregate of amounts in excess of ₹ 7 lakhs	No TCS upto ₹ 7 lakhs 20% on the amount or aggregate of amounts in excess of ₹ 7 lakhs
(iv)	<i>Overseas Tour Program Package</i>	5% without any threshold limit	5% upto ₹ 7 lakhs and 20% above ₹ 7 lakhs

Power to issue guidelines [Section 206C(1-I): In case any difficulty arises to give effect to, *inter alia*, the provisions of section 206C(1G), the CBDT is empowered to issue guidelines, with the approval of the Central Government, for the purpose of removing the difficulty.

In exercise of the power to issue guidelines, the CBDT has, with the approval of Central Government, vide **Circular no. 10/2023 dated 30.6.2023**, issued the following guidelines for removing certain difficulties-

Guidelines

Question 1: Whether payment through overseas credit card would be counted in LRS?

Answer: As announced in the press release dated 28th June, 2023, the classification of use of international credit card while being overseas, as LRS is postponed.

Therefore, no TCS shall be applicable on expenditure through international credit card while being overseas till further order.

Question 2: Whether the threshold of ₹ 7 lakh, for TCS to become applicable on LRS,

Threshold limit

applies separately for various purposes like education, health treatment and others? For example, if remittance of ₹ 7 lakh under LRS is made in a financial year for education purpose and other remittances in the same financial year of ₹ 7 lakh is made for medical treatment and ₹ 7 lakh for other purposes, whether the exemption limit of ₹ 7 lakh shall be given to each of the three separately?

Answer: It is clarified that the threshold of ₹ 7 lakh for LRS is **combined threshold** for applicability of the TCS on LRS irrespective of the purpose of the remittance. This is clear from the first proviso to section 206C(1G). The proviso states that the TCS is not required if

the amount or aggregate of the amounts being remitted by a buyer is less than seven lakh rupees in a financial year. The amendment by the Finance Act, 2023 has only restricted it to education and medical treatment purpose. Now, after press release⁸, old position has been restored and the threshold continues to apply for seven lakh rupees in a financial year, irrespective of the purpose.

Thus, in the given example, upto ₹ 7 lakh remittance under LRS during a financial year shall not be liable for TCS. However, subsequent ₹ 14 lakh remittance under LRS shall be liable for TCS in accordance with the TCS rates applicable for such remittance.

In the example, if the remittances under LRS are made in the current financial year at different point of time, TCS rates for the remaining ₹ 14 lakh remittances under LRS would depend on the time of remittance as TCS rates changes from 1st October 2023.

TCS rates would be applicable as under:-

Remittances	Rate of TCS
First ₹ 7 lakh remittance under LRS during the financial year 2023-24 for education purpose (or for that matter any purpose)	No TCS
Remittances beyond ₹ 7 lakh under LRS during the financial year 2023-24, if on or before 30th September 2023	TCS at 5% (irrespective of the purpose unless it is for education purpose financed by loan from a financial institution when the rate is 0.5%)
Remittances beyond ₹ 7 lakh under LRS during the financial year 2023-24, if on or after 1st October 2023.	TCS at 0.5% (if it is for education purpose financed by loan from a financial institution), 5% (if it is for education or medical treatment) and 20% (if it is for other purposes)

Question 3: Since there are different TCS rates on LRS for the first six months and next six months of the financial year 2023-24, whether the threshold of ₹ 7 lakh, for the TCS to become applicable on LRS, applies separately for each six months?

Threshold of ₹ 7 lakhs applies for whole P.Y.

Answer: No. The threshold of ₹ 7 lakh, for the TCS to become applicable on LRS, applies for the full financial year. If this threshold has already been exhausted; all subsequent

⁸ Press release dated 28.6.2023

remittances under LRS, whether in the first half or in the second half, would be liable for TCS at applicable rate.

Question 4: Whether the threshold of ₹ 7 lakh, for TCS to become applicable on LRS, applies separately for each remittance through different authorised dealers? If not, how will authorised dealer know about the earlier remittances by that remitter through some other authorised dealer?

Answer: It is clarified that the threshold of ₹ 7 lakh for LRS is qua remitter and not qua authorised dealer. This is clear from the first proviso to section

Threshold is Qua remitter

206C(1G). The proviso states that the TCS is not required if the amount or aggregate of amounts being remitted by a buyer is less than seven lakh rupees in a financial year. The threshold continues to apply qua remitter.

Since the facility to provide real time update of remittance under LRS by remitter is still under development by the RBI, it is clarified that the details of earlier remittances under LRS by the remitter during the financial year may be taken by the authorised dealer through an undertaking at the time of remittance. If the authorised dealer correctly collects the tax at source based on information given in this undertaking, he will not be treated as "assessee in default". However, for any false information in the undertaking, appropriate action may be taken against the remitter under the Act.

It is further clarified that same methodology of taking undertaking from the buyer of overseas tour program package may be followed by the seller of such package.

Question 5: There is threshold of ₹ 7 lakh for remittance under LRS for TCS to become applicable while there is another threshold of ₹ 7 lakh for purchase of overseas tour program package where reduced rate of 5% of TCS applies. Whether these two thresholds apply independently?

Answer: Yes, these two thresholds apply independently. For LRS, the threshold of ₹ 7 lakh applies to make TCS applicable. For purchase of overseas tour program package, the threshold of ₹ 7 lakh applies to determine the applicable TCS rate as 5% or 20%.

Question 6: A resident individual spends ₹ 3 lakh for purchase of overseas tour program package from a foreign tour operator and remits money which is classified under LRS. There is no other remittance under LRS or purchase of overseas tour program during the financial year. Whether TCS is applicable?

Answer: In case of purchase of overseas tour program package which is classified under

LRS, TCS provision for purchase of overseas tour program package shall apply and not TCS provisions for remittance under LRS.

Since for purchase of overseas tour program package, the threshold of ₹ 7 lakh for applicability of TCS does not apply, TCS is applicable and tax is required to be collected by the seller. In this case the tax shall be required to be collected at 5% since the total amount spent on purchase of overseas tour program package during the financial year is less than ₹ 7 lakh. The TCS should be made by the seller.

Question 7: There are different rates for remittance under LRS for medical treatment/education purposes and for other purposes. What is the scope of remittance under LRS for medical treatment/education purposes?

Answer: As per the clarification by the RBI, remittance for the purposes of medical treatment shall include,-

Medical treatment

- (i) remittance for purchase of tickets of the person to be treated medically overseas (and his attendant) for commuting between India and the overseas destination;
- (ii) his medical expense; and
- (iii) other day to day expenses required for such purpose.

It may be noted that code 50304 (under the Purpose Group Name "Travel"), in RBI master direction for LRS, pertains to travel for medical treatment. As per BPM6, A.P. (DIR Series) Circular no 50, dated 11 Feb 2016 this code covers the transactions which are related to health services acquired by residents travelling abroad for medical reasons, which includes medical services, other healthcare, food, accommodation and local transport transactions.

In addition, code 51108 (under the Purpose Group Name "Personal, Cultural & Recreational services") covers transactions for health services rendered remotely or onsite (that is no travel by service recipient is involved). This cover services from hospitals, doctors, nurses, paramedical and similar services, etc.

TCS provision for purpose of medical treatment would apply when remittance is under code 50304 or under code 51108.

Education

Remittance for purpose of education shall include,-

Education

- (i) remittance for purchase of tickets of the person undertaking study overseas for commuting between India and the overseas destination;

- (ii) the tuition and other fees to be paid to educational institute; and
- (iii) other day to day expenses required for undertaking such study.

It may be noted that code 50305 (under the Purpose Group Name "Travel"), in RBI master direction for LRS, pertains to travel for education (including fees, hostel expenses, etc). As per BPM6, A.P. (DIR Series) Circular no 50, dated 11 Feb 2016 this code covers education related services such as tuition, food, accommodation, local transport and health services acquired by resident students while residing overseas.

In addition, code 51107 (under the Purpose Group Name "Personal, Cultural & Recreational services") covers transactions for education (e.g., fees for correspondence courses abroad) where the person receiving education does not travel overseas.

TCS provision for purpose of education would apply when remittance is under code 50305 or under 51107.

Question 8: Whether purchase of international travel ticket or hotel accommodation on standalone basis is purchase of overseas tour program package?

Answer: The term 'overseas tour program package' is defined as to mean any tour package which offers visit to a country or countries or territory or territories outside India and includes expenses for travel or hotel stay or boarding or lodging or any other expenditure of similar nature or in relation thereto.

It is clarified that purchase of only international travel ticket or purchase of only hotel accommodation, by in itself is not covered within the definition of 'overseas tour program package'. To qualify as 'overseas tour program package', the package should include at least two of the followings:-

- (i) international travel ticket,
- (ii) hotel accommodation (with or without food)/boarding/lodging,
- (iii) any other expenditure of similar nature or in relation thereto.

Cases where no tax is to be collected

(i)	No TCS by the authorized dealer on an amount in respect of which the sum has been collected by the seller.
(ii)	No TCS, if the buyer is liable to deduct tax at source under any other provision of the Act and has deducted such tax.
(iii)	No TCS, if the buyer is the Central Government, a State Government, an embassy,

	a High Commission, a legation, a commission, a consulate, the trade representation of a foreign State, a local authority⁹ or any other person notified by the Central Government, subject to fulfillment of conditions stipulated thereunder. Accordingly, the Central Government has, vide Notification No. 99/2022, dated 17.08.2022, notified that the provisions of section 206C(1G) would not be applicable to a person (being a buyer) who is a non-resident in terms of section 6 and who does not have a permanent establishment in India.

Meaning of certain terms

Term	Meaning
Authorised dealer	A person authorised by the RBI to deal in foreign exchange or foreign security. [Clause (i) of <i>Explanation</i> to section 206C(1G)]
Overseas tour program package	Any tour package which offers visit to a country/(ies) or territory/(ies) outside India. It includes expenses for travel or hotel stay or boarding or lodging or any other expenditure of similar nature or in relation thereto. [Clause (ii) of <i>Explanation</i> to section 206C(1G)]

(V) Sale of goods of value exceeding ₹ 50 lakh [Section 206C(1H)]

- (a) As per section 206C(1H), tax is also required to be collected by a seller, who receives any amount as consideration for sale of goods of the value or aggregate of such value exceeding ₹ 50 lakhs in a previous year [other than exported goods or goods covered under sub-sections (1)/(1F)/(1G)].

**TCS on Sale of Goods
@ 0.1% of
consideration in
excess of ₹ 50 lakhs**

- (b) Tax is to be collected at source @0.1% u/s 206C(1H) of the sale consideration exceeding ₹ 50 lakhs, at the time of receipt of consideration.

- (c) Tax is, however, not required to be collected if the buyer is liable to deduct tax at source under any other provision of the Act on the goods purchased by him from the seller and has deducted such tax.

At the time of receipt

- (d) Tax shall be collected **at the time of receipt** of such amount under section 206C(1H).

⁹ as defined in Explanation to section 10(20)

(e) **Meaning of certain terms**

	Term	Meaning
(ii)	Buyer	A person who purchases any goods but does not include – (A) the Central Government, a State Government, an embassy, a High Commission, legation, commission, consulate and the trade representation of a foreign State, or (B) a local authority; or (C) a person importing goods into India or any other person as the Central Government may, by notification in the Official Gazette, specify for this purpose, subject to stipulated conditions. [Clause (a) of Explanation to section 206C(1H)]
(iii)	Seller	A person whose total sales, gross receipts or turnover from the business carried on by him exceed ₹ 10 crores during the financial year immediately preceding the financial year in which sale of goods is carried out. However, seller does not include a person as notified by the Central Government for this purpose, subject to fulfillment of conditions stipulated [Clause (b) of Explanation to section 206C(1H)]

(f) **Power of the CBDT to issue guidelines**

In case any difficulty arises to give effect to, *inter alia*, the provisions of section 206C(1H), the CBDT is empowered to issue guidelines, with the approval of the Central Government, for the purpose of removing the difficulty.

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 person liable to collect the sum.

In exercise of the power to issue guidelines, the CBDT has, with the approval of Central Government, vide **Circular no. 17/2020 dated 29.9.2020**, issued the following guidelines for removing certain difficulties-

Guidelines

1. **Applicability on transactions carried through various Exchanges:**

In order to remove practical difficulties in implementing section 206C(1H) in case of certain exchanges and clearing corporations, it has been provided that section 206C(1H) shall **not be applicable** in relation to-

- transactions in securities and commodities which are traded through recognized stock exchanges or cleared and settled by the recognized clearing corporation, including recognized stock exchanges or recognized clearing corporation located in International Financial Service Centre;
- transactions in electricity, renewable energy certificates and energy saving certificates traded through power exchanges registered in accordance with Regulation 21 of the CERC (Central Electricity Regulatory Commission).

2. Applicability on sale of Motor vehicle:

The provisions of section 206C(1F) apply to sale of motor vehicle of the value exceeding ₹ 10 lakhs. Section 206C(1H) excludes from its applicability goods covered under section 206C(1F). It may be noted that the scope of sections 206C(1H) and (1F) are different. While section 206C(1F) is based on single sale of motor vehicle, section 206C(1H) is for receipt above ₹ 50 lakhs. Hence, in order to remove difficulty that whether all motor vehicles are excluded from the applicability of section 206C(1H), it is clarified that,-

- Receipt of sale consideration from a dealer would be subjected to TCS under section 206C(1H), if such sales are not subjected to TCS under section 206C(1F)
- In case of sale to consumer, receipt of sale consideration for sale of motor vehicle of the value of ₹ 10 lakhs or less to a buyer would be subjected to TCS under section 206C(1H), if the receipt of sale consideration for such vehicles during the previous year exceeds ₹ 50 lakhs during the previous year.
- In case of sale to consumer, receipt of sale consideration for sale of motor vehicle of the value exceeding ₹ 10 lakhs would not be subjected to TCS under section 206C(1H) if such sales are subjected to TCS under section 206C(1F).

3. Adjustment for sale return, discount or indirect taxes:

It is been clarified that no adjustment on account of sale return or discount or indirect taxes including

TCS on GST also

GST is required to be made for collection of tax under section 206C(1H) since the collection is made with reference to receipt of amount of sale consideration.

4. Fuel supplied to non-resident airlines at airports in India:

It is provided that the provisions of section 206C(1H) shall not apply on the sale consideration received for fuel supplied to non-resident airlines at airports in India.

Clarification relating to cross application of section 194-O, section 206C(1H) and section 194Q

The CBDT has, vide **Circular no. 13/2021 dated 30.6.2021 and Circular No. 20/2021 dated 25.11.2021**, provide clarifications on cross application of section 194-O, section 206C(1H) and Section 194Q-

A. Cross application of section 194-O, section 206C(1H) and section 194Q

Clarification of how section 194-O, section 206C(1H) and section 194Q apply on the same transaction.

Under section 194-O(3), a transaction in respect of which tax has been deducted by the e-commerce operator under sub-section (1), or which is not liable to deduction under sub-section (2), shall **not** be liable to tax deduction at source under any other provision of Chapter XVII of the Act. Under the second proviso to section 206C(1H), provisions of this sub-section shall not apply, if the buyer is liable to deduct tax at source under any other provisions of this Act on the goods purchased by him from the seller and has deducted such tax.

E-commerce operator

Under section 194Q(5), the provisions of this section would **not** apply to a transaction on which -

- (i) tax is deductible under any of the provisions of this Act; and
- (ii) tax is collectible under the provisions of section 206C, other than a transaction on which section 206C(1H) applies

After conjoint reading of all these provisions, it is clarified that:

- (i) If tax has been deducted by the e-commerce operator on a transaction u/s 194-O [including transactions on which tax is not deducted on account of section 194-O(2)], that transaction shall not be subjected to tax deduction u/s 194Q.
- (ii) Though section 206C(1H) provides exemption from TCS if the buyer has deducted tax at source on goods purchased by him, to remove difficulties, it is clarified that this exemption would also cover a situation where, instead of the buyer, the e-commerce operator has deducted tax at source on that transaction of sale of goods by seller to buyer through e-commerce operator.
- (iii) If a transaction is both within the purview of section 194-O as well as section 194Q, tax is required to be deducted u/s 194-O and not u/s 194Q.

- (iv) Similarly, if a transaction is both within the purview of section 194-O as well as section 206C(1H), tax is required to be deducted u/s 194-O. The transaction shall come out of the purview of section 206C(1H) after tax has been deducted by the e-commerce operator on that transaction. Once the e-commerce operator has deducted the tax on a transaction, the seller is not required to collect the tax u/s 206C(1H) on the same transaction. It is clarified that here primary responsibility is on e-commerce operator to deduct the tax u/s 194-O and that responsibility cannot be condoned if the seller has collected the tax u/s 206C(1H). This is for the reason that the rate of TDS u/s 194-O is higher than rate of TCS u/s 206C(1H).
- (v) If a transaction is both within the purview of section 194Q as well as section 206C(1H), then, tax is required to be deducted u/s 194Q. The transaction shall come out of the purview of section 206C(1H) after tax has been deducted by the buyer on that transaction. Once the buyer has deducted the tax on a transaction, the seller is not required to collect the tax u/s 206C(1H) on the same transaction. However, if, for any reason, tax has been collected by the seller u/s 206C(1H), before the buyer could deduct tax u/s 194Q on the same transaction, such transaction would not be subjected to tax deduction again by the buyer. This concession is provided to remove difficulty, since tax rate of deduction and collection are same in section 194Q and section 206C(1H).

Section 194Q

B. Applicability of section 194Q in cases where exemption has been provided under section 206C(1A)

Section 194Q does not apply in respect of transactions where tax is collectible u/s 206C [except sale of goods under section 206C(1H)]. Section 206C(1H) requires collection of tax at source in respect of sale of goods other than goods which have been covered u/s 206C(1)/(1F)/(1G).

In accordance with section 206C(1A), tax is not required to be collected in the case of a resident buyer who furnishes declaration to the effect that the goods u/s 206C(1) are to be utilised for the purposes of manufacturing, processing or producing articles or things or for the purposes of generation of power and not for trading purposes.

In case of goods which are covered u/s 206C(1) but exempted u/s 206C(1A), tax would not be collectible u/s 206C(1)/(1H).

It is clarified that the provisions of section 194Q will apply in such cases covered under section 206C(1A) and the buyer is to be liable to deduct tax u/s 194Q, if the conditions specified therein are fulfilled.

(2) Higher rate of TCS for non-furnishers of PAN [Section 206CC]

- (i) The provisions of section 206CC require tax collection at the higher of the following two rates, in case of failure by the person paying any sum or amount on which tax is collectible at source (collectee) to furnish PAN **[PAN or Aadhar number in case of section 206C(1H)]** to the person responsible for collecting tax at source (collector) -

Higher TCS for non-furnishing of PAN

- at twice the rate specified in the relevant provision of the Act
- at 5% [1%, in case tax is required to be collected at source u/s 206C(1H)].

W.e.f. 1.7.2023, the higher rate of TCS leviable for non-furnishing of PAN should not exceed 20%.

- (ii) Tax would be collectible at the rates mentioned above also in case where the person furnishes a declaration under section 206C(1A) but does not furnish his PAN.
- (iii) Both the collectee and collector have to compulsorily quote the PAN of the collectee in all correspondence, bills, vouchers and other documents exchanged between them.
- (iv) If the PAN provided to the collector is invalid or it does not belong to the collectee, it shall be deemed that the collectee has not furnished his PAN to the collector. Accordingly, tax would be collectible at the rate specified in (i) above.
- (v) The provisions of section 206CC does **not** apply to a non-resident who does not have a permanent establishment in India.

Non-applicability

(3) Higher rate of TCS for non-filers of income-tax return [Section 206CCA]

- (i) Section 206CCA requires tax to be collected at source under the provisions of this Chapter on any sum or amount received by a person **from a specified person**, at higher of the following rates –
- (a) at twice the rate specified in the relevant provision of the Act;
 - (b) at 5%

W.e.f. 1.7.2023, the higher rate of TCS leviable for non-filers of income-tax return should not exceed 20%.

**Higher TCS for
non-filers of
ROI**

(ii) In case the provisions of section 206CC are also applicable to the specified person, in addition to the provisions of section 206CCA, then, tax is required to be collected at higher of the two rates provided in section 206CC and section 206CCA.

(iii) **Meaning of “specified person”** – A person who has not furnished

- the return of income for the assessment year relevant to the previous year immediately preceding the financial year in which tax is required to be collected, for which the time limit for furnishing the return of income under section 139(1) has expired and
- the aggregate of tax deducted at source and tax collected at source in his case is ₹ 50,000 or more in the said previous year

However, the specified person does **not** include

- a non-resident who does not have a permanent establishment in India or;
- a person who is not required to furnish return of income and who is notified by the Central Government.

For example, if tax collection is required in January, 2024, the same would be collected at the higher rate under section 206CCA, if return of income of the buyer for A.Y. 2023-24 has not been filed and aggregate of TDS/TCS in the case of buyer is ₹ 50,000 or more in P.Y. 2022-23.

ILLUSTRATION 20

Mr. Gupta, a resident Indian, is in retail business and his turnover for F.Y.2022-23 was ₹ 12 crores. He regularly purchases goods from another resident, Mr. Agarwal, a wholesaler, and the aggregate payments during the F.Y.2023-24 was ₹ 95 lakh (₹ 20 lakh on 1.6.2023, ₹ 25 lakh on 12.8.2023, ₹ 22 lakh on 23.11.2023 and ₹ 28 lakh on 25.3.2024). Assume that the said amounts were credited to Mr. Agarwal's account in the books of Mr. Gupta on the same date. Mr. Agarwal's turnover for F.Y.2022-23 was ₹ 15 crores.

- (i) *Based on the above facts, examine the TDS/TCS implications, if any, under the Income-tax Act, 1961.*
- (ii) *Would your answer be different if Mr. Gupta's turnover for F.Y.2022-23 was ₹ 8 crores, all other facts remaining the same?*

- (iii) Would your answer to (i) and (ii) change, if PAN has not been furnished by the buyer or seller, as required?

SOLUTION

- (i) Since Mr. Gupta's turnover for F.Y.2022-23 exceeds ₹ 10 crores, and payments made by him to Mr. Agarwal, a resident seller exceed ₹ 50 lakhs in the P.Y.2023-24, he is liable to deduct tax @ 0.1% of ₹ 45 lakhs (being the sum exceeding ₹ 50 lakhs) in the following manner –

No tax is to be deducted u/s 194Q on the payments made on 1.6.2023 and 12.8.2023, since the aggregate payments till that date i.e., 45 lakhs, has not exceeded the threshold of ₹ 50 lakhs.

Tax of ₹ 1,700 [i.e., 0.1% of ₹ 17 lakhs (₹ 22 lakh – ₹ 5 lakhs, being the balance unexhausted threshold limit)] has to be deducted u/s 194Q from the payment/ credit of ₹ 22 lakh on 23.11.2023.

Tax of ₹ 2,800 (i.e., 0.1% of ₹ 28 lakhs) has to be deducted u/s 194Q from the payment/ credit of ₹ 28 lakhs on 25.3.2024.

Note – In this case, since both section 194Q and 206C(1H) applies, tax has to be deducted u/s 194Q.

- (ii) If Mr. Gupta's turnover for the F.Y.2022-23 was only ₹ 8 crores, TDS provisions under section 194Q would not be attracted. However, TCS provisions under section 206C(1H) would be attracted in the hands of Mr. Agarwal, since his turnover exceeds ₹ 10 crores in the F.Y.2022-23 and his receipts from Mr. Gupta exceed ₹ 50 lakhs.

No tax is to be collected u/s 206C(1H) on 1.6.2023 and 12.8.2023, since the aggregate receipts till that date i.e., ₹ 45 lakhs, has not exceeded the threshold of ₹ 50 lakhs.

Tax of ₹ 1,700 [i.e., 0.1% of ₹ 17 lakh (₹ 22 lakh – ₹ 5 lakhs, being the balance unexhausted threshold limits)] has to be collected u/s 206C(1H) on 23.11.2023.

Tax of ₹ 2,800 (i.e., 0.1% of ₹ 28 lakhs) has to be collected u/s 206C(1H) on 25.3.2024.

- (iii) In case (i), if PAN is not furnished by Mr. Agarwal to Mr. Gupta, then, Mr. Gupta has to deduct tax @5%, instead of 0.1%. Accordingly, tax of ₹ 85,000 (i.e., 5% of ₹ 17 lakhs) and ₹ 1,40,000 (5% of ₹ 28 lakhs) has to be deducted by Mr. Gupta u/s 194Q on 23.11.2023 and 25.3.2024, respectively.

In case (ii), if PAN is not furnished by Mr. Gupta to Mr. Agarwal, then, Mr. Agarwal has to collect tax@1% instead of 0.1%. Accordingly, tax of ₹ 17,000 (i.e., 1% of ₹ 17 lakhs) and

₹ 28,000 (1% of ₹ 28 lakhs) has to be collected by Mr. Agarwal u/s 206C(1H) on 23.11.2023 and 25.3.2024, respectively.

(4) TCS to be paid within prescribed time [Section 206C(3)]

Deposit of TCS

Any amount collected under this section shall be paid within the prescribed time to the credit of the Central Government or as the Board directs.

Time limit for paying tax collected to the credit of the Central Government [Rule 37CA]

	Person collecting sums in accordance with section 206C	Circumstance		Period within which such sum should be paid to the credit of the Central Government
(1)	An office of the Government	(i)	where the tax is paid without production of an income-tax challan	on the same day
		(ii)	where tax is paid accompanied by an income-tax challan	on or before 7 days from the end of the month in which the collection is made
(2)	Collectors other than an office of the Government			within one week from the last day of the month in which the collection is made

(5) Statement of TCS to be prepared and delivered within prescribed time

- (i) A person collecting tax in accordance with the provisions of the section is vested with the responsibility of preparing such statements for such periods as may be prescribed after paying the tax collected to the credit of the Central Government within the prescribed time.
- (ii) The statement should be delivered or caused to be delivered to the prescribed income-tax authority, i.e., DGIT (Systems) or the person authorised by such authority.
- (iii) The statement should be in the prescribed form [Form No.27EQ] and verified in the prescribed manner.
- (iv) The statement should set forth the prescribed particulars and should be filed within such time as may be prescribed.

Statement for TCS

Due dates for furnishing statement of TCS [Rule 31AA]

	Quarter ending	Due Date
I	30 th June	15 th July
II	30 th September	15 th October
III	31 st December	15 th January
IV	31 st March	15 th May

(6) **Enabling provision for improving the reporting of payment of TCS made through book entry and making the existing mechanism enforceable [Section 206C(3A)]**

Where the tax collected has been paid without the production of a challan, the PAO/TO/CDDO or any other person, by whatever name called, who is responsible for crediting such sum to the credit of the Central Government, shall furnish a statement in the prescribed form [Form No.24G] for the prescribed period to the agency authorised by the Principal Director of Income-tax (Systems) in respect of tax collected by the collectors and reported to him. Such statement has to be furnished within the prescribed time by verifying the same in the prescribed manner and setting forth prescribed particulars.

Relevant Rule	Period to which statement relates	Prescribed Time
37CA(3A)(a)	Where the statement relates to the month of March	On or before 30 th April
37CA(3A)(b)	In any other case	On or before 15 days from the end of the relevant month

Such statement has to be furnished in the following manner:

- (a) electronically under digital signature; or
- (b) electronically along with verification of the statement in Form No.27A or verified through an electronic process

in accordance with the procedures, formats and standards for the purpose of furnishing and verification of the statements specified by the Principal DGIT (Systems)

Penalty

Penalty: Failure to furnish such statement would attract penalty under section 272A(2) of ₹ 500 for every day during which default continues.

(7) **Enabling provision for filing correction statement of TCS [Section 206C(3B)]**

The person collecting tax at source who is required to prepare statements to be delivered to

DGIT (Systems) / NSDL after paying the tax collected to the credit of the Central Government, may also deliver to the said authority, a correction statement for rectification of any mistake or to add, delete or update the information furnished in the statement so delivered in the specified form and verified in the specified manner.

(8) Credit for TCS [Section 206C(4)]

Any amount collected in accordance with the provisions of this section and paid to the credit of the Central Government shall be deemed to be payment of tax on behalf of the person from whom the amount has been collected. The CBDT may prescribe the rules based on which credit shall be given to such person for the amount so collected in a particular assessment year.

Rule	Case	Manner of allowing credit
Rule 37-I(2)(i)	Where tax has been collected at source and paid to the Central Government	Credit for TCS shall be given for the A.Y. for which the income is assessable to tax.
Rule 37-I(2)(ii)	Where tax has been collected at source and paid to the Central Government and the lease or license is relatable to more than one year	Credit for TCS shall be allowed across those years to which the lease or license relates in the same proportion

For the purposes of section 206C(1F)/ (1G)/ (1H), credit for tax collected at source shall be given to the person from whose account tax is collected and paid to the Central Government account for the assessment year relevant to the previous year in which such tax collection is made.

(9) Furnishing of Certificate of TCS within prescribed time [Section 206C(5)]

- (i) Every person collecting tax in accordance with the provisions of this section shall, within such period as may be prescribed from the date of debit or receipt of the amount, furnish to the buyer or licensee or lessee to whose account such amount is debited or from whom such payment is received, a certificate to the effect that tax has been collected specifying the sum so collected, the rate at which the tax has been collected and such other particulars as may be prescribed.

TCS Certificate

- (ii) Certificate of tax collected at source under section 206C(5) in Form No.27D shall be furnished by the collector within 15 days from the due date for furnishing the quarterly statement of TCS under Rule 31AA [Rule 37D].
- (iii) The prescribed income-tax authority or the person authorized by such authority have now been vested with the responsibility to prepare and deliver a statement in the prescribed form specifying the amount of tax collected and such other particulars as may be prescribed, within the prescribed time after the end of each financial year beginning on or after 1.4.2008 [Proviso to sub-section (5)].

(10) **Consequences of failure to collect tax at source**

- (i) **Personal liability to pay tax collectible at source [Section 206C(6)]** - A person who is responsible for collecting the tax in accordance with the provisions of this section shall be liable to pay the tax to the credit of the Central Government, even if he has failed to collect the tax
- (ii) **Deemed assessee-in-default for failure to collect tax [Section 206C(6A)]** - Any person responsible for collecting tax shall be deemed to be an assessee in default in respect of the tax if such person -

Assessee in Default

 - (1) does not collect the whole or any part of the tax or
 - (2) fails to pay such tax after having collected the tax
- (iii) **Deeming provision not applicable if tax is paid by buyer/licensee/lessee [First Proviso to section 206C(6A)]** - Any person responsible for collecting tax at source in accordance with the provisions of sub-section (1) and sub-section (1C) would not be deemed to be an assessee-in-default for failure to collect tax on the amount received from a buyer or licensee or lessee or on the amount debited to the account of the buyer or licensee or lessee, if such buyer or licensee or lessee has furnished his return of income under section 139, taking into account such amount for computing income and paid the tax due on the income declared by him in such return of income. Further, the person should also furnish a certificate to this effect from an accountant in the prescribed form.
- (iv) **Levy of penalty for failure to collect and pay tax [Second proviso to section 206C(6A)]** - No penalty shall be charged under section 221 from such person unless the Assessing Officer is satisfied that the person has without good and sufficient reasons failed to collect and pay the tax.

- (v) **Interest payable for failure to collect and pay tax within the prescribed time [Section 206C(7)]** - If the person responsible for collecting tax does not collect the tax or after collecting the tax fails to pay it as required under this section, he shall be liable to pay simple interest at the rate of 1% p.m. or part thereof on the amount of such tax from the date on which such tax was collectible to the date on which the tax was actually paid and such interest shall be paid before furnishing the quarterly statement for each quarter in accordance with the provisions of section 206C(3).

Interest @1% p.m. or part of month

In such cases where a person is not deemed to be an assessee-in-default on account of the tax being paid by the buyer/licensee/lessee, interest shall be payable by the collector from the date on which tax was collectible to the date of furnishing return of income by such buyer or licensee or lessee.

However, where an order is made by the Assessing Officer for assessee-in-default, the interest shall be paid by the person in accordance with such order.

- (vi) **Tax not collected to be a charge upon all assets of the collector [Section 206C(8)]** - Where the tax has not been paid as aforesaid, after it is collected, the amount of tax together with the amount of simple interest thereon referred to in sub-section (7) shall be a charge upon all the assets of the person responsible for collecting tax.

(11) Other Provisions [Section 206C(9)/(10)/(11)]

- (i) **Certificate for collection of tax at lower rate [Section 206C(9)]** - The Assessing Officer can issue certificate for collection of tax at a lower rate than those specified in sub-section (1)/(1C). Such certificate shall be issued on an application made by the buyer or licensee or lessee in this behalf.

TCS at Lower rate

- (ii) **Tax to be collected at the rate specified in the certificate [Section 206C(10)]** - The person responsible for collecting tax shall collect the same at the rate specified in such certificate until such certificate is cancelled by the Assessing Officer.
- (iii) **CBDT empowered to make rules relating to grant of certificates [Section 206C(11)]** - The CBDT is empowered to make rules specifying the cases in which and the circumstances under which an application may be made for the grant of such certificate and the conditions subject to which certificate may be granted.



13.8 PROCESSING OF TDS/TCS STATEMENTS [SECTION 200A/ SECTION 206CB]

- (1) Section 200A facilitates processing of TDS statements and section 206CB deals with processing of statements of tax collected at source.
- (2) The manner of processing a statement of tax deduction at source/tax collection at source or a correction statement made by a person deducting/collecting, is as follows -

(a) **Permissible adjustments** - the sums deductible/collectible shall be computed after making the following adjustments -

- (i) any arithmetical error in the statement;
- (ii) an incorrect claim, apparent from any information in the statement (i.e., a claim, on the basis of an entry, in the statement -

**Processing
of TDS or
TCS
Statement**

- (1) of an item, which is inconsistent with another entry of the same or some other item in such statement;
- (2) in respect of rate of deduction/collection of tax at source, where such rate is not in accordance with the provisions of the Income-tax Act, 1961).

(b) **Interest** – The interest, if any, shall be computed on the basis of the sums deductible/collectible as computed in the statement;

(c) **Fee** - The fee, if any, shall be computed in accordance with the provisions of section 234E.

Section 234E: A fee of ₹ 200 for every day would be levied under section 234E for late furnishing of TDS/TCS statement from the due date of furnishing of TDS/TCS statement to the date of furnishing of TDS/TCS statement. However, the total amount of fee shall not exceed the total amount of tax deductible/tax collectible and such fee has to be paid before delivering the TDS/TCS statement.

Fee

(d) **Determination of sum payable by, or the amount of refund due to, the collector** – Such sum shall be determined after adjustment of such interest and fee against any amount paid under section 200 or section 201 or section 234E or under section 206C or section 234E and any amount paid otherwise by way of tax or interest or fee;

- (e) **Intimation** - An intimation shall be prepared or generated and sent to the deductor/collector specifying the sum determined to be payable by, or the amount of refund due to, him; and
- (f) **Grant of refund** - The amount of refund due to the deductor/collector in pursuance of such determination shall be granted to the deductor/collector:

However, no intimation shall be sent after the expiry of the period of **one year** from the end of the financial year in which the statement is filed.

No intimation after 1 year

- (3) The CBDT is empowered to make a scheme for centralised processing of statements of tax deducted/collected at source to expeditiously determine the tax payable by, or the refund due to, the deductor/collector, as required under section 200A or section 206CB(1), as the case may be.



13.9 ADVANCE PAYMENT OF TAX [SECTION 207 TO 219]

13.9.1 Liability for payment of advance tax

- (1) Tax shall be payable in advance during any financial year, in accordance with the provisions of sections 208 to 219, in respect of an assessee's current income i.e., the total income of the assessee which would be chargeable to tax for the assessment year immediately following that financial year [Section 207].
- (2) Under section 208, obligation to pay advance tax arises in every case where the advance tax payable is ₹ 10,000 or more.

Advance tax where tax is ₹ 10,000 or more

Note - An assessee who is liable to pay advance tax of less than ₹ 10,000 will not be saddled with interest under sections 234B and 234C for defaults in payment of advance tax. However, the consequences under section 234A regarding interest for belated filing of return would be attracted.

- (3) In case of senior citizens who have passive source of income like interest, rent, etc., the requirement of payment of advance tax causes genuine compliance hardship. Therefore, in order to reduce the compliance burden on such senior citizens, exemption from payment of advance tax has been provided to a resident individual-

Non-applicability

- (i) not having any income chargeable under the head "Profits and gains of business or profession"; and

- (ii) of the age of 60 years or more.

Such senior citizens need not pay advance tax and are allowed to discharge their tax liability (other than TDS) by payment of self-assessment tax.

13.9.2 Computation of advance tax

- (1) An assessee has to estimate his current income and pay advance tax thereon. He need not submit any estimate or statement of income to the Assessing Officer, except where he has been served with notice by the Assessing Officer.
- (2) Where an obligation to pay advance tax has arisen, the assessee shall himself compute the advance tax payable on his current income at the rates in force in the financial year and deposit the same, whether or not he has been earlier assessed to tax.
- (3) In the case of a person who has been already assessed by way of a regular assessment in respect of the total income of any previous year, the Assessing Officer, if he is of the opinion that such person is liable to pay advance tax, can serve an order under section 210(3) requiring the assessee to pay advance tax.
- (4) For this purpose, the total income of the latest previous year in respect of which the assessee has been assessed by way of regular assessment or the total income returned by the assessee in any return of income for any subsequent previous year, whichever is higher, shall be taken as the basis for computation of advance tax payable.
- (5) The above order can be served by the Assessing Officer at any time during the financial year but not later than the last date of February.
- (6) If, after sending the above notice, but before 1st March of the financial year, the assessee furnishes a return relating to any later previous year or an assessment is completed in respect of a later return of income, the Assessing Officer may amend the order for payment of advance tax on the basis of the computation of the income so returned or assessed.
- (7) If the assessee feels that his own estimate of advance tax payable would be less than the one sent by the Assessing Officer, he can file estimate of his current income and advance tax payable thereon.
- (8) Where the advance tax payable on assessee's estimation is higher than the tax computed by the Assessing Officer, then, the advance tax shall be paid based upon such higher amount.
- (9) In all cases, the tax calculated shall be reduced by the amount of tax deductible or collectible at source.

No reduction of 'tax deductible but not deducted' or 'tax collectible but not collected' while computing advance tax liability

- (i) As per the provisions of section 209, the amount of advance tax payable by a person is computed by reducing the amount of income-tax which would be deductible at source during the financial year from any income which has been taken into account in computing the total income.
- (ii) Some courts have opined that in case where the payer pays any amount (on which tax is deductible at source) without deduction of tax at source, the payee shall not be liable to pay advance tax to the extent tax is deductible from such amount.
- (iii) With a view to make such a person (payee) liable to pay advance tax, the proviso to section 209(1)(d) provides that the amount of tax deductible at source but not so deducted by the payer shall not be reduced from the income tax liability of the payee for determining his liability to pay advance tax.
- (iv) In effect, only if tax has actually been deducted at source, the same can be reduced for computing advance tax liability of the payee. Tax deductible but not so deducted cannot be reduced for computing advance tax liability of the payee.
- (v) Similarly, only if tax has actually been collected at source, the same can be reduced for computing advance tax liability of the buyer or licensee or lessee. Tax collectible but not so collected cannot be reduced for computing advance tax liability of the buyer or licensee or lessee.

(10) The amount of advance tax payable by an assessee in the financial year calculated by -

- (i) the assessee himself based on his estimation of current income; or
- (ii) the Assessing Officer as a result of an order under section 210(3) or amended order under section 210(4)

is subject to the provisions of section 209(2), as per which the net agricultural income has to be considered for the purpose of computing advance tax.

13.9.3 Instalments of advance tax and due dates

- (1) **Common advance tax payment schedule for both corporates and non-corporates [other than an assessee who declares profits and gains in accordance with section 44AD(1) or section 44ADA(1)]:**

Due date of instalment	Amount payable
On or before 15th June	Not less than 15% of advance tax liability
On or before 15th September	Not less than 45% of advance tax liability, as reduced by the amount, if any, paid in the earlier instalment.

On or before 15th December	Not less than 75% of advance tax liability, as reduced by the amount or amounts, if any, paid in the earlier instalment or instalments.
On or before 15th March	The whole amount of advance tax liability as reduced by the amount or amounts, if any, paid in the earlier instalment or instalments.

Note - Any amount paid by way of advance tax on or before 31st March shall also be treated as advance tax paid during each financial year ending on 31st March.

(2) Eligible assessee computing profits on presumptive basis under section 44AD(1) or section 44ADA(1) to pay advance tax by 15th March

An eligible assessee, opting for computation of profits or gains of business on presumptive basis in respect of eligible business referred to in section 44AD(1) or for computation of profits or gains of profession on presumptive basis in respect of eligible profession referred to in section 44ADA(1), shall be required to pay advance tax of the whole amount in one instalment on or before 15th March of the financial year.

Due date 15th March

However, any amount paid by way of advance tax on or before 31st March shall also be treated as advance tax paid during each financial year ending on 31st March.

- (3) Where advance tax is payable by virtue of the notice of demand issued under section 156 by the Assessing Officer, the whole or the appropriate part of the advance tax specified in such notice shall be payable on or before each of such due dates as fall after the date of service of notice of demand.
- (4) Where the assessee does not pay any instalment by the due date, he shall be deemed to be an assessee in default in respect of such instalment.

13.9.4 Credit for advance tax [Section 219]

Any sum, other than interest or penalty, paid by or recovered from an assessee as advance tax, is treated as a payment of tax in respect of the income of the previous year and credit thereof shall be given in the regular assessment.



13.10 INTEREST CHARGEABLE IN CERTAIN CASES

13.10.1 Interest for defaults in furnishing return of income [Section 234A]

- (1) **Rate and Period for calculation of interest** - Where the return of income for any assessment year under section 139(1) or section 139(4) or section 139(8A) or in response to a notice under section 142(1), is furnished after the due date or is not furnished, the assessee shall be liable to pay simple interest at the rate of 1% for every month or part of a month comprised in the period commencing on the day immediately following the due date and,

Interest @1% p.m. or part of a month

- (a) where the return is furnished after the due date, ending on that date of furnishing the return; and
- (b) where no return has been furnished, ending on the date of completion of assessment under section 144.

The interest payable under section 234A shall be reduced by the interest, if any, paid under section 140A towards interest chargeable under this section.

Note - 'Due date' means the date specified in section 139(1) as applicable in the case of the assessee.

- (2) **Amount on which interest is payable** - The amount on which interest will be payable will be the amount of the tax on the total income as determined under section 143(1) or on regular assessment, as reduced by the amount of -
- (i) advance tax, if any, paid ;
 - (ii) any tax deducted or collected at source;
 - (iii) any relief of tax allowed under section 89;
 - (iv) any relief of tax allowed under section 90 or 90A;
 - (v) any deduction of tax allowed under section 91;
 - (vi) any tax credit allowed to be set-off in accordance with the provisions of section 115JAA or section 115JD.

Notes:

- (i) The tax on total income as determined under section 143(1) would not include additional income-tax, if any, payable under section 140B or under section 143.

- (ii) Tax on the total income determined under regular assessment would not include the additional income-tax payable under section 140B.
- (iii) Where in relation to an assessment year an assessment is made for the first time under section 147, the assessment so made shall be regarded as regular assessment for the purposes of this section.

- (3) **Computation of interest where return is furnished after the time period specified in notice under section 148** - Where the return of income for any assessment year, required by a notice under section 148 issued after the determination of income under section 143(1) or after completion of assessment under section 143(3) or section 144 or section 147, is furnished after the expiry of the time allowed under such notice, or is not furnished, the assessee shall be liable to pay simple interest at the rate of 1% for every month or part of a month comprised in the period commencing on the date immediately following the expiry of the time allowed as aforesaid and ending on the following dates specified in column (3) below:

	Case	Ending date
(i)	where the return is furnished after the expiry of the time aforesaid	on the date of furnishing the return
(ii)	where no return has been furnished	on the date of completion of the reassessment or re-computation under section 147

- (4) **Amount on which interest is payable** - The amount on which the above interest is payable is the amount by which the tax on the total income determined on the basis of such reassessment or re-computation exceeds the tax on the total income determined under section 143(1) or on the basis of the earlier assessment aforesaid.
- (5) **Consequence where interest is increased or reduced subsequently as a result of rectification, appeal, revision etc.** - Where as a result of an order of rectification or appellate order or an order of revision, the interest payable is reduced or increased, the Assessing Officer shall proceed as follows:

	Case	Ending date
(i)	Where the interest is increased	The Assessing Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable and such demand notice shall be a notice under section 156.
(ii)	Where interest is reduced	The excess paid shall be refunded

- (6) **Interest under section 234A not chargeable on self assessment tax paid before the due date of filing of return of income [Circular No. 2/2015, dated 10-2-2015]**

The Hon'ble Supreme Court has, in the case of *CIT vs Prannoy Roy (2009) 309 ITR 231*, held that interest under section 234A on default of furnishing return of income shall be payable only on the amount of tax that has not been deposited before the due date of filing of the -tax return for the relevant assessment year.

No interest

Accordingly, the CBDT has clarified that **no interest under section 234A shall be charged on self assessment tax paid by the assessee on or before the due date of filing of return.**

13.10.2 Interest for non-payment or short-payment of advance tax [Section 234B]

- (1) **Rate and period of interest:** Interest under section 234B would be attracted where an assessee, who is liable to pay advance tax, fails to pay such tax or the advance tax paid is less

Interest @1% p.m. or part of a month

than 90% of assessed tax. Accordingly, interest would be leviable at the rate of 1% for every month or for part of month for the following period, if the advance tax paid falls short of 90% of the 'assessed tax'.

Period commencing from:	and	Period ending on:	
the 1st April of the following F.Y.	(i)	Where regular assessment is not made	The date of determination of total income u/s 143(1)
	(ii)	Where regular assessment is made	The date of regular assessment
Amount on which interest is payable:			
(i)	Where no advance tax is paid	Assessed tax	
(ii)	Where advance tax paid falls short of 90% of assessed tax	Assessed tax minus Advance tax paid	

- (2) **Meaning of the term 'assessed tax':** The tax on the total income determined under section 143(1) or on regular assessment as reduced by the amount of -

- (i) any tax deducted or collected at source on any income which is taken into account for calculating the total income;

- (ii) any relief of tax allowed under section 89;
- (iii) any relief of tax allowed under section 90 or 90A;
- (iv) any deduction of tax allowed under section 91;
- (v) any tax credit allowed to be set-off in accordance with the provisions of section 115JAA or section 115JD.

Assessed tax

Notes:

- (i) An assessment made for the first time under section 147 shall be deemed to be regular assessment.
- (ii) Tax on total income as determined under section 143(1) would not include the additional income-tax, if any, payable under section 140B or section 143.
- (iii) Tax on the total income determined under such regular assessment would not include the additional income-tax payable under section 140B.

- (3) **Interest paid on self-assessment:** Where, before the date of determination of total income under section 143(1) or completion of regular assessment, tax is paid by the assessee under section 140A or otherwise, interest shall be calculated up to the date on which the tax is so paid and reduced by the interest paid under section 140A towards interest under section 234B.

Thereafter, interest shall be calculated @1% on the amount by which the tax paid under section 140A together with the advance tax paid falls short of the assessed tax.

- (4) **Where total income is increased on reassessment under section 147:** As per section 234B(3), where the total income is increased on reassessment under section 147, the assessee shall be liable for interest @1% for every month or part of a month on the amount of the increase in tax on total income as a consequence of reassessment or recomputation [Tax on total income determined on the basis of reassessment or recomputation (–) Tax on total income determined under section 143(1) or on the basis of regular assessment].

Period for which interest is payable

Period commencing from:		Period ending on:
the 1st April next following the financial year	and	the date of reassessment or recomputation under section 147.

- (5) **Consequence where interest payable is increased or reduced subsequently as a result of rectification, appeal, revision etc.** - Where as a result of an order of rectification or an appellate order or an order of revision, the interest payable is reduced or increased, the Assessing Officer shall proceed as follows:

	Case	Ending date
(i)	Where the interest is increased	The Assessing Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable and such demand notice shall be a notice under section 156.
(ii)	Where interest is reduced	The excess paid shall be refunded

13.10.3 Interest for deferment of advance tax [Section 234C]

(1) **Manner of computation of interest under section 234C for deferment of advance tax by corporate and non-corporate assessees:**

In case an assessee, other than an assessee who declares profits and gains in accordance with the provisions of section 44AD(1) or section 44ADA(1), who is liable to pay advance tax under section 208 has failed to pay such tax or the advance tax paid by such assessee on its current income on or before the dates specified in column (1) is less than the specified percentage [given in column (2)] of tax due on returned income, then simple interest @1% per month for the period specified in column (4) on the amount of shortfall, as per column (3) is leviable under section 234C.

**Interest on deferment
of advance tax @1%
p.m. or part of a
month**

Specified date	Specified%	Shortfall in advance tax	Period
(1)	(2)	(3)	(4)
15 th June	15%	15% of tax due on returned income (-) advance tax paid up to 15 th June	3 months
15 th September	45%	45% of tax due on returned income (-) advance tax paid up to 15 th September	3 months
15 th December	75%	75% of tax due on returned income (-) advance tax paid up to 15 th December	3 months
15 th March	100%	100% of tax due on returned income (-) advance tax paid up to 15 th March	1 month

Note – However, if the advance tax paid by the assessee on the current income, on or before 15th June or 15th September, is not less than 12% or, 36% of the tax due on the returned income, respectively, then, the assessee shall not be liable to pay any interest on the amount of the shortfall on those dates.

(2) **Computation of interest under section 234C in case of an assessee who declares profits and gains in accordance with the provisions of section 44AD(1) or section 44ADA(1):**

In case an assessee, who declares profits and gains in accordance with the section 44AD(1) or section 44ADA(1), as the case may be, who is liable to pay advance tax under section 208 has failed to pay such tax or the advance tax paid by the assessee on its current income on or before 15th March is less than the tax due on the returned income, then, the assessee shall be liable to pay simple interest at the rate of 1% on the amount of the shortfall from the tax due on the returned income.

(3) **Non-applicability of interest under section 234C in certain cases:**

Interest under section 234C shall not be leviable in respect of any shortfall in payment of tax due on returned income, where such shortfall is on account of under-estimate or failure to estimate –

Non-applicability

- (i) the amount of capital gains;
- (ii) income of nature referred to in section 2(24)(ix) i.e., winnings from lotteries, crossword puzzles etc.;
- (iii) income under the head “Profits and gains of business or profession” in cases where the income accrues or arises under the said head for the first time;
- (iv) the amount of dividend income u/s 2(22)(a)/(b)/(c)/(d)

However, the assessee should have paid the whole of the amount of tax payable in respect of such income referred to in (i), (ii), (iii) or (iv), as the case may be, had such income been a part of the total income, as part of the remaining instalments of advance tax which are due or where no such instalments are due, by 31st March of the financial year.

(4) **Tax due on the returned income:** means the tax chargeable on the total income declared in the return of income furnished by the assessee for the assessment year immediately following the financial year in which the advance tax is paid or payable, as reduced by the amount of –

- (i) any tax deductible or collectible at source on any income which is taken into account for calculating the total income;
- (ii) any relief of tax allowed under section 89;
- (iii) any relief of tax allowed under section 90 or 90A;

- (iv) any deduction of tax allowed under section 91;
- (v) any tax credit allowed to be set-off in accordance with the provisions of section 115JAA or section 115JD.

13.10.4 Interest on excess refund granted at the time of summary assessment [Section 234D]

- (1) **Applicability:** Where a regular assessment under section 143(3) or section 144 is made, any tax or interest paid under section 143(1) shall be deemed to have been paid towards such regular assessment and if no refund is due on regular assessment or the amount refunded under section 143(1) exceeds the amount refundable on regular assessment, the whole or the excess amount so refunded is deemed to be tax payable by the assessee. In order to charge interest for the period during which the refund amount has been utilised by the assessee, section 234D levies interest on excess refund granted at the time of summary assessment.

Interest on refund @ ½% p.m. or part of a month

- (2) **Rate and period of interest:** Where any refund is granted to the assessee under section 143(1) and no refund is due on regular assessment or the amount refunded under section 143(1) exceeds the amount refundable on regular assessment, then, the assessee shall be liable to pay simple interest at the rate of ½% on the whole or the excess amount so refunded for every month or part of the month from the date of grant of the refund to the date of such regular assessment.

Note - An assessment made for the first time under section 147 shall be regarded as regular assessment for the purpose of this section.

- (3) **Reduction of interest:** The interest chargeable under sub-section (1) shall be reduced, where, as a consequence to the order passed due to rectification, appeal, revisions etc. under sections 154/155/250/254/260/262/263/264, the amount of refund granted under section 143(1) is held to be correctly allowed.

13.10.5 Fee/ penalty for default in furnishing TDS/ TCS Statements

- (1) **Quantum of fee:** A fee of ₹ 200 for every day would be levied under section 234E for late furnishing of TDS/ TCS statement from the due date of furnishing of TDS/ TCS statement to the date of furnishing of TDS/ TCS statement. However, the total amount of fee shall not exceed the total amount of tax deductible/collectible and such fee has to be paid before delivering the TDS/ TCS statement.

Fee/penalty

- (2) **Penalty [Section 271H]:** In addition to said fee, a penalty ranging from a minimum of ₹ 10,000 to a maximum of ₹ 1,00,000 shall also be levied under section 271H for not furnishing TDS/ TCS statement within the prescribed time or furnishing incorrect information in the said statements in respect of tax deducted or collected at source.
- (3) **Fee and penalty where TDS/ TCS statement is furnished after one year:** Since late furnishing of TDS/ TCS statements would attract levy of fees under section 234E, no penalty under section 271H shall be levied for delay in furnishing of TDS/ TCS statement, if the TDS/ TCS statement is furnished within one year of the prescribed due date after payment of tax deducted or collected along with applicable interest and fee. However, if the delay is beyond the period of one year, both fee under section 234E and penalty under section 271H would be leviable.



13.11 COLLECTION AND RECOVERY OF TAX - OTHER METHODS

13.11.1 Payment of tax and defaults by the assessee [Section 220]

- (1) Under section 220(1), any amount specified as payable in a notice of demand under section 156 shall be paid within thirty days of the service of notice at the place and to the person mentioned in the notice. On an application made by the assessee before the expiry of the due date of thirty days, the Assessing Officer may extend the time for payment or allow payment by instalments, subject to such conditions as he may think fit to impose in the circumstances of the case.

Notice of demand

The Assessing Officer may with the previous approval of the Joint Commissioner, direct that the sum specified in the notice of demand shall be paid within such period being a period less than the period of thirty days as may be specified by him in the notice of demand, if he has any reason to believe that it will be detrimental to revenue if the full period of thirty days aforesaid is allowed.

- (2) If the amount specified in the notice is not paid within the period, the assessee shall be liable to pay interest at 1% for every month or part of a month comprised in the period commencing from the day immediately following the end of the period mentioned in section 220(1) and ending with the day on which the amount is paid. This is provided for in section 220(2).

**Interest @ 1% p.m.
or part of a month**

- (3) The first proviso to section 220(2) states that where as a result of an order under sections 154/155/250/254/260/262/264, the amount on which interest payable under this section had been reduced, the interest shall be reduced accordingly and the excess interest paid, if any, shall be refunded.
- (4) The liability of the assessee to pay interest is based on the theory of continuity of the proceedings and the doctrine of relation back.
- (5) Further, the second proviso to section 220(2) provides that if as a result of order under the sections specified in the first proviso to section 220(2), the amount of interest payable was reduced, and thereafter, as a result of another order under any of the sections given in the first proviso or section 263, the interest payable was increased, the assessee would be liable to pay interest under section 220(2) from the day immediately following the end of the period mentioned in the first notice of demand referred to in section 220(1) till the date on which the amount is paid.
- (6) Accordingly, section 220(1A) provides that where any notice of demand has been served upon an assessee and any appeal or other proceeding, as the case may be, is filed or initiated in respect of the amount specified in the said notice of demand, then such demand shall be deemed to be valid till the disposal of appeal by the last appellate authority or disposal of proceedings, as the case may be, and any such notice of demand shall have effect as provided in section 3 of the Taxation Laws (Continuation and Validation of Recovery Proceedings) Act, 1964 [See Note below]

**Notice of
Demand valid till
disposal of appeal**

Note - Section 3 of the Taxation Laws (Continuation and Validation of Recovery Proceedings) Act, 1964

Continuation and validation of certain proceedings

- (1) Where any notice of demand in respect of any Government dues is served upon an assessee by a Taxing Authority under any scheduled Act, and any appeal or other proceeding is filed or taken in respect of such Government dues, then,-
- (a) where such Government dues are enhanced in such appeal or proceeding, the Taxing Authority shall serve upon the assessee another notice of demand only in respect of the amount by which such Government dues are enhanced and any proceeding in relation to such Government dues as are covered by the notice or notices of demand served upon him before the disposal of such appeal

or proceeding may, without the service of any fresh notice of demand, be continued from the stage at which such proceedings stood immediately before such disposal;

- (b) where such Government dues are reduced in such appeal or proceeding,-
 - (i) it shall not be necessary for the Taxing Authority to serve upon the assessee a fresh notice of demand;
 - (ii) the Taxing Authority shall give intimation of the fact of such reduction to the assessee. Further, where a certificate has been issued to the Tax Recovery Officer for the recovery of such amount, intimation of the fact of reduction shall also be given to him;
 - (iii) any proceedings initiated on the basis of the notice or notices of demand served upon the assessee before the disposal of such appeal or proceeding may be continued in relation to the amount so reduced from the stage at which such proceedings stood immediately before such disposal;
- (c) no proceedings in relation to such Government dues (including the imposition of penalty or charging of interest) shall be invalid by reason only that no fresh notice of demand was served upon the assessee after the disposal of such appeal or proceeding or that such Government dues have been enhanced or reduced in such appeal or proceeding.

- (2) No fresh notice of demand shall be necessary in any case where the amount of Government dues is not varied as a result of any order passed in any appeal or other proceeding under any scheduled Act.

No fresh notice of demand

- (3) The provisions of this section shall have effect notwithstanding any judgment, decree or order of any court, tribunal or other authority.

ILLUSTRATION 21

The Assessing Officer issued a notice of demand under section 156 to Mr. X on 1.10.2023 for payment of ₹ 15 lakhs towards his income-tax liability for the A.Y.2022-23, requiring him to pay the said amount within 30 days.

- (a) *Is he required to issue fresh notice of demand and if so, for what amount, in the following two cases (each case has to be considered independently) –*

- (i) *If the tax demand is reduced to ₹ 12 lakhs by the Commissioner (Appeals) by issue of order under section 250;*
 - (ii) *If the tax demand is increased to ₹ 20 lakhs by the Appellate Tribunal, by issue of an order under section 254.*
- (b) *How would the interest liability under section 220(2) be calculated if the tax demand is reduced to ₹ 12 lakhs by the Commissioner (Appeals) by issue of order under section 250 and subsequently increased to ₹ 15 lakhs by the Appellate Tribunal by way of issue of order under section 254?*

SOLUTION

- (a) (i) No fresh notice of demand is required to be served on Mr. X. The Assessing Officer is only required to give an intimation of the fact of reduction of demand to ₹ 12 lakhs to Mr. X. The proceedings initiated on the basis of the original notice of demand may be continued in relation to the reduced amount of ₹ 12 lakhs from the stage at which such proceedings stood immediately before disposal of appeal.
- (ii) A fresh notice of demand has to be given only in respect of ₹ 5 lakhs, being the amount of enhancement. Any proceedings in relation to ₹ 15 lakhs covered by the original notice of demand served upon Mr. X may be continued from the stage at which such proceedings stood immediately before disposal of appeal.
- (b) The interest under section 220(2) has to be paid on ₹ 15 lakhs @1% per month or part of the month comprised in the period commencing from 1.11.2023 and ending with the date on which the amount is paid, assuming that Mr. X has not paid any interest so far.
- (7) **Reduction or waiver of interest payable under section 220(2)** - Section 220(2A) empowers the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner to reduce or waive any interest payable under section 220(2) if he is satisfied that:
- (i) payment of such amount has caused or would cause genuine hardship to the assessee;
 - (ii) default in the payment of the amount on which interest was made payable under the said sub-section was due to circumstances beyond the control of the assessee; and
 - (iii) the assessee has co-operated in any enquiry relating to the assessment or any proceeding for the recovery of any amount due from him.

The order accepting or rejecting the application of the assessee, either in full or in part, shall be passed **within a period of twelve months from the end of the month in which the application is received.**

Further, no order rejecting the application, either in full or in part, shall be passed unless the assessee has been given an opportunity of being heard.

(8) **Interest under section 220(2) not leviable where interest is charged u/s 201(1A) or section 206C(7) -**

Since the intimation generated after processing the TDS statement under section 200A(1) would be deemed as a notice of demand under section 156, consequently, interest under section 220 would be attracted for failure to pay the tax specified in the intimation. However, interest under section 201(1A) is leviable for non-payment of tax specified in the intimation. Therefore, it has been provided that in cases where interest is charged for any period under section 201(1A) on the tax specified in the intimation under section 200A, then, interest under section 220(2) would not be levied on the same amount for the same period.

Likewise, since the intimation generated after processing of TCS statement shall be deemed as a notice of demand under section 156, failure to pay the tax specified in the intimation

Intimation deemed as notice of demand

shall attract levy of interest as per the provisions of section 220(2). Section 206C(7) also provides for levy of interest for non-payment of tax specified in the intimation to be issued. In

order to remove the possibility of charging interest on the same amount for the same period of default both under section 206C(7) and section 220(2), sub-section (2C) of section 220 specifically provides that **where interest is charged for any period under section 206C(7) on the amount of tax specified in the intimation issued under 206CB(1), no interest shall be charged under section 220(2)** on the same amount for the same period.

13.11.2 Penalty payable [Section 221]

- (1) **Penalty for default in payment of tax** - Where an assessee is in default in payment of tax including advance tax and interest payable thereon, the Assessing Officer shall impose a penalty which in cases of continuing default, may be increased from time to time. However, the total penalty should not exceed the tax in arrears. The Assessing Officer should give the assessee a reasonable opportunity of being heard before levying such a penalty.

Penalty not to exceed tax arrears

No penalty shall be levied on the assessee for default in payment of tax in cases where he proves to the satisfaction of the Assessing Officer that default was for good and sufficient reasons.

- (2) **Payment of tax before levy of penalty not to absolve the assessee from penalty** - The *Explanation* to section 221(1) provides that an assessee would not cease to be liable to pay any penalty for his default or delay in payment of the tax merely by reason of the fact that before the date of levy of such penalty the tax which was in arrears had actually been paid by him.

Thus, wherever there is delay on the part of the assessee, he would be liable to penalty even though by the time the Assessing Officer initiates action for the levy of penalty the amount of tax in arrears is actually paid.

Pay tax before filing appeal

An order imposing penalty is appealable and the assessee's right of appeal subject to the condition that he must first pay the tax or penalty; the assessee should first pay the tax before filing the appeal.

- (3) **Circumstance when penalty levied will be cancelled** – If, as a consequence of any final order, the amount of tax, with respect to the default in the payment of which the penalty was levied, has been wholly reduced, the penalty levied shall be cancelled and the amount of penalty paid shall be refunded.

13.11.3 Certificate to Tax Recovery Officer (TRO) [Section 222]

- (1) **TRO to draw up statement specifying amount of arrears due from an assessee-in-default [Section 222(1)]** - When an assessee is in default or is deemed to be in default in making a payment of tax, the TRO may draw up under his signature a statement in the prescribed form and specifying the amount of arrears due from the assessee and shall proceed to recover from such assessee the amount specified in the certificate by one of more of the modes mentioned below, in accordance with the Second Schedule.

Attachment of property

- (a) Attachment and sale of the assessee's movable property.
- (b) Attachment and sale of assessee's immovable properties.
- (c) Arrest of the assessee and his detention in prison.
- (d) Appointing a receiver for the management of assessee's movable and immovable properties.

- (2) **Property to include property transferred to spouse/minor child/son's wife/son's minor child for inadequate consideration [Explanation to section 222(1)]** - For the purpose of this section, the assessee's movable or immovable property shall include any property which has been transferred directly or indirectly by the assessee to his spouse or minor child or son's wife or son's minor child otherwise than for adequate consideration and which is held by any of the persons aforesaid. So far as the movable or immovable property so transferred to his minor child or his son's minor child is concerned, they shall even after the date of attainment of majority by such minor child or son's minor child continue to be included in the assessee's movable or immovable property for recovering any arrears from the assessee in respect of any period prior to such date.
- (3) The TRO may take action under sub-section (1), notwithstanding that proceedings or recovery of the arrears by any special mode have been taken.

13.11.4 Tax Recovery Officer (TRO) by whom recovery is to be effected [Section 223]

- (1) **TRO competent to take action under section 222:** The TRO competent to take action under section 222 shall be the TRO within whose jurisdiction:
- Jurisdictional TRO**
- (i) the assessee carries on business or profession.
 - (ii) the principal place of his business or profession is situated.
 - (iii) the assessee resides or any movable or immovable property of the assessee is situated.
- (2) **Assignment of jurisdiction:** The jurisdiction is assigned either by the CBDT or by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner who is authorised in this behalf by the CBDT under section 120.
- (3) **Procedure where an assessee has property within the jurisdiction of more than one TRO:** In such a case, if the TRO by whom the certificate is drawn up is not able to recover the entire amount by sale of the property within his jurisdiction or is of the opinion that, for the purpose of expediting or securing the recovery of the whole or any part of the amount under this Chapter, it is necessary so to do, he may send the certificate to a TRO within whose jurisdiction the assessee has property. Thereupon, that TRO shall proceed to recover the amount as if the certificate was drawn up by him.

13.11.5 Validity of certificate and cancellation and amendment thereof [Section 224]

- (1) The assessee cannot dispute the correctness of any certificate drawn up by the TRO on any ground whatsoever.
- (2) However, the TRO is empowered to cancel the certificate if, for any reason, he thinks it necessary so to do, or to correct any clerical or arithmetical mistake therein.

13.11.6 Stay of proceedings in pursuance of certificate and amendment or cancellation thereof [Section 225]

- (1) **TRO empowered to grant time for payment of tax:** It shall be lawful for the TRO to grant

Grant Time

time for the payment of any tax and when he does so he shall stay proceedings for the recovery of such tax until the expiry of the time so granted.

- (2) **TRO empowered to stay proceedings where demand is reduced in appeal but subject matter of further proceedings:** Where as a result of appeal, the demand is reduced but the order is the subject matter of further proceedings, the TRO shall stay the recovery of such part of the amount specified in the certificate as pertains to such deduction for the period in which an appeal or other proceedings remains pending.
- (3) **TRO empowered to modify or cancel certificate where demand is reduced on appeal:** Where a certificate has been drawn up and subsequently, as a result of appellate order the amount is reduced, the TRO shall modify the certificate or cancel it if it is necessary, when the order which was the subject matter of appeal or other proceeding becomes final and conclusive.

13.11.7 Other modes of recovery [Section 226 & 227]

- (1) **Recovery of tax where certificate has/has not been drawn up under section 222:**

	Whether Certificate has been drawn up under section 222?	Income-tax authority empowered to recover taxes by one or more of the modes specified in section 226
(i)	No	Assessing Officer
(ii)	Yes	TRO, without prejudice to the modes of recovery specified in section 222

Note - This section enumerates the various modes of recovery by the Assessing Officer and TRO. Students may refer to the section in the Bare Act for details.

- (2) **Non-validity of claim in regard to any property where notice is issued:** Any claim in regard to any property in relation to which a notice under this section is issued, shall be void as against any demand contained therein.
- (3) **Consequences where the person on whom notice is served objects on oath:** Where a person, on whom a notice (garnishee order) under this section has been served, objects on oath that the amount demanded from him is not due to the assessee or that he does not hold any money for or on account of the assessee, he cannot be compelled by the Assessing Officer to make the payment. However, if it is later on found that such a statement made by him was false, he would personally become liable to pay the amount to the Assessing Officer or TRO to the extent of his own liability to the assessee or to the extent of the assessee's liability, whichever is less.
- Such personal liability would arise even in cases where the person in receipt of a notice from the Assessing Officer or TRO, makes a payment in disregard of the notice served on him.
- (4) **Recovery of tax dues from money in custody of a Court or Receiver by distraint and sale of movable property:** Moneys belonging to the assessee-in-default which are in the custody of a Court or Receiver are also liable for attachment. Further, on being authorised by the Principal Chief Commissioner/Chief Commissioner/Principal Commissioner/Commissioner, the Assessing Officer or the TRO is also empowered, by general or special order to recover any arrears of tax due by distraint and sale of movable property as laid down in the Third Schedule. For details, students may refer to the Third Schedule in the Act.
- (5) **Recovery through State Government:** In addition, tax may be recovered through the State Government if the recovery of tax in any area has been entrusted to it under the Constitution. In such a case, the State Government may direct that the tax shall be recovered in respect of any particular area together with the municipal taxes or local rates, if any, by the municipality or local authority [Section 227].

13.11.8 Recovery of tax in pursuance of agreements with foreign countries [Section 228A]

- (1) Section 228A provides for the procedure of recovery of tax in pursuance of an agreement entered into by the Central Government with the Government of any country outside India or any authority under that Government.
- (2) Where the Government of the foreign country or any authority under that Government sends a certificate to the CBDT for the recovery of any tax

Recovery of tax from a resident or person having property in India

due under that law from a resident, or a person having any property in India, the CBDT may forward such certificate to any TRO having jurisdiction over the resident, or within whose jurisdiction such property is situated.

- (3) The TRO shall proceed to recover the amount specified in the certificate in the manner in which he would proceed to recover the amount specified in a certificate drawn up by him under section 222.
- (4) Thereafter, the TRO has to remit any sum so recovered to the CBDT after deducting the expenses in connection with the recovery proceedings.
- (5) Where an assessee is in default or is deemed to be in default in making a payment of tax, the TRO may, if the assessee is a resident of a country (being a country with which the Central Government has entered into an agreement for the recovery of income-tax under the Income-tax Act, 1961 and the corresponding law in force in that country) or has any property in that country, forward to the CBDT a certificate drawn up by him under section 222 and the CBDT may take such action thereon as it may deem appropriate having regard to the terms of the agreement with such country.

13.11.9 Tax Clearance Certificate [Section 230]

(1) **Undertaking to be furnished by a person not domiciled in India visiting India in connection with business, profession or employment [Section 230(1)]**

- (i) No person, who is not domiciled in India and who has come to India in connection with business, profession or employment; and who has income derived from any source in India, shall leave the territory of India by land, sea or air unless he furnishes to the prescribed authority an undertaking in the prescribed form.
- (ii) The said undertaking should be furnished from the employer of the said person or through whom such person is in receipt of the income.
- (iii) The undertaking should be to the effect that tax payable by such person who is not domiciled in India shall be paid by the employer or the person through whom any income is receivable by the first-mentioned person.
- (iv) The prescribed authority shall, on receipt of the undertaking, immediately give to such person a no objection certificate, for leaving India.
- (v) However, the provisions contained in sub-section (1) shall not apply to a person who is not domiciled in India but visits India as a foreign tourist or for any other purpose not connected with business, profession or employment.

**Undertaking
from person not
domiciled in
India**

(2) **Furnishing of PAN by person domiciled in India at the time of departure [Section 230(1A)]**

- (i) Every person, who is domiciled in India at the time of his departure, shall furnish, to the income-tax authority or such other authority as may be prescribed, his PAN allotted to him under section 139A, the purpose of his visit and the estimated period of his stay outside India.
- (ii) In case, no such PAN has been allotted to him, or his total income is not chargeable to income-tax or he is not required to obtain a PAN under the Income-tax Act, 1961, a certificate in the prescribed form shall be furnished to the income-tax authority or such other authority, as may be prescribed.
- (iii) However, where an income-tax authority opines that there exist circumstances which render an Indian domiciled to obtain a certificate under this section, such person shall not leave the territory of India by land, sea or air unless -
- (a) he obtains a certificate from the income-tax authority stating that he has no liabilities under the Income-tax Act, 1961 or
 - (b) that satisfactory arrangements have been made for the payment of all or any of such taxes which are or may become payable by that person [First proviso to sub-section (1A)]
- (iv) No income-tax authority shall make it necessary for any person who is domiciled in India to obtain a certificate under this section unless he records the reasons therefor and obtains the prior approval of the Principal Chief Commissioner or Chief Commissioner of Income-tax.

**Furnishing of
PAN at the
time of
departure**

(3) **Personal liability of owner or charterer of ship or aircraft carrying such persons [Section 230(2) & (3)]**

If the owner or charterer of any ship or aircraft carrying persons from any place in India to any place outside India allows any of the above mentioned persons to travel by such ship or aircraft without first satisfying that such person is in possession of a certificate as required, he shall be personally liable to pay the whole or any part of the tax payable by such person as the Assessing Officer, may determine. In such a case, the owner or charterer shall be deemed to be an assessee in default for such sum and recovery shall be made in the manner as if it were an arrear of tax.

Note - The expressions “owner” and “charterer” include any representative, agent or employee empowered by the owner or charterer to allow persons to travel by the ship or aircraft.

(4) Power to make Rules [Section 230(4)]

The CBDT is empowered to make rules for carrying out the provisions of this section.

13.11.10 Faceless collection and recovery of tax [Section 231]

Section 231 empowered the Central Government to notify scheme for faceless collection and recovery of tax for eliminating physical interface.

(1) **Faceless scheme [Section 231(1)]** - The Central Government is empowered to make a scheme [faceless collection and recovery of tax scheme] by notification in the Official Gazette for the purpose of:

- a. issuing certificate for deduction of income-tax at any lower rates or no deduction of income-tax under section 197 or
- b. deeming a person to be an assessee-in-default under section 201(1) or section 206C(6A) or
- c. issuance of certificate for lower collection of tax under 206C(9) or
- d. passing of order or amended order under section 210(3)/(4) or
- e. reduction or waiver of the amount of interest paid or payable by an assessee u/s 220(2A); or
- f. extending the time for payment or allowing payment by instalment u/s 220(3); or
- g. treating the assessee as not being in default u/s 220(6) or u/s 220(7); or
- h. levy of penalty u/s 221; or
- i. drawing of certificate by the Tax Recovery Officer u/s 222; or
- j. jurisdiction of Tax Recovery Officer u/s 223 or
- k. stay of proceedings in pursuance of certificate and amendment or cancellation thereof by the Tax Recovery Officer u/s 225 or
- l. other modes of recovery u/s 226 or
- m. issuance of tax clearance certificate u/s 230

Faceless Collection and recovery of tax

so as to impart greater efficiency, transparency and accountability by:

- (i) eliminating the interface between the income-tax authority and the assessee or any person to the extent technologically feasible
 - (ii) optimising utilisation of the resources through economies of scale and functional specialisation;
 - (iii) introducing a team-based issuance of certificate for deduction or collection of income-tax at lower rate, or for no deduction, or for deeming a person to be an assessee-in-default, or for passing of an order or amended order, or extending the time for payment, or allowing payment by instalment, or reduction or waiver of interest, or for treating the assessee as not being in default, or for levy of penalty or for drawing of certificate or stay of proceedings in pursuance of certificate and amendment or cancellation thereof, by, or jurisdiction of, Tax Recovery Officer or other modes of recovery or issuance of tax clearance certificate, with dynamic jurisdiction.
- (2) **Applicability or non-applicability of other provisions of the Act [Section 231(2)]** - The Central Government may, for the purpose of giving effect to the scheme, by notification in the Official Gazette, direct that any provision of this Act shall not apply or shall apply with such exception, modification and adaptations as specified in the notification.
- No such direction can, however, be issued by the Central Government after 31st March, 2022.
- (3) **Notification issued above to be laid before each House of Parliament [Section 231(3)]**
- Every such notification issued by the Central Government either under sub section (1) or (2) of the section 231 has to be laid before each House of Parliament as soon as possible.

13.11.11 Recovery by suit or under other law [Section 232]

Section 232 provides that the Assessing Officer or the Government can have recourse to the other modes of recovery under any other law for the time being in force, over the various modes specified above to recover the tax dues under the Act, in the same way as other debts due to the Government. It shall also be lawful for the Assessing Officer or the Government to take recourse to any other law or file a suit in any manner for the recovery of the arrears due from the assessee.



13.12 REFUNDS

(1) Eligibility [Section 237]

- (i) An assessee is entitled to claim a refund of tax if the tax actually paid (and not merely payable) by him or on his behalf or treated as paid by him or on his behalf for any

assessment year exceeds the amount of tax with which he is properly chargeable under the Act for that year.

- (ii) This may arise usually as a result of excess deduction of tax at source from salaries, dividends, interest, to or as a result of excess payment of advance tax or when the tax originally paid on assessment is reduced on appeal, revision, rectification or reference.

(2) Persons entitled to claim refund in certain cases [Section 238]

- (i) Generally, a claim for refund can be made only by the person on whose account the tax was already paid.
- (ii) However, in cases where the income of one person is included in the total income of another person under sections 60 to 65, the latter person alone is entitled to claim the refund.
- (iii) If any person is not able to claim or receive the refund due to him on account of his death, incapacity, insolvency, dissolution, liquidation, etc., his legal representative or trustee or guardian or receiver, as the case may be, is entitled to claim or receive the refund on behalf of such person or his estate.

Claim of Refund

(3) Claim for refund [Section 239]

In order to simplify the procedure for claim of refund, it has been provided that every claim for refund should be made by furnishing return in accordance with the provisions of section 139.

(4) Refund for denying liability to deduct tax under section 195 [Section 239A]:

- (i) **Application for refund of tax** - This section provides that where under an agreement or other arrangement, in writing, the tax deductible on any income, other than interest, under section 195 is to be borne by the person by whom the income is payable, and such person having paid such tax to the credit of the Central Government, claims that no tax was required to be deducted on such income, he may file an application before the Assessing Officer for refund of such tax in prescribed form and manner.
- (ii) **Time limit for filing application** - Such application may be filed within 30 days from the date of payment of such tax.
- (iii) **Passing of order by Assessing Officer** - The Assessing Officer has to, by an order in writing, allow or reject the application. However, no application would be rejected

unless an opportunity of being heard has been given to the applicant. The Assessing Officer, may, before passing an order make such inquiry as he considers necessary.

- (iv) **Time limit for passing order** - The order has to be passed within 6 months from the end of the month in which application for refund is received.

(5) Refund on appeal etc. [Section 240]

- (i) Where refund becomes due to the assessee as a result of an order passed in appeal or any other proceeding under the Income-tax Act, 1961, he need not make an application to claim the same.
- (ii) In such a case, the Assessing Officer is bound to pass an order of refund without waiting for the application from the assessee.
- (iii) Where, by the order aforesaid, an assessment is set aside or cancelled and an order of fresh assessment is directed to be made, the refund shall become due only on the making of such fresh assessment.
- (iv) Where the assessment is annulled the refund shall become due only of the amount of tax paid in excess of the tax chargeable on the total income returned by the assessee.

(6) Correctness of assessment not to be questioned [Section 242]

- (i) While making a claim for refund, an assessee cannot question the correctness of any assessment or other matter decided which has become final and conclusive or ask for a review of the same.
- (ii) The assessee shall not be entitled to any relief on such claim except refund of tax wrongly paid or paid in excess.

(7) Interest on Refunds [Section 244A]

- (i) **Applicability and Rate**: Interest at 0.5% for every month or part of a month shall be payable on tax or penalty becoming refundable on account of excess payment of advance tax, tax deducted at source or collected at source and other tax or penalty becoming refundable.
- (ii) **Period of interest**: Interest @0.5% for every month or part of a month for the period specified in the following table for each of the cases mentioned in column (2) hereunder–

**Interest @ 0.5% p.m. of
part of a month**

	Case		Period for grant of interest on refund	
			Beginning from	Ending with
(1)	(2)		(3)	(4)
(a)	Where the refund is out of TCS u/s 206C or paid by way of advance tax or treated as paid u/s 199, during the financial year immediately preceding the A.Y.			
	(1)	Where the return is filed on or before the due date u/s 139(1)	1 st April of the assessment year	Date of grant of refund
	(2)	Where the return is filed after the due date	the date of filing of return	
(b)	Where the refund is out of self-assessment tax paid u/s 140A		Date of furnishing return of income or payment of tax, whichever is later	Date of grant of refund
(c)	In any other case		Date of payment of tax or penalty	Date of grant of refund
Note – The assessee can claim interest on refund due also in pursuance of determination of total income u/s 143(1) or on regular assessment. However, no interest shall be payable if the amount of refund due is less than 10% of the tax determined u/s 143(1) or on regular assessment, in case of (a) and (b) above.				

- (iii) **Additional interest payable on refund arising out of fresh assessment order giving effect to appellate or revisionary order** : Where a refund arises as a result of giving effect to an order under section 250/254/260/262/263/264, wholly or partly, otherwise than by making a fresh assessment or reassessment, the assessee shall be entitled to receive, in addition to the interest payable under section 244A(1), an additional interest on such refund amount calculated at the rate of 3% p.a., for the period beginning from the date following the date of expiry of the time allowed under section 153(5) to the date on which the refund is granted. Further, in cases where extension is granted by the Principal Commissioner or Commissioner by invoking proviso to section 153(5), the period of additional interest, if any, shall begin from the expiry of such extended period.

Circumstance	Period beginning from ¹⁰
Where a refund arises as a result of giving effect to an order under section 250/254/260/262/263/264, wholly or partly, otherwise than by making a fresh assessment or reassessment	From the expiry of 3 months from the end of the month in which the order u/s 250/254/260/262 is received by PCC/CC/PC/CIT, or order u/s 263 or 264 is passed, by the PC/CIT.
Where extension is granted by the Principal Commissioner or Commissioner by invoking proviso to section 153(5)	From the expiry of 9 months from the end of the month in which the order u/s 250/254/260/262 is received by PCC/CC/PC/CIT, or order u/s 263 or 264 is passed, by the PC/CIT.
Where the order of rectification, appeal or revision requires verification of any issue by way of submission of any document by the assessee or any other person or where an opportunity of being heard is to be provided to the assessee	From the expiry of 9 months from the end of the F.Y. in which order u/s 254 is received by the PCC/CC/PC/CIT or order u/s 263 or 264 is passed by the PC/CIT.

- (iv) **Interest on refund payable to deductor [Section 244A(1B)]**: Interest @0.5% for every month or part of a month for the period specified in the following table for each of the cases mentioned in column (1) hereunder –

Case		Period for grant of interest on refund	
		Beginning from	Ending with
(1)		(2)	(3)
Where the refund of any amount becomes due to the deductor in respect of any amount paid to the credit of the Central Government under Chapter XVII-B			
(1)	Where refund arises on account of giving effect to an order u/s 250/254/260/262	Date on which tax is paid	Date of grant of refund
(2)	In any other case	Date on which claim for refund is made in prescribed form	

- (v) **Consequence where delay in granting refund is attributable to the assessee or the deductor [Section 244A(2)]** : Where there is a delay in granting refund and the reasons for such delay are attributable to the assessee or the deductor, as the case

¹⁰Period for which assessee would be entitled to receive additional interest on refund

may be, either wholly or in part, the period of the delay so attributable to the assessee shall be excluded from the period for which interest is payable. In case any question arises as to the period of delay attributable to the assessee, it shall be decided by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.

(vi) **Increase or reduction of interest of refund as a result of assessment/rectification/ appellate/ revisionary order [Section 244A(3)]**

- (a) Where as a result of an order under sections 143(3)/144/147/154/155/250/254/260/262/263/264, the amount on which interest payable under this section has been increased or reduced, the interest shall be increased or reduced accordingly.
- (b) If the interest is reduced, the Assessing Officer has to serve a notice of demand on the assessee in the prescribed form specifying the amount of excess interest paid and require him to pay such amount.
- (c) Such notice of demand shall be deemed to be notice under section 156 and the provisions of the Act shall accordingly apply.

(vii) **Interest under section 244A is income of the P.Y. in which it is allowed**

Interest allowed under section 244A is the income of the previous year in which it is allowed and should be declared in the return of income furnished in the assessment year relevant to the previous year.

(viii) **Payment of interest on refund under section 244A of excess TDS deposited under section 195 [Circular No.11/2016 dated 26.4.2016]**

The procedure for refund of tax deducted at source under section 195 to the person deducting the tax is set out in CBDT *Circular No.7/2007 dated 23.10.2007*. *Circular No.7/2007* states that no interest under section 244A is admissible on refunds to be granted in accordance with the circular or on the refunds already granted in accordance with *Circular No.769* or *Circular No.790 dated 20.4.2000*.

The issue of eligibility for interest on refund of excess TDS to a tax deductor has been a subject matter of controversy and litigation. The Supreme Court of India, in *Tata Chemical Limited, Civil Appeal No. 6301 of 2011 vide order dated 26.02.2014*, held that refund due and payable to the assessee is debt-owed and payable by the Revenue. The State having received the money without right, and having retained and used it, is bound to make the party good, just as an individual would be under like

circumstances. The obligation to refund money received and retained without right implies and carries with it the right to interest."

In view of the above judgment of the Apex Court, it is settled that if a resident deductor is entitled for the refund of tax deposited under section 195, then, it has to be refunded with interest under section 244A from the date of payment of such tax.

(8) Set off of refunds against tax remaining payable or withholding of refund [Section 245]

- (i) **Set-off of refunds against any sum payable:** Where a refund becomes due or is found to be due to any person, the Assessing Officer or Commissioner or Principal Commissioner or Chief Commissioner or Principal Chief Commissioner, as the case may be, may, in lieu of payment of the refund, **set-off the amount to be refunded** or any part of that amount, **against the sum**, if any, remaining payable by the person to whom the refund is due, **after giving an intimation in writing** to such person of the action proposed to be taken.

Set-off of Refunds

- (ii) **Withholding of refund:** Where a part of the refund is set-off as stated above or where no such amount is set-off, and refund becomes due to a person, and the Assessing Officer, having regard to the fact that **proceedings for assessment or reassessment are pending in the case of such person**, is of the opinion that the **grant of refund is likely to adversely affect the revenue**, he may, for reasons to be recorded in writing and with the previous approval of the Principal Commissioner or the Commissioner, as the case may be, **withhold the refund up to the date on which such assessment or reassessment is made.**



13.13 PENAL CONSEQUENCES FOR FAILURE TO DEDUCT OR COLLECT OR PAY TAX AT SOURCE

The following penal consequences would be attracted for failure to deduct or collect or pay tax at source:

Section	Nature of Default	Penalty Leviable/	Rigorous imprisonment	Remarks
271C	Failure to deduct the whole or any part of tax	A sum equal to the amount of tax which	-	Penalty imposable by the Joint Commissioner.

	at source as per Chapter XVII-B	he failed to deduct		
276B	Failure to pay to the credit of Central Government, tax deducted at source under Chapter XVII-B		3 months to 7 years (+) fine [See Note below]	No limit specified with respect to fine
271C & 276B	Failure to pay or ensure payment of whole or any part thereof in cases where the consideration/benefit/perquisite, winnings as the case may be, is wholly or partly in kind and the tax deductor has to ensure that tax to be deducted has been paid as required - by the proviso to section 194B [Winnings from lottery or crossword puzzle]; or - the first proviso to section 194R(1) [on benefits and perquisites in respect of business or profession] or - the proviso to section 194S(1) [on transfer of virtual digital assets] or - as per section 194BA(2) [winning from online games (inserted w.e.f. 1.7.2023)].	A sum equal to the amount of tax which such person has failed to pay or ensure payment of	3 months to 7 years (+) fine [See Note below]	No limit specified with respect to fine
271CA	Failure to collect the whole or any part of the tax as required by or	A sum equal to the amount of tax which he	-	Penalty imposable by the Joint Commissioner.

	under the provisions of Chapter XVII-BB	failed to collect.		
276BB	Failure to pay to the Central Government tax collected under section 206C	-	3 months to 7 years (+) fine	No limit specified with respect to fine
278A	Second and subsequent offences under section 276B & 276BB		6 months to 7 years for every subsequent offence (+) fine	No limit specified with respect to fine

Section 278AA provides that where a reasonable cause for the failure is proved, punishment shall not be imposed for offences *inter alia* specified in sections 276B and 276BB.

Note - The CBDT has, vide Circular No. 24/2019 dated 9.9.2019, in exercise of the powers under section 119, listed out the offences covered under Chapter XXII of the Income-tax Act, 1961 in respect of which prosecution proceedings shall be launched by Approving Authority being the Sanctioning Authority where the quantum of offences exceed the prescribed monetary threshold. Accordingly, in case of failure to pay TDS under section 276B or failure to pay TCS u/s 276BB, no prosecution will be processed if the TDS/TCS amount does not exceed Rs.25 lakhs and delay in deposit is less than 60 days. However, for these offences, in exceptional cases like habitual defaulters, based on particular facts and circumstances of each case, prosecution may be initiated only with the previous administrative approval of the Collegium of two CCIT/DGIT rank officers though the amount involved does not exceed the threshold limit of Rs.25 lakhs. Students may read the detailed circular available at the following link –

<https://incometaxindia.gov.in/communications/circular/circular-24-2019-11-09-2019.pdf>

SIGNIFICANT SELECT CASES

S. No.	Case Law	
1.	<i>ITC Ltd v. CIT (2016) 384 ITR 14 (SC)</i>	
	Issue	Analysis & Decision
	Whether “tips” received by the hotel-company from its customers (who made payment through credit card) and distributed to the employees would fall within the meaning of “Salaries” to attract tax deduction at source u/s 192?	Section 15 applies when an employee has a vested right to claim any salary from an employer or former employer. However, in the case on hand, there is no vested right on the part of the employee to claim any amount of tips from the employer, since tips are purely voluntary amounts that may or may not be paid by customers for services rendered. The amount of tips paid by the employer to the employees had no reference to the contract of employment at all. Tips were received by the employer in a fiduciary capacity as trustee for payments that were received from customers which they disbursed to their employees for service rendered to the customer. There was, therefore, no reference to the contract of employment when these amounts were paid by the employer to the employee. Therefore, the tips received by the employees could not be regarded as “profits in lieu of salary” in terms of section 17(3). The payment by the employer of tips collected from the customers to the employees would not be a payment made “by or on behalf of” an employer. Such payments would be outside the purview of section 15(b) of the Act. The person who paid the tip was the customer and not the employer. Even though the amounts were with the employer he had no title to the money and it was held in a fiduciary capacity as trustee for and on behalf of the employees. Therefore, in such a case, no liability to deduct tax at source u/s 192 arises, and hence, the assessee company cannot be treated as an assessee in default for non-deduction of tax at source from the amount of tips collected and distributed to its employees.

2.	<i>Japan Airlines Co. Ltd. v. CIT / CIT v. Singapore Airlines Ltd. (2015) 377 ITR 372 (SC)</i>	
	Issue	Analysis & Decision
	Are landing and parking charges paid by an airline company to Airports Authority of India in the nature of rent to attract tax deduction at source u/s 194-I?	The charges which are fixed by the AAI for landing and take-off services as well as for parking of aircrafts are not for the "use of the land". These charges are for services and facilities offered in connection with the aircraft operation at the airport which include providing of air traffic services, ground safety services, aeronautical communication facilities, installation and maintenance of navigational aids and meteorological services at the airport. Hence, the charges are not for use of the land per se and, therefore, it cannot be treated as "rent" within the meaning of section 194-I.
3.	<i>CIT v. Ahmedabad Stamp Vendors Association (2012) 348 ITR 378 (SC)</i>	
	Issue	Analysis & Decision
	Can discount given to stamp vendors on purchase of stamp papers be treated as 'commission or brokerage' to attract the provisions for tax deduction u/s 194H?	Although the Government has imposed a number of restrictions on the licensed stamp vendors regarding the manner of carrying on the business, the stamp vendors are required to purchase the stamp papers on payment of price less discount on "principal to principal" basis and there is no "contract of agency" at any point of time. The definition of "commission or brokerage" under clause (i) of the <i>Explanation</i> to section 194H indicates that the payment should be received, directly or indirectly, by a person acting on behalf of another person, <i>inter alia</i>, for services in the course of buying or selling goods. Therefore, the element of agency is required in case of all services and transactions contemplated by the definition of "commission or brokerage" under <i>Explanation (i)</i> to section 194H. When the licensed stamp vendors take delivery of stamp papers on payment of full price less discount and they sell such stamp papers to the retail customers, neither of the two activities (namely, buying from the Government and selling to the customers) can be termed as service in the course of buying and selling of goods. The discount on purchase of stamp papers, therefore, does not fall

		within the expression “commission or brokerage” to attract the provisions of tax deduction at source u/s 194H.
4.	<i>CIT v. Kotak Securities Ltd (2016) 383 ITR 1 (SC)</i>	
	Issue	Analysis & Decision
	Would transaction charges paid by the members of the stock exchange for availing fully automated online trading facility, being a facility provided by the stock exchange to all its members, constitute fees for technical services to attract the provisions of tax deduction at source u/s 194J?	The assessee company was engaged in the business of share broking, depositories, mobilisation of deposits and marketing public issues. Being a member of the BSE, it made payment to the Stock Exchange by way of transaction charges in respect of fully automated online trading facility and other facilities. • The services provided by the stock exchange are available to all members in respect of every transaction that is entered into. There is nothing special, exclusive or customized in the service that is rendered by the stock exchange. • A member who wants to conduct his daily business in the stock exchange has no option but to avail such services. Each and every transaction by a member involves the use of such services provided by the stock exchange for which the member is required to pay transaction charge based on the transaction value besides charges for the membership of the stock exchange. • Technical services like managerial and consultancy service are in the nature of specialised services made available by the service provider to cater to the special needs of the customer-user as may be felt necessary. It is the above feature that would distinguish or identify a service provider from a facility offered. The service provided by the BSE for which transaction charges are paid failed to satisfy the test of specialized, exclusive and individual requirement of the user or the consumer who may approach the service provider for such assistance or service. Therefore, the transaction charges paid to BSE by its members are not for technical services but are in the

		nature of payments made for facilities provided by the stock exchange. Such payments would, therefore, not attract the provisions of tax deduction at source u/s 194J.
5.	UCO Bank v. Dy. CIT (2014) 369 ITR 335 (Del)	
	Issue	Analysis & Decision
	Is section 194A applicable in respect of interest on fixed deposits in the name of Registrar General of High Court?	The expression “payee” u/s 194A would mean the recipient of income whose account is maintained by the person paying interest. The Registrar General is neither recipient of the amount credited to his account nor to interest accruing thereon. Therefore, he cannot be considered as a ‘payee’ for the purposes of section 194A. In the absence of a payee, the machinery provisions for deduction of tax to his credit are ineffective. The credit by the bank in the name of the Registrar General would, thus, not attract the provisions of section 194A. Note - The CBDT has accepted the aforesaid judgment and accordingly, vide Circular No.23/2015 dated 28.12.2015, clarified that interest on FD₹ made in the name of Registrar General of the Court or the depositor of the fund on the directions of the Court, will not be subject to TDS till the matter is decided by the Court. However, once the Court decides the ownership of the money lying in the fixed deposit, the provisions of section 194A will apply to the recipient of the income.
6.	Indus Towers Ltd v. CIT (2014) 364 ITR 114 (Del)	
	Issue	Analysis & Decision
	Is payment made for use of passive infrastructure facility such as mobile towers be subject to tax deduction u/s 194C or 194-I?	The assessee owned a network of telecom towers and infrastructure services which were let out to major telecom operators in the country. The infrastructure was given for the use of mobile operators. The towers were the neutral platform without which the mobile operators could not operate. Each mobile operator has to carry out this activity, by necessarily renting premises and installing the same equipment. The dominant intention was the use of equipment or plant or machinery i.e., the passive infrastructure, and the use of premises

		was only incidental. Hence, tax has to be deducted@2% as per section 194-I(a), the rate applicable for payment made for use of plant and machinery.
7.	<i>CIT v. Senior Manager, SBI (2012) 206 Taxman 607 (All.)</i>	
	Issue	Analysis & Decision
	In respect of a co-owned property, would the threshold limit mentioned in section 194-I for non-deduction of tax at source apply for each co-owner separately or is it to be considered for the complete amount of rent paid to attract liability to deduct tax at source?	Since the share of each co-owner is definite and ascertainable, they cannot be assessed as an association of persons as per section 26. The income from such property is to be assessed in the individual hands of the co-owners. Therefore, it is not necessary that there should be a physical division of the property by metes and bounds to attract the provisions of section 26. In this case, since the payment of rent is made to each co-owner by way of separate cheque and their share is definite, the threshold limit mentioned in section 194-I has to be seen separately for each co-owner.
8.	<i>CIT (TDS) v. Shree Mahalaxmi Transport Co. (2011) 339 ITR 484 (Guj.)</i>	
	Issue	Analysis & Decision
	Can the payment made by an assessee engaged in transportation of building material and transportation of goods to contractors for hiring dumpers, be treated as rent for machinery or equipment to attract provisions of tax deduction at source u/s 194-I?	Since the assessee had given contracts to the parties for the transportation of goods and not for renting out machinery and equipment, such payments could not be termed as rent paid for the use of machinery. The provisions of section 194-I would, therefore, not be applicable. The transactions being in the nature of contracts for shifting of goods from one place to another would be covered under works contracts, thereby attracting the provisions of section 194C.
9.	<i>CIT v. V.S. Dempo & Co P Ltd (2016) 381 ITR 303 (Bom) (FB)</i>	
	Issue	Analysis & Decision
	Is tax is required to be deducted u/s 195 on the demurrage charges paid to a foreign shipping company which is	Since section 172 dealing with shipping business of non-residents contains a non-obstante clause and applies both for the purpose of the levy and recovery of tax in the case of any ship carrying passengers etc., belonging to or chartered by a non-resident and shipping at a port in

	governed by section 172 for the purpose of levy and recovery of tax?	India, there would be no obligation on the payer- assessee to deduct the tax at source u/s 195 on payment of demurrage charges to the non-resident shipping company.
10.	<i>Sun Outsourcing Solutions Private Limited v. CIT (Appeals) (2018) 407 ITR 480 (T&AP)</i>	
	Issue	Analysis & Decision
	Is interest u/s 201(1A) attracted even in a case where non-deduction of tax at source was under a <i>bona fide</i> belief that tax was not deductible and the default was not wilful?	The assessee is a private limited company engaged in the business of software development with its office in Hyderabad and branch office in London. In the course of executing software projects in the U.K., the assessee had deputed some employees from Hyderabad to London. The assessee did not deduct tax at source on the allowances paid to the staff deputed to the U. K. Since the company had failed to deduct tax on the payments made to its employees, being Indian residents deputed to work in the U.K., section 201(1A) is automatically attracted; even if such non-deduction was due to the <i>bona fide</i> belief that tax is not deductible in such case, the company is, nevertheless, liable to pay interest u/s 201(1A).
11.	<i>Director, Prasar Bharati v. CIT [2018] 403 ITR 161 (SC)</i>	
	Issue	Analysis & Decision
	Are the provisions of tax deduction at source under section 194H attracted in respect of amount retained by accredited advertising agencies out of remittance of sale proceeds of “airtime” purchased from Doordarshan and sold to customers?	The assessee, Prasar Bharati Doordarshan Kendra, functions under the Ministry of Information and Broadcasting, Government of India and runs the television channel called Doordarshan. For the purpose of telecasting advertisements of consumer companies on its channel, the assessee entered into agreements with advertising agencies, on the basis of the application made by such agencies to the assessee for gaining “accredited status”. The agencies were to give minimum annual business of ₹ 6 lakhs to the assessee in a financial year and furnish bank guarantee for a sum of ₹ 3 lakhs. The agreement provided that the accredited agencies would retain 15% by way of commission out of the amount collected from customers and paid to the assessee. The agencies were to retain the commission

earned and not to part with the same either directly or indirectly to any other person.

In the relevant assessment years, the agencies retained ₹ 4.87 crores towards commission as per the terms of the agreement.

The definition of “commission or brokerage” under section 194H is inclusive and covers any payment received or receivable directly or indirectly by a person acting on behalf of another person for the services rendered. The agreement itself uses the expression “commission” in all relevant clauses. The payment clause is free of ambiguity and the terms of the agreement indicate that both parties intended that the amount to be paid/retained is in the nature of commission. It is for this reason that the parties used the expression “commission” in the agreement. The relationship in question was a pure agency arrangement because the agency acted on behalf of the assessee and the actions of the agency were binding on the assessee. Moreover, the agreement itself contained a clause for deduction of tax at source on trade discount.

Thus, the amount retained by the accredited advertising agencies is commission and consequently, the provisions of tax deduction at source under Section 194H are attracted. Consequently, for failure to deduct tax at source under section 194H, the assessee would be treated as an assessee-in-default.

Note - It may be noted that the CBDT has, vide Circular No.5/2016 dated 29.2.2016, clarified that TDS under section 194H is not attracted on retentions by an advertising agency (for booking or procuring of or canvassing for advertisements) from payments remitted to television channels/newspaper companies. The CBDT has issued this clarification on the basis of the Allahabad High Court ruling in Jagran Prakashan Ltd.’s case and Delhi High Court ruling in Living Media Ltd.’s case that the relationship between the media company and advertising agency is that of a “principal to principal”. However, the Supreme Court, in this case, has distinguished from the Allahabad High Court ruling, on

		<i>the basis of the fact that an agreement has been entered into by Doordarshan with the accredited agencies specifically appointing them as agents; and the agreement also contains a specific clause for deduction of tax at source on trade discount, which is in the nature of commission. Accordingly, the Supreme Court held that the relationship between Doordarshan and its accredited agencies is that of a principal and agent, consequent to which TDS provisions under section 194H would get attracted in respect of retentions by accredited advertising agencies from payments remitted to Doordarshan. Therefore, the applicability or otherwise of the CBDT Circular will depend on the facts of the specific case.</i>
12.	<i>DIT (International Taxation) v. Wizcraft International Entertainment (P) Ltd (2014) 364 ITR 227 (Bom)</i>	
	Issue	Analysis & Decision
	Is payment made to an overseas agent, who did not perform any service in India, liable for tax deduction at source?	The assessee, an event management company, engaged the services of an agent to bring artistes to India. The assessee-company paid commission to overseas agent. The assessee-company did not deduct tax at source on the commission paid to the agent. With regard to the payment of commission, the agent did not act as a performing artist or entertainer. He was concerned only with the services rendered outside India. Thus, the income of the agent did not arise from the personal activities in the contracting state of an entertainer or artist. He only contacted the artists and negotiated with them for performance in India in terms of the authority given by the assessee. Hence, the commission paid to the overseas agent was not liable to tax in India. Consequently, there was no obligation for deducting tax at source at the time of making payment to the overseas agent.
13.	<i>CIT v. Priya Blue Industries (P) Ltd (2016) 381 ITR 210 (Guj)</i>	
	Issue	Analysis & Decision
	Can items of finished products from ship	The assessee-company, engaged in ship breaking activity, sold old and used plates, wood etc. The

	breaking activity which are usable as such be treated as “Scrap” to attract provisions for tax collection at source under section 206C?	assessee did not collect tax at source on sale of certain items viz. old and used plates; non-excisable (exempted) goods like wood etc. The products obtained from the ship breaking activity were finished products which constituted sizable chunk of production done by the ship breakers. Such products though commercially known as ‘scrap’ were definitely not “waste and scrap”. For the purpose of collection of tax at source u/s 206C, the ‘waste and scrap’ must be from manufacture or mechanical working of material which is <i>definitely not usable as such because of breakage, cutting up, wear and other reasons</i>. However, in this case, these items were usable as such and, therefore, do not fall within the definition of “scrap” as given in clause (b) of <i>Explanation</i> to section 206C(1).
14.	<i>Pioneer Overseas Corporation USA (India Branch) v. CIT (International Taxation) (2022) 449 ITR 186 (SC)</i>	
	Issue Is pendency of dispute resolution under MAP a valid ground for waiver of interest under section 220(2A)?	Analysis & Decision Relevant provision of law: Section 220(2) provides for levy of simple interest@1% for every month or part of a month comprised in the period commencing from the day immediately following the 30 days period specified in section 220(1) (from service of notice of demand under section 156) and ending on the day on which the amount is paid. Section 220(2A) provides for reduction or waiver of interest payable under section 220(2), if the PCC/CC/PC/Commissioner is satisfied that payment of such amount has caused or would cause genuine hardship to the assessee, default in payment of amount specified in notice of demand was due to circumstances beyond the control of the assessee and the assessee has co-operated in any enquiry relating to the assessment or any proceeding for the recovery of any amount due from him. Facts of the case: The assessee applied for waiver of interest under section 220(2A) on the ground that the dispute was pending for resolution under the mutual agreement procedure under the Double Taxation

		Avoidance Agreement between India and the United States of America, which subsequently culminated in the year 2012 and the liability to pay the tax arose thereafter. The Commissioner, however, rejected the assessee's application. The same was confirmed by the High Court. Decision: The Supreme Court observed that merely raising the dispute before any authority cannot be a ground not to levy the interest and/or waiver of interest under section 220(2A). Otherwise, each and every assessee may raise a dispute and thereafter, may contend that since the litigation was <i>bona fide</i>, no interest is leviable. It is required to be noted that under section 220(2), the levy of simple interest on non-payment of the tax at 1 per cent. per annum is, as such, mandatory. Note – It may be noted that under section 220(2A), the Commissioner may reduce or waive the interest payable by an assessee on the ground of genuine hardship. In this case, the assessee is a part of a global conglomerate which had in the earlier year \$ 37.96 billion in net sales and \$ 6.253 billion as operating profit, cannot be an irrelevant factor in considering whether any 'genuine hardship' was undergone by the petitioner. Further, in comparison to the profitability of the petitioner over the years, the amount paid by it towards interest under section 220(2) was merely \$ 0.004 billion (approx.). In the circumstances, the Commissioner of Income-tax concluded that no 'genuine hardship' can be said to have been caused to the petitioner on account of payment of interest.
15.	<i>Singapore Airlines Ltd/ KLM Royal Dutch Airlines v. CIT/ British Airways Plc v. CIT(TDS) [2022] 49 ITR 203 (SC)</i>	
	Issue	Analysis & Decision
	Would the additional income (supplementary commission) earned by a travel agent over and above the minimum fare fixed by the airlines be also subjected to tax	Facts of the case: Within the aviation industry, the base fare for air tickets was set by the International Air Transport Association (IATA) with discretion provided to airlines to sell their tickets for a net fare lower than the base fare, but not higher. The air carriers were also required to provide a

	deduction at source under section 194H besides the standard commission on base fare?	fare list to the Director General of Civil Aviation (DGCA) for approval. The prices that were rubber stamped by the DGCA may be equivalent to or lower than the base fare set by the IATA. Simultaneously, the IATA would provide blank tickets to the travel agents acting on behalf of the airlines to market and sell the travel tickets. The arrangement between the airlines and the travel agents would be governed by Passenger Sales Agency Agreements ("PSA"). The PSA set the conditions under which the travel agents carry out the aforementioned sale of flight tickets, along with other ancillary services, and the remuneration they are entitled to for these activities. Once these tickets were sold, a fixed per cent commission designated by the IATA would, be paid to the travel agent for its services as "standard commission" based on base fare set by the IATA. This would be independent of the net fare quoted by the air carriers themselves. The standard commission is subjected to TDS under section 194H. The details of the amounts at which the tickets were sold would be transmitted by the travel agents to an organization known as the Billing and Settlement Plan ("BSP") which functions under the aegis of the IATA. The BSP stores a plethora of financial information including the net amount payable to the aviation companies, discounts, and commission payable to the agents. Within this framework, the airlines would have no control over the actual fare at which the travel agents would sell the tickets. The additional amount that the travel agents charged over and above the net fare that was quoted by the airline would be retained by the agent as its own income. This auxiliary amount charged on top of the net fare was portrayed on the BSP as a "supplementary commission" in the hands of the travel agent. The airline companies had failed to deduct tax at source on the supplementary commission amounts earned by the travel agent. They were declared "assessee-in-default" under section 201 and subject to payment of interest under section 201(1A). Penalty proceedings were directed to be

initiated against the airlines under section 271C.

Relevant provision of the Income-tax Act, 1961:

Explanation (i) to section 194H defines the expression 'commission or brokerage'. It is an inclusive definition and includes therein any payment received or receivable, directly or indirectly by a person acting on behalf of another person for services rendered (not being professional services) or for any services in the course of buying or selling of goods or in relation to any transaction relating to assets, valuable article or thing, not being securities.

Analysis and Conclusion:

Section 194H does not distinguish between direct and indirect payments. Both fall within the meaning of "commission" under clause (i) of the *Explanation* thereto. Therefore, if the ambit of section 194H is viewed in an expansive manner, TDS would be attracted even on an indirect payment stemming from the consumer.

Section 194H is to be read with section 182 of the Contract Act, 1872. If a relationship between two parties as culled out from their intentions as manifested in the terms of the contract between them indicates the existence of a principal-agent relationship as defined under section 182 of the Contract Act, the definition of "commission" under section 194H stands attracted and the requirement to deduct tax at source arises.

The Apex Court noted that the tickets remained the property of the airline. There was no transfer in terms of the title in the tickets and they remained the property of the airline company throughout the transaction. Every action taken by the travel agents is on behalf of the air carriers and the services they provide is with express prior authorization. The terms of the PSA also indicated that the actions of the agents in procuring customers was done on behalf of the airlines and not independently.

Accordingly, the Apex Court concluded that the contract is one of agency that does not distinguish in terms of stages of the transaction involved in selling flight tickets. The fact that the travel agent had discretion to set an

		actual fare above the net fare had no effect on the nature of the relationship between the parties. The accretion of the supplementary commission to the travel agents was an accessory to the actual principal-agent relationship under the PSA agreement. Apart from this, the PSA agreement set out that any payments collected by an agent pursuant to sale of air transportation and ancillary services were held in a fiduciary capacity for the carrier until a proper accounting was made. Notwithstanding the lack of control over the actual fare, the contract definitively stated that “all monies” received by the agent were held as the property of the air carrier until they were recorded on the billing and settlement plan and properly gauged. The billing and settlement plan demarcated “supplementary commission” under a separate heading. Hence, once the IATA made the payment of the accumulated amounts shown on the billing and settlement plan, it would be feasible for the assessees, being the airlines to deduct tax at source on this additional income earned by the agent. Further, as regards penalty under section 271C, the Apex Court stated that there were contradictory pronouncements by different High Courts which clearly highlighted the genuine and bona fide legal conundrum that was raised by the prospect of section 194H being applied to the supplementary commission. Hence, there was clearly an arguable and “nascent” legal issue that required resolution by the Supreme Court. Thus, there was “reasonable cause” for the air carriers not to have deducted tax at source at the relevant period. Thus, penalty proceedings against the airlines under section 271C were to be quashed. As regards applicability of interest u/s 201(1A), if the recipient of income on which tax has not been deducted at source, even though it was liable to such deduction as per the provisions of the Income-tax Act, 1961, has already included that amount in its income and paid taxes on the same, the assessee can no longer be proceeded against for recovery of the short fall in TDS. However, it

would be open to the Revenue to seek payment of interest u/s 201(1A) for the period between the date of default in deduction of tax at source and the date on which the recipient actually paid income-tax on the amount for which there had been a shortfall in such deduction.

Notes – An illustration showing how additional income arises in the hands of travel agent is given hereunder -

Base fare for Wingfly Airline, Delhi (Set by the IATA)	Net fare (Set by the airline)	Actual fare (Set by the travel agent)	Standard commission (7% of the base fare)	Supplementary commission (Actual fare – net fare)
₹ 1 lakh	₹ ,000	₹ 0,000	7% of ₹1 lakh = ₹ 7,000	₹ 80,000 (-) 60,000 = ₹ 20,000
Selling price	Income of the assessee (Airline)	₹ 20,000 left after payment of net fare to the assessee	Income of the travel agent	Additional Income of the travel agent

Applying the rationale of the Apex Court in the above case, TDS u/s 194H is required to be deducted both on the standard commission of ₹ 7,000 and on the supplementary commission of ₹ 20,000.

TEST YOUR KNOWLEDGE**Questions**

1. *Mr. Madhusudan is regular in deducting tax at source and depositing the same. In respect of the quarter ended 31st December, 2023, a sum of ₹ 80,000 was deducted at source from the contractors. The statement of tax deducted at source under section 200 was filed on 23rd March, 2024 for the quarter ended 31.12.2023.*
 - (i) *Is there any delay on the part of Mr. Madhusudan in filing the statement of TDS?*
 - (ii) *If the answer to (i) above is in the affirmative, how much amount can be levied on Mr. Madhusudan for such default under section 234E?*
 - (iii) *Is there any remedy available to him for reduction/waiver of the levy?*
2. *Smt. Vijaya, proprietor of Lakshmi Enterprises, made turnover of ₹ 210 lakhs during the previous year 2022-23. Her turnover for the year ended 31-3-2024 was ₹ 90 lakhs.*

Decide whether provisions relating to deduction of tax at source are attracted for the following payments made during the financial year 2023-24:

 - (i) *Purchase commission paid to one agent ₹ 25,000 on 13.6.2023 towards purchases made during the year.*
 - (ii) *Payments to Civil engineer of ₹ 5,00,000 on 23rd August, 2023 for construction of residential house for self-use.*
3. *What is the rate at which the tax is either to be deducted or collected under the provisions of the Act in the following cases?*
 - (i) *A partnership firm making sales of timber in September 2023 which was procured and obtained under a forest lease.*
 - (ii) *A nationalized bank receiving professional services from a registered society made provision on 31-03-2024 of an amount of ₹ 25 lakh against the service charges bills to be received.*
4. *Examine the liability for tax deduction at source in the following cases for the A.Y.2024-25:*
 - (i) *Wings Ltd. has paid amount of ₹ 15 lakhs during the year ended 31-3-2024 to Airports Authority of India towards landing and parking charges.*
 - (ii) *Ramesh gave a building on sub-lease to Mac Ltd. with effect from 1-7-2023 on a rent*

of ₹ 20,000 per month. The company also took on hire machinery from Ramesh with effect from 1-11-2023 on hire charges of ₹ 15,000 per month. The rent of building and hire charges of machinery for the year 2023-24 were credited by the company to the account of Ramesh in its books of account on 31-3-2024.

- (iii) ₹ 2,45,000 paid to Mr. X on 01-02-2024 by Karnataka State Government on compulsory acquisition of his urban land. What would be your answer if the land is agricultural land?
5. "Come Air Ltd." has paid a sum of ₹ 12 lakhs during the year ended 31-3-2024 to Airports Authority of India towards landing and parking charges. The company has deducted tax at source @2% under section 194C on the said payment and remitted the tax deducted within the prescribed time. The Assessing Officer contended that landing and parking charges were levied for use of the land of the airport and hence, the payment was in the nature of rent attracting TDS @10% under section 194-I. Discuss the correctness or otherwise of the contention of the Assessing Officer.
6. Mr. Harish, Vice President of ABC Bank, sold his house property in Chennai as well as his rural agricultural land for a consideration of ₹ 60 lakh and ₹ 15 lakh, respectively, to Mr. Suresh, a retail trader of garments, on 10.10.2023. Mr. Harish had purchased the house property and rural agricultural land in December 2021 for ₹ 40 lakh and ₹ 10 lakh, respectively. The stamp duty value on the date of transfer, i.e., 10.10.2023, is ₹ 85 lakh and ₹ 20 lakh for the house property and rural agricultural land, respectively.
- (a) Determine the tax implications in the hands of Mr. Harish and Mr. Suresh, if the date of agreement for sale of house property and rural agricultural land is 1.7.2023 and the stamp duty value on the said date was ₹ 75 lakh and ₹ 15 lakh, respectively. On the said date, Mr. Suresh made payment of ₹ 5 lakh by way of account payee cheque to Mr. Harish for purchase of house property.
- (b) Would your answer be different if Mr. Harish is a property dealer and sold the house property in the course of his business?
7. Siddharth Hospitals Pvt. Ltd. has recently been accorded recognition by several insurance companies to admit and treat patients on cashless hospitalization basis. Payment to the assessee hospital will be made by Third Party Administrators (TPA) who will process the claims of the patients admitted and make payments to the various hospitals including the assessee. All TPAs are corporate entities. The assessee wants to know whether the TPAs are bound to deduct tax at source under section 194J or under section 194C. Examine.

8. *Examine in the context of provisions contained in Chapter XVII-B of the Act and also work out the amount of tax to be deducted by the payer of income in the following cases:*
- (i) *Payment of ₹ 5 lakh made by JCP & Co. to Pingu Events Co. Ltd. on 4th September, 2023 for organizing a debate competition on the subject "Preservation of Rural Heritage of Rajasthan".*
 - (ii) *KD, a part time director of DAF Pvt. Ltd. was paid an amount of ₹ 2,25,000 as fees which was actually in the nature of commission on sales for the period 1.7.2023 to 30.9.2023.*
9. *Examine the applicability of the provisions relating to deduction of tax at source in the following transactions:*
- (i) *Max Limited pays ₹ 1,02,000 to Mini Limited, a resident contractor who, under the contract dated 15th October, 2023, manufactures a product according to specification of Max Limited by using materials purchased from Max Limited.*
 - (ii) *A company operating a television channel makes payment of ₹ 5 lakh to a former Indian cricketer on 10th March, 2024 for making running commentary of a one-day cricket match.*
10. *Examine in the following cases, the obligation of the person paying the income in respect of tax deduction at source:*
- (i) *MNO Ltd., the employer, credited salary due for the month of March 2024 amounting to ₹ 9,40,000 to the account of Q, an employee, in its books of account on 31.3.2024. Q has not intimated his intended tax regime.*
 - (ii) *T, an individual whose total sales in business during the year ended 31.3.2023 was ₹ 2.20 crores, paid ₹ 9 lakh by cheque on 1.1.2024 to a contractor (an individual), for construction of his factory building. No amount was credited earlier to the account of the contractor in the books of T.*
 - (iii) *BCD Ltd. credited ₹ 28,000 towards fees for professional services and ₹ 27,000 towards fees for technical services to the account of HG in its books of account on 6.10.2023. The total sum of ₹ 55,000 was paid by cheque to HG on 18.12.2023.*
11. *Examine the liability for tax deduction at source in the following cases for the assessment year 2024-25:*
- (i) *Mr. Anand has been running a sole proprietary business with turnover of ₹ 202 lakhs*

for the A.Y.2023-24. He pays a monthly rent of ₹ 15,000 for the office premises to Mr. R, the owner of building and an individual. Besides, he also pays service charges of ₹ 6,000 per month to Mr. R towards the use of furniture, fixtures and vacant land appurtenant thereto.

- (ii) By virtue of an agreement with a nationalised bank, a catering organisation receives a sum of ₹ 50,000 per month towards supply of food, water, snacks etc. during office hours to the employees of the bank.
 - (iii) An Indian company pays gross salary including allowances and monetary perquisites amounting to ₹ 7,30,000 to its General Manager (aged 45 years). Besides, the company provides non-monetary perquisites to him whose value is estimated at ₹ 1,20,000. General manager has not given any declaration regarding opt out of section 115BAC.
12. The following issues arise in connection with the deduction of tax at source under Chapter XVII-B. Examine the liability for tax deduction in these cases:
- (a) An employee of the Central Government receives arrears of salary for the earlier 3 years. He enquires whether he is liable for deduction of tax on the entire amount during the current year.
 - (b) ₹ 10 lakh is payable by a T.V. Channel on 1.9.2023 as prize money to the winner of a quiz programme, "Who will be a Millionaire".
 - (c) State Bank of India pays ₹ 50,000 per month as rent to the Central Government for a building in which one of its branches is situated.
 - (d) ₹ 80,000 is payable by a television company to a cameraman on 6th January, 2024 for shooting of a documentary film.
 - (e) ₹ 22,000 is payable by Maharashtra State Government on 2.7.2023 as commission to one of its agents on sale of lottery tickets.
 - (f) A Turf Club awards a jack-pot of ₹ 5 lakh to the winner of one of its races on 1.2.2024.
13. Examine and compute the liability for deduction of tax at source, if any, in the cases stated hereunder, for the financial year ended 31st March, 2024:
- (i) On 20.6.2023, Mr. X, a resident, made three separate transactions for acquiring house property at Mumbai from Mr. Y for a consideration of ₹ 90 lakhs, an urban plot in Kolkata from Mr. C for a sum of ₹ 49,50,000 and rural agricultural land from Mr. D for

a consideration of ₹ 60 lakhs. Stamp duty value of house property, plot and rural agricultural land is ₹ 95 lakhs, ₹ 48 lakhs and ₹ 65 lakhs, respectively.

- (ii) On 17.6.2023, a commission of ₹ 50,000 was retained by the consignee 'ABC Packaging Ltd.' and not remitted to the consignor 'XYZ Developers', while remitting the sale consideration. Examine the obligation of the consignor to deduct tax at source.
- (iii) Raj (aged 35 years) is working with AB Ltd. He is entitled to a salary of ₹ 85,000 per month w.e.f. 1.4.2023. He has a house property which is self-occupied. He paid an interest of ₹ 1,95,000 on loan, during the previous year 2023-24. The loan was taken for construction of house. He has notified his employer AB Ltd. that there will be a loss of ₹ 1,95,000 in respect of this house property for financial year ended 31.3.2024. Raj declared that he has exercised option to shift out of default regime of section 115BAC.
14. "Tax Recovery Officer, can recover the arrear demands from the assessee in default out of sale proceeds of the property attached after making a proclamation". How can such proclamation be made under the Act? Is there any time limit for sale of attached immovable property? Discuss.

Answers

1. (i) Yes, there has been a delay on the part of Mr. Madhusudan in filing the statement of TDS.

As per section 200(3) read with Rule 31A, the statement of tax deducted at source for the quarter ended 31st December, 2023 has to be filed on or before 31st January, 2024. However, the same has been filed only on 23rd March, 2024. Hence, there has been delay of 52 days on the part of Mr. Madhusudan in filing the statement of TDS.

- (ii) As per section 234E of the Income-tax Act, 1961, where a person fails to file deliver or cause to be delivered the statement of tax deducted at source within the prescribed time, then, he shall be liable to pay, by way of fee, a sum of ₹ 200 for every day during which the failure continues.

The amount of fee shall not, however, exceed the amount of tax deductible.

In this case, since Mr. Madhusudhan has delayed filing the statement of TDS by 52 days, he would be liable to pay a fee of ₹ 10,400 (₹ 200 x 52 days) under section 234E. The said fee does not exceed the tax deductible (₹ 80,000, in this case).

- (iii) Under section 119, the CBDT is empowered to issue general or special orders, whether by way of relaxation of any of the provisions of sections 139, 143, 144, 147 etc. or otherwise, in respect of any class of incomes or class of cases. The CBDT may issue such order(s) from time to time, if it considers expedient to do so, for the purpose of proper and efficient management of the work of assessment and collection of revenue. Section 234E is included in the list of sections in respect of which the CBDT is empowered to issue order for relaxation of the provisions of the Act.

Hence, the remedy available to Mr. Madhusudhan is that he can file an application to the CBDT under section 119 and seek waiver/reduction of the penalty levied/leviable under section 234E.

2. Since Smt. Vijaya's turnover from business was ₹ 210 lakhs in the immediately preceding financial year (i.e., F.Y.2022-23), she is liable to deduct tax at source in the P.Y.2023-24, irrespective of her turnover being only ₹ 90 lakhs in the F.Y.2023-24.

- (i) Tax @5% has to be deducted under section 194H in respect of purchase commission of ₹ 25,000 to an agent for purchases made during the year, since the same exceeds the threshold limit of ₹ 15,000 for non-deduction of tax at source thereunder.
- (ii) Tax has to be deducted under section 194C in case of payment to resident contractors. The rate of tax is 1% if the payee is an individual or HUF and 2% in case of payees, other than individuals and HUFs.

However, as per section 194C(4), no individual or Hindu undivided family shall be liable to deduct income tax on the sum credited or paid to the account of the contractor where such sum is credited or paid exclusively for personal purposes of such individual or any member of the Hindu undivided family. In such case, the provisions of section 194M would be attracted if the aggregate payment to the contractor exceeds ₹ 50 lakhs.

In this case, since Smt. Vijaya, an individual, makes payment of ₹ 5 lakh to a civil engineer for construction of residential house for self use, she is not liable to deduct tax at source either under section 194C or under section 194M from such sum.

3. (i) As per section 206C(1), tax has to be collected at source@2.5% by the partnership firm, being a seller, at the time of debiting of the amount payable by the buyer to the account of the buyer or at the time of receipt of such amount, whichever is earlier.
- (ii) Tax has to be deducted at source@10% under section 194J, by the nationalized bank at the time of credit of fees for professional services to the account of the registered society (i.e., on 31.3.2024), even though payment is to be made after that date.

4. (i) **TDS on landing and parking charges:** The landing and parking charges which are fixed by the Airports Authority of India are not merely for the "use of the land". These charges are also for services and facilities offered in connection with the aircraft operation at the airport which include providing of air traffic services, ground safety services, aeronautical communication facilities, installation and maintenance of navigational aids and meteorological services at the airport [*Japan Airlines Co. Ltd. v. CIT / CIT v. Singapore Airlines Ltd. (2015) 377 ITR 372 (SC)*]. Thus, tax is **not** deductible under section 194-I which provides deduction of tax for payment in the nature of rent.

Hence, tax is deductible @2% under section 194C by the airline company, Wings Ltd., on payment of ₹ 15 lacs made towards landing and parking charges to the Airports Authority of India for the previous year 2023-24.

- (ii) **TDS on rent for building and machinery:** Tax is deductible on rent under section 194-I, if the aggregate amount of rental income paid or credited to a person exceeds ₹ 2,40,000. Rent includes payment for use of, *inter alia*, building and machinery. Tax is deductible at the time of credit of such income to the payee or at the time of payment, whichever is earlier.

The aggregate payment made by Mac Ltd. to Ramesh towards rent in P.Y.2023-24 is ₹ 2,55,000 (i.e., ₹ 1,80,000 for building and ₹ 75,000 for machinery). Hence, Mac Ltd. has to deduct tax @10% on rent for building and tax @2% on rent for machinery, credited to the account of Ramesh on 31.3.2024.

- (iii) **TDS on compensation for compulsory acquisition:** Tax is deductible at source @10% under section 194LA, where payment is made to a resident as compensation or enhanced compensation on compulsory acquisition of any immovable property (other than agricultural land).

However, no tax deduction is required if the aggregate payments in a year does not exceed ₹ 2,50,000.

Therefore, no tax is required to be deducted at source on payment of ₹ 2,45,000 to Mr. X, since the aggregate payment does not exceed ₹ 2,50,000.

If the land is agricultural land, no tax would be deductible under section 194LA irrespective of the amount of compensation.

5. The issue as to whether the charges fixed by the Airport Authority of India (AAI) for landing and take-off facilities and parking facility for the aircraft are for the "use of the land" by the

airline company came up before the Supreme Court in *Japan Airlines Co. Ltd. v. CIT / CIT v. Singapore Airlines Ltd.* (2015) 377 ITR 372.

The Supreme Court observed that the charges which are fixed by the AAI for landing and take-off services as well as for parking of aircrafts are not for the "use of the land". These charges are for services and facilities offered in connection with the aircraft operation at the airport which include providing of air traffic services, ground safety services, aeronautical communication facilities, installation and maintenance of navigational aids and meteorological services at the airport.

There are various international protocols which mandate all authorities manning and managing these airports to construct the airport of desired standards which are stipulated in the protocols. The services which are required to be provided by these authorities, like AAI, are aimed at passengers' safety as well as for safe landing and parking of the aircrafts. Therefore, the services are not restricted to merely permitting "use of the land" of airport. On the contrary, it encompasses all the facilities that are to be compulsorily offered by the AAI in tune with the requirements of the protocol.

The Supreme Court observed that the charges levied on air-traffic includes landing charges, lighting charges, approach and aerodrome control charges, aircraft parking charges, aerobridge charges, hangar charges, passenger service charges, cargo charges, etc. Thus, when the airlines pay for these charges, treating such charges as charges for "use of the land" would tantamount to adopting a totally simplistic approach which is far away from reality.

The Supreme Court opined that the substance behind such charges has to be considered and when the issue is viewed from this angle, keeping the larger picture in mind, it becomes very clear that the charges are not for use of the land *per se* and, therefore, it cannot be treated as "rent" within the meaning of section 194-I. The Supreme Court, thus, concurred with the view taken by the Madras High Court in *Singapore Airlines* case and overruled the view taken by the Delhi High Court in *United Airlines/Japan Airlines* case.

Applying the rationale of the Supreme Court ruling to the facts of this case, the contention of the Assessing Officer that landing and parking charges are levied for use of the land of airport and hence, the charges are in the nature of rent to attract the provisions of tax deduction at source under section 194-I is **not** correct.

6. (a) **Tax implications on sale of rural agricultural land and house property representing a capital asset in the hands of Mr. Harish, a salaried employee**

(i)	Tax implications in the hands of Mr. Harish, a salaried employee
	Since rural agricultural land is not a capital asset, the gains arising on sale of such land is not taxable in the hands of Mr. Harish. However, capital gains would arise on sale of house property, being a capital asset. As per section 50C(1), the stamp duty value of house property on the date of agreement (i.e., ₹ 75 lakh) would be deemed to be the full value of consideration arising on transfer of property. Therefore, ₹ 35 lakh (i.e., ₹ 75 lakh – ₹ 40 lakh, being the purchase price) would be taxable as short-term capital gains in the A.Y.2024-25. It may be noted that as the date of agreement is different from the date of registration and part of the consideration was received on or before the date of agreement by way of account payee cheque, the stamp duty value on the date of agreement is to be adopted as the deemed sale consideration.
(ii)	Tax implications in the hands of the buyer – Mr. Suresh, a retail trader
	The house property purchased would be a capital asset in the hands of Mr. Suresh, who is a retail trader of garments. The provisions of section 56(2)(x) are attracted in the hands of Mr. Suresh who has acquired the immovable property, being a capital asset, for inadequate consideration. For the purpose of section 56(2)(x), Mr. Suresh can take the stamp duty value on the date of agreement instead of the date of registration since he has paid a part of the consideration by account payee cheque on the date of agreement. Therefore, ₹ 15 lakh, being the difference between the stamp duty value of the property on the date of agreement (i.e., ₹ 75 lakh) and the actual consideration (i.e., ₹ 60 lakh) would be taxable as per section 56(2)(x) under the head “Income from other sources” in the hands of Mr. Suresh, since such difference exceeds the higher of ₹ 50,000 or 10% of consideration. As rural agricultural land is not a capital asset, the provisions of section 56(2)(x) are not attracted in respect of acquisition of agricultural land for inadequate consideration, since the definition of “property” under section 56(2)(x) includes only capital assets specified thereunder.

(b) Tax implications on sale of house property representing stock-in-trade in the hands of Mr. Harish, a property dealer:

(i)	Tax implications in the hands of Mr. Harish
	If Mr. Harish is a property dealer who has sold the house property in the course of his business, the provisions of section 43CA would be attracted, since the house property represents his stock-in-trade and he has transferred the same for a consideration less than the stamp duty value.

	For the purpose of section 43CA, Mr. Harish can take the stamp duty value on the date of agreement instead of the date of registration, since he has received part of the sale consideration by an account payee cheque on the date of agreement and it exceeds 110% of consideration. Therefore, ₹ 35 lakh, being the difference between the stamp duty value on the date of agreement (i.e., ₹ 75 lakh) and the purchase price (i.e., ₹ 40 lakh), would be chargeable as business income in the hands of Mr. Harish.
(ii)	Taxability in the hands of Mr. Suresh
	There would be no difference in the taxability in the hands of Mr. Suresh, whether Mr. Harish is a property dealer or a salaried employee. Therefore, the provisions of section 56(2)(x) would be attracted in the hands of Mr. Suresh who has received house property, being a capital asset, for inadequate consideration.

7. This issue has been clarified by the CBDT *Circular No.8/2009 dated 24.11.2009*. As per provisions of section 194J(1), any person, who is responsible for paying to a resident any sum by way of fees for professional services, shall, at the time of credit of such sum to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct an amount equal to 10% of such sum as TDS.

Further, as per clause (a) of *Explanation* to section 194J “professional services” includes services rendered by a person in the course of carrying on medical profession.

The services rendered by hospitals to various patients are primarily medical services and, therefore, **the provisions of section 194J are applicable on payments made by TPAs to hospitals** etc. Further, for invoking provisions of section 194J, there is no stipulation that the professional services have to be necessarily rendered to the person who makes payment to hospital. Therefore, TPAs who are making payment on behalf of insurance companies to hospitals for settlement of medical/ insurance claims etc. under various schemes including Cashless Schemes are liable to deduct tax at source under section 194J on all such payments to hospitals etc.

In view of the above, all such transactions between TPAs and hospitals would fall within the ambit of provisions of section 194J.

8. (i) The services of Event Managers in relation to sports activities alone have been notified by the CBDT as “professional services” for the purpose of section 194J. In this case, payment of ₹ 5 lakh was made to an event management company for organization of a debate competition. Hence, the provisions of section 194J are not attracted.

However, TDS provisions under section 194C relating to contract payments would be attracted and consequently, tax has to be deducted @2% under section 194C. The tax deductible under section 194C would be ₹ 10,000, being 2% of ₹ 5 lakh.

- (ii) Section 194J provides for deduction of tax at source @10% on any remuneration or fees or commission, by whatever name called, paid to a director, which is not in the nature of salary in respect of which tax is deductible at source under section 192.

Hence, tax is to be deducted at source under section 194J @10% by DAF Pvt. Ltd. on the commission of ₹ 2,25,000 paid to KD, a part-time director. The tax deductible under section 194J would be ₹ 22,500, being 10% of ₹ 2,25,000.

- 9. (i) The definition of “work” under section 194C includes manufacturing or supplying a product according to the requirement or specification of a customer by using material purchased from such customer or its associate. In the instant case, Mini Limited manufactures the product as per the specification given by Max Limited **by using the raw materials purchased from Max Limited. Therefore, it falls within the definition of “work”** under section 194C. Consequently, tax is to be deducted on the invoice value excluding the value of material purchased from such customer if such value is mentioned separately in the invoice. If the material component is not mentioned separately in the invoice, tax is to be deducted on the whole of the invoice value.
 - (ii) Provisions for deduction of tax at source under section 194J are attracted in respect of payment of fees for professional services, if the amount of such fees exceeds ₹ 30,000 in the relevant financial year. The service rendered by a commentator in relation to sports activities has been notified by the CBDT as a professional service for the purposes of section 194J vide its *Notification No. 88 dated 21st August, 2008*. Therefore, tax is required to be deducted @10% from the fee of ₹ 5 lakhs payable to the former cricketer.
- 10. (i) Section 192 requires deduction of tax from salary at the time of payment. Thus, the employer is not required to deduct tax at source when salary has not been paid but is merely credited to the account of the employee in its books of account. MNO Ltd. therefore, is not required to deduct tax at source in respect of the salary merely credited to the account of employee Q which is not paid.

If salary has been paid during the year to Q, then, MNO Ltd a deductor, being an employer, shall seek information from each of its employees having income under

section 192 regarding their intended tax regime and each such employee shall intimate the same to the deductor, being his employer, regarding his intended tax regime for each year and upon intimation, the deductor shall compute his total income, and deduct tax at source thereon according to the option exercised.

If intimation is not made by the employee, it shall be presumed that the employee continues to be in the default tax regime and has not exercised the option to opt out of the new tax regime. Accordingly, in such a case, the MNO Ltd. shall deduct tax at source, on income under section 192, in accordance with the rates provided under section 115BAC(1A)

- (ii) An individual who has total sales, gross receipts or turnover from the business carried on by him exceeding ₹ 1 crore in the immediately preceding financial year i.e., F.Y. 2022-23, is liable to deduct tax at source under section 194C for the financial year 2023-24 in respect of the payment made to contractor exceeding ₹ 30,000 in a single contract and ₹ 1,00,000 in aggregate of contracts during the financial year. Since, turnover of the individual T is ₹ 2.20 crores in the financial year 2022-23 and as the payment during financial year 2023-24 to the contractor has exceeded the limits prescribed in section 194C, tax has to be deducted under section 194C.

The rate of tax deduction is 1% as the contractor is an individual.

- (iii) The limit of ₹ 30,000 for non-deduction of tax under section 194J would apply separately for fees for professional services and fees for technical services. This means that if a person has rendered services falling under both the categories, tax need not be deducted if the fee for each category does not exceed ₹ 30,000 even though the aggregate of the amounts credited to the account of such person or paid to him for both the categories of services exceed ₹ 30,000. Therefore, BCD Ltd. is not required to deduct tax at source in respect of the fees either at the time of credit or at the time of payment.

11. (i) Where the payer is an individual or HUF whose total sales, gross receipts or turnover from the business carried on by him exceed ₹ 1 crore during the financial year immediately preceding financial year in which such rent was credited or paid, is liable to deduct tax at source. Since the turnover from business of Mr. Anand was ₹ 202 lakhs for the F.Y. 2022-23, he is liable to deduct tax at source under section 194-I in respect of rental payments during the financial year 2023-24.

Accordingly, Mr. Anand is liable to deduct tax at source under section 194-I on the rental payments made. Section 194-I provides that rent includes any payment, by whatever name called, for the use of land or building together with furniture, fittings etc. Therefore, in the given case, apart from monthly rent of ₹ 15,000 p.m., service charge of ₹ 6,000 p.m. for use of furniture and fixtures would also attract TDS under section 194-I. Since the aggregate rental payments of ₹ 2,52,000 to Mr. R during the financial year 2023-24 exceeds ₹ 2,40,000, Mr. Anand is liable to deduct tax at source @10% under section 194-I from rent paid to Mr. R.

- (ii) The definition of “work” under *Explanation* to section 194C includes catering services and therefore, TDS provisions under section 194C are attracted in respect of payments to a caterer. As the payment exceeds ₹ 30,000, the nationalised bank is required to deduct tax at source at 2% on the payments made to catering organisation. If the catering organization is an individual or HUF, then, the tax deduction shall be made @1%

(iii)	₹
Gross salary, allowances and monetary perquisites	7,30,000
Non-Monetary perquisites	<u>1,20,000</u>
	8,50,000
Less: Standard deduction under section 16(ia)	<u>50,000</u>
	<u>8,00,000</u>
Tax Liability	36,400
Average rate of tax ($\text{₹ } 36,400 / \text{₹ } 8,00,000 \times 100$)	4.55%

The company can deduct ₹ 36,400 at source from the salary of the General Manager at the time of payment.

Alternatively, the company can pay tax on non-monetary perquisites as under –

Tax on non-monetary perquisites = 4.55% of ₹ 1,20,000 = ₹ 5,460

Balance to be deducted from salary = ₹ 30,940

If the company pays tax of ₹ 5,460 on non-monetary perquisites, the same is not a deductible expenditure as per section 40(a)(v). The amount of tax paid towards non-monetary perquisite by the employer, however, is not chargeable to tax in the hands of the employee as per section 10(10CC).

12. (a) As per section 192, tax is deductible at source by any person who is responsible for paying any income chargeable under the head 'Salaries'. However, as per sub-section (2A) of said section, the employee will be entitled to relief u/s 89 and consequently he will be required to furnish to the person responsible for making the payment, such particulars in the prescribed form (i.e., Form No.10E). The person responsible for making the payment shall compute the relief and take into account the same while deducting tax at source from salary.
- (b) Under section 194B, the person responsible for paying by way of winnings from any card game and other game in an amount exceeding ₹ 10,000 shall at the time of payment deduct income-tax at 30%. Therefore, tax of ₹ 3 lakh has to be deducted at source from the prize money of ₹ 10 lakh payable to the winner.
- (c) Section 194-I, which governs the deduction of tax at source on payment of rent, exceeding ₹ 2,40,000 p.a., is applicable to all taxable entities except individuals and HUFs, whose total sales, gross receipts or turnover from the business or profession carried on by him does not exceed ₹ 1 crore in case of business and ₹ 50 lakhs in case of profession during the financial year immediately preceding financial year in which such rent was credited or paid, is liable to deduct tax at source. Section 196, however, provides exemption in respect of payments made to Government from application of the provisions of tax deduction at source.
- Therefore, no tax is required to be deducted at source by State Bank of India from rental payments to the Government.
- (d) If the cameraman is an employee of the T.V. company, the provisions of section 192 will apply. However, if he is a professional, TDS provisions under section 194J will apply. Tax at 10% will have to be deducted at the time of credit of ₹ 80,000 or on its payment, whichever is earlier.
- (e) Under section 194G, the person responsible for paying to any person, stocking, distributing, purchasing or selling lottery tickets shall at the time of credit of the commission or payment thereof, whichever is earlier, amounting to more than ₹ 15,000, deduct income-tax at source @5%.
- Accordingly, tax @5% under section 194G amounting to ₹ 1,100 has to be deducted from commission payment of ₹ 22,000 to the agent of the State Government.
- (f) The TDS on payment by way of winnings from horse race is governed by section 194BB. Under this section, the person responsible for payment shall, at the time of payment, deduct tax at source @ 30%, if the payment exceeds ₹10,000.

Accordingly, tax @30% amounting to ₹ 1,50,000 has to be deducted from the winnings of ₹ 5 lakh payable to the winner of the race.

13. Liability for deduction of tax at source

	Reasoning	Amount of TDS (₹)
(i)	Since the consideration and stamp duty value for transfer of house property at Mumbai both are not less than ₹ 50 lakhs, Mr. X, being the transferee, is required to deduct tax @1% under section 194-IA on ₹ 95 lakhs, being higher of stamp duty value and the amount of consideration for transfer of property, at the time of credit to the transferor account or payment, whichever is earlier. Mr. X is not required to deduct tax as source under section 194-IA from the consideration of ₹ 49,50,000 paid to Mr. C for transfer of urban plot, since the consideration and stamp duty value, both are less than ₹ 50 lakhs. Mr. X is also not required to deduct tax at source under section 194-IA for transfer of rural agricultural land, since the same is specifically excluded from the scope of immovable property for the purpose of tax deduction under section 194-IA. Note - Section 194-IA requires every transferee responsible for paying any sum as consideration for transfer of immovable property (land, other than agricultural land, or building or part of building) to deduct tax, at the rate of 1% of higher of consideration and stamp duty value, at the time of credit of such sum to the account of the resident transferor or at the time of payment of such consideration to the resident transferor, whichever is earlier. However, no tax is required to be deducted where the consideration for transfer of an immovable property and stamp duty value of such property, both are less than ₹ 50 lakhs.	95,000 Nil Nil
(ii)	Section 194H requires deduction of tax at source @5% from commission and brokerage payments to a resident. However, no tax is to be deducted at source where the amount of such payment does not exceed ₹ 15,000. In the given case, 'ABC Packaging Ltd.', the consignee, has not remitted the commission of ₹ 50,000 to the consignor 'XYZ Developers' while remitting the sales consideration. Since the retention of commission by the consignee/agent amounts to constructive payment of the same to him by the consignor/principal, deduction of tax at source is required to be made from the amount of commission [CBDT Circular No.619 dated 4/12/1991].	

(iii)	Therefore, XYZ Developers has to deduct tax at source on ₹ 50,000 at the rate of 5%.	2,500
	Section 192 provides that tax is required to be deducted on the payment made as salaries. Tax is to be deducted on the estimated income at the rates specified under section 115BAC(1A) or at the average of income tax computed on the basis of the rates in force for the financial year in which payment is made in case employee submitted a declaration of opt out of the default regime under section 115BAC.	
	The employee may declare details of his other incomes (including loss under the head "Income from house property" but not any other loss) to his employer. In this case, since Mr. Raj has submitted a declaration of opt out of section 115BAC and also notified his employer AB Ltd. of loss from self-occupied house property, the employer has to take the same into consideration for deduction of tax at source.	
	Therefore, AB Ltd. is required to deduct tax at source on the salary of ₹ 85,000 per month paid to Mr. Raj, in the following manner:	
	Income under the head salaries (₹ 85,000 x 12)	10,20,000
	Less: Standard deduction under section 16(ia)	<u>50,000</u>
		9,70,000
	Income under the head "house property"	<u>(1,95,000)</u>
	Gross total income	7,75,000
	Less: Deduction under Chapter VI-A	<u>Nil</u>
	Total Income	<u>7,75,000</u>
	Tax on ₹ 7,75,000	67,500
	Add: Health and Education cess@4%	<u>2,700</u>
	Tax to be deducted at source	<u>70,200</u> 70,200

13. Manner of making a proclamation

Movable Property [Rules 38 & 39 of Schedule II to the Income-tax Act, 1961]

Where the Tax Recovery Officer orders sale of movable property, he should issue a proclamation in the language of the district, of the intended sale, specifying the time and place of sale and whether the sale is subject to confirmation or not.

The proclamation should be made by beat of drum or other customary mode, -

- (a) in the case of property attached by actual seizure –
 - (i) in the village in which the property was seized, or, if the property was seized in a town or city, then, in the locality in which it was seized; and

- (ii) at such other places as the Tax Recovery Officer may direct;
- (b) in the case of property attached otherwise than by actual seizure, in such places, if any, as the Tax Recovery Officer may direct.

A copy of the proclamation should also be affixed in a conspicuous part of the office of the Tax Recovery Officer.

Immovable Property [Rule 54 of Schedule II to the Income-tax Act, 1961]

The Tax Recovery Officer shall make a proclamation for sale of immovable property at some place on or near such property by beat of drum or other customary mode. A copy of the proclamation shall be affixed on a conspicuous part of the property and also upon a conspicuous part of the office of the Tax Recovery Officer.

Where the Tax Recovery Officer directs, such proclamation shall also be published in the Official Gazette or in a local newspaper or in both, and the cost of such publication shall be deemed to be cost of the sale.

Where the property to be sold is divided into lots for the purpose of being sold separately, then it is not necessary to make a separate proclamation for each lot of property, unless in the opinion of the Tax Recovery Officer, proper notice of sale cannot otherwise be given.

Time limit for sale of attached immovable property [Rule 68B of Schedule II to the Income-tax Act, 1961]

The sale of immovable property attached has to be made on or before the expiry of 7 years from the end of the financial year in which the order giving rise to a demand of any tax, interest, fine, penalty or any other sum, for the recovery of which the immovable property has been attached,

- has become conclusive under the provisions of section 245-I (where order of settlement under section 245D(4) is deemed to be conclusive as to the matters stated therein) or
- has become final in terms of the provisions of Chapter XX (Appeals and Revision).

However, the CBDT may, for reasons to be recorded in writing, extend the aforesaid period for a further period not exceeding 3 years.

INCOME TAX AUTHORITIES

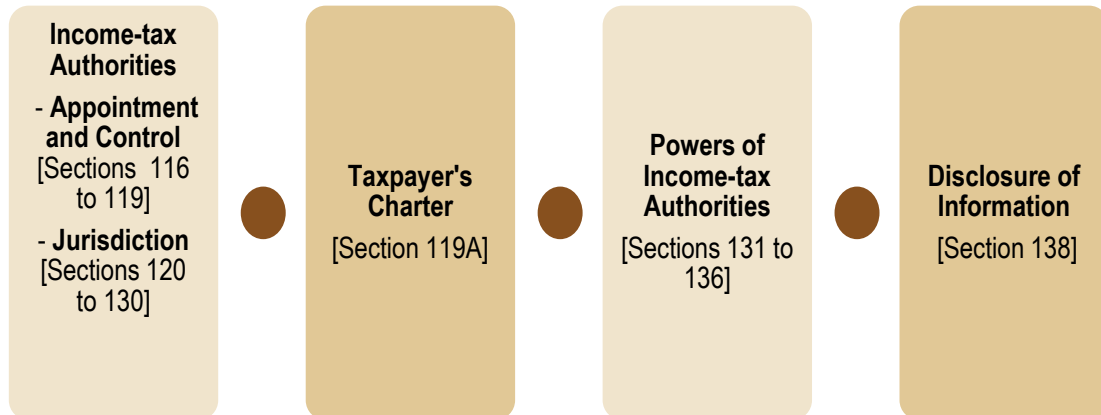


LEARNING OUTCOMES

After studying this chapter, you would be able to -

- ❑ **identify** the various income-tax authorities and comprehend the provisions of law relating to their appointment, control and jurisdiction;
- ❑ **appreciate** the powers of income-tax authorities under the Income-tax Act, 1961;
- ❑ **examine** the provisions relating to survey, search and seizure and the related powers of various income-tax authorities;
- ❑ **analyse and apply** such provisions to address related issues.

CHAPTER OVERVIEW



14.1 APPOINTMENT AND CONTROL [SECTIONS 116 TO 119A]

(1) **Income-tax Authorities [Section 116]**

The following are the classes of income-tax authorities-

Income-tax Authorities	
1.	Central Board of Direct Taxes (CBDT) or Board- CBDT - A statutory body constituted under the Central Board of Revenue Act, 1963. It comprises of Chairman & Members. - It functions under the jurisdiction of the Ministry of Finance. - It is the highest executive authority, exercises control and supervision over all officers of the Income-tax Department. - It is authorised to exercise certain powers conferred upon it by the Income-tax Act, 1961. - The CBDT frames rules as empowered u/s 295 subject to the control and approval of the Central Government for the proper administration of Act.

	Authority with nomenclature “Director”	Authority with nomenclature “Commissioner”
2.	Principal Directors-General of Income-tax (PDGIT)	Principal Chief Commissioners of Income-tax (PCCIT)
3.	Directors-General of Income-tax (DGIT)	Chief Commissioners of Income-tax (CCIT)
4.	Principal Directors of Income-tax (PDIT)	Principal Commissioners of Income-tax (PCIT)
5.	Directors of Income-tax (DIT)	Commissioner of Income-tax (CIT) or Commissioner of Income-tax (Appeals) [CIT(A)]
6.	Additional Directors of Income-tax (Add. DIT)	Additional Commissioners of Income-tax (Add. CIT) or Additional Commissioners of Income-tax (Appeals) [Add. CIT(A)]
7.	Joint Directors of Income-tax (JDIT)	Joint Commissioners of Income-tax (JCIT) or Joint Commissioners of Income-tax (Appeals)
8.	Deputy Directors of Income-tax (DDIT)	Deputy Commissioners of Income-tax (DCIT) or Deputy Commissioners of Income-tax (Appeals) [DCIT(A)]
9.	Assistant Directors of Income-tax (ADIT)	Assistant Commissioners of Income-tax (ACIT)
10.	Income-tax Officers (ITOs)	
11.	Tax Recovery Officers (TROs)	
12.	Inspectors of Income-tax	

Note - As per section 2(7A), “Assessing Officer” means -

- ACIT or DCIT or ADIT or DDIT; or
- ITO who is vested with the relevant jurisdiction by virtue of directions or orders issued by CBDT; and
- the Add. CIT or Add. DIT or JCIT or JDIT who is directed to exercise or perform all or any of the powers and functions conferred on, or assigned to, an Assessing Officer.

(2) **Appointment and Control of Income-tax Authorities [Sections 117 & 118]**

- (i) Section 117 empowers the Central Government to appoint such persons as it thinks fit to be income-tax authorities.

- (ii) It may also authorise the Board or a Principal Director General or Director General, a Principal Chief Commissioner or Chief Commissioner or a Principal Director or Director or a Principal Commissioner or Commissioner to appoint income-tax authorities below the rank of an Assistant Commissioner or Deputy Commissioner.
- (iii) An income-tax authority authorised by the CBDT may appoint such executive or ministerial staff as may be necessary to assist it in the execution of its functions.
- (iv) Section 118 authorises the CBDT to also direct, by way of notification, that any income-tax authority or authorities shall be subordinate to such other income-tax authority or authorities, as may be specified.

(3) Instruction to Subordinate Authorities [Section 119]

- (i) The CBDT has been empowered under section 119 to issue orders, instructions and directions to its subordinates for the proper administration of the Act.
- (ii) It is obligatory for the various authorities and all other persons employed in the execution of the Act to observe and follow such orders, instructions and directions of the CBDT. 
- (iii) The CBDT, however, is not empowered to issue orders, instructions or directions in such a way as to –
 - (1) require any income-tax authority to make a particular assessment or to dispose of a particular case in a particular manner; or
 - (2) interfere with the discretion of the **Joint Commissioner (Appeals) or Commissioner (Appeals)** in the exercise of his appellate functions.
- (iv) The CBDT may, if it considers necessary or expedient to do so, for the purpose of proper and effective management of the work of assessment and collection of revenue, issue general or special orders from time to time in respect of any class of incomes or class of cases setting forth directions and instructions not being prejudicial to the assessee.
- (v) In appropriate cases, the CBDT may relax the provisions of sections 139, 143, 144, 147, 148, 154, 155, 201(1A), 210, 211, 234A, 234B, 234C, 234E, 234F, 270A, 271C, 271CA and 273.

The following table gives a brief glimpse of what these sections relate to –

Section	Particulars of section
139	Filing of Return of income
143	Scrutiny Assessment of income
144	Best Judgment Assessment of income
147	Income escaping assessment
148	Issue of notice where income has escaped assessment
154	Rectification of mistake apparent on record
155	Other amendments relating to assessment of income
201(1A)	Interest for non-deduction of tax or non-payment of tax after deduction by such person/principal officer/company, as the case may be.
210	Payment of advance tax by the assessee of his own accord or in pursuance of order of Assessing Officer.
211	Installments of advance tax and due dates
234A	Interest for default in furnishing return of income
234B	Interest for default in payment of advance tax
234C	Interest for deferment of advance tax
234E	Fee for failure to deliver the statement of deduction of tax at source under section 200(3) and for failure to deliver the statement of collection of tax at source under section 206C(3) within the prescribed time.
234F	Fee for default in furnishing return of income under section 139(1)
270A	Penalty for underreporting and misreporting of income
271C	Penalty for failure to deduct tax at source
271CA	Penalty for failure to collect tax at source
273	Penalty for false estimate of, or failure to pay, advance tax

- (vi) The CBDT is empowered to authorise any income-tax authority [not being a **Joint Commissioner (Appeals)** or a Commissioner(Appeals)] by general or special order to admit an application or claim for any exemption, deduction, refund or any other relief under the Act after the expiry of the period specified under the Act, to avoid genuine hardship in any case or class of cases. The claim for carry forward of loss in case of late filing of a return is relatable to a claim arising under the category of “any other relief available under the Act”.

Accordingly, the CBDT has, vide *Circular No. 9/2015 dated 9.6.2015*, clarified containing comprehensive guidelines on the conditions for condonation of delay in filing returns, claiming refund and returns claiming carry forward of loss and set-off and the procedure to be followed for deciding such matters:

- (1) **Monetary Limits:** The Income-tax Authorities have vested with the powers of acceptance/rejection of such applications/claims upto certain threshold monetary limits:

Quantum of claim	Income-tax authority with whom powers of acceptance/rejection is vested
Where the claim is upto ₹ 10 lakhs for one A.Y.	Principal CIT or CIT
Where the claim is above ₹ 10 lakhs but upto ₹ 50 lakhs for one A.Y.	Principal CCIT or CCIT
Where the claim is above ₹ 50 lakhs for one A.Y.	CBDT

The above monetary limits have been revised w.e.f. 1.6.2023 vide Circular No. 7/2023 dated 31.5.2023 as under:

Quantum of claim	Income-tax authority with whom powers of acceptance/rejection is vested
Where the claim is upto ₹ 50 lakhs for one A.Y.	Principal CIT or CIT
Where the claim is above ₹ 50 lakhs but upto ₹ 2 crores for any one A.Y.	CCIT
Where the claim is above ₹ 2 crores but upto ₹ 3 crores for any one A.Y.	Principal CCIT
Where the claim is above ₹ 3 crores	CBDT

The above revised monetary limits shall be applicable to the applications/claims filed on or after 1.6.2023.

2. **Period for which application can be made:** No condonation application for claim of refund/loss shall be entertained **beyond six years from the end of the assessment year** for which such application/claim is made.

A condonation application should be disposed of **within six months from the end of the month** in which the application is received by the competent authority, as far as possible.

3. **Refund consequent to Court order:** In a case where refund claim has arisen consequent to a Court order, the period for which any such proceedings were pending before any Court of Law shall be ignored while calculating the said period of six years, provided such condonation application is filed within six months from the end of the month in which the Court order was issued or the end of financial year, whichever is later.
 4. **Application claiming additional amount of refund:** A belated application for supplementary claim of refund (claim of additional amount of refund after completion of assessment for the same year) can be admitted for condonation provided other conditions as referred above are fulfilled. The powers of acceptance/rejection within the monetary limits delegated to the Principal CCIT/CCIT/Principal CIT/CIT in case of returns claiming refund and supplementary claim of refund would be subject to the following further conditions:
 - (a) The income of the assessee is not assessable in the hands of any other person under any of the provisions of the Act.
 - (b) No interest will be admissible on belated claim of refunds.
 - (c) The refund has arisen as a result of excess tax deducted/collected at source and/or excess advance tax payment and/or excess payment of self-assessment tax as per the provisions of the Act.
- (vii) The CBDT is empowered to relax the requirements specified in Chapter IV or Chapter VI-A, by general or special order, where the assessee failed to comply with such requirements for claiming deduction due to circumstances beyond the control of the assessee and such requirements were complied with before completion of the assessment for that year. Every order issued under this clause shall, however, to be laid before each House of Parliament by the Central Government.

(4) Taxpayer's Charter [Section 119A]

The CBDT shall adopt and declare a taxpayer's charter and issue orders, directions, instructions and guidelines to other Income tax authorities for the administration of such Charter.

Taxpayer's Charter**Income-tax department is committed to**

1. **Provide fair, courteous, and reasonable treatment:** The Department shall provide prompt, courteous, and professional assistance in all dealings with the taxpayer.
2. **Treat taxpayer as honest:** The Department shall treat every taxpayer as honest unless there is a reason to believe otherwise.
3. **Provide mechanism for appeal and review:** The Department shall provide fair and impartial appeal and review mechanism.
4. **Provide complete and accurate information:** The Department shall provide accurate information for fulfilling compliance obligations under the law.
5. **Provide timely decisions:** The Department shall take decision in every income-tax proceeding within the time prescribed under law.
6. **Collect the correct amount of tax:** The Department shall collect only the amount due as per the law.
7. **Respect privacy of taxpayer:** The Department will follow due process of law and be no more intrusive than necessary in any inquiry, examination, or enforcement action.
8. **Maintain confidentiality:** The Department shall not disclose any information provided by taxpayer to the department unless authorized by law.
9. **Hold its authorities accountable:** The Department shall hold its authorities accountable for their actions.
10. **Enable representative of choice:** The Department shall allow every taxpayer to choose an authorized representative of his choice.
11. **Provide mechanism to lodge complaint:** The Department shall provide mechanism for lodging a complaint and prompt disposal thereof.
12. **Provide a fair & just system:** The Department shall provide a fair and impartial system and resolve the tax **issues** in a time-bound manner.
13. **Publish service standards and report periodically:** The Department shall publish standards for service delivery in a periodic manner.

14. **Reduce cost of compliance:** The Department shall duly take into account the cost of compliance when **administering** tax legislation.

Income-tax department expects taxpayers to:

1. **Be honest and compliant:** Taxpayer is expected to honestly disclose full information and fulfil his **compliance** obligations.
2. **Be informed:** Taxpayer is expected to be aware of his compliance obligations under tax law and seek help of department if needed.
3. **Keep accurate records:** Taxpayer is expected to keep accurate records required as per law.
4. **Know what the representative does on his behalf:** Taxpayer is expected to know what information and submissions are made by his authorised representative.
5. **Respond in time:** Taxpayer is expected to make submissions as per tax law in timely manner.
6. **Pay in time:** Taxpayer is expected to pay amount due as per law in a timely manner.



14.2 JURISDICTION

(1) **Jurisdiction of income-tax authorities [Section 120]**

- (i) **Income-tax authorities to exercise powers in accordance with CBDT directions [Section 120(1)]:** The income-tax authorities shall exercise all or any of the powers and perform all or any of the functions conferred on, or assigned to, such authorities in accordance with the directions issued by the CBDT for the exercise of such powers and performance of the functions by all or any of those authorities.
- (ii) **Deemed directions under section 120(1) by CBDT [Explanation to section 120(1)]:** Any income-tax authority, being an authority higher in rank, may exercise the powers and perform the functions of the income-tax authority lower in rank, if so directed by the CBDT. Such direction issued by the CBDT shall be deemed to be a direction issued under the said section 120(1).
- (iii) **CBDT may authorize income-tax authorities to exercise powers/performance functions:** The directions of the Board may authorise any other income-tax authority to issue orders in writing for the exercise of the powers and performance of the functions by all or any of the other income-tax authorities who are subordinate to it.

Jurisdiction

(iv) **Criteria for issue of directions [Section 120(3)]:** In issuing such directions, the Board may have regard to the following criteria:

- (a) Territorial area.
- (b) Persons or classes of persons.
- (c) Incomes or classes of incomes.
- (d) Cases or classes of cases.

(v) **CBDT authorisation assigning functions [Section 120(4)]:** The CBDT may authorise any Principal Director General or Director General or Principal Director or Director of Income-tax to perform such functions of any other income-tax authority as may be assigned to him. Such authorisation may be through a general or special order.

The CBDT can empower the Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner to issue orders in writing to the effect that the powers and functions conferred on or assigned to the Assessing Officer under this Act in respect of any specified area or person or class of person or persons or incomes or classes of income or cases or classes of cases shall be exercised or performed by an Additional Commissioner or Additional Director or a Joint Commissioner or Joint Director.

The CBDT or any other authority authorised in this behalf can confer jurisdiction with more than one income-tax authority in relation to any case.

(2) **Jurisdiction of Assessing Officers [Section 124]**

(i) **Persons in respect of whom Assessing Officer has jurisdiction:** Where the Assessing Officer has been vested with jurisdiction over any area within the limits of such area, he shall have jurisdiction:

- (a) in respect of any person carrying on business or profession within that area or in respect of a person whose business or profession is carried on in more than one place, if his principal place of business is in that area and
- (b) in respect of any other person residing within the area.

(ii) **Income-tax Authorities higher in rank to determine question of Assessing Officer's jurisdiction:** Where a question arises under this section as to whether an Assessing Officer has jurisdiction to assess any person, the question shall be determined by the Principal Director General or Director General or the Principal Chief Commissioner or Chief Commissioners or Principal Commissioner or Commissioner.

In case the question relates to an area within the jurisdiction of different Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioners or Principal Commissioner or Commissioner then the question shall be determined by the Principal Directors General or Directors General or Principal Chief Commissioners or Chief Commissioners or Principal Commissioners or Commissioner concerned or if they are not in agreement, then the same shall be determined by the Board or by such Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner as the Board may specify by way of notification in the Official Gazette.

(iii) **Time limit for calling in question jurisdiction of the Assessing Officer:**

S. No.	Case	Time Limit
(a)	Where a return of Income has been filed under section 139(1)	One month from the date of service of notice under section 142(1) or 143(2) or completion of assessment, whichever is earlier.
(b)	Where no return of income has been filed	Time allowed by notice under section 142(1) or 148 for filing return of income or by notice under the first proviso to section 144 to show cause why the best judgement assessment should not be made, whichever is earlier.
(c)	Where search is initiated under section 132 or books of accounts or other documents or any assets are requisitioned under section 132A	One month from the date on which notice was served under section 153A(1) or 153C(2) ¹ or completion of assessment, whichever is earlier.

(iv) **Assessing Officer may refer matter for determination:** Where the assessee questions the jurisdiction of an Assessing Officer, then, the Assessing Officer shall, if not satisfied with the correctness of the claim refer the matter for determination under (ii) above before the assessment is made.

(v) **Jurisdictional Powers of Assessing Officer:** Every Assessing Officer shall have all the powers conferred by or under this Act on an Assessing Officer in respect of the

¹¹ These provisions (i.e., sections 153A and 153C) were applicable in case of search, initiated under section 132 or books of accounts or other documents or any assets requisitioned under section 132A before 1.4.2021. Where search is initiated under section 132 or books of accounts or other documents or any assets requisitioned under section 132A on or after 1.4.2021, assessment or reassessment or recomputation is conducted under section 143(3) or section 144 or section 147.

income accruing or arising or received within the area, if any, over which he has been vested with jurisdiction by virtue of the direction or order issued under section 120(1) and 120(2).

(3) **Power to transfer cases [Section 127]**

(i) **Authorities empowered to transfer cases from one Assessing Officer to another:**

The power to transfer a case from one Assessing Officer to another subordinate Assessing Officer or Officers is vested with the Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner of Income-tax. However, this power can be exercised only after giving the assessee a reasonable opportunity of being heard and after recording reasons for doing so, wherever possible.

Transfer of case from one AO to another AO

(ii) **Mutual agreement between higher authorities to transfer cases:** There may be situations where the Assessing Officer(s) from whom the case is transferred and the Assessing Officer to whom the case is transferred do not fall under the control of the same Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner of Income-tax. In such cases, the Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner of Income-tax from whose jurisdiction the case is transferred shall pass an order, if such concerned higher authorities mutually agree for such transfer.

If the higher authorities are not in agreement about the transfer, then, the CBDT or any such authority authorized by the Board may pass the order.

(iii) **No requirement of giving opportunity to be heard in certain cases:** If the case is transferred between Assessing Officers within the same city or locality or place, then, it is not necessary to give the assessee an opportunity of being heard.

(iv) **Re-issue of notice not required:** The transfer of a case may be made at any stage of the proceedings and it is not necessary to re-issue any notice already issued.

(v) **Meaning of 'Case':** For the purpose of section 120 and section 127, "case" in relation to any person whose name is specified in any order or direction issued thereunder, means all proceedings under this Act in respect of any year which may be pending on

the date of such order or direction or which may have been completed on or before such date, and includes also all proceedings under this Act which may be commenced after the date of such order or direction in respect of any year.

(4) Change of Income-tax Authority [Section 129]

- (i) Stage from which the succeeding Income-tax authority would continue:** In cases where an income-tax authority succeeds another income-tax authority, who ceases to exercise jurisdiction, then, the succeeding income-tax authority may continue the proceedings from the stage at which the proceedings was left by his predecessor.
- (ii) Opportunity to be reheard:** The assessee concerned may demand that before continuance of proceedings as in (i) above, the previous proceedings or any part thereof be reopened or be reheard before passing of any assessment order against him.

(5) Faceless jurisdiction of income-tax authorities [Section 130]

- (i)** Section 130(1) empowered the Central Government to notify scheme for faceless jurisdiction of income-tax authorities. The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of—
 - (a)** exercise of all or any of the powers and performance of all or any of the functions conferred on, or, as the case may be, assigned to income-tax authorities by or under this Act as referred to in section 120; or
 - (b)** vesting the jurisdiction with the Assessing Officer as referred to in section 124; or
 - (c)** exercise of power to transfer cases under section 127; or
 - (d)** exercise of jurisdiction in case of change of incumbency as referred to in section 129,so as to impart greater efficiency, transparency and accountability by—
 - (i)** eliminating the interface between the income-tax authority and the assessee or any other person, to the extent technologically feasible;
 - (ii)** optimising utilisation of the resources through economies of scale and functional specialisation;
 - (iii)** introducing a team-based exercise of powers and performance of functions by two or more income-tax authorities, concurrently, in respect of any area or persons or classes of persons or incomes or classes of income or cases or classes of cases, with dynamic jurisdiction.

- (ii) The Central Government may, for the purpose of giving effect to the scheme made under sub section (1), by notification in the Official Gazette, direct that any provision of this Act shall not apply or shall apply with such modification, exceptions and adaptations as necessary [Section 130(2)].

No such direction can, however, be issued by the Central Government after 31st March, 2022.

- (ii) Every notification issued under sub-section (1) and sub-section (2) shall, as soon as may be after the notification is issued, be laid before each House of Parliament.
- (iii) Accordingly, the Central Government has, vide Notification No. 15/2022 dated 28.03.2022 issued the Faceless Jurisdiction of Income-tax Authorities Scheme, 2022, which provides that the
- (a) exercise of all or any of the powers and performance of all or any of the functions conferred on or as the case may be, assigned to income-tax authorities, by or under the Act as referred to in section 120; or
 - (b) vesting the jurisdiction with the Assessing Officer as referred to in section 124, shall be in a faceless manner, through automated allocation, in accordance with and to the extent provided in
 - section 144B with reference to making faceless assessment of total income or loss of assessee;
 - the Faceless Appeal Scheme, 2021 with reference to the disposal of appeals
 - the Faceless Penalty Scheme, 2021 with reference to imposition of penalty under Chapter XXI of the Act
 - the e-Verification Scheme, 2021, with reference to -
 - the calling of information under section 133,
 - collecting certain information under section 133B or
 - calling for information by prescribed authority under section 133C or
 - exercise of power to inspect register of companies under section 134, or

- exercise of power of Assessing Officer under section 135;
- the e-advance rulings Scheme, 2022 with reference to dispute resolution for persons or class of persons, as specified by the Board, who may opt for dispute resolution under the Chapter XIX-AA of the Act with reference to dispute arising from any variation in the specified order fulfilling the specified conditions.



14.3 POWERS OF INCOME TAX AUTHORITIES [SECTIONS 131 TO 136]

Powers of Income-tax Authorities [Sections 131 to 136]
• Power regarding discovery, production of evidence, etc [Section 131] • Search and seizure [Section 132] • Powers to requisition books of account, etc [Section 132A] • Application of seized or requisitioned assets [Section 132B] • Power to call for information [Section 133] • Power of survey [Section 133A] • Power to collect certain information [Section 133B] • Power to call for information by prescribed income-tax authority [Section 133C] • Power to inspect registers of companies [Section 134] • Power of certain income-tax authorities [Section 135]

(1) Powers regarding discovery, production of evidence etc. [Section 131]

- (i) **Income-tax Authorities to have powers vested in a Civil Court in certain matters [Section 131(1)]:** The Assessing Officer, Joint Commissioner, **Joint Commissioner (Appeals)**, Commissioner (Appeals), the Principal Chief Commissioner or Chief Commissioner, Principal Commissioner or Commissioner and the Dispute Resolution Panel referred to in section 144C have the powers vested in a Civil Court under the Code of Civil Procedure, 1908, while dealing with the following matters:

**Have powers vested with
in a Civil Court**

- (a) discovery and inspection;
- (b) enforcing the attendance of any person, including any officer of a banking company and examining him on oath;
- (c) compelling the production of books of account and documents; and
- (d) issuing commissions.

The powers aforementioned are normally those exercisable by a Court when it is trying a suit. While exercising these powers, the authorities act in a quasi-judicial capacity and ought to conform to the principles of judicial procedure.

(ii) Powers under section 131(1) to be exercised in certain cases, even if no proceeding is pending [Section 131(1A)/(2)]:

- (a) If the Principal Director General or Director General or Principal Director or Director or Joint Director or Assistant Director or Deputy Director or the authorized officer referred to in section 132(1), before he takes action under the said sub-section, has reason to suspect that any income has been concealed, or is likely to be concealed, by any person or class of persons, within his jurisdiction, then for the purposes of making an enquiry or investigation relating thereto, it shall be competent for him to exercise the powers conferred in section 131(1) on the income-tax authorities referred to therein, even if no proceedings with respect to such person or class of persons are pending before him or any other income-tax authority.
- (b) For facilitating quick collection of information on request from tax authorities outside India, income-tax authorities (not below the rank of Assistant Commissioner of Income-tax), as may be notified by the Board, to have powers under section 131(1) for making an inquiry or investigation in respect of any person or class of persons relating to an agreement for exchange of information under section 90 or 90A, even if no proceeding is pending before it or any other income-tax authority with respect to the concerned person or class of persons.

Powers can be exercised even in a case where no proceedings are pending

(iii) Power to impound or retain books of account [Section 131(3)]: The income-tax authority is vested with the power to impound or retain in its custody for such period

as it may think fit, any books of account or other documents produced before it in any proceeding under this Act.

The powers are unrestricted in the case of all the authorities except the Assessing Officer or an Assistant Director or Deputy Director, whose powers are subjected to two restrictions;

- (a) he must record his reasons for impounding books of account or other documents; and
- (b) if he desires to retain in his custody any such books or documents **for a period exceeding 15 days (excluding holidays)**, he must obtain the prior approval of the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General or Principal Commissioner or Commissioner or Principal Director or Director, as the case may be, for the purpose.

AO/AD/DD can retain books for > 15 days with prior approval

- (2) **Search and Seizure [Section 132]**: Under this section, wide powers of search and seizure are conferred on the income-tax authorities.

- (i) **Authorities empowered to issue authorisation [Section 132(1)]**: Search and seizure can be authorised by Principal Director General or Director General or Principal Director or Director or the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner. However, the said operations can be authorised by Additional Director or Additional Commissioner or Joint Director or Joint Commissioner if they are empowered by the Board.

The authorities mentioned above (Authorising officer) shall authorise their subordinates (Authorised officer) specified below to conduct the search and seizure operations:

Authorising Officer	Authorised Officer
A Principal Director General or Director General or Principal Director or Director or the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner	Joint Director, Joint Commissioner, Additional Director or Additional Commissioner, Assistant Director, or Deputy Director, Assistant Commissioner or Deputy Commissioner or Income-tax Officer.
Additional Director or Additional Commissioner, Joint Director or Joint Commissioner (If empowered by the Board)	Assistant Director or Deputy Director or Assistant Commissioner or Deputy Commissioner or Income-tax Officer.

(II) **'Reason to believe' pre-requisite for authorisation [Section 132(1)]**: Such authorisation could take place if the authorising officer has reason to believe, on the basis of information in his possession:

- (a) that the person to whom a summons under section 131(1) or notice under section 142(1) was issued to produce or cause to produced, any books of account or other documents has omitted or failed to do so; or

Reasons to believe - Pre-requisite for search
Reason not required to be disclosed to any person, authority or ITAT

- (b) that a person to whom a summons or a notice aforesaid has been or might be issued, will not or would not produce or caused to be produced, any books of account or other documents which will be useful or relevant to any proceeding under the Income-tax Act, 1961; or
- (c) that a person is in possession of any valuable articles or things, including money, bullion or jewellery etc. representing either wholly or partly income or property which has not been disclosed or would not be disclosed by such person concerned for income-tax purposes.

However, the reason to believe, as recorded by the income-tax authority, shall not be disclosed to any person or any authority or the Appellate Tribunal.

(III) **Powers of Authorised Officer [Section 132(1)]**

(A) **Power with reference to search of person**: The authorized officer is empowered to-

- (i) **enter and search any building or place** or vehicle or vessel or aircraft, where he has reason to suspect that such books of account, other documents, money, bullion, jewellery, other valuable article or thing are kept;
- (ii) **break open the locks of any door**, box, safe, almirah or other receptacle, in case keys are not readily available for discharge of duties mentioned above

Power of Search

- (iii) **search any person** who has got out of, or is able to get into, or is in, the building, place, vessel, vehicle or aircraft in respect of which a search has been authorised, if he has reason to suspect that such person has secreted about his person any books of account or other documents, money, bullion, jewellery or other valuable article or thing for which the search is being made.

Power exercisable outside jurisdiction, if delay would be prejudicial to the interests of the revenue: The Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner has the power to authorise the search of any building, place, vessel, vehicle, aircraft etc., within his territorial jurisdiction and also in cases where he has no jurisdiction over the persons concerned, if he has reason to believe that any delay in obtaining authorisation from the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner having jurisdiction over the person would be prejudicial to the interests of revenue [*First proviso to section 132(1)*].

- (B) **Power with reference to money, jewellery, valuable article or thing:** The authorized officer is empowered to

- (i) **seize money, bullion, jewellery, valuable articles, etc. found as a result of search.**

However, any bullion, jewellery or other valuable article or thing, which is in the nature of stock-in-trade of the business, found as a result of search shall not be seized but the authorised officer shall make a note or inventory of such stock-in-trade of the business.

Power to Seize

Second proviso to section 132(1) provides that where **it is not possible or practicable to take physical possession** of any valuable article or thing and remove it to a safe place due to its volume, weight or other physical characteristics or due to its being of a dangerous nature, the authorized officer **may serve an order on the owner** or the person

**Deemed Seizure
not to apply for
Stock-in trade**

who is in immediate possession thereof that he shall **not remove**, part with or otherwise deal with it, **except with the previous authorised officer shall be deemed to be seizure of such valuable article or**

thing. However, such a deeming seizure would not apply to stock-in-trade of the business.

Further, where it is not practicable to seize any such money, bullion, jewellery or other valuable permission of such authorised officer and such action of the article or thing (for reasons other than those mentioned above), the authorized officer may serve an order on the owner or the person who is in immediate possession or control thereof that he shall not remove, part with or otherwise deal with it except with the previous permission of such officer and such officer may take such steps as may be necessary for ensuring compliance [Section 132(3)]. However, serving of such an order shall not be deemed to be seizure of such valuable article or thing. Such order shall **not be in force for a period exceeding 60 days from the date of the order** [Section 132(8A)].

- (ii) **Make a note or inventory of any such money, bullion, jewellery or other valuable article or thing.**

(C) **Power with reference to books of account/other documents:** The authorized officer is empowered to –

- (i) **inspect books of account and other documents.**

The person who is in possession or control of books of account or other documents maintained in the form of electronic records, shall be required to afford the necessary facility to authorised officer to inspect all such books of account or other documents.

“Electronic record” as defined in section 2(1)(t) of the Information Technology Act, 2000 means data, record or data generated, image or sound stored, received or sent in an electronic form or microfilm or computer-generated micro fiche.

- (ii) **seize books of account and other documents.**

Where **it is not practicable to seize** any such books of account and other documents, the authorized officer **may serve an order** on the owner or the person who is in immediate possession or control thereof that **he shall not remove**, part with or otherwise deal with it, **except with the previous permission** of such officer and such officer may take such steps as may be necessary for ensuring compliance [Section 132(3)]. However, serving of such an order shall **not be deemed to be seizure** of such books of account and other documents. Such order shall

not be in force for a period exceeding 60 days from the date of the order [Section 132(8A)].

- (iii) place marks of identification on books and other documents.
- (iv) make or cause to be made extracts or copies from the books or documents.

Authorisation for search in other place not specified in the warrant: Where a search for any books of account or other documents or assets has been authorised by any authority who is competent to do so, and the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, in consequence of information in his possession, has reason to suspect that such books of account, other documents, money, bullion, jewellery or other valuable article or things of the assessee are kept in any building, place, vessel, vehicle or aircraft not specified in the search warrant, he may authorise the authorised officer to search such other building, place, vessel, vehicle or aircraft. Accordingly, if a search warrant is issued by the Principal Commissioner or Commissioner of Income-tax, authorising the search of a premises in a particular place specified in the search warrant and the authorised officer finds that the books of account or other documents and/or assets have been secreted in a building or place not specified in the search warrant, he could request the Commissioner to authorise him to search that building or place [Section 132(1A)].

However, the reason to suspect, as recorded by the income-tax authority, shall not be disclosed to any person or any authority or the Appellate Tribunal [*Explanation below to section 132(1A)*].

(D) Other powers:

- (i) The authorized officer may requisition the service of
 - ***any police officer or any officer of Central Government or of both; or***
 - ***any person or entity as may be approved by the Principal Chief Commissioner or the Chief Commissioner or the Principal Director General or the Director General in accordance with prescribed procedure,***

to assist him in carrying out the search operations and it shall be duty of every such officer or person or entity to comply with such requisition [Section 132(2)].

- (ii) The authorised officer may examine on oath any person who is found to be in possession or control of any books, other documents, money, bullion jewellery etc. However, the examination of any person may be not merely in respect of any books of account, other documents or assets found as a result of the search but also in respect of all matters relevant for the purposes of any investigation under the Act [Section 132(4)]

Other points relating to books, other documents, money, bullion, jewellery etc. seized:

- (i) The person from whose custody any books of account or other documents are seized under sub-section (1) or sub-section (1A) **may make copies thereof, or take extracts therefrom**, in the presence of the authorised officer or any other person empowered by him in this behalf, at such place and time as the authorised officer may appoint in this behalf [Section 132(9)]
- (ii) The books of account and other documents seized should be returned within a period of 30 days from the date of the order of assessment or reassessment or recomputation under section 143(3) or section 144 or section 147 or under section 153A², unless the reasons for retaining the same are recorded in writing and approved by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or Principal Director General or Director General or Principal Director or Director. With the approval, the books or other records can be retained but however the same cannot be retained for a period exceeding 30 days after the assessment proceedings in respect of the years for which the

**Seized books of account
to be returned within 30
days from date of
assessment**

² Section 153A deals with assessment in case of search, initiated under section 132 or books of accounts or other documents or any assets requisitioned under section 132A before 1.4.2021. Section 147 contains the provisions for assessment in case of search initiated or books of accounts or other documents or any assets requisitioned on or after 1.4.2021.

books of account or other documents are relevant are completed [Section 132(8)].

- (iii) Where the authorised officer has no jurisdiction over the person referred to in clause (a) or clause (b) or clause (c) of point (ii) above, the books of account or other documents, or any money, bullion, jewellery or other valuable article or thing seized under that sub-section shall be handed over by the authorised officer to the Assessing Officer having jurisdiction over such person within a period of 60 days from the date on which the last of the authorizations for search was executed and thereupon, the powers exercisable by the authorized officer under sub-section (8) or sub-section (9) shall be exercisable by such Assessing Officer [Section 132(9A)].
- (iv) If a person, legally entitled to the books of account or other documents seized, objects for any reason to the approval given by the Principal Chief Commissioner or Chief Commissioner, Principal Commissioner or Commissioner, Principal Director General or Director General or Principal Director or Director to extend the period of retention of the same by the Assessing Officer beyond 30 days, he may make an application to the Board stating therein the reasons for such objection and requesting for the return of the books of account or other documents. The Board may, after giving the applicant an opportunity of being heard, pass such orders as it thinks fit. [Section 132(10)]

**Handover to other
AO within 60 days
from the date of
last authorisation
for search**

(IV) **Rebuttable presumption [Section 132(4A)]:** The law presumes in the course of search and seizure proceedings that

- (a) the books of account or other documents and assets found in the possession of any person **belong to such person**
- (b) the **contents** of such books of account and other documents **are true**

**Rebuttable
Presumption**

- (c) the signature and every other part of such books of account and other documents are in the handwriting of the persons who can reasonably be assumed to have signed or written the books of account or other documents. In the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested.

It may be noted that this is a rebuttable presumption. On facts and with evidence the assessee may rebut the above presumption and prove that the facts are otherwise.

- (V) **Provisional attachment of property [Section 132(9B)]:** For the purpose of protecting the interest of the revenue and safeguarding recovery in search cases, the authorized officer during the course of search or seizure or within a period of **sixty days** from the date on which the last of the authorisations for search was executed is satisfied for reasons to be recorded in writing, it is necessary so to do, he may **with the prior approval** of the Principal Director General or Director General or the Principal Director or Director, by order in writing, **attach provisionally any property belonging to the assessee** .
- (VI) **Period of provisional attachment [Section 132(9C)]:** Every provisional attachment made under sub-section (9B) shall cease to have effect **after the expiry of a period of six months** from the date of the order referred to in sub-section (9B).
- (VII) **Reference to Valuation Officer or any other person or entity [Section 132(9D)]:** *The authorised officer may, during the course of the search or seizure or **within a period of 60 days from the date on which the last of the authorisations for search was executed**, make a reference*
- *to a Valuation Officer referred to in section 142A,*
 - *any other person or entity or any valuer registered by or under any law for the time being in force, as may be approved by the Principal Chief Commissioner or the Chief Commissioner or the Principal Director General or the Director General, in accordance with the prescribed procedure,*
- who shall estimate the fair market value of the property in the prescribed manner and*

submit a report of the estimate to the said officer or the Assessing Officer within a period of 60 days from the date of receipt of such reference.

Last of authorisation for search

For the purpose of sub-sections (9A), (9B) and (9D) of section 132, the last of authorisation for search shall be deemed to have been executed -

- (a) *in the case of search, on the conclusion of search as recorded in the last panchnama drawn in relation to any person in whose case the warrant of authorisation has been issued; or*
- (b) *in the case of requisition under section 132A, on the actual receipt of the books of account or other documents or assets by the authorised officer. [Explanation 1 to section 132].*

(VIII) Rules providing for procedure to be followed by Authorised Officer [Section 132(14)]: The Board may make rules in relation to any search or seizure under this section; in particular, and without prejudice to the generality of the foregoing power, such rules may provide for the procedure to be followed by the authorised officer—

- (a) for obtaining ingress into any building, place, vessel, vehicle or aircraft to be searched where free ingress thereto is not available;
- (b) for ensuring safe custody of any books of account or other documents or assets seized.

Rule 112 states the procedure to be followed by authorised officer while exercising the power of search and seizure under section 132.

(IX) Meaning of 'Proceeding' [Explanation 2 below Section 132]: For the purpose of this section, the word "proceeding" means any proceeding in respect of any year under this Act, which may be pending on the date on which a search is authorised under this section or which may have been completed on or before such date and includes also all proceedings under this Act which may be commenced after such date in respect of any year.

(X) Applicability of CrPC: The provisions of the Criminal Procedure Code relating to searches and seizure would, as far as possible, apply to the searches and seizures under this Act. Contravention of the orders issued under this section would be punishable with imprisonment upto 2 years and fine under section 275A.

(XI) **Penal provisions on undisclosed income found during of search [Section 271AAB(1A)]:**

Penalty where search is initiated on or after 15.12.2016:

Section 271AAB(1A) provides for penalty in cases where search has been initiated on or after 15th December, 2016, being the date on which the Taxation Laws (Second Amendment) Act, 2016 received the assent of the President. Accordingly, under section 271AAB, the following would be the rate of penalty on undisclosed income in each of the following circumstances:

Penalty

	Circumstance	Rate of penalty
(1)	(2)	(3)
(i)	If undisclosed income is admitted during the course of search in the statement furnished under section 132(4), and - the assessee explains the manner in which such income was derived, - pays the tax, together with interest if any, in respect of the undisclosed income, and - furnishes the return of income for the specified previous year declaring such undisclosed income on or before the specified date (i.e., the due date of filing return of income or the date on which the period specified in the notice issued under section 148 or 153A expires, as the case may be).	30%
(ii)	In all other cases	60%

Meaning of certain terms:

Term	Meaning
Undisclosed income	(i) any income of the specified previous year represented, either wholly or partly, by any money, bullion, jewellery or other valuable article or thing or any entry in the books of account or other documents or transactions found in the course of a search under section 132, which has- (a) not been recorded on or before the date of search in the books of account or other documents maintained in the normal course relating to such previous year; or (b) otherwise not been disclosed to the Principal

	Chief Commissioner or the Chief Commissioner or the Principal Commissioner or the Commissioner before the date of search; or (ii) any income of the specified previous year represented, either wholly or partly, by any entry in respect of an expense recorded in the books of account or other documents maintained in the normal course relating to the specified previous year which is found to be false and would not have been found to be so had the search not been conducted.
Specified previous year	the previous year - which has ended before the date of search, but the date of furnishing the return of income under section 139(1) for such year has not expired before the date of search and the assessee has not furnished the return of income for the previous year before the date of search; or - in which search was conducted.
Specified date	the due date of furnishing of return of income under section 139(1) or the date on which the period specified in the notice issued under section 148 or under section 153A, as the case may be, for furnishing of return of income expires, as the case may be.

Other points:

- (a) Penalty may be levied by the Assessing Officer or Commissioner (Appeals).
- (b) No penalty under section 270A is leviable in respect of such undisclosed income.
- (c) An order imposing penalty under section 271AAB would be appealable under section 246A before the Commissioner (Appeals).
- (d) Section 274 providing for the procedure for imposing penalties and section 275 providing for a bar of limitation for imposing penalties, shall, to the extent relevant apply to penalty under section 271AAB.

(3) Power to requisition books of account etc. [Section 132A]

- (i) **Requirement of “reasons to believe” for requisition of books of account [Section 132A(1)]:** Where the Principal Director General or Director General or Principal Director or Director or the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner

Requisition of books of A/c

(authorising officer) on the basis of information in his possession, has reason to believe that-

- (a) any person to whom a summons under section 131(1) or a notice under section 142(1) was issued to produce, or cause to be produced, any books of account or other documents has omitted or failed to produce, or cause to be produced, such books of account or other documents, as required by such summons or notice and the said books of account or other documents have been taken into custody by any officer or authority under any other law for the time being in force, or
- (b) any books of account or other documents will be useful for, or relevant to, any proceeding under this Act and any person to whom a summons or notice as aforesaid has been or might be issued will not, or would not, produce or cause to be produced, such books of account or other documents on the return of such books of account or other documents by any officer or authority by whom or which such books of account or other documents have been taken into custody under any other law for the time being in force, or
- (c) any assets represent either wholly or partly income or property which has not been, or would not have been, disclosed for the purposes of this Act by any person from whose possession or control such assets have been taken into custody by any officer or authority under any other law for the time being in force

then, the authorising officer may authorise any Additional Director, Additional Commissioner, Joint Director, Joint Commissioner, Assistant Director or Deputy Director, Assistant Commissioner, Deputy Commissioner or Income-tax Officer (referred to as the requisitioning officer) to require the officer or authority under any other law referred above, as the case may be, to deliver such books of account, other documents or assets to the requisitioning officer.

However, the reason to believe, as recorded by the income-tax authority, shall not be disclosed to any person or any authority or the Appellate Tribunal.

Clarificatory provision for non-disclosure of reason to believe or reason to suspect recorded by the Income-tax Authorities

- ✓ The need for this clarification arose because the Commissioner of Income-tax (Appeals) & Benches of the Income-tax Appellate Tribunal, in the context of appeals before them, started demanding copies of reasons to believe in search,

seizure and requisition cases, which the Income Tax Department has not been giving to them on ground of secrecy.

- ✓ Though there are some decisions wherein it has already been held that search cannot be held invalid on the ground that reasons to believe not disclosed to assessee, the said amendment provides statutory recognition to such decisions so as to avoid any further litigation on the issue. These decisions are:
 - (i) In *M.S. Associates v. Union of India* (2005) 275 ITR 502 (Gau), it was observed that revenue authorities are not required to disclose to the person challenging the warrant of authorisation as to what materials were available against him, which had led to the issuance of the warrant. It is required to be disclosed only when the authorities concerned resolve to impose tax or penalties.
 - (ii) In *Genom Biotech (P) Ltd. & Ors. v. Director of IT (Investigation) & Ors.* (2009) 180 Taxman 395 (Bom), it was observed that it is not the mandate of section 132 or any other provision in the Act that the reasonable belief recorded by the designated authority before issuing the warrant of authorisation must be disclosed to the assessee.

- (ii) **Delivery of books of accounts to the Requisition Officer [Section 132A(2)]:** On a requisition being made under (i), the officer or authority under any other law referred above, as the case may be, shall deliver the books of account, other documents or assets to the requisitioning officer either forthwith or when such officer or authority is of the opinion that it is no longer necessary to retain the same in his or its custody.
- (iii) **Certain provisions relating to search to apply in case of requisition also [Section 132A(3)]:** Where any books of account, other documents or assets have been delivered to the requisitioning officer, the provisions of sections 132(4A) to 132(14) and section 132B shall, so far as may be, apply as if such books of account, other documents or assets had been seized under section 132(1) by the requisitioning officer from the custody of the concerned person.

(4) Presumption with regard to assets, books of account [Section 278D]

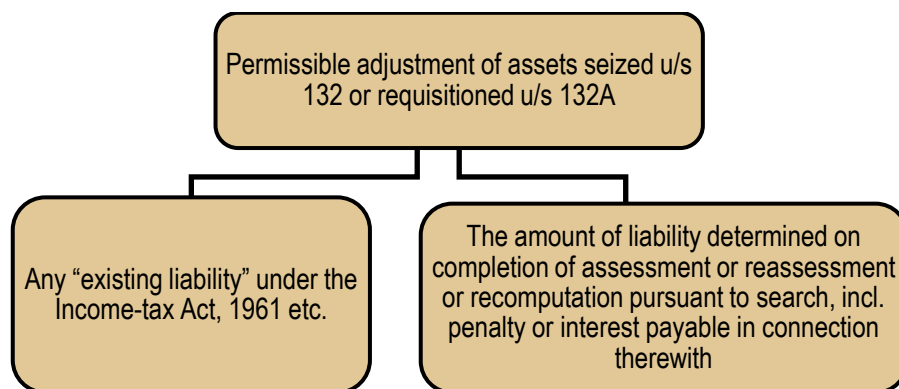
- (i) **Presumption with regard to books of account and other documents in search cases** - Section 278D provides that in case where, during the course of any search made u/s 132, any money, bullion, jewellery or other valuable articles or things or any books of account or other documents had been found in the possession or control of any person and such assets or books of account or other documents are tendered by

the prosecution in evidence against such person and/or against any person who is convicted of an offence u/s 278, the provisions of section 132(4A) would apply, in relation to all such books of account and other documents. Accordingly, it would be presumed that such books of account or other documents and assets belong to the person in whose control or possession they were found, at the time of search and also that the contents of such books of account and other documents are true.

- (ii) **Presumption with regard to books of account and documents in case of requisition** - Similarly, in cases where any books of accounts or other documents and assets are taken into custody from the possession or control of any person by the officer or authority specified in section 132A(1)(a) or (c) and these are delivered to the requisitioning officer under section 132A(2), it would be presumed that the presumption similar to the one mentioned earlier would operate in these cases as well.
- (iii) **Presumption rebuttable** - It would be for assessee to rebut the presumption wherever necessary by producing cogent and reliable evidence.

(5) **Application of seized or requisitioned assets [Section 132B]**

- (i) **Permissible adjustment of assets seized or requisitioned [Section 132B(1)(i)]:**
The permissible adjustment of assets seized under section 132 or requisitioned under section 132A are shown below:



Note - "Existing liability" does not include **advance tax payable** in accordance with the provisions of Part C of Chapter XVII of the Income-tax Act, 1961.

- (ii) **Manner of application of assets seized [Section 132B(1)(ii)/(iii)]:** If the assets consist solely of money or partly of money and partly of other assets, the Assessing Officer may apply the money in discharge of the liabilities mentioned

Application of asset seized

above. The assessee shall be discharged of such liability to the extent of the money so applied.

The assets other than money may also be applied for the discharge of such liabilities which still remains undischarged. For this purpose, such assets shall be deemed to be under distraint, as if such distraint was effected by the Assessing Officer or, as the case may be, the Tax Recovery Officer under authorisation from the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner under section 226(5). The Assessing Officer or the Tax Recovery Officer, as the case may be, may recover the amount of such liabilities by the sale of such assets in the manner laid down in the Third Schedule. Any assets or proceeds thereof which remain after the liabilities referred above are discharged shall be forthwith made over or paid to the persons from whose custody the assets were seized.

- (iii) **Release of seized asset [Proviso to section 132B(1)(i) and section 132B(4)]:** Where the person concerned makes an application to the Assessing Officer within 30 days from the end of the month in which the asset was seized, for release of the asset and explains the nature and source of acquisition of seized assets to the satisfaction of the Assessing Officer, then, such assets are required to be released within a period of 120 days from the date on which last of the authorisations for search under section 132 or requisition under section 132A was executed after meeting any existing liabilities, with the prior approval of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.
- (iv) **Entitled to interest on the amount of assets seized exceeds the liabilities:** The assessee shall be entitled to simple interest at $\frac{1}{2}$ % per month or part of a month, if the amount of assets seized exceeds the liabilities eventually, for the period immediately following the expiry of 120 days from the date on which the last of the authorisations for search under section 132 or requisition under section 132A was executed to the date of completion of the assessment or reassessment or recomputation.
- (6) **Power to call for information [Sections 133]**
- (i) **Details of information to be furnished by different persons:** The Assessing Officer, the Joint Commissioner or *the Joint Commissioner (Appeals)* or the Commissioner (Appeals)] may call for following information from the following persons for the purposes of this Act-

S. No.	Person	Information to be furnished
(1)	Firm	The names and addresses of the partners of the firm and their respective shares.
(2)	Hindu undivided family	The names and addresses of the manager and the members of the family.
(3)	A trustee, guardian or agent	The names of the persons for or of whom he is trustee, guardian or agent, and of their addresses.
(4)	Any assessee	A statement of the names and addresses of all persons to whom he has paid in any previous year rent, interest, commission, royalty or brokerage, or any annuity, not being any annuity taxable under the head "Salaries" amounting to more than ₹ 1,000, or such higher amount as may be prescribed, together with particulars of all such payments made.
(5)	Any dealer, broker or agent or any person concerned in the management of a stock or commodity exchange	A statement of the names and addresses of all persons to whom he or the exchange has paid any sum in connection with the transfer, whether by way of sale, exchange or otherwise, of assets, or on whose behalf or from whom he or the exchange has received any such sum, together with particulars of all such payments and receipts.
(6)	Any person, including a banking company or any officer thereof	Information in relation to such points or matters, or statements of accounts and affairs verified in the manner specified by the Assessing Officer, the Joint Commissioner or the Joint Commissioner (Appeals) or the Commissioner (Appeals), giving information in relation to such points or matters as, in the opinion of the Assessing Officer, the Joint Commissioner or the Joint Commissioner (Appeals) or the Commissioner (Appeals)], will be useful for, or relevant to, any enquiry or proceeding under this Act.

- (ii) **Exercise of power by the Income-tax authorities u/s. 133(6):** Although section 133 empowers only the Assessing Officer, Joint Commissioner, **the Joint Commissioner (Appeals)** or and Commissioner of Income tax (Appeals) to call for any information from any person which will be useful for or relevant to any proceedings under the Act as mentioned in point (6) of (i) above, such powers may also be exercised by the Principal

Director General or Director-General, the Principal Chief Commissioner or Chief Commissioner, the Principal Director or Director or the Principal Commissioner or Commissioner or the Joint Director or Deputy Director or Assistant Director.

- (iii) **Exercise of power of inquiry where no proceeding pending:** The power in respect of an inquiry, in a case where no proceeding is pending, shall not be exercised by any income-tax authority below the rank of Principal Director or Director or Principal Commissioner or Commissioner without the prior approval of the Principal Director or Director or as the case may be, the Principal Commissioner or Commissioner. However, the Joint Director or Deputy Director or Assistant Director can exercise such power without prior approval from PDIT, DIT, PCIT or CIT.
- (iv) **Exercise of power to call for information under section 90 or 90A:** For facilitating quick collection of information on request from tax authorities outside India, notified income-tax authorities (not below the rank of Assistant Commissioner of Income-tax) to have powers under section 131(1) for making an inquiry or investigation in respect of any person or class of persons relating to an agreement for exchange of information under section 90 or 90A, even if no proceeding is pending before it or any other income-tax authority with respect to the concerned person or class of persons. Such notified authorities are also empowered, for the purposes of an agreement referred to in section 90 or section 90A, to exercise the powers conferred under section 133 to call for information, irrespective of whether any proceedings are pending before it or any other income-tax authority.

Power to call for information

(7) **Power of Survey [Section 133A]**

- (i) **Power to enter a place within jurisdiction to inspect books of account, to verify cash, stock etc. [Section 133A(1)]:** An income-tax authority may enter any place:
- (a) within the limits of the area assigned to him, or
 - (b) occupied by any person in respect of whom he exercises jurisdiction, or
 - (c) in respect of which he is authorised for the purposes of this section by such income-tax authority, who is assigned the area within which such place is situated or who exercises jurisdiction in respect of any person occupying such place,

at which a business or profession or an activity for charitable purpose is carried on,

whether such place be the principal place or not of such business or profession or of such activity for charitable purpose, and require any proprietor, trustee, employee or any other person who may at that time and place be attending in any manner to, or helping in, the carrying on of such business or profession or such activity for charitable purpose. This power may be exercised:

- (a) to afford him the necessary facility to inspect such books of account or other documents as he may require and which may be available at such place;
- (b) to afford him the necessary facility to check or verify the cash, stock or other valuable articles or things which may be found therein; and
- (c) to furnish such information as he may require as to any matter which may be useful for or relevant to any proceeding under the Income-tax Act, 1961.

Power of survey

This power may be exercised in respect of any place with which the assessee is connected, whether or not such place is the principal place of business or profession or activity for charitable purpose. It will also include any other place, whether any business or profession or activity for charitable purpose is carried on therein or not, in which the person carrying on the business or profession or activity for charitable purpose states that any of his books of account or other valuable article or thing relating to his business or profession or activity for charitable purpose are kept.

- (ii) **Permitted time for conduct of survey [Section 133A(2)]:** The income-tax authority

Business place - during office hours

may enter any place of business or profession mentioned above only during the hours at which such place is open for the conduct of business or profession and in the case of any other place, only after sunrise and before sunset.

For example, if a place is open for business from 11 a.m. to 11 p.m. an income tax authority may enter at 10 p.m. for survey operations. The survey can, however, continue beyond 11 p.m.

- (iii) **Exercise of power of survey for verification of TDS/TCS [Section 133A(2A)]:** An income-tax authority may, for the purpose of verifying that tax has been deducted or collected at source in accordance with the provisions of Chapter XVII-B or Chapter XVII-BB, as the case may be, enter-

- (a) any office, or a place where business or profession is carried on, within the limits of the area assigned to him, or
- (b) any such place in respect of which he is authorised for the purposes of this section by such income-tax authority who is assigned the area within which such place is situated, where books of account or documents are kept.

The income-tax authority may for this purpose enter an office, or a place where business or profession is carried on after sunrise and before sunset. Further, such income-tax authority may require the deductor or the collector or any other person who may at the time and place of survey be attending to such work,—

After sunrise before sunset

- (a) to afford him the necessary facility to inspect such books of account or other documents as he may require and which may be available at such place, and
- (b) to furnish such information as he may require in relation to such matter.

**(iv) Permissible and impermissible acts while conducting survey [Section 133A(3)]:
An income-tax authority may -**

- (a) place marks of identification on the books of account or other documents inspected by him and take extracts and copies thereof;
- (b) impound and retain in his custody for such period as he thinks fit any book of account or other documents inspected by him after recording reasons for doing so.

Cannot retain for >15 days without approval of higher authorities.

However, the income tax authority cannot retain in his custody such books of account etc. for a period exceeding 15 days (excluding holidays) without obtaining the approval of the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General or the Principal Commissioner or Commissioner or Principal Director or Director, as the case may be.

- (c) make an inventory of any cash, stock or valuable article or thing checked or verified by him; and
- (d) record the statement of any person which may be useful for, or relevant to, any proceeding under the Act.

However, while acting under sub-section (2A), the income-tax authority shall not impound and retain in his custody, any books of account or documents inspected by him or make an inventory of any cash, stock or other valuable articles or thing checked or verified by him.

Any income-tax authority cannot remove or cause to be removed from the place where he has entered, any cash, stock or other valuable article or thing [Section 133A(4)].

**Income-tax Authority
cannot remove cash,
stock or other valuable
thing**

- (v) **Power to collect information and record statements in connection with any function, ceremony or event [Section 133A(5)]:** The income-tax authorities would also have the power to collect information and record the statements of any of the persons concerned at any time after any function, ceremony or event but even before the stage of commencement of assessment proceedings for the following year for which the information may be relevant, if they are of the opinion that having due regard to the nature, scale and extent of the expenditure incurred, it is necessary or expedient to do so. This provision is intended to help in collecting evidence about ostentatious expenditure incurred for any function, etc., immediately after the event which may be used at the time of the assessment.
- (vi) **Power to enforce compliance [Section 133A(6)]:** If any person who is required to provide facility to the income-tax authority to inspect the books of account or the other documents or to check or verify any cash, stock or other valuable articles or to furnish any information or to have his statement recorded, either refuses or evades to do so, the income-tax authority would be entitled to use all the powers vested in it under section 131(1) for enforcing proper compliance with the requirements.
- (vii) **Meaning of 'proceeding' [Clause (b) of Explanation to Section 133A]:** For the purpose of this section, "proceeding" means any proceeding under this Act in respect of any year which may be pending on the date on which the powers under this section are exercised or which may have been completed on or before such date and includes also all proceedings under this Act which may be commenced after such date in respect of any year.
- (viii) **Meaning of "Income tax authority" and restriction to exercise the power under this section [Clause (a) of Explanation to section 133A]:**
 "Income tax authority", for the purpose of this section, means –
 - (i) a Principal Commissioner or Commissioner, a Principal Director or Director, a Joint Commissioner or Joint Director, an Assistant Director or Deputy Director or an Assessing Officer or a Tax Recovery Officer; and

- (ii) includes an inspector of Income tax (only for the purpose of inspection of books of account or other documents, placing marks of identification on such books of account or other documents inspected by him and making or causing to be made extracts or copies therefrom and recording statements from any person in connection with any ceremony, function or event mentioned in section 133A(5) above).

who is subordinate to the Principal Director General or the Director General or the Principal Chief Commissioner or the Chief Commissioner, as may be specified by the Board.

All income-tax authorities have to take approval from Principal Director General or the Director General or Principal Chief Commissioner or the Chief Commissioner in all cases of survey.

(8) Power to collect certain information [Section 133B]

- (i) Under this section, an income-tax authority may enter
- any building or place within its jurisdiction or
 - any building or place which is occupied by any person in respect of whom the said authority exercises jurisdiction

at which a business or profession is carried on for the purpose of collecting any information which may be useful for or relevant for the purposes of the Act. It is not necessary that such a place should be the principal place of the business or profession.

- (ii) The authority may require any proprietor, employee or any other person who may at the time and place be attending in any manner to or helping in carrying on such business or profession to furnish such information as may be prescribed.

- (iii) An income-tax authority **may enter** any place of business or profession referred to above **only during the hours at which such place is open for business.**

Income tax authority can enter only during business hours. He cannot remove any books of account or other valuable article.

- (iv) Such authority **shall on no account remove or cause to be removed** from the building or place wherein he has entered any books of account or other valuable articles or things.

- (v) 'In this section, 'income-tax authority' means a Joint Commissioner, an Assistant Director or Deputy Director or an Assessing Officer, and includes an Inspector of Income-tax who has been authorised by the Assessing Officer to exercise the power conferred under this section in relation to the area in respect of which the Assessing Officer exercises jurisdiction or any part thereof.
- (vi) **Penalty under section 272AA for failure to furnish the prescribed information:**
Fail to furnish the prescribed information as required as per section 133B would attract penalty of upto ₹ 1000 under section 272AA. Such penalty is imposable by the joint Commissioner or Assistant Director or Deputy Director or the Assessing Officer after giving the person an opportunity of being heard in the matter.

(9) Prescribed income-tax authorities empowered to call for information [Section 133C]

- (i) Section 133C enables the prescribed income-tax authority to verify the information in its possession relating to any person, which may be useful for or relevant to any inquiry or proceedings under this Act.
- (ii) Under this section, for the purposes of verification of information in its possession relating to any person, prescribed income-tax authority, may, issue a notice to such person requiring him,
 - on or before a date to be therein specified,
 - to furnish information or documents,
 - verified in the manner specified therein
 - which may be useful for, or relevant to, any inquiry or proceeding under the Act.
- (iii) The prescribed income-tax authority may process and utilise such information and document in accordance with the provisions of section 135A empowering the Central Government to make a scheme for faceless collection of information.

The Central Government has, vide *Notification No. 137/2021 dated 13.12.2021* made e-Verification Scheme, 2021 as empowered under section 135A.

The prescribed income-tax authority under section 133C shall be an income-tax authority not below the rank of Assistant Commissioner of Income-tax who has been authorised by the CBDT to act as such authority for the purposes of the section.

- (iv) The term “proceeding” means any proceeding under the Act in respect of any year which may be pending on the date on which the powers under this section are exercised or which may have been completed on or before such date.

Meaning of Proceeding

The term “proceeding” also includes all proceedings under the Income-tax Act, 1961 which may be commenced after such date in respect of any year.

- (10) **Power to inspect registers of companies [Section 134]**: The Assessing Officer, the Joint Commissioner or ***the Joint Commissioner (Appeals)*** or the Commissioner (Appeals), or any person subordinate to him authorised in writing in this behalf by the Assessing Officer, the Joint Commissioner or ***the Joint Commissioner (Appeals)*** or the Commissioner (Appeals), as the case may be, may inspect and if necessary, take copies, or cause copies to be taken, of any register of the members, debenture holders or mortgagees of any company or of any entry in such register.

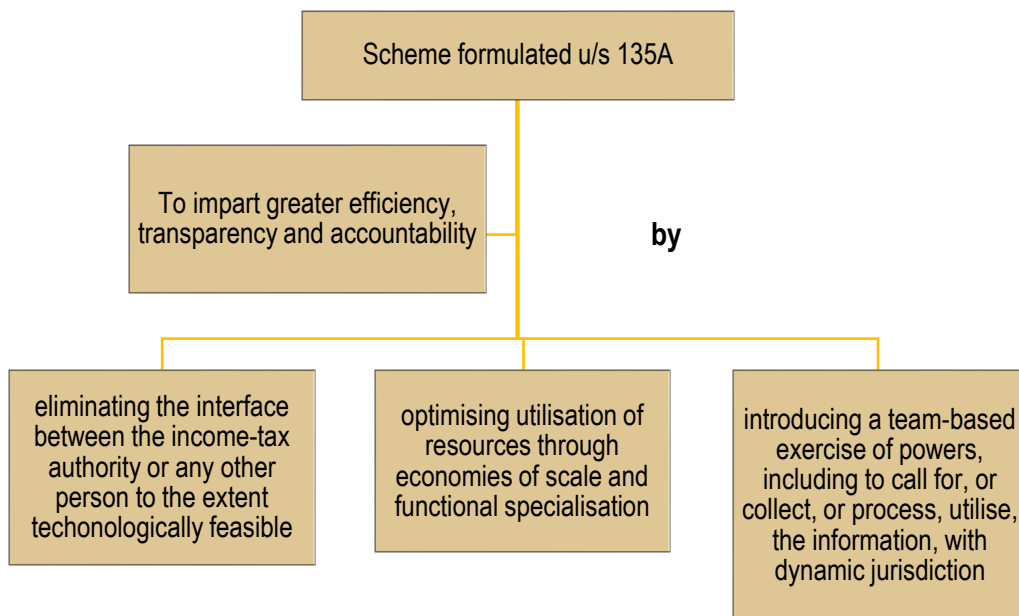
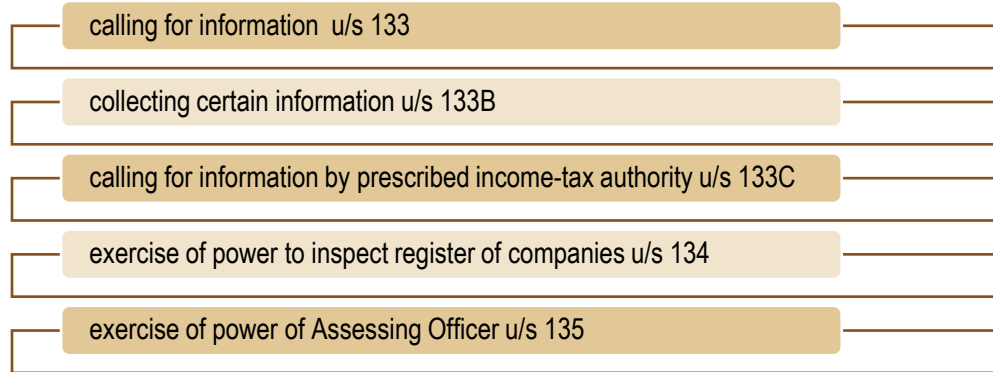
- (11) **Other powers [Sections 135 and 136]**: The Principal Director General or Director General or Principal Director or Director, the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner and the Joint Commissioner are competent to make any enquiry under this act and for all purposes they shall have the powers vested in an Assessing Officer in relation to the making of enquiries.

If the Investigating officer is denied entry into the premises, the said Officer shall have all the powers vested in him under sections 131(1) and (2). All the proceedings before Income-tax authorities are judicial proceedings for purposes of section 196 of the Indian Penal Code, 1860, and fall within the meaning of sections 193 and 228 of the Code.

An income-tax authority shall be deemed to be a Civil Court for the purposes of section 195 of the Criminal Procedure Code, 1973.

- (12) **Faceless collection of information [Section 135A]**:

- (i) Section 135A provides for faceless collection of information.
- (ii) Section 135A(1) empowers the Central Government to make a scheme, by notification in the Official Gazette, for the following purposes –



- (iii) For the purpose of giving effect to the scheme, section 135A(2) empowers the Central Government to direct , by notification in the Official Gazette, that any of the provisions of the Income-tax Act, 1961 would not apply or would apply with specified exceptions, modifications and adaptations. Though such direction cannot be issued after 31.3.2022, **the Central Government may however, amend any direction issued under this section on or before 31.3.2022.**
- (iv) Section 135A(3) requires that every notification issued u/s 135A(1) and 135A(2) to be laid before each House of Parliament, as soon as may be after notification is issued.

Accordingly, the Central Government has, vide Notification No. 137/2021 dated 13.12.2021 made e-Verification Scheme, 2021³.

(13) Disclosure of information respecting assessee [Section 138]

- (i) Under section 138(1)(a), the CBDT, or any other income-tax authority specified by it by a general or special order, may furnish or cause to be furnished, any information received or obtained by any income-tax authority, in the performance of his functions under the Act which may be necessary for the purpose of enabling any officer, or authority or body performing any function:
 - (a) under any law relating to the imposition of any tax, duty or cess or to dealings in foreign exchange
 - (b) under any other law as the Central Government may notify in the Official Gazette in the public interest.

As per section 138(1)(b), if a person makes an application in accordance with Rule 113 of the Income-tax Rules, 1962 to the Principal Chief Commissioner or Chief Commissioner or the Principal Commissioner or Commissioner of Income-tax in the prescribed form for obtaining any information relating to any assessee received or obtained by any income-tax authority in the performance of his functions under the Income-tax Act, 1961, the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, may, if he is satisfied that it is in the public interest, furnish or cause to be furnished the information asked for. His decision in this regard cannot be called in question in any court of law.

- (ii) Nevertheless, section 138(2) empowers the Central Government to direct, having regard to practice and usage customary or otherwise, and any other relevant factors, that no information or documents shall be furnished or produced by a public servant in respect of such matters relating to a particular class of assessee or except to certain authorities which may be specified.

For instance, in exercise of the powers conferred by section 138(2), the Central Government having regard to all the relevant factors, has directed, vide *Notification No.56/2016 dated 6.7.2016*, that no public servant shall produce before any person or authority any such document or record or any information or computerised data or part thereof as comes into his possession during the discharge of official duties in respect of a valid declaration made under the Income Declaration Scheme, 2016', contained in Chapter IX of the Finance Act, 2016.

³ To know the scheme in detail, please refer -

<https://incometaxindia.gov.in/communications/notification/notification-137-2021.pdf>.

SIGNIFICANT SELECT CASES

S. No.	Case Law				
1.	<i>CIT and Anr v. SV Gopala and Others (2017) 396 ITR 694 (SC)</i> <table> <tr> <th style="text-align: center;">Issue</th><th style="text-align: center;">Decision</th></tr> <tr> <td>Does the CBDT have the power to amend legislative provisions through a Circular?</td><td>The CBDT does not have the power to amend legislative provisions in exercise of its powers u/s 119 of the Income-tax Act, 1961 by issuing a Circular.</td></tr> </table>	Issue	Decision	Does the CBDT have the power to amend legislative provisions through a Circular?	The CBDT does not have the power to amend legislative provisions in exercise of its powers u/s 119 of the Income-tax Act, 1961 by issuing a Circular.
Issue	Decision				
Does the CBDT have the power to amend legislative provisions through a Circular?	The CBDT does not have the power to amend legislative provisions in exercise of its powers u/s 119 of the Income-tax Act, 1961 by issuing a Circular.				
2.	<i>Hemant Kumar Sindhi & Another v. CIT (2014) 364 ITR 555 (All)</i> <table> <tr> <th style="text-align: center;">Issue</th><th style="text-align: center;">Analysis & Decision</th></tr> <tr> <td>Can the assessee's application, for adjustment of tax liability on income surrendered during search by sale of seized gold bars, be entertained where assessment has not been completed?</td><td> Consequent to a search in the premises of the assessee, some gold bars were seized from the locker. The assessee voluntarily disclosed some income during the course of search. The assessee filed an application for sale of the gold bars and adjustment of tax liability on undisclosed income out of the sale proceeds. This would obviate his liability to pay interest under sections 234B and 234C. Section 132B(1)(i) uses the expression "the amount of any existing liability" and "the amount of the liability determined". The words "existing liability" postulates a liability that is crystallized by adjudication; Likewise, "a liability is determined" only on completion of the assessment. Until the assessment is complete, it cannot be postulated that a liability has been crystallized. As per the first proviso to section 132B(1)(i), the assessee may make an application to the Assessing Officer for release of the assets seized. However, he has to explain the nature and source of acquisition of the asset to the satisfaction of the Assessing Officer. It is not the <i>ipse dixit</i> of the assessee but the satisfaction of the Assessing Officer on the basis of the explanation tendered by the assessee which is material. Only when the liability is determined on the completion of assessment that it would stand crystallized and in pursuance of which a demand can be raised and recovery can be initiated. Therefore, in the present case, the first proviso to section 132B(1)(i) would not be attracted. </td></tr> </table>	Issue	Analysis & Decision	Can the assessee's application, for adjustment of tax liability on income surrendered during search by sale of seized gold bars, be entertained where assessment has not been completed?	Consequent to a search in the premises of the assessee, some gold bars were seized from the locker. The assessee voluntarily disclosed some income during the course of search. The assessee filed an application for sale of the gold bars and adjustment of tax liability on undisclosed income out of the sale proceeds. This would obviate his liability to pay interest under sections 234B and 234C. Section 132B(1)(i) uses the expression "the amount of any existing liability" and "the amount of the liability determined". The words "existing liability" postulates a liability that is crystallized by adjudication; Likewise, "a liability is determined" only on completion of the assessment. Until the assessment is complete, it cannot be postulated that a liability has been crystallized. As per the first proviso to section 132B(1)(i), the assessee may make an application to the Assessing Officer for release of the assets seized. However, he has to explain the nature and source of acquisition of the asset to the satisfaction of the Assessing Officer. It is not the <i>ipse dixit</i> of the assessee but the satisfaction of the Assessing Officer on the basis of the explanation tendered by the assessee which is material. Only when the liability is determined on the completion of assessment that it would stand crystallized and in pursuance of which a demand can be raised and recovery can be initiated. Therefore, in the present case, the first proviso to section 132B(1)(i) would not be attracted.
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3.	Kathiroor Service Co-operative Bank Ltd. v. CIT (CIB) (2014) 360 ITR 0243 (SC)	
	Issue	Analysis & Decision
	Where no proceeding is pending against a person, can the Assessing Officer call for information under section 133(6), which is useful or relevant to any enquiry, with the permission of Director or Commissioner?	The Assessing Officer has been empowered to requisition information which will be useful for or relevant to any enquiry or proceeding under the Income-tax Act, 1961 in the case of any person. However, an income-tax authority below the rank of the Principal Director or Director or Principal Commissioner or Commissioner can exercise this power in respect of an enquiry in a case where no proceeding is pending, only with the prior approval of the Principal Director or Director or Principal Commissioner or Commissioner. Note – The power in respect of an inquiry, in a case where no proceeding is pending, can, however, be exercised by the Joint Director, Deputy Director and Assistant Director, without the prior approval of the Principal Director/Director/Principal Commissioner/Commissioner.
4.	Regen Powertech Private Limited v. CBDT and Another [2019] 410 ITR 483 (Mad)	
	Issue	Decision
	Can the CBDT refuse to condone delay in filing the tax return, where such delay was caused by circumstances beyond the control of the assessee?	In condonation matters “a highly pedantic approach should be eschewed and a justice-oriented approach should be adopted”. Application for condonation of delay should not be rejected by the CBDT if the circumstances causing delay are beyond the control of the assessee. The CBDT should exercise its discretion in a proper manner and condone the delay.

TEST YOUR KNOWLEDGE

Questions

1. *Rajesh regularly files his return of income electronically. While he was trying to upload his return of income for assessment year 2023-24 on 31st July, 2023, he found it extremely difficult to do the same due to network problems and ultimately, he became successful in making e-filing of his return only at 1 a.m. on 1st August, 2023. The return contained a claim for carry forward of business loss of ₹ 3.10 crores. This circumstance was recorded in an e-mail addressed to the competent income-tax authority on 1st August, 2023. Rajesh made a request to the CBDT for condonation of delay in filing the return of income.*

Discuss whether the CBDT has the power to condone the delay in filing the return of income and permit carry forward of loss in the given circumstance.

Would your answer change, if the return contained a claim for carry forward of business loss of ₹ 2.7 crores.

2. *Examine the correctness of the statement “the jurisdiction of an Assessing Officer cannot be objected by the assessee”.*
3. *The Director General of Income-tax after getting the information that Mr. Mogambo is in possession of unaccounted cash of ₹ 50 lacs, issued orders by invoking powers vested in him as per section 131(1A), for its seizure. Is the order for seizure of cash issued by the Director General of Income-tax correct? If not, does the Director General of Income-tax have any other power to seize such cash?*
4. *The premises of Ganesh were subjected to a search under section 132 of the Act. The search was authorized and the warrant was signed by the Joint Commissioner of Income-tax having jurisdiction over the assessee, consequent to information in his possession. The assessee challenged the validity of search on the ground that section 132(1) does not empower Joint Commissioner to authorise a search under the Act. Decide the correctness of the contention raised by the assessee.*
5. *Examine whether the information regarding possession of unexplained assets and income received from the Central Bureau of Investigation, a Government agency, can constitute “information” for action under section 132. Discuss.*
6. *Cash of ₹ 25 lacs was seized on 12.9.2023 in a search conducted as per section 132 of the Act. The assessee moved an application on 27.10.2023 to release such cash after explaining the sources thereof, which was turned down by the department. The assessee seeks your opinion on, the following issues:*

- (i) Can the department withhold the explained money?
 - (ii) If yes, then to what extent and upto what period?
7. The business premises of Ram Bharose Ltd. and the residence of two of its directors at Delhi were searched under section 132 by the DDI, Delhi. The search was concluded on 9.8.2023 and following were also seized besides other papers and records:
- (i) Papers found in the drawer of an accountant relating to Shri Krishna Ltd., Mumbai indicating details of various business transactions. However, Ram Bharose Ltd. is not having any direct or indirect connection of any nature with these transactions and Shri Krishna Ltd., Mumbai and its directors.
 - (ii) Jewellery worth ₹ 5 lacs from the bed room of one of the directors, which was claimed by him to be of his married daughter.
 - (iii) Papers recording certain transactions of income and expenses having direct nexus with the business of the company for the period from 16.4.2019 to date of search. It was admitted by the director that the transactions recorded in such papers have not been incorporated in the books.
- You are required to answer on the basis of aforesaid and the provisions of Act, following questions:
- (a) What action the DDI shall be taking in respect of the seized papers relating to Shri Krishna Ltd., Mumbai?
 - (b) Whether the contention raised by the director as to jewellery found from his bed-room will be acceptable?
 - (c) What presumption shall be drawn in respect of the papers which indicate transactions not recorded in the books?
8. In the course of search on 25.03.2024, assets were seized. Examine the procedure laid down to deal with such seized assets under the Act.
9. A search under section 132 was initiated in the premises of Mr. X on 30.4.2023 and undisclosed money and jewellery belonging to Mr. X was found in his premises. Examine the penal provisions under the Income-tax Act which are attracted in this case, assuming that the undisclosed assets were acquired out of his undisclosed income of previous year 2022-23.

Answers

1. Section 119(2)(b) empowers the CBDT to authorise any income tax authority to admit an application or claim for any exemption, deduction, refund or **any other relief under the Act**

after the expiry of the period specified under the Act, to avoid genuine hardship in any case or class of cases. The claim for carry forward of loss in case of late filing of a return is relatable to a claim arising under the category of “any other relief available under the Act”. Therefore, the CBDT has the power to condone delay in filing of such loss return due to genuine reasons.

The facts of the case are similar to the case of *Lodhi Property Company Ltd. v. Under Secretary, (ITA-II), Department of Revenue (2010) 323 ITR 0441*, where the Delhi High Court held that the Board has the power to condone the delay in case of a return which was filed late and where a claim for carry forward of losses was made. The delay was only one day and the assessee had shown justifiable reason for the delay of one day in filing the return of income. If the delay is not condoned, it would cause genuine hardship to the assessee. Therefore, the Court held that the delay of one day in filing of the return had to be condoned.

The CBDT Circular No. 9/2015 dated 09.06.2015 specified the monetary limits along with following authorities to be approached for this purpose. The said monetary limits are revised w.e.f. 1.6.2023 vide Circular No.7/2023 dated 31.5.2023 prescribed as under:

Quantum of claim	Concerned Income-tax Authority
Where the claim is upto ₹ 50 lakhs for one A.Y.	Principal CIT or CIT
Where the claim is above ₹ 50 lakhs but upto ₹ 2 crores for any one A.Y.	CCIT
Where the claim is above ₹ 2 crores but upto ₹ 3 crores for any one A.Y.	Principal CCIT
Where the claim is above ₹ 3 crores	CBDT

Applying the rationale of the above court ruling and the clarification given in CBDT Circular to the case on hand, the CBDT has the power to condone the delay in filing the return of income of Mr. Rajesh and permit carry forward of business loss of ₹ 3.10 crores, since the delay of one hour was due to a genuine and justifiable reason i.e., network problem while e-filing the return.

Based on the circular mentioned above, if the claim for carry forward of business loss is ₹ 2.7 crores, then, the Principal Chief Commissioner of Income-tax has the power to condone the delay.

2. According to section 124(3), the assessee can raise a question as to the jurisdiction of an Assessing Officer within the prescribed time limit as under:
 - (i) **where a return has been filed** under section 139(1) then, within one month from the

date of service of notice under section 142(1) or section 143(2) or before the completion of assessment, whichever is earlier.

- (ii) **where no return has been filed**, then, within the expiry of time allowed by the notice under section 142(1) or section 148 for filing the return or within the time allowed in show cause notice issued seeking as to why a best judgment assessment under section 144 should not be made, whichever is earlier.
- (iii) where search is initiated under section 132 or books of accounts, other documents or any assets are requisitioned under section 132A, within one month from the date on which he was served with a notice under section 153A(1) or 153C(2)⁴ or before the completion of assessment, whichever is earlier.

Where the assessee calls in question the jurisdiction of an Assessing Officer and the Assessing Officer is not satisfied with such claim, he shall refer the matter for determination by the Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner before the assessment is made.

Therefore, in view of the above provisions, the statement that “the jurisdiction of an Assessing Officer cannot be objected by the assessee” is not correct.

3. The powers under section 131(1A) deal with power of discovery and production of evidence. They do not confer the power of seizure of cash or any asset. The Director General, for the purposes of making an enquiry or investigation relating to any income concealed or likely to be concealed by any person or class of persons within his jurisdiction, shall be competent to exercise powers conferred under section 131(1), which confine to discovery and inspection, enforcing attendance, compelling the production of books of account and other documents and issuing commissions. Thus, the power of seizure of unaccounted cash is not one of the powers conferred on the Director General under section 131(1A).

However, under section 132(1), the Director General has the power to authorize any Additional Director or Additional Commissioner or Joint Director or Joint Commissioner etc. to seize money found as a result of search [Clause (iii) of section 132(1)], if he has reason to believe that any person is in possession of any money which represents wholly or partly income which has not been disclosed [Clause (c) of section 132(1)]. Therefore, the proper course open to the Director General is to exercise his power under section 132(1) and

⁴ Section 153A deals with assessment in case of search, initiated under section 132 or books of accounts or other documents or any assets requisitioned under section 132A before 1.4.2021. Section 147 contains the provisions for assessment in case of search initiated or books of accounts or other documents or any assets requisitioned on or after 1.4.2021.

authorize the Officers concerned to enter the premises where the cash is kept by Mr. Mogambo and seize such unaccounted cash.

4. Under section 132(1), the income-tax authorities listed therein are empowered to authorise other income-tax authorities to conduct search and seizure operations. The authorities empowered to issue authorisation include such Additional Director, Additional Commissioner, Joint Director and Joint Commissioner as are empowered by the CBDT to do so.

However, a Joint Commissioner can issue warrant of authorisation only if he has been specifically empowered to do so by the CBDT. Therefore, only if the Joint Commissioner has not been specifically empowered by the CBDT to do so, the contention of the assessee would hold good. If the Joint Commissioner has been duly empowered by the CBDT, then the contention raised by the assessee would not be valid.

5. As per section 132(1)(c), authorisation for search and seizure can take place if the authority, in consequence of information in his possession, has reason to believe that any person is in possession of money, bullion, jewellery or other valuable article or thing and these assets represent, either wholly or partly, income or property which has not been, or would not be disclosed by such person for the purposes of this Act. In the absence of such information, a search cannot be validly authorised.

The Apex Court in *UOI v Ajit Jain [2003] 260 ITR 80* has held that mere intimation by the CBI that money was found in the possession of the assessee, which according to the CBI was undisclosed, without something more, does not constitute “information” within the meaning of section 132, on the basis of which a search warrant could be issued. Consequently, the Supreme Court held that the search conducted on this basis and the assessment made pursuant to such search was not valid.

6. The proviso to section 132B(1)(i) provides that where the person concerned makes an application to the Assessing Officer, within 30 days from the end of the month in which the asset was seized, for release of the asset and the nature and source of acquisition of the asset is explained to the satisfaction of the Assessing Officer, then, the Assessing Officer may, with the prior approval of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, release the asset after recovering the existing liability under the Income-tax Act, 1961, etc. out of such asset. ‘Existing liability’, however, does not include advance tax payable. Such asset or portion thereof has to be released within 120 days from the date on which the last of the authorisations for search under section 132 was executed.

In this case, since the application was made to the Assessing Officer within 30 days from the end of the month in which search was conducted, the department may retain only the amount of existing liability, if any, and the balance may have to be released within 120 days from the date on which the last of the authorisations for search under section 132 was executed.

Note: *It may be noted that one of the conditions mentioned above for release of an asset is that the nature and source of acquisition of the asset should be explained to the satisfaction of the Assessing Officer. However, in this case, it has been given that the assessee's application for release of the asset, explaining the sources thereof, was turned down by the Department. If the application was turned down by the Department due to the reason that it was not satisfied with the explanation given by the assessee as to the nature and source of acquisition of the asset, then, the asset (in this case, cash) cannot be released, since the condition mentioned above is not satisfied.*

7. (a) The authorised officer being DDI, Delhi is not having any jurisdiction over Shri Krishna Ltd., Mumbai, and therefore, as per section 132(9A), the papers seized relating to this company shall be handed over by him to the Assessing Officer having jurisdiction over Shri Krishna Ltd., Mumbai within a period of 60 days from the date on which the last of the authorisations for search was executed for taking further necessary action thereon.
 - (b) The contention raised by the Director will not be acceptable because as per the provisions of sub-section (4A)(i) of section 132, where any books of account, other documents, money, bullion, jewellery or other valuables are found in the possession or control of any person in the course of search, then, in respect thereof, it may be presumed that the same belongs to that person.
 - (c) As per section 132(4A), the presumptions in respect of the papers, indicating transactions not recorded in the books but having direct nexus with the business of the company, are that the same belong to the company, contents of such papers are true and the handwriting in which the same are written is/are of the persons(s) whose premises have been searched.
8. Section 132B of the Income-tax Act, 1961 deals with the application of assets seized under section 132. Such assets will be first applied towards the existing liability under the Income-tax Act, 1961, etc. 'Existing liability', however, does not include advance tax payable. Further, the amount of liability determined on completion of assessment or reassessment or recomputation (including any penalty levied or interest payable in connection with such assessment) and in respect of which the assessee is in default or deemed to be in default, may be recovered out of such assets.

Where the nature and source of acquisition of such seized assets is explained to the satisfaction of the Assessing Officer, the amount of any existing liability mentioned above may be recovered out of such asset and the remaining portion, if any, of the asset may be released, with the prior approval of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, as the case may be. The release must be made within 120 days from the date on which the last of the authorisations for search under section 132 or for requisition under section 132A was executed. The assets would be released to the person from whose custody they were seized.

When the assets consist of solely of money, or partly of money and partly of other assets, the Assessing Officer may apply such money in the discharge of the liabilities referred to above and the assessee shall be discharged of such liability to the extent of the money so applied. However, the assets other than money may also be applied for the discharge of such liabilities if the complete recovery could not be made from the money seized or the money seized was not sufficient.

9. In order to deter the practice of non-disclosure of income, section 271AAB(1A) provides for levy of penalty on undisclosed income found during the course of a search, which relates to specified previous year, i.e.-

- the previous year which has ended before the date of search, but the due date of filing return of income for the same has not expired before the date of search and the return has not yet been furnished (P.Y. 2022-23).
- the previous year in which search is conducted (P.Y. 2023-24).

Accordingly, under section 271AAB(1A), in respect of searches initiated on or after 15.12.2016,

- penalty@30% would be attracted, if undisclosed income is admitted during the course of search in the statement furnished under section 132(4), and the assessee explains the manner in which such income was derived, pays the tax, together with interest if any, in respect of the undisclosed income, and furnishes the return of income for the specified previous year declaring such undisclosed income on or before the specified date (i.e., the due date of filing return of income or the date on which the period specified in the notice issued under section 148 expires, as the case may be).
- In all other cases, penalty @60% of undisclosed income would be attracted.

ASSESSMENT PROCEDURE



LEARNING OUTCOMES

After studying this chapter, you would be able to -

- ❑ **appreciate** when return filing becomes mandatory for different persons;
- ❑ **identify and recall** the due dates for filing of return in case of such persons;
- ❑ **comprehend and apply** the provisions relating to belated return, revised return and defective return;
- ❑ **appreciate** the statutory provisions relating to special audit directed by the Assessing Officer;
- ❑ **appreciate** the procedure for assessment (including faceless assessment) – self-assessment, summary assessment, scrutiny assessment and best judgement assessment;
- ❑ **appreciate** the circumstances when the Assessing Officer can issue notice for reassessment of income and the time limit for issuance of such notice;
- ❑ **know and recall** the time limits for completion of assessments;
- ❑ **appreciate** the provisions for rectification of mistake apparent from the record.

CHAPTER OVERVIEW



Filing of return of income [Section 139] - ROI on or before due date [Section 139(1)] - Loss return [Section 139(3)] - Belated return [Section 139(4)] - Revised Return [Section 139(5)] - Updated Return [Section 139(8A)]	Permanent Account Number [Section 139A]	Quoting of Aadhaar Number [Section 139AA]	
Persons authorised to verify Return of Income [Section 140]	Self-assessment [Section 140A]	Provisions contained under section 142	Assessment [Section 143]
Best Judgement Assessment [Section 144]	Faceless Assessment [Section 144B]	Reference to Dispute Resolution Panel [Section 144C]	Income Escaping Assessment [Sections 147 to 151]
Other Provisions [Section 152]	Time limits for completion of assessments [Section 153]	Rectification of Mistake [Section 154]	Other amendments [Section 155]
Notice of Demand [Section 156]	Intimation of loss [Section 157]	Faceless rectification, amendments and issuance of notice or intimation [Section 157A]	

15.1 RETURN OF INCOME

The Income-tax Act, 1961 contains provisions for filing of return of income. Return of income is the format in which the assessee furnishes information as to his total income and tax payable. The format for filing of returns by different assesseees is notified by the CBDT. The particulars of income earned under different heads, gross total income, deductions from gross total income, total income and tax payable by the assessee are generally required to be furnished in a return of income. In short, a return of income is the declaration of income by the assessee in the prescribed format.

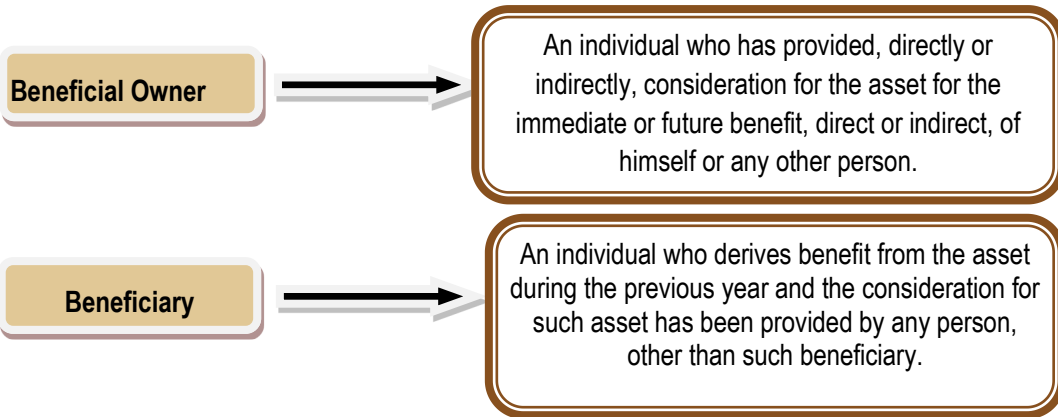
15.2 COMPULSORY FILING OF RETURN OF INCOME [SECTION 139(1)]

- (1) As per section 139(1), it is **compulsory for companies and firms to file a return** of income or loss for every previous year on or before the due date in the prescribed form.
- (2) A return of income or loss for the previous year in the prescribed form and verified in the prescribed manner on or before the due date, has to be filed by every person, being a resident other than not ordinarily resident in India within the meaning of section 6(6), who is not required to furnish a return under section 139(1) if such person, at any time during the previous year –
 - (a) holds, as a beneficial owner or otherwise, any asset (including any financial interest in any entity) located outside India or has a signing authority in any account located outside India; or
 - (b) is a beneficiary of any asset (including any financial interest in any entity) located outside India.

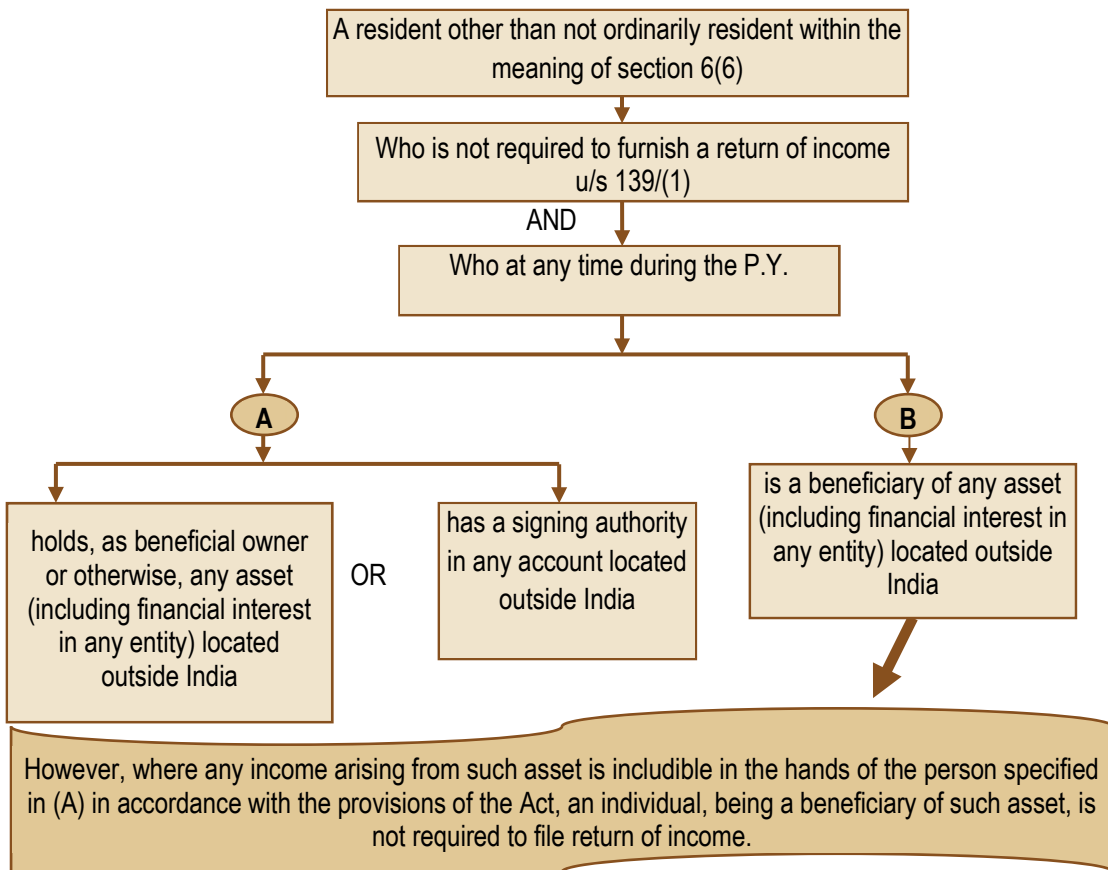
All companies and firms to mandatorily file ROI by due date

However, an individual being a beneficiary of any asset (including any financial interest in any entity) located outside India would not be required to file return of income, where, income, if any, arising from such asset is includible in the income of the person referred to in (a) above in accordance with the provisions of the Income-tax Act, 1961.

Meaning of “beneficial owner” and “beneficiary” in respect of an asset for the purpose of section 139:



Requirement of filing of return of income as per the fourth and fifth proviso to section 139(1)



- (3) Further, every person, being an individual or a HUF or an AOP or BOI or an artificial juridical person -

**Cases where ROI
mandatorily to be filed**

- **whose total income** or the total income of any other person in respect of which he is assessable under this Act during the previous year
- **without giving effect** to the exemption provisions contained in sections 54/54B/54D/ 54EC/54F/54G/54GA in respect of capital gains or deductions under Chapter VI-A

- **exceeds the basic exemption limit**

Different BEL

is required to file a return of his income or income of such other person on or before the due date.

For the A.Y. 2024-25, the basic exemption limit is ₹ 3,00,000 for individuals/HUF/AOPs/BOIs and artificial juridical persons under the default regime under section 115BAC. These amounts denote the level of total income, which is arrived at after claiming the admissible deductions under Chapter VI-A i.e., 80CCD(2), 80CCH(2) and 80JJAA under default regime and exemption under section 54/54B/54D/54EC/54F/54G/54GA in respect of capital gain. However, the level of total income to be considered for the purpose of filing return of income is the income before claiming the admissible deductions under Chapter VI-A and exemption under section 54/54B/54D/54EC/54F/54G/54GA.

However, where the assessee being an individual/HUF/AOPs/BOIs and artificial juridical persons has exercised the option of shifting out of the default tax regime provided under section 115BAC(1A), basic exemption limit would be ₹ 2,50,000 for individuals/HUFs/AOPs/BOIs and artificial juridical persons, ₹ 3,00,000 for resident individuals of the age of 60 years or more but less than 80 years and ₹ 5,00,000 for resident individuals of the age of 80 years or more at any time during the previous year. These amounts denote the level of total income, which is arrived at after claiming exemption under sections 54/54B/54D/54EC/54F/54G/54GA in respect of capital gains and the admissible deductions under Chapter VI-A. However, the level of total income to be considered for the purpose of filing return of income is the income before claiming exemption under sections 54/54B/54D/54EC/54F/54G/54GA in respect of capital gains and the admissible deductions under Chapter VI-A.

- (4) Any person other than a company or a firm, who is not required to furnish a return under section 139(1), would have to file income-tax return in the prescribed form and manner on or before the due date if, during the previous year, such person –

- (a) has **deposited** an amount or aggregate of the amounts **exceeding ₹ 1 crore** in one or more current accounts maintained with a banking company or a co-operative bank; or
- (b) has **incurred expenditure** of an amount or aggregate of the amounts **exceeding ₹ 2 lakh** for himself or any other person **for travel to a foreign country**; or
- (c) has incurred **expenditure** of an amount or aggregate of the amounts **exceeding ₹ 1 lakh** towards **consumption of electricity**; or
- (d) fulfils such other prescribed conditions.

Accordingly, CBDT, vide Notification No. 37/2022 dated 21.4.2022, inserted Rule 12AB stating the conditions wherein any person other than a company or a firm, who is not required to furnish a return under section 139(1), would have to file income-tax return in the prescribed form and manner on or before the due date if, during the previous year:

**Prescribed Conditions
where ROI mandatorily to be
filed**

- (i) his total sales, turnover or gross receipts, as the case may be, in the business **exceed ₹ 60 lakh**; or
- (ii) his total gross receipts in profession **exceed ₹ 10 lakh**; or
- (iii) the aggregate of tax deducted at source and tax collected at source during the previous year, in the case of the person, is **₹ 25,000 or more** (in the case of a resident individual **who is aged ≥ 60 years** at any time during the relevant P.Y, the limit will be **₹ 50,000 or more**); or
- (iv) the deposit in one or more savings bank account of the person, in aggregate, is **₹ 50 lakh or more**.

**31st July or 31st Oct. or
30th Nov. of the A.Y**

- (5) **Meaning of due date:** 'Due date' means -

	Assessee	Due Date
(i)	Where the assessee, other than an assessee referred to in clause (ii), is - (a) a company, (b) a person (other than a company) whose accounts are required to be audited under the Income-tax Act, 1961 or any other law in force; or (c) a partner of a firm whose accounts are required to be audited under the Income-tax Act, 1961 or any other law for the time being in force or the spouse	31 st October of the assessment year

	of such partner if the provisions of section 5A applies to such spouse.	
(ii)	in the case of an assessee including the partners of the firm or the spouse of such partner (if the provisions of section 5A applies to such spouse), being such assessee who is required to furnish a report referred to in section 92E.	30 th November of the assessment year
(iii)	in the case of any other assessee.	31st July of the assessment year

(6) Apportionment of income between spouses governed by Portuguese Civil Code [Section 5A]

Where the husband and wife are governed by the system of community of property (known under the Portuguese Civil Code of 1860 as "COMMUNIAO DOS BENS") in force in the State of Goa and in the Union territories of Dadra and Nagar Haveli and Daman and Diu:

- **Income under the head "Salaries":** Where the husband or, as the case may be, the wife governed by the aforesaid system of community of property has any income under the head "Salaries", such income shall be included in the total income of the spouse who has actually earned it [Section 5A(2)]
- **Income under any head of income (other than under the head "Salaries"):** The income of the husband and of the wife under any head of income shall not be assessed as that of such community of property (whether treated as an association of persons or a body of individuals), but such income of the husband and of the wife under each head of income (other than under the head "Salaries") shall be apportioned equally between the husband and the wife and the income so apportioned shall be included separately in the total income of the husband and of the wife respectively, and the remaining provisions of this Act shall apply accordingly [Section 5A(1)]



15.3 INTEREST FOR DEFAULT IN FURNISHING RETURN OF INCOME [SECTION 234A]

- (1) Interest under section 234A is attracted for failure to file a return of income on or before the due date mentioned above i.e. interest is payable where an assessee furnishes the return of income after the due date or does not furnish the return of income.

1% p.m after due date of ROI

- (2) Simple interest@1% per month or part of the month is payable for the period commencing

from the date immediately following the due date and ending on the following dates -

Circumstances	Ending on the following dates
Where the return is furnished after the due date	the date of furnishing of the return
Where no return is furnished	the date of completion of assessment

- (3) The interest has to be calculated on the amount of tax on total income as determined under section 143(1) or on regular assessment, as reduced by the advance tax paid, any tax deducted or collected at source, any relief of tax allowed under section 89/90/90A/91 and any tax credit allowed to be set-off in accordance with section 115JAA or 115JD.

Note – For detailed understanding of section 234A, refer to Chapter 13: Tax deduction, collection and recovery of tax of this module.



15.4 SPECIFIED CLASS OR CLASSES OF PERSONS TO BE EXEMPTED FROM FILING RETURN OF INCOME [SECTION 139(1C)]

- (1) **Persons required to furnish return of income:** Every person who falls within the ambit of the conditions mention under section 139 has to furnish a return of his income on or before the due date specified under section 139(1).
- (2) **Exemption from filing return of income:** To reduce the compliance burden of certain type of taxpayers, the Central Government has been empowered to notify the class or classes of persons who will be exempted from the requirement of filing of return of income, subject to satisfying the prescribed conditions. Accordingly, the Central Government has, vide Notification No.55/2019 dated 26.7.2019 and **Notification No. 49/2023 dated 14.7.2023, exempted non-corporate non-residents and foreign companies**, having **any income** chargeable under the Income-tax Act, 1961 during a previous year **from any investment fund set up in an International Financial Services Centre (IFSC) located in India**, from the requirement of furnishing a return of income under section 139(1) from A.Y.2019-20 onwards:

Exempted Persons

Exemption from filing return of income would be available to such notified class of persons only if - any income-tax due on income of the said class of persons has been deducted at source and remitted to the Central Government by the investment fund at the tax-rate in force as per provisions of section 194LBB; and - there is no other income during the previous year for which the said class of persons, is otherwise liable to file the income-tax return.	Exemption from the requirement of furnishing a return of income would not be available to such notified class of persons where a notice under section 142(1) or section 148 or section 153A or section 153C (relevant in respect of search initiated or books of accounts requisitioned on or before 31.3.2021] has been issued for filing a return of income for the assessment year specified therein to such notified class of persons

Meaning of Investment fund

- any 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 Category II Alternative Investment Fund (AIF) and is regulated under the SEBI (AIF) Regulations, 2012 **or regulated under the IFSC Authority (Fund Management) Regulations, 2022.**

The Central Government has, vide *Notification No. 119/2021 dated 11.10.2021*, also exempted the following class of persons mentioned in column (2) of the Table below, subject to the conditions specified in column (3) of the said Table, from the requirement of furnishing a return of income under section 139(1) from the assessment year 2021-22 onwards:

S. No.	Class of Persons	Conditions
(1)	(2)	(3)
1.	(i) Non-corporate non-resident; or (ii) a foreign company.	The said class of person should not earn any income in India, during the previous year, other than the income from investment in the specified fund referred to in sub-clause (i) of clause (c) of Explanation to section 10(4D). The provisions of section 139A are not applicable to the said class of persons subject to fulfillment of the conditions mentioned in Rule 114AAB(1) [Read discussion under section 139A in this chapter] [Refer Chapter 2: Non-resident Taxation in Module 4 for detailed reading of section 10(4D)]

2.	a non-resident, being an eligible foreign investor.	(i) The said class of persons, during the previous year, has made transaction only in capital asset referred to in section 47(viiab) (bonds or GDRs under section 115AC, rupee denominated bonds of an Indian company, derivative and other notified securities) which are listed on a recognised stock exchange located in any International Financial Services Centre and the consideration on transfer of such capital asset is paid or payable in foreign currency; (ii) The said class of persons does not earn any income in India, during the previous year, other than the income from transfer of capital asset referred to in of section 47(viiab) (bonds or GDRs under section 115AC, rupee denominated bonds of an Indian company, derivative and other notified securities); and (iii) The provisions of section 139A are not applicable to the said class of persons subject to fulfillment of the conditions mentioned in Rule 114AAB(2A) (Read discussion under section 139A in this Chapter).



15.5 RETURN OF LOSS [SECTION 139(3)]

- (1) **Return of loss:** This section requires the assessee to file a return of loss in the same manner as in the case of return of income within the time allowed under section 139(1).
- (2) **Compulsory filing return of loss on or before due date to carry forward and set-off certain losses:** Section 80 requires mandatory filing of return of loss under section 139(3) on or before the due date specified under section 139(1) for carry forward of the following losses -
 - (a) Business loss under section 72(1)
 - (b) Speculation business loss under section 73(2)
 - (c) Loss from specified business under section 73A(2)
 - (d) Loss under the head "Capital Gains" under section 74(1)
 - (e) Loss from the activity of owning and maintaining race horses under section 74A(3)

File ROL by due date

Consequently, section 139(3) requires filing of return of loss mandatorily within the time allowed under section 139(1) for claiming carry forward of the losses mentioned in (2) above.

However, loss under the head “Income from house property” under section 71B and “unabsorbed depreciation” under section 32 can be carried forward for set-off even though return of loss has not been filed before the due date.

- (3) **Non-receipt of a notice from Assessing Officer to file a return not a valid excuse:** A return of loss has to be filed by the assessee in his own interest and the non-receipt of a notice from the Assessing Officer requiring him to file the return cannot be a valid excuse under any circumstances for the non-filing of such return.



15.6 BELATED RETURN [SECTION 139(4)]

- (1) **Furnishing of belated return of income:** Any person who has not furnished a return within the time allowed to him under section 139(1), may furnish the return for any previous year at any time -

- (i) before three months prior to the end of the relevant assessment year (i.e., 31.12.2024 for P.Y. 2023-24); or
- (ii) before the completion of the assessment,
whichever is earlier.

**File ROI latest by 31st
Dec. of RAY**

Thus, a belated return can be filed only in case a person has not furnished his return within the time allowed under section 139(1).

- (2) **Consequences of filing a belated return:**

- (i) Certain losses computed under specified sections (refer to para (2) of 15.5 above) cannot be carried forward for set-off in the subsequent years.
- (ii) Interest under section 234A for the delay in furnishing the return shall be leviable.
- (iii) Fee of ₹ 5,000 under section 234F would be leviable where return is filed after the due date. However, late fee shall not exceed ₹ 1,000 where total income does not exceed ₹ 5,00,000.
- (iv) Further, as per section 80AC, deductions in respect of certain incomes under Chapter VI-A [Heading C- Deduction in respect of certain incomes] would not be available.

- (v) *Additionally, w.e.f. A.Y. 2024-25, no deduction under section 10AA shall be available to an eligible unit established in SEZ if it fails to furnish its return of income on or before the due date.*



15.7 RETURN OF INCOME OF CHARITABLE TRUSTS AND INSTITUTIONS [SECTION 139(4A)]

- (1) **Person required to furnish return under section 139(4A):** Every person in receipt of income -
- (i) derived from property held under a trust or any other legal obligation wholly or partly for charitable or religious purposes; or
 - (ii) by way of voluntary contributions on behalf of such trust or institution

File ROI by due date for exemption u/s 11 and 12

must furnish a return of income if the total income in respect of which he is assessable as a representative assessee (computed before allowing any exemption under sections 11 and 12) exceeds the basic exemption limit.

Such persons should furnish the return in the prescribed form and verify in the prescribed manner containing all the particulars prescribed for this purpose.

- (2) **Return filed by the representative-assessee:** This return must be filed by the representative-assessee voluntarily within the time limit. Any failure on the part of the assessee would attract liability to pay interest, fees and penalty.
- (3) **Due date for filing return of income in case books of account are required to be audited:** It may be noted that a charitable trust or other legal obligation is required to get its accounts audited when its income before claiming exemption under section 11 and 12 exceeds basic exemption limit. In such case, the due date would be 31st October of the relevant assessment year.



15.8 RETURN OF INCOME OF POLITICAL PARTIES [SECTION 139(4B)]

- (1) **Political party required to furnish return of income under section 139(4B):** Under this section, the Chief Executive Officer of the political party is statutorily required to file a return of income of political party if, before claiming exemption under section 13A, the political party

has income exceeding the basic exemption limit.

The return must be filed in the prescribed form and verified in the prescribed manner setting forth such other particulars as may be prescribed by the CBDT. The provisions of the Act would apply as if it were a return required to be furnished under section 139(1).

File ROI by due date for exemption u/s 13A

- (2) **Furnishing of return mandatory to claim exemption under section 13A:** The grant of exemption from income-tax to any political party under section 13A is subject to the condition that the political party submits a return of its total income within the time limit prescribed under section 139(1) and gets the accounts audited.
- (3) **Due date for filing return of income:** Since the audit of accounts is mandatory for the political party for claiming exemption under section 13A, the due date for filing of return of income would be 31st of October of the relevant assessment year.



15.9 MANDATORY FILING OF RETURNS BY RESEARCH ASSOCIATIONS, NEWS AGENCY, TRADE UNIONS, ETC. [SECTION 139(4C)]

- (1) It will be mandatory for the following institutions/associations/persons etc. to file the return of income if their total income without giving effect to exemption under respective clauses of section 10, exceeds the basic exemption limit –

	Institution/Association/Persons etc.	Applicable section
(a)	Research association	10(21)
(b)	News agency	10(22B)
(c)	Association or institution	10(23A)
(d)	Fund for the welfare of employees or their dependents	10(23AAA)
(e)	Institution	10(23B)
(f)	Fund or institution	10(23C)(iv)
(g)	Trust or institution	10(23C)(v)
(h)	University or other educational institution	10(23C)(vi)/(iiiad)/(iiiab)
(i)	Hospital or other medical institution	10(23C)(via)/(iiiiae)/(iiiac)
(j)	Mutual Fund	10(23D)

(k)	Securitisation Trust	10(23DA)
(l)	Investor Protection Fund	10(23EC)/(23ED)
(m)	Core Settlement Guarantee Fund	10(23EE)
(n)	Venture Capital Company/Venture Capital Fund	10(23FB)
(o)	Trade Union/association	10(24)(a)/(b)
(p)	Board or Authority	10(29A)
(q)	Body or Authority or Board or Trust or Commission	10(46)
(r)	Infrastructure Debt Fund	10(47)

- (2) Such return of income should be in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed.
- (3) Then, the provisions of the Act would apply as if it were a return required to be furnished under section 139(1).



15.10 MANDATORY FILING OF RETURNS BY UNIVERSITIES, COLLEGES ETC. [SECTION 139(4D)]

- (1) It will be mandatory for every university, college or other institution referred to in clause (ii) and clause (iii) of section 35(1), which is not required to furnish its return of income or loss under any other provision of section 139, to furnish its return in respect of its income or loss in every previous year.
- (2) All the provisions of the Income-tax Act, 1961 shall apply to such return as if it were a return under section 139(1).



15.11 FILING OF RETURN OF INCOME BY A BUSINESS TRUST [SECTION 139(4E)]

- (1) Every business trust, which is not required to furnish return of income or loss under any other provisions of this section, has to furnish the return of its income in respect of its income or loss in every previous year.
- (2) All the provisions of the Income-tax Act, 1961 shall apply as if it were a return required to be filed under section 139(1).



15.12 FILING OF RETURN OF INCOME BY INVESTMENT FUND [SECTION 139(4F)]

- (1) Every investment fund referred to in section 115UB, which is not required to furnish return of income or loss under any other provisions of this section, shall furnish the return of income in respect of income or loss in every previous year.
- (2) All the provisions of the Income-tax Act, 1961 shall apply as if it were a return required to be filed under section 139(1).



15.13 REVISED RETURN [SECTION 139(5)]

- (1) If any person having furnished a return under section 139(1) or section 139(4), discovers any omission or any wrong statement therein, he may furnish a revised return
 - **at any time before three months prior to the end of the relevant assessment year** (i.e., 31.12.2024 for P.Y. 2023-24) or
 - before completion of assessment,whichever is earlier.
- (2) The return can be revised for any number of times within the given time limit. In this case the latest revised return filed replaces all other returns filed earlier.
- (3) It may be noted that the returns filed under sub-sections (1A), (3), (4A) to (4F) of section 139 are treated as having been filed under section 139(1). Hence, these returns can also be revised subject to satisfying the conditions of section 139(5).

**File revised ROI latest
by 31st Dec. of RAY**



15.14 PARTICULARS TO BE FURNISHED WITH THE RETURN [SECTION 139(6)]

The return form prescribed under section 139(1)/ (3) and section 142(1)(i) in certain specified cases, require the assessee to furnish the particulars of -

- (1) income exempt from tax.
- (2) assets of the prescribed nature and value, held by him as a beneficial owner or otherwise or in which he is a beneficiary.
- (3) his bank account and credit card held by him.

- (4) expenditure exceeding the prescribed limits incurred by him under prescribed heads.
- (5) such other outgoings as may be prescribed.



15.15 PARTICULARS TO BE FURNISHED WITH RETURN OF INCOME IN CASE OF AN ASSESSEE ENGAGED IN BUSINESS OR PROFESSION [SECTION 139(6A)]

The prescribed form of the return shall, in the case of an assessee engaged in any business or profession, also require him to furnish -

- (1) the report of any audit referred to in section 44AB [such tax audit report is required to be furnished one month prior to the due date of filing return of income u/s 139(1)].
- (2) the particulars of the location and style of the principal place where he carries on the business or profession and all the branches thereof.
- (3) the names and addresses of his partners, if any, in such business or profession.
- (4) if he is a member of an association or body of individuals,
 - (a) the names of the other members of the association or the body of individuals; and
 - (b) the extent of the share of the assessee and the shares of all such partners or members, as the case may be, in the profits of the business or profession and any branches thereof.



15.16 DEFECTIVE RETURN [SECTION 139(9)]

- (1) Under this sub-section, the Assessing Officer has the power to call upon the assessee to rectify a defective return.
- (2) Where the Assessing Officer considers that the return of income furnished by the assessee is defective, he may intimate the defect to the assessee and give him an opportunity to rectify the defect within a period of 15 days from the date of such intimation. The Assessing Officer has the discretion to extend the time period beyond 15 days, on an application made by the assessee.
- (3) If the defect is not rectified within the period of 15 days or such further extended period, then the return would be treated as an invalid return. The consequential effect would be the same as if the assessee had failed to furnish the return.

**Rectify defect within
15 days of intimation**

- (4) Where, however, the assessee rectifies the defect after the expiry of the period of 15 days or the further extended period, but before assessment is made, the Assessing Officer can condone the delay and treat the return as a valid return.
- (5) A return of income shall be regarded as defective unless all the following conditions are fulfilled, namely:
- (i) The annexures, statements and columns in the return of income relating to computation of income chargeable under each head of income, computations of gross total income and total income have been duly filled in.
 - (ii) The return of income is accompanied by the following, namely:
 - (a) a statement showing the computation of the tax payable on the basis of the return.
 - (b) the report of the audit obtained under section 44AB [such tax audit report is required to be furnished one month prior to the due date of filing return of income u/s 139(1)].
 - (c) the proof regarding the tax, if any, claimed to have been deducted or collected at source and the advance tax and tax on self-assessment, if any, claimed to have been paid. (However, the return will not be regarded as defective if (i) a certificate for tax deducted or collected was not furnished under section 203 or section 206C to the person furnishing his return of income, (ii) such certificate is produced within a period of 2 years.).
 - (d) the proof of payment of tax as required under section 140B, if the return of income is an updated return furnished under section 139(8A).
 - (iii) Where regular books of account are maintained by an assessee, the return of income is accompanied by the following -
 - (a) copies of manufacturing account, trading account, profit and loss account or income and expenditure account, or any other similar account and balance sheet;
 - (b) the personal accounts as detailed below -

(1)	Proprietary business or profession	The personal account of the proprietor
(2)	Firm, association of persons or body of individuals	Personal accounts of partners or members
(3)	Partner or member of a firm, association of persons or body of	Partner's personal account in firm, member's personal

	individuals	account in the association of persons or body of individuals

- (iv) Where the accounts of the assessee have been audited, the return should be accompanied by copies of the audited profit and loss account and balance sheet and the auditor's report.
- (v) Where the cost accounts of an assessee have been audited under section 233B¹ of Companies Act, 1956, the return should be accompanied by such report (Cost Audit).
- (vi) Where regular books of account are not maintained by the assessee, the return should be accompanied by -
 - (a) a statement indicating the amount of turnover or gross receipts, gross profit, expenses and net profit of the business or profession;
 - (b) the basis on which such amounts mentioned in (1) above have been computed,
 - (c) the amounts of total sundry debtors, sundry creditors, stock-in-trade and cash balance as at the end of the previous year.

It may be noted that a return which is otherwise valid would not be treated as defective merely because self-assessment tax and interest payable in accordance with the provisions of section 140A has not been paid on or before the date of furnishing the return.

Notes:

- (i) *Many of these particulars are now required to be incorporated as part of the relevant return form, for example, details of tax deducted at source, advance tax paid, self-assessment tax paid, amount of turnover/gross receipts etc.*
- (ii) *Section 292B provides that no return of income, order of assessment, notice, summons or other proceedings furnished or made or taken or purported to have been furnished or made in pursuance of any of the provisions of the Income-tax Act, 1961 shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such return of income, assessment, notice, summons or other proceeding, if they are in substance and effect in conformity with or according to the intent and purposes of the Income-tax Act, 1961. The provision, thus, enables tax authorities to accept returns and other documents and tax payers to accept orders, notice, etc., received from tax authorities even in cases where there are a few typographical, arithmetical or other mistakes which do not materially affect the objects with which the document was submitted by the assessee or order was issued by the department.*

¹ Section 148 of the Companies Act, 2013

15.17 FEE FOR DEFAULT IN FURNISHING RETURN OF INCOME [SECTION 234F]

Where a person, who is required to furnish a return of income under section 139, fails to do so within the prescribed time limit under section 139(1), he shall pay, by way of fee, a sum of ₹ 5,000. However, if the total income of the person does not exceed ₹ 5 lakhs, the fees payable shall not exceed ₹ 1,000.

**Fee ₹ 5,000;
However, where
TI ≤ ₹ 5 lakhs -
Fee ₹ 1,000**

15.18 EFFECT OF ORDER OF TRIBUNAL OR COURT IN RESPECT OF BUSINESS REORGANISATION [SECTION 170A]

- (1) **Requirement and timeline to file Modified Return in ITR-A [Section 170A(1)]** - In a case of **business reorganisation**, where prior to the date of order of a High Court or Tribunal or an Adjudicating Authority as defined in section 5(1) of the Insolvency and Bankruptcy Code, 2016, as the case may be, any return of income has been furnished by an entity to which such order applies under the provisions of section 139 for any assessment year relevant to the previous year to which such order applies, such successor entity has to furnish, within a period of **six months from the end of the month in which the said order was issued**, a **modified return** in Form ITR-A in accordance with and limited to the said order. The said return of income has to be furnished electronically under digital signature.

This provision will apply notwithstanding anything contained in section 139.

- (2) **Assessment on the basis of modified return [Section 170A(2)]**

	Status of Assessment or reassessment proceedings for an A.Y. relevant to a P.Y. to which the order of the business reorganisation applies	Completion of Assessment by the A.O. on the basis of modified return
(i)	Completed proceedings - If the proceedings have been completed on the date of furnishing of the modified return in accordance with the provisions of section 170A(1)	The A.O. has to pass an order modifying the total income of the relevant A.Y. determined in such assessment or reassessment proceedings in accordance with the order of the business reorganisation and the modified return so furnished.

(ii)	Pending proceedings - If the proceedings are pending on the date of furnishing of the modified return in accordance with the provisions of section 170A(1)	The A.O. has to proceed to complete the assessment or reassessment proceedings and pass an order assessing or reassessing the total income of the relevant assessment year in accordance with the order of the business reorganisation and the modified return so furnished.

All other provisions of the Act shall apply to such assessment or reassessment made in respect of the assessment year to which the order of business reorganisation applies and the tax shall be chargeable at the rate or rates applicable to such assessment year.

- (3) **Meaning of “business reorganization”** – Business reorganization” means the reorganization of business involving the amalgamation or demerger or merger of business or one or more persons.
- (4) **Meaning of “successor”** – “Successor” means all resulting companies in a business reorganization, whether or not the company was in existence prior to such business reorganization.

Example: If A Ltd. merges with B Ltd. with effect from 1.4.2022 vide order of the High Court dated 1.11.2023, and B Ltd. has already filed its return of income for the A.Y.2023-24 on 30th October, 2023, then, B Ltd. has to file a modified return for A.Y.2023-24 in accordance with and limited to the Order of the High Court on or before 31st May, 2024.

15.19 PERMANENT ACCOUNT NUMBER (PAN) [SECTION 139A]

- (1) **Persons mandatorily required to apply for allotment of PAN:** Section 139A(1) requires the following persons mentioned in column (2), who have not been allotted a permanent account number (PAN), to apply to the Assessing Officer within the time specified in column (3) for the allotment of a PAN –

Apply for PAN at

<https://www.protean-tinpan.com/services/pan/pan-index.html>

(1)	(2)	(3)
	Persons required to apply for PAN	Time limit for making such application
(i)	Every person, if his total income or the total income of any other person in respect of which he is assessable under the Act during any previous year exceeds the maximum amount which is not chargeable to income-tax	On or before 31st May of the assessment year for which such income is assessable
(ii)	Every person carrying on any business or profession whose total sales, turnover or gross receipts are or is likely to exceed ₹ 5 lakhs in any previous year	Before the end of that financial year (previous year).
(iii)	Every person who is required to furnish a return of income under section 139(4A)	Before the end of the financial year
(iv)	Every person being a resident, other than an individual, which enters into a financial transaction of an amount aggregating to ₹ 2,50,000 or more in a financial year	On or before 31st May of the immediately following financial year in which financial transaction is made.
(v)	Every person who is a managing director, director, partner, trustee, author, founder, karta, chief executive officer, principal officer or office bearer of any person referred in (iv) above or any person competent to act on behalf of such person referred in (iv) above	On or before 31st May of the immediately following financial year in which the person referred in (v) enters into financial transaction specified therein.

Further, for widening the tax base, every person who has not been allotted a PAN **and intends to enter into such transaction** as prescribed by the CBDT is also required to apply to the Assessing Officer for allotment of PAN.

Accordingly, Rule 114BA inserted (w.e.f. expiry of 15 days from 10.5.2022) to prescribe the following transactions:

(i)	Every person, who intends to deposit cash in his one or more accounts with a banking company, co-operative bank or post office, if the aggregate amount of cash deposit in such accounts during a financial year is ₹ 20 lakh or more	Atleast 7 days before the date on which he intends to deposit cash over the specified limit, i.e., ₹ 20 lakh or more.
(ii)	Every person, who intends to withdraw cash from his one or more accounts with a banking company, co-operative bank or post office, if the aggregate amount of cash withdrawal from such	Atleast 7 days before the date on which he intends to withdraw cash over the specified limit, i.e., ₹ 20 lakh or more.

	accounts during a financial year is ₹ 20 lakh or more	
(iii)	Any person, who intends to open a current account or cash credit account with a banking company or a co-operative bank, or a Post Office	Atleast 7 days before the date on which he intends to open such account.

- (2) The Central Government is empowered to specify, by notification in the Official Gazette, any class or classes of persons by whom tax is payable under the Act or any tax or duty is payable under any other law for the time being in force. Such persons are required to apply within such time as may be mentioned in that notification to the Assessing Officer for the allotment of a PAN [Sub-section (1A)].
- (3) For the purpose of collecting any information which may be useful for or relevant to the purposes of the Act, the Central Government may notify any class or classes of persons, and such persons shall within the prescribed time, apply to the Assessing Officer for allotment of a PAN [Sub-section (1B)].
- (4) The Assessing Officer, having regard to the nature of transactions as may be prescribed, may also allot a PAN to any other person (whether any tax is payable by him or not) in the manner and in accordance with the procedure as may be prescribed [Sub-section (2)].
- (5) Any person, other than the persons mentioned in (1) to (4) above, may apply to the Assessing Officer for the allotment of a PAN and the Assessing Officer shall allot a PAN to such person immediately.

Note – Rule 114(4) requires submission of application for allotment of PAN by the applicant in the prescribed form accompanied by the prescribed documents as proof of identity, address and date of birth of such applicant. Rule 114(1A) provides that any person, who has not been allotted a PAN but possesses the Aadhaar number and has furnished or intimated or quoted his Aadhaar number in lieu of the PAN in accordance with section 139A(5E), **shall be deemed to have applied for allotment of PAN and he shall not be required to apply or submit any documents under Rule 114.**

Further, Rule 114(1B) provides that any person, who has not been allotted a PAN but possesses the Aadhaar number may apply for allotment of the PAN under section 139A(1)/(1A)/(3) by intimating his Aadhaar number and he shall not be required to apply or submit any documents under Rule 114.

- (6) **Quoting of PAN is mandatory for transactions prescribed under Rule 114B:** As per section 139A(5) quoting of PAN is mandatory in the following documents/prescribed transactions:

Quoting of PAN

- (a) in all returns to, or correspondence with, any income-tax authority;
- (b) in all challans for the payment of any sum due under the Act;
- (c) in all documents pertaining to such transactions entered into by him, as may be prescribed by the CBDT in the interests of revenue. In this connection, CBDT has prescribed the following transactions *vide* Rule 114B, namely:

S. No.	Nature of transaction	Value of transaction
1.	Sale or purchase of a motor vehicle or vehicle, as defined in the Motor Vehicles Act, 1988 which requires registration by a registering authority under that Act, other than two wheeled vehicles.	All such transactions
2.	Opening an account [other than a time-deposit referred to at Sl. No.12 and a Basic Savings Bank Deposit Account] with a banking company or a co-operative bank to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act).	All such transactions
3.	Making an application to any banking company or a co-operative bank to which the Banking Regulation Act, 1949, applies (including any bank or banking institution referred to in section 51 of that Act) or to any other company or institution, for issue of a credit or debit card.	All such transactions
4.	Opening of a demat account with a depository, participant, custodian of securities or any other person registered under section 12(1A) of the SEBI Act, 1992.	All such transactions
5.	Payment to a hotel or restaurant against a bill or bills at any one time.	Payment in cash of an amount exceeding ₹ 50,000.
6.	Payment in connection with travel to any foreign country or payment for purchase of any foreign currency at any one time.	Payment in cash of an amount exceeding ₹ 50,000.

7.	Payment to a Mutual Fund for purchase of its units	Amount exceeding ₹ 50,000.
8.	Payment to a company or an institution for acquiring debentures or bonds issued by it.	Amount exceeding ₹ 50,000.
9.	Payment to the Reserve Bank of India for acquiring bonds issued by it.	Amount exceeding ₹ 50,000.
10.	Deposit with - a banking company or a co-operative bank to which the Banking Regulation Act, 1949, applies (including any bank or banking institution referred to in section 51 of that Act); or - post office	Cash deposits exceeding ₹ 50,000 during any one day.
11.	Purchase of bank drafts or pay orders or banker's cheques from a banking company or a co-operative bank to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act).	Payment in cash of an amount exceeding ₹ 50,000 during any one day.
12.	A time deposit with, - (i) a banking company or a co-operative bank to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act); (ii) a Post Office; (iii) a Nidhi referred to in section 406 of the Companies Act, 2013; or (iv) a non-banking financial company which holds a certificate of registration under section 45-IA of the Reserve Bank of India Act, 1934, to hold or accept deposit from public.	Amount exceeding ₹ 50,000 or aggregating to more than ₹ 5 lakh during a financial year.
13.	Payment for one or more pre-paid payment instruments, as defined in the	Payment in cash or by way of a bank draft or pay order or

	policy guidelines for issuance and operation of pre-paid payment instruments issued by Reserve Bank of India under the Payment and Settlement Systems Act, 2007, to a banking company or a co-operative bank to which the Banking Regulation Act, 1949, applies (including any bank or banking institution referred to in section 51 of that Act) or to any other company or institution.	banker's cheque of an amount aggregating to more than ₹ 50,000 in a financial year.
14.	Payment as life insurance premium to an insurer as defined in the Insurance Act, 1938.	Amount aggregating to more than ₹ 50,000 in a financial year.
15.	A contract for sale or purchase of securities (other than shares) as defined in section 2(h) of the Securities Contracts (Regulation) Act, 1956.	Amount exceeding ₹ 1 lakh per transaction
16.	Sale or purchase, by any person, of shares of a company not listed in a recognised stock exchange.	Amount exceeding ₹ 1 lakh per transaction.
17.	Sale or purchase of any immovable property.	Amount exceeding ₹ 10 lakh or valued by stamp valuation authority referred to in section 50C at an amount exceeding ₹ 10 lakh
18.	Sale or purchase, by any person, of goods or services of any nature other than those specified at Sl. No. 1 to 17 of this Table, if any.	Amount exceeding ₹ 2 lakh per transaction:

Minor to quote PAN of parent or guardian

Where a person, entering into any transaction referred to in this rule, is a minor and who does not have any income chargeable to income-tax, he shall quote the PAN of his father or mother or guardian, as the case may be, in the document pertaining to the said transaction.

Declaration by a person not having PAN

Further, any person who does not have a PAN and who enters into any transaction specified in the Table above, shall make a declaration in Form No.60 giving therein the particulars of such transaction either in paper form or electronically under the electronic verification code

in accordance with the procedures, data structures, and standards specified by the Principal Director General of Income-tax (Systems) or Director General of Income-tax (Systems).

Non-applicability of Rule 114B

Also, the provisions of Rule 114B shall not apply to the following class or classes of persons, namely:-

- (i) the Central Government, the State Governments and the Consular Offices;
- (ii) the non-residents referred to in section 2(30) in respect of the transactions other than a transaction referred to at Sl. No. 1 or 2 or 4 or 7 or 8 or 10 or 12 or 14 or 15 or 16 or 17 of the Table.

Meaning of certain phrases:

	Phrase	Inclusion
(i)	Payment in connection with travel	Payment towards fare, or to a travel agent or a tour operator, or to an authorized person as defined in section 2(c) of the Foreign Exchange Management Act, 1999
(ii)	Travel agent or tour operator	A person who makes arrangements for air, surface or maritime travel or provides services relating to accommodation, tours, entertainment, passport, visa, foreign exchange, travel related insurance or other travel related services either severally or in package
(iii)	Time deposit	Any deposit which is repayable on the expiry of a fixed period.

- (7) Every person who receives any document relating to any transaction cited above shall ensure that the PAN is duly quoted in the document.
- (8) If there is a change in the address or in the name and nature of the business of a person, on the basis of which PAN was allotted to him, he should intimate such change to the Assessing Officer [Sub-section 5(d)]

(9) Intimation of PAN to person deducting tax at source

Every person who receives any amount from which tax has been deducted at source shall intimate his PAN to the person responsible for deducting such tax [Sub-section (5A)].

A person, however, shall intimate the General Index Register Number till such time PAN is allotted to him.

(10) Quoting of PAN in certain documents of tax deduction

Where any amount has been paid after deducting tax at source, the person deducting tax

shall quote the PAN of the person to whom the amount was paid in the following documents:

- (i) in the statement furnished under section 192(2C) giving particulars of perquisites or profits in lieu of salary provided to any employee;
- (ii) in all certificates for tax deducted issued to the person to whom payment is made u/s 203;
- (iii) in all returns made to the prescribed income-tax authority under section 206;
- (iv) in all statements prepared and delivered or caused to be delivered in accordance with the provisions of section 200(3) [Sub-section (5B)].

(11) **Requirement to intimate PAN and quote PAN not to apply to certain persons**

The above sub-sections (5A) and (5B) shall not apply to a person who –

- (i) does not have taxable income or
- (ii) who is not required to obtain PAN

if such person furnishes a declaration under section 197A in the prescribed form and manner that the tax on his estimated total income for that previous year will be nil.

(12) **Intimation of PAN to person collecting tax at source**

Likewise, every buyer or licensee or lessee referred to in section 206C shall intimate his PAN to the person responsible for collecting tax.

(13) **Quoting of PAN in certain documents of tax collection**

Every person collecting tax in accordance with section 206C shall quote PAN of every buyer or licensee or lessee referred to therein –

- (i) in all certificates furnished in accordance with the provisions of section 206C(5);
- (ii) in all returns prepared and delivered or caused to be delivered in accordance with the provisions of section 206C(5A) or section 206C(5B) to an income-tax authority;
- (iii) in all statements prepared and delivered or caused to be delivered in accordance with the provisions of section 206C(3).

(14) **Inter-changeability of PAN with the Aadhaar number**

Every person who is required to furnish or intimate or quote his PAN, may furnish or intimate or quote his Aadhaar Number in lieu of the PAN w.e.f. 1.9.2019, if he -

- has not been allotted a PAN but possesses the Aadhaar number

Aadhaar Number or PAN

- has been allotted a PAN and has intimated his Aadhaar number to prescribed authority in accordance with the requirement contained in section 139AA(2)

PAN would be allotted in prescribed manner to a person who has not been allotted a PAN but possesses Aadhaar number [Sub-section (5E)]

(15) **Quoting and authentication of PAN or Aadhaar number**

- Every person entering into such prescribed transactions is required to quote his PAN or Aadhaar number, as the case may be, in the documents pertaining to such transactions. Such persons are also required to authenticate such PAN or Aadhaar number in the prescribed manner [Sub-section (6A)].
- Every person receiving such document relating to transactions referred to in (a) has to ensure that PAN or Aadhaar number has been duly quoted in such document. They also have to ensure that such PAN or Aadhaar number is so authenticated. [Sub-section (6B)].

Accordingly, Rule 114BB has been inserted (w.e.f. expiry of 60 days from 10.5.2022) to prescribe that every person has to, at the time of entering into a transaction specified in column (2) of the Table below, quote his permanent account number or Aadhaar number, as the case may be, in documents pertaining to such transaction, and every person specified in column (3) of the said Table, who receives such document, has to ensure that the said number has been duly quoted and authenticated:

(1)	(2)	(3)
S. No.	Nature of transaction	Person
1.	Cash deposit or deposits aggregating to ₹ 20 lakhs or more in a financial year, in one or more account of a person with a bank or a co-operative bank or Post Office.	A bank or a co-operative bank or Post Master General of a Post Office.
2.	Cash withdrawal or withdrawals aggregating to ₹ 20 lakhs or more in a financial year, in one or more account of a person with a bank or a co-operative bank or Post Office	A bank or a co-operative bank or Post Master General of a Post Office.
3.	Opening of a current account or cash credit account by a person with a bank or a co-operative bank or Post Office	A bank or a co-operative bank or Post Master General of a Post Office.

Note – Quoting of PAN or Aadhaar number is, however, not required in case where the person depositing money as per Sl. No.1 or withdrawing money as per Sl. No.2 or opening a current account or cash credit account as per Sl. No.3 is the Central Government, the State Government or the Consular Office [Notification No. 105/2022 dated 1.9.2022]

(16) **Power to make rules**

The CBDT is empowered to make rules with regard to the following:

- (a) the form and manner in which an application for PAN may be made and the particulars to be given therein;
- (b) the categories of transactions in relation to which PAN or the Aadhaar number, as the case may be, is to be quoted on the related documents;
- (c) the categories of documents pertaining to business or profession in which PAN or the Aadhaar number, as the case may be, shall be quoted by every person;
- (d) the class or classes of persons to whom the provisions of this section shall not apply;

Accordingly, Rule 114AAB provides that the provisions of section 139A shall not apply:

- to a non-corporate non-resident, or a foreign company, who has made investment in a specified fund during the previous year;
- to a non-resident, being an **eligible foreign investor**, who has made transaction only in a capital asset referred to in section 47(viiab) (bonds or GDRs under section 115AC, rupee denominated bonds of an Indian company, derivative and other notified securities) which are listed on a recognised stock exchange located in any IFSC and the consideration on transfer of such capital asset is paid or payable in foreign currency, if the following conditions are satisfied:
 - (i) the non-resident **does not earn any income in India, other than the income from investment in the specified fund** during the previous year. Similarly, the eligible foreign investor **does not earn any income in India, other than the income from transfer of a capital asset referred to in section 47(viiab)** (bonds or GDRs under section 115AC, rupee denominated bonds of an Indian company, derivative and other notified securities)

Exemption from obtaining PAN

- (ii) any **income-tax due** on income of non-resident **has been deducted at source** and remitted to the Central Government by the specified fund at the rates specified in section 194LBB of the Act (**this condition is not applicable in case of eligible foreign investor**); and
- (iii) the non-resident/eligible foreign investor **furnishes the following details and documents** respectively to the specified fund/stock broker through which the transaction is made, respectively:-
 - (A) name, e-mail id, contact number;
 - (B) address in the country or specified territory outside India of which he is a resident;
 - (C) a declaration that he is a resident of a country or specified territory outside India; and
 - (D) Tax Identification Number in the country or specified territory of his residence and in case no such number is available, then a unique number on the basis of which the non-resident is identified by the Government of that country or the specified territory of which he claims to be a resident.

Specified Fund/Stock Broker to furnish such details received from non-resident: The specified fund/stock broker, as the case may be, has to electronically furnish a quarterly statement for the quarter of the financial year, in which the details and documents furnished by such non-resident/eligible foreign investor are received by it.

It also required to upload the declaration received from such non-resident/eligible foreign investor **within fifteen days from the end of the quarter of the financial year to which such statement relates.**

Meaning of Certain Terms:

Term	Meaning
Specified Fund	Any 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 Category II Alternative Investment Fund and is regulated under the Securities and Exchange Board of India

	(Alternative Investment Funds) Regulations, 2012 made under the Securities and Exchange Board of India Act, 1992 or International Financial Services Centres Authority Act, 2019 and which is located in any IFSC. - Category III Alternative Investment Fund and is regulated under the Securities and Exchange Board of India (Alternative Investment Fund) Regulations, 2012 or regulated under the International Financial Services Centres Authority (Fund Management) Regulations, 2022 - Specified fund referred in sub-clause (i) of clause (c) of <i>Explanation</i> to section 10(4D) [Refer Chapter 21 for detail definition]
Eligible Foreign Investor	A non-resident who operates in accordance with the guidelines issued by SEBI in its Circular No. IMD/HO/FPIC/CIR/P/2017/003 dated 04th January, 2017.
Stock Broker	A person having trading rights in a recognised stock exchange located in any IFSC and the member of such exchange.

- (e) the form and manner in which a person who has not been allotted a PAN shall make a declaration;
- (f) the manner in which PAN/Aadhaar number shall be quoted for transactions cited in (b) above;
- (g) the time and manner in which such transactions cited in (b) above shall be intimated to the prescribed authority.

(17) **Meaning of certain terms for the purpose of section 139A**

	Term	Definition
(i)	Aadhaar Number	An identification number issued to an individual by the Unique Identification Authority of India, after verification of the demographic information and biometric information submitted by the individual.

(ii)	Assessing Officer	Includes an income-tax authority who is assigned the duty of allotting PANs.
(iii)	Authentication	The process by which – (i) the PAN or Aadhaar number along with demographic information or biometric information of an individual is submitted to the income-tax authority or such other prescribed authority or agency for its verification; and (ii) Such authority or agency verifies the correctness or the lack thereof, on the basis of the information available with it.
(iv)	Permanent Account Number (PAN)	A number which the Assessing Officer may allot to any person for the purpose of identification and includes a PAN allotted under the new series i.e., PAN having 10 alphanumeric characters.

(18) **Penalty for failure to comply with the provisions of section 139A [Section 272B]**

Section	Default	Penalty
272B(1)	Failure to comply with the provisions of section 139A	₹ 10,000
272B(2)	Failure to quote PAN/Aadhaar number in any document referred to in section 139A(5)(c)	₹ 10,000 for each such default
	Failure to intimate PAN/Aadhaar number to persons deducting or collecting tax at source	
	Knowingly quoting or intimating a number which is false	
272B(2A)	Failure to quote PAN/Aadhaar Number in documents referred to in section 139A(6A) or authenticate such number in accordance with the provisions contained therein	₹ 10,000 for each such default
272B(2B)	(i) Failure to <u>ensure</u> that PAN/Aadhaar Number is duly quoted in the documents relating to transactions referred to in section 139A(5)(c) or section 139A(6A)	₹ 10,000 for each such default
	(ii) Failure to ensure that PAN/Aadhaar Number has been duly authenticated in respect of transactions referred to under section 139A(6A)	
Note – It is necessary to give an opportunity to be heard to the person on whom the penalty under section 272B is proposed to be imposed.		



15.20 QUOTING OF AADHAAR NUMBER [SECTION 139AA]

(1) **Mandatory quoting of Aadhaar Number [Section 139AA(1)]**

Every person who is eligible to obtain Aadhaar Number is required to mandatorily quote Aadhaar Number, on or after 1st July, 2017:

- (a) in the application form for allotment of Permanent Account Number (PAN)
- (b) in the return of income [Sub-section (1)]

(2) **Mandatory quoting of Enrolment ID, where person does not have Aadhaar Number [proviso to section 139AA(1)]**

If a person does not have Aadhaar Number, he is required to quote Enrolment ID of Aadhaar application form issued to him at the time of enrolment in the application form for allotment of Permanent Account Number (PAN) or in the return of income furnished by him.

Note - Enrolment ID means a 28 digit Enrolment Identification Number issued to a resident at the time of enrolment.

(3) **Intimation of Aadhaar Number to prescribed Authority [Section 139AA(2)]**

Every person who has been allotted PAN as on 1st July, 2017, and who is eligible to obtain Aadhaar Number, shall intimate his Aadhaar Number to the Principal Director General of Income-tax (Systems) or Principal Director of Income-tax (Systems) **on or before 31.3.2022**.

Notwithstanding the last date of intimating/linking of Aadhaar Number with PAN being 31.3.2022, it is clarified that it is mandatory to quote and link Aadhaar number while filing the return of income, either manually or electronically, unless specifically exempted in cases referred to in para (5) below.

Link Aadhaar with PAN

As per the proviso to section 139AA(2), in case of failure to intimate the Aadhaar Number, PAN would made inoperative after the date so notified i.e., 31.3.2022 in such manner as may be prescribed.

Manner of making PAN inoperative [Rule 114AAA]

Accordingly, Rule 114AAA specifies the manner of making PAN inoperative. Rule 114AAA(1) provides that where a person, who has been allotted PAN as on the 1.7.2017 and is required to intimate his Aadhaar number under section 139AA(2), has failed to intimate the same on or before the 31.3.2022, the PAN of such person shall become inoperative, and he shall be liable for payment of fee specified under section 234H read with Rule 114(5A).

Where the person has intimated his Aadhaar number after 31.3.2022, after payment of fee specified under section 234H read with Rule 114(5A), his PAN would become operative within 30 days from the date of intimation of Aadhaar number.

Further consequences of failure to intimate Aadhaar Number: As per section 114AAA(3), a person, whose PAN has become inoperative, shall be liable for further consequences for the period commencing from the date specified by the Board till the date it becomes operative, namely –

- (i) refund of any amount of tax or part thereof, due under the provisions of the Act shall not be made;
- (ii) interest shall not be payable on such refund for the period, beginning with the date specified and ending with the date on which it becomes operative;
- (iii) where tax is deductible under Chapter XVII-B in case of such person, such tax shall be deducted at higher rate, in accordance with provisions of section 206AA;
- (iv) where tax is collectible at source under Chapter XVII-BB in case of such person, such tax shall be collected at higher rate, in accordance with provisions of section 206CC

**No refund, no interest,
TDS/TCS at higher rate**

Date from which consequences specified in Rule 114AAA become effective [Circular No. 3/2023 dated 28.03.2023]

The CBDT has, vide this Circular, specified that the consequences specified above will be effective from 1.7.2023 and continue till the PAN becomes operative. A fee of ₹ 1,000 [discussed below in para (4)] will continue to apply to make the PAN operative by intimating the Aadhaar number. However, these consequences of PAN becoming inoperative shall not be applicable to those persons who have been provided exemption from intimating Aadhaar number.

- (4) **Fee for late intimation of Aadhaar Number i.e., after the notified date [Section 234H read with Rule 114(5A)]**

As per section 234H, where a person, who is required to intimate his Aadhaar Number under section 139AA(2), fails to do so on or before the notified date i.e., 31st March, 2022, he shall be liable to pay such fee, as may be prescribed, at the time of making intimation under section 139AA(2) after 31st March, 2022. However, such fee shall not exceed ₹ 1,000.

Accordingly, Rule 114(5A) provides that if such person fails to intimate his Aadhaar Number on or before the date notified in section 139AA(2) i.e., 31st March, 2022, then, at the time of

subsequent intimation of his Aadhaar number to the prescribed authority, such person would be liable to pay, by way of fee, an amount equal to,—

- (a) ₹ 500, in a case **where such intimation is made** within three months from the date referred in section 139AA(2) i.e., by 30.06.2022; and
- (b) ₹ 1,000, in all other cases.

However, if a person fails to link Aadhaar with PAN on or before 31.3.2022, his PAN shall become inoperative after the said date in the prescribed manner [Proviso to section 139AA(2)].

(5) **Provision not to apply to certain person or class of persons**

The provisions of section 139AA relating to quoting of Aadhaar Number would, however, not apply to such person or class or classes of persons or any State or part of any State as may be notified by the Central Government [Sub-section (3)].

Accordingly, the Central Government has, vide Notification No. 37/2017, dated 11.05.2017, effective from 01.07.2017, notified that the provisions of section 139AA relating to quoting of Aadhaar Number would **not** apply to an individual who does not possess the Aadhaar number or Enrolment ID and is:

- (i) residing in Assam, Jammu & Kashmir and Meghalaya;
- (ii) a non-resident as per Income-tax Act, 1961;
- (iii) of the age of 80 years or more at any time during the previous year;
- (v) not a citizen of India

**Exemption from
Quoting Aadhaar
number**

15.21 SCHEME FOR SUBMISSION OF RETURNS THROUGH TAX RETURN PREPARERS [SECTION 139B]

- (1) This section provides that, for the purpose of enabling any specified class or classes of persons to prepare and furnish their returns of income, the CBDT may notify a Scheme to provide that such persons may furnish their returns of income through a Tax Return Preparer authorised to act as such under the Scheme.
- (2) The Tax Return Preparer shall assist the persons furnishing the return in a manner that will be specified in the Scheme and shall also affix his signature on such return.

Tax Return Preparer

(3) A **Tax Return Preparer** can be an individual, other than

- (i) any officer of a scheduled bank with which the assessee maintains a current account or has other regular dealings.
- (ii) any legal practitioner who is entitled to practice in any civil court in India.
- (iii) an accountant (being a chartered accountant).
- (iv) an employee of the 'specified class or classes of persons'.

who has been authorised to act as a Tax Return Preparer under the Scheme.

(4) The "**specified class or classes of persons**" for this purpose means any person other than a company or a person whose accounts are required to be audited under section 44AB (tax audit) or under any other existing law, who is required to furnish a return of income under the Income-tax Act, 1961.

(5) The Scheme notified under the said section may provide for the following -

- (i) the manner in which and the period for which the Tax Return Preparers shall be authorised,
- (ii) the educational and other qualifications to be possessed, and the training and other conditions required to be fulfilled, by a person to act as a Tax Return Preparer,
- (iii) the code of conduct for the Tax Return Preparers,
- (iv) the duties and obligations of the Tax Return Preparers,
- (v) the circumstances under which the authorisation given to a Tax Return Preparer may be withdrawn, and
- (vi) any other relevant matter as may be specified by the Scheme.

(6) Accordingly, the CBDT has, in exercise of the powers conferred by this section, framed the Tax Return Preparer Scheme, 2006, which came into force from 1.12.2006.

Particulars	Contents
Applicability of the scheme	The scheme is applicable to all eligible persons.
Eligible person	Any person being an individual or a Hindu undivided family.
Tax Return Preparer	Any individual who has been issued a "Tax Return Preparer Certificate" and a "unique identification number" under this Scheme by the Partner Organisation to carry on the profession of preparing the returns of income in accordance

	with the Scheme. However, the following person are not entitled to act as Tax Return Preparer: (i) any officer of a scheduled bank with which the assessee maintains a current account or has other regular dealings. (ii) any legal practitioner who is entitled to practice in any civil court in India. (iii) an accountant.
Educational qualification for Tax Return Preparers	An individual, who holds a bachelor degree from a recognised Indian University or institution, or has passed the intermediate level examination conducted by the Institute of Chartered Accountants of India or the Institute of Company Secretaries of India or the Institute of Certified Management Accountants of India, shall be eligible to act as Tax Return Preparer.
Preparation of and furnishing the Return of Income by the Tax Return Preparer	An eligible person may, at his option, furnish his return of income under section 139 for any assessment year after getting it prepared through a Tax Return Preparer: However, the following eligible person (an individual or a HUF) cannot furnish a return of income for an assessment year through a Tax Return Preparer: (i) who is carrying out business or profession during the previous year and accounts of the business or profession for that previous year are required to be audited under section 44AB or under any other law for the time being in force; or (ii) who is not a resident in India during the previous year. An eligible person cannot furnish a revised return of income for any assessment year through a Tax Return Preparer unless he has furnished the original return of income for that assessment year through such or any other Tax Return Preparer. Also, a return of income which is required to be furnished in response to a notice under section 142(1)(i) or section 148 shall not be prepared and furnished through a Tax Return Preparer.

Note - It may be noted that as per section 139B(3), an employee of the “specified class or classes of persons” is not authorised to act as a Tax Return Preparer. Therefore, it follows that employees of companies and persons whose accounts are required to be audited under section 44AB or any other law for the time being in force (since they are not falling in the category of specified class or classes of persons), are eligible to act as Tax Return Preparers.



15.22 PERSONS AUTHORISED TO VERIFY RETURN OF INCOME [SECTION 140]

This section specifies the persons who are authorised to verify the return of income u/s 139.

	Assessee	Circumstance	Authorised Persons
1.	Individual	(i) In circumstances not covered under (ii), (iii) & (iv) below (ii) where he is absent from India (iii) Where he is mentally incapacitated from attending to his affairs (iv) where, for any other reason, it is not possible for the individual to verify the return	- the individual himself - the individual himself; or - any person duly authorised by him in this behalf holding a valid power of attorney from the individual (Such power of attorney should be attached to the return of income) - his guardian; or - any other person competent to act on his behalf - any person duly authorised by him in this behalf holding a valid power of attorney from the individual (Such power of attorney should be attached to the return of income)
2.	Hindu Undivided Family	(i) in circumstances not covered under (ii) and (iii) below (ii) where the karta is absent from India (iii) where the karta is mentally incapacitated from attending to his affairs	- the karta - any other adult member of the HUF - any other adult member of the HUF
3.	Company	(i) in circumstances not covered under (ii) to (vi) below (ii) (a) where for any unavoidable reason such managing director is not able to verify the return; or (b) where there is no managing director	- the managing director of the company - any director of the company or any other person as may be prescribed for this purpose [See Note below]

		(iii) Where the company is not resident in India (iv) (a) Where the company is being wound up (whether under the orders of a court or otherwise); or (b) where any person has been appointed as the receiver of any assets of the company (v) Where the management of the company has been taken over by the Central Government or any State Government under any law (vi) Where an application for corporate insolvency resolution process has been admitted by the Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016.	- the managing director of the company or a person who holds a valid power of attorney from such company to do so (such power of attorney should be attached to the return). - Liquidator - Liquidator - the principal officer of the company - insolvency professional appointed by such Adjudicating Authority
4.	Firm	(i) in circumstances not covered under (ii) below (ii) (a) where for any unavoidable reason such managing partner is not able to verify the return; or (b) where there is no managing partner.	- the managing partner of the firm - any partner of the firm, not being a minor - any partner of the firm, not being a minor
5.	LLP	(i) in circumstances not covered under (ii) below	- Designated partner

		(ii) (a) where for any unavoidable reason such designated partner is not able to verify the return; or (b) where there is no designated partner.	any partner of the LLP or any other person as may be prescribed for this purpose [See Note Below]
6.	Local authority	-	- the principal officer
7.	Political party [referred to in section 139(4B)]	-	- the chief executive officer of such party (whether he is known as secretary or by any other designation)
8.	Any other association	-	- any member of the association or the principal officer of such association
9.	Any other person	-	- that person or some other person competent to act on his behalf.

Note – In case of a company and LLP, "any other person" as may be prescribed for the purpose of verification of return of income, shall be the person, appointed by the adjudicating authority i.e., National Company Law Tribunal constituted under Section 408 of the Companies Act, 2013 for discharging the duties and functions of an interim resolution professional, a resolution professional, or a liquidator, as the case may be, under the Insolvency and Bankruptcy Code, 2016 and the rules and regulations made thereunder [Rule 12AA].



15.23 SELF ASSESSMENT [SECTION 140A]

(1) **Payment of tax, interest and fee before furnishing return of income**

Where any tax is payable on the basis of any return required to be furnished under section 139, or section 142 or section 148, after taking into account -

- (i) the amount of tax, already paid, under any provision of the Income-tax Act, 1961
- (ii) any tax deducted or collected at source;
- (iii) any relief of tax claimed under section 89;
- (iv) relief of tax claimed under section 90 or 90A;
- (v) deduction of tax claimed under section 91;

Self Assessment tax

(vi) any tax credit claimed to be set-off in accordance with the provisions of section 115JAA or section 115JD.

(vii) any tax or interest payable as per the provisions of section 191(2).

the assessee shall be liable to pay such tax together with interest and fee payable under any provision of this Act for any delay in furnishing the return or any default or delay in payment of advance tax before furnishing the return. The return shall be accompanied by the proof of payment of such tax, interest and fee.

(2) **Order of adjustment of amount paid by the assessee**

Where the amount paid by the assessee under section 140A(1) falls short of the aggregate of the tax, interest and fee as aforesaid, the amount so paid shall first be adjusted towards the fee payable and thereafter towards interest and the balance, if any, shall be adjusted towards the tax payable.

(3) **Interest under section 234A**

For the above purpose, interest payable under section 234A shall be computed on the amount of tax on the total income as declared in the return, as reduced by the amount of-

- (i) advance tax paid, if any;
- (ii) any tax deducted or collected at source;
- (iii) any relief of tax claimed under section 89;
- (iv) relief of tax claimed under section 90 or 90A;
- (v) deduction of tax claimed under section 91;
- (vi) any tax credit claimed to be set-off in accordance with the provisions of section 115JAA or section 115JD.

(4) **Interest under section 234B**

Interest payable under section 234B shall be computed on the assessed tax or on the amount by which the advance tax paid falls short of the assessed tax.

For this purpose, "assessed tax" means the tax on total income declared in the return as reduced by –

- (i) the amount of tax deducted or collected at source;
- (ii) any relief of tax claimed under section 89;

- (iii) relief of tax claimed under section 90 or 90A
- (iv) deduction of tax claimed under section 91
- (v) any tax credit claimed to be set-off in accordance with the provisions of section 115JAA or section 115JD.

(5) **Self-assessment tax deemed to have been paid towards regular assessment**

After regular assessment under section 143 or section 144, any amount paid under section 140A shall be deemed to have been paid towards such regular assessment or assessment.

(6) **Consequence of failure to pay tax, interest or fee**

If any assessee fails to pay the whole or any part of such tax or interest or fees, he shall be deemed to be an assessee in default in respect of such tax or interest or fees remaining unpaid and all the provisions of this Act shall apply accordingly.



15.24 UPDATED RETURN OF INCOME [SECTION 139(8A)]

- (1) **Option to furnish updated return:** Any person may furnish an updated return of his income or the income of any other person in respect of which he is assessable, for the previous year relevant to the assessment year at any time within 24 months from the end of the relevant assessment year.

Updated return can be filed within 24 months from the end of RAY

This is irrespective of whether or not he has furnished a return under section 139(1) or belated return under section 139(4) or revised return under section 139(5) for that assessment year.

For example, an updated return for A.Y. 2024-25 can be filed till 31.3.2027.

- (2) **Non applicability of the provisions of updated return:** The provisions of updated return would not apply, if the updated return of such person for that assessment year –
- (i) is a loss return; or
 - (ii) has the effect of decreasing the total tax liability determined on the basis of return furnished under section 139(1) or section 139(4) or section 139(5); or
 - (iii) results in refund or increases the refund due on the basis of return furnished under section 139(1) or section 139(4) or section 139(5).

Additionally, no updated return shall be furnished in the following scenarios –

S. No.	Scenarios	updated return can not be furnished
(i)	In case of a person - Where a search has been initiated under section 132 or books of account or other documents or any assets are requisitioned under section 132A. - Where a survey has been conducted under section 133A (other than survey conducted in relation to TDS or TCS) - Where a notice has been issued to the effect that: - any money, bullion, jewellery or valuable article or thing, seized or requisitioned under section 132 or section 132A in case of any other person belongs to such person; or - any books of account or documents, seized or requisitioned under section 132 or section 132A in the case of any other person, pertain or pertains to, or any other information contained therein, relate to, such person.	for the Assessment Year relevant to the Previous Year in which the search is initiated or survey is conducted, or requisition is made and for any A.Y. preceding such assessment year.
(ii)	Where a person has furnished an updated return under this sub-section for the relevant assessment year.	for such relevant Assessment Year
(iii)	Where any proceeding for assessment, reassessment, recomputation, or revision of income under this Act is pending or has been completed for the relevant assessment year.	

(iv)	Where the Assessing Officer has information in his possession for the relevant assessment year in respect of a person under - the Smugglers, and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 or - the Prohibition of Benami Property Transactions Act, 1988 or - the Prevention of Money laundering Act, 2002 or - the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 and the same has been communicated to him, prior to the date of furnishing of updated return.	for such relevant Assessment Year.
(v)	Where information for the relevant assessment year has been received under an agreement referred to in section 90 or section 90A in respect of such person and the same has been communicated to him, prior to the date of furnishing of updated return.	
(vi)	If any prosecution proceedings under the Chapter XXII have been initiated for the relevant assessment year in respect of a person prior to the date of furnishing of return under this sub-section.	

- (3) **Updated return can be filed if original return is a loss return and updated return is a return of income:** If any person has a loss in any previous year and has furnished a return of loss on or before the due date of filing return of income under section 139(1), he shall be allowed to furnish an updated return if such updated return is a return of income.

For example, if Mr. X has furnished his return of loss for A.Y. 2023-24 on 31.5.2023 consisting of ₹ 5,00,000 as business loss, he can furnish an updated return for A.Y. 2023-24 upto 31.3.2026, if such updated return is a return of income.

- (4) **Updated return to be furnished for subsequent previous year in case (3) above** - If the loss or any part thereof carried forward under Chapter VI or unabsorbed depreciation carried forward under section 32(2) or tax credit carried forward under section 115JD is to be reduced for any subsequent previous year as a result of furnishing of updated return of income for a

previous year, an updated return is required to be furnished for each such subsequent previous year.

- (5) Updated return for the relevant assessment year cannot be furnished by such person or belongs to such class of persons, as may be notified by the Board in this regard.



15.25 TAX ON UPDATED RETURN [SECTION 140B]

- (1) **Payment of tax, additional tax, interest and fee before furnishing an updated return of income**

- (a) **In a case where no return is furnished earlier [Section 140B(1)]**

- (I) **Tax to be paid along with interest and fee before furnishing of updating return:**

Where no return of income under section 139(1) or 139(4) has been furnished by an assessee and tax is payable, on the basis of updated return to be furnished by such assessee under section 139(8A), the assessee would be liable to pay such tax together with interest and fee payable under

No return filed earlier

any provision of this Act for any delay in furnishing the return or any default or delay in payment of advance tax, along with the payment of additional income-tax computed under section 140B(3), before furnishing the return.

The updated return shall be accompanied by proof of payment of such tax, additional income-tax, interest and fee.

- (II) **Manner of computation of tax payable on the basis of updated return**

The tax payable is to be computed after taking into account the following -

- (i) the amount of tax, if any, already paid as advance tax;
- (ii) any tax deducted or collected at source;
- (iii) any relief of tax claimed under section 89;
- (iv) any relief of tax or deduction of tax claimed under section 90 or section 91 on account of tax paid in a country outside India;
- (v) any relief of tax claimed under section 90A on account of tax paid in any specified territory outside India referred to in that section; and

- (vi) any tax credit claimed to be set off in accordance with the provisions of section 115JAA or section 115JD.

(III) Interest under section 234A if no earlier return has been furnished

In a case, where no earlier return has been furnished, the interest payable under section 234A has to be computed on the amount of the tax on the total income as declared in the updated return under section 139(8A), in accordance with the provisions of section 140A(1A).

(b) In a case where return is furnished earlier [Section 140B(2)]

(I) Tax to be paid along with interest before furnishing updated return:

Where, return of income under section 139(1) or 139(4) or 139(5) has been furnished by an assessee and tax is payable, on the basis of updated return to be furnished by such assessee under section 139(8A), the assessee would be liable to pay such tax together with interest payable under any provision of this Act for any default or delay in payment of advance tax, along with the payment of additional income-tax computed under section 140B(3) **(as reduced by the amount of interest paid under the provisions of this Act in the earlier return)** before furnishing the return.

Return filed earlier

The updated return shall be accompanied by proof of payment of such tax, additional income-tax and interest.

(II) Manner of computation of tax payable on the basis of updated return:

The tax payable has to be computed after taking into account the following -

- (i) the amount of relief or tax referred to in section 140A(1), the credit for which has been taken in the earlier return;
- (ii) **tax deducted or collected at source**, in accordance with the provisions of Chapter XVII-B, on any income which is subject to such deduction or collection and which is taken into account in computing total income and **which has not been included in the earlier return;**
- (iii) **any relief of tax** or deduction of tax claimed under section 90 or section 91 on account of tax paid in a country outside India on such income **which has not been included in the earlier return;**
- (iv) **any relief of tax** claimed under section 90A on account of tax paid in any specified territory outside India referred to in that section on such income **which has not been included in the earlier return;**

- (v) **any tax credit claimed**, to be set off following the provisions of section 115JAA or section 115JD, **which has not been claimed in the earlier return**; and

The aforesaid tax would be increased by the amount of refund, if any, issued in respect of such earlier return.

(III) Interest under section 234B where earlier return has been furnished [Section 140B(4)]

In a case where an earlier return has been furnished, **interest payable under section 234B has to be computed on the assessed tax**.

“Assessed tax” means the tax on the total income as declared in the updated return to be furnished under section 139(8A), after taking into account the following:

- (i) the amount of relief or tax referred to in section 140A(1), the credit for which has been claimed in the earlier return, if any;
- (ii) tax deducted or collected at source, in accordance with the provisions of Chapter XVII-B, on any income which is subject to such deduction or collection and which is taken into account in computing such total income, which has not been included in the earlier return;
- (iii) any relief of tax or deduction of tax claimed under section 90 or section 91 on account of tax paid in a country outside India on such income which has not been included in the earlier return;
- (iv) any relief of tax claimed under section 90A on account of tax paid in any specified territory outside India referred to in that section on such income which has not been included in the earlier return;
- (v) any tax credit claimed, to be set off in accordance with the provisions of section 115JAA or section 115JD, which has not been claimed in the earlier return; and

Assessed Tax

The aforesaid tax would be increased by the amount of refund, if any, issued in respect of such earlier return.

(IV) Interest under section 234C if earlier return has been furnished

Interest payable under section 234C, where an earlier return has been furnished, has to be computed after taking into account the total income furnished in the updated return as returned income.

(2) Additional income-tax payable at the time of updated return [Section 140B(3)]

The additional income-tax payable at the time of furnishing the updated return under section 139(8A) would be –

S. No.	Time of furnishing updated return	Additional Income-tax Payable
(i)	If such return is furnished after expiry of the time available under section 139(4) or 139(5) of the assessment year and <u>before completion of the period of 12 months</u> from the end of the relevant assessment year;	25% of aggregate of tax and interest payable, as determined in (1) above
(ii)	If such return is furnished <u>after the expiry of 12 months</u> from the end of the relevant assessment year <u>but before completion of the period of 24 months</u> from the end of the relevant assessment year.	50% of aggregate of tax and interest payable, as determined in (1) above

Computation of Additional income-tax

For the purpose of computation of Additional income-tax -

- tax would include surcharge and cess, by whatever name called, on such tax.
- the interest payable would be interest chargeable under any provision of the Act, on the income as per updated return furnished under section 139(8A), as reduced by interest paid in the earlier return, if any.

However, the interest paid in the earlier return would be considered to be nil, if no earlier return has been furnished.

Note - An updated return furnished under section 139(8A) would be regarded as defective return as referred u/s 139(9) unless such return of income is accompanied by the proof of payment of tax as required under section 140B.

(3) Power to CBDT to issue guidelines

In case of any difficulty arises in giving effect to the provisions of this section, the CBDT may issue guidelines for the purpose of removing the difficulty, with the approval of the Central Government. Every guideline issued shall be laid before each House of Parliament.

ILLUSTRATION

Mr. X would like to furnish his updated return for the A.Y. 2022-23. In case he furnished his updated return of income, he would be liable to pay ₹ 2,50,000 towards tax and ₹ 35,000 towards interest after adjusting tax and interest paid at the time filing earlier return. You are required to examine whether Mr. X can furnish updated return-

- (i) as on 31.3.2024
- (ii) as on 28.2.2025
- (iii) as on 31.5.2025

If yes, compute the amount of additional income-tax payable by Mr. X at the time of filing his updated return.

Would your answer be different with respect to filing of updated return in case of (ii) above, where he has received a notice under section 147 for the said A.Y. 2022-23 on 23.7.2024.

SOLUTION

Mr. X may furnish an updated return of his income for A.Y. 2022-23 at any time within 24 months from the end of the relevant assessment year i.e., 31.3.2025.

Accordingly, Mr. X can furnish updated return for A.Y. 2022-23 as on 31.3.2024 and on 28.2.2025. However, he cannot furnish such return as on 31.5.2025, since such date falls after 31.3.2025.

Mr. X would be liable to pay additional income-tax

- @25% of tax and interest payable, if updated return is furnished after the expiry of the time limit available under section 139(4) or 139(5) i.e., 31st December 2022 and before the expiry of 12 months from end of relevant assessment year i.e., 31.3.2024.
- @50% of tax and interest payable, if updated return is furnished after the expiry of 12 months from end of relevant assessment year i.e., after 31.3.2024 but before the expiry of 24 months from end of relevant assessment year i.e., 31.3.2025.

Accordingly, Mr. X is liable to pay additional income-tax in case he furnished his updated return as on

- (i) 31.3.2024 - ₹ 71,250 [25% of 2,85,000, being tax of ₹ 2,50,000 plus interest of ₹ 35,000]
- (ii) 28.2.2025 of ₹ 1,42,500 [50% of 2,85,000, being tax of ₹ 2,50,000 plus interest of ₹ 35,000]

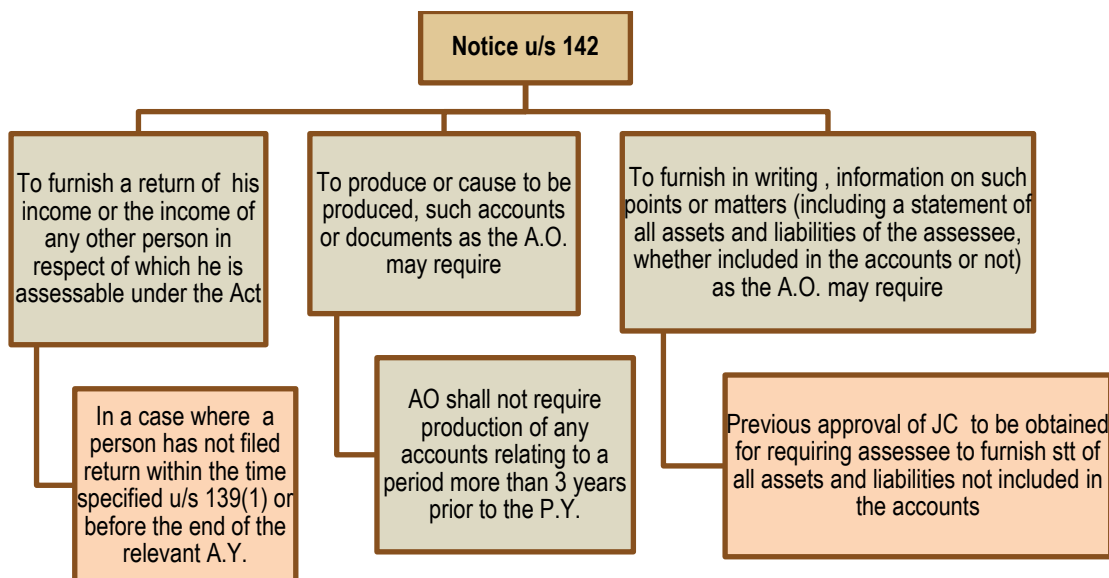
He cannot furnish updated return where he has received notice u/s 147, since proceeding for income escaping assessment for the A.Y. 2022-23 are pending.



15.26 INQUIRY BEFORE ASSESSMENT [SECTION 142]

A. Issue of Notice to any person for making assessment [Section 142(1)]

For the purpose of making an assessment, the Assessing Officer may serve on any person who has made a return under section 139 or in whose case the time allowed under section 139(1) for furnishing the return has expired, a notice under section 142. The purposes for which such notice can be served are depicted in the following diagram:



Notes – (1) Notice to furnish return of income may also be served by the prescribed income-tax authority in addition to the Assessing Officer. Accordingly, Rule 12F, inserted w.e.f. 13.9.2021 to provide that the prescribed income-tax authority shall be an income-tax authority not below the rank of Income-tax Officer who has been authorised by the CBDT to act as such authority for the purposes of this clause.

(2) It may be noted that the time-limit provided under section 153(1) for completion of assessment is 21 months/18 months/12 months/9 months [Refer table on time limits for completion of assessment given later in this chapter], as the case may be, from the end of the assessment year in which the income was first assessable. Therefore, since assessment has to be completed within the said period, it appears that notice under section 142(1) should also be issued within that period.

B. Inquiry by Assessing Officer [Section 142(2)]

For the purpose of obtaining full information in respect of income or loss of any person, the Assessing Officer may make such inquiry as he considers necessary.



15.27 SPECIAL AUDIT AND INVENTORY VALUATION UNDER SECTION 142

Sub-sections (2A), (2B), (2C), and (2D) of section 142 contain the statutory provisions relating to the conduct of audit.

(1) **Basis for direction to get accounts audited or inventory valued:** *If at any stage of the proceedings before him, the Assessing Officer, having regard*

- *to the nature and complexity of the accounts,*
- *volume of the accounts,*
- *doubts about the correctness of the accounts,*
- *multiplicity of transactions in the accounts or*
- *specialized nature of business activity of the assessee, and*
- *the interests of the revenue,*

is of the opinion that it is necessary so to do, he may, with the previous approval of the Principal Chief Commissioner or Chief Commissioner or the Principal Commissioner or Commissioner, direct the assessee to get either or both of the following -

- *the accounts audited by an accountant and furnish a report of such audit.*
- *the inventory valued by a cost accountant and furnish a report of such inventory valuation.*

Opportunity of being heard is to be given to the assessee before directing to get the accounts audited or inventory valued.

'Accountant' means a 'chartered accountant' within the meaning of the Chartered Accountants Act, 1949.

"Cost Accountant" means a cost accountant as defined in the Cost and Works Accountants Act, 1959 and who holds a valid certificate of practice under the said Act.

(2) **Accountant and cost accountant nominated by the Principal Chief Commissioner/Chief Commissioner/Principal Commissioner/Commissioner** - *The accountant by whom the audit should be carried out and the cost accountant by whom inventory should be valued are nominated by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner of Income-tax specifically for the*

purpose. The assessee is required to furnish audit report and inventory valuation report in the prescribed form duly signed and verified by such accountant or cost accountant, respectively and setting forth such other particulars as may be prescribed and such other particulars as the Assessing Officer may require.

- (3) **Special audit may be directed even if accounts are audited under any other law** - The Assessing Officer is empowered to direct the audit to be carried out in the case of any particular assessee even if the accounts of the assessee have already been audited under any other law for the time being in force or otherwise.
- (4) **Time limit** - The audit report or **inventory valuation report**, or both must be furnished to Assessing Officer by the assessee within the period specified by the Assessing Officer in his order.

The Assessing Officer is, however, entitled, *suo motu* or on receipt of an application made in this behalf by the assessee for any good any sufficient reason to extend the time-limit by such further period or periods as he deems fit. Further, the aggregate of the period originally fixed and the period or periods so extended **should not exceed 180 days** in any case. This time of 180 days must be reckoned from the date on which the Assessing Officer's direction is received by the assessee.

- (5) **Expenses of special audit or inventory valuation to be paid by the Central Government** - Where the direction for special audit or **inventory valuation** is issued by the Assessing Officer, the expenses of, and incidental to, such **special audit or inventory valuation, including remuneration of the Accountant or Cost Accountant**, shall be determined by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner in accordance with the prescribed guidelines. **The expenses so determined shall be paid by the Central Government.**

Expenses paid by CG

Rule 14B lays down the guidelines for the purposes of determining expenses for audit under section 142(2A). Every Chief Commissioner would maintain a panel of accountants, out of persons referred to in *Explanation* to section 288(2), for the purposes of section 142(2A). The expenses of, and incidental to, audit (including the remuneration of the accountant, qualified assistants, semi-qualified and other assistants who may be engaged by such Accountant) should not be less than ₹ 3,750 and not more than ₹ 7,500 for every hour of the period as specified by the Assessing Officer under section 142(2C). Such period shall be specified in terms of the number of hours required for completing the report.

- (6) **Assessee to be given an opportunity of being heard** - The assessee should, however, be given an opportunity of being heard in respect of any material gathered on the basis of –

- (i) any inquiry under section 142(2); or
- (ii) any audit or inventory valuation under section 142(2A)

which is proposed to be utilized for the purposes of the assessment. If, however, the assessment is in nature of a best judgment assessment under section 144, it is not obligatory for the Assessing Officer to give the assessee an opportunity to be heard, before passing the assessment order on the basis of the inquiry conducted under section 142(2) or audit report or inventory valuation report under section 142(2A).

- (7) **Consequence of failure to get special audit done** - In any case, where the assessee is directed to get audit done or get inventory valued and the assessee fails to do so, the Assessing Officer is entitled to make a best judgment assessment under section 144 in addition to imposing penalty or taking such steps as may be necessary under the law.

Would the assessee be liable to consequences for failure to get the accounts audits if the nominated Chartered Accountant refused to audit the accounts of the assessee? [Swadeshi Polytex Ltd. v. ITO [1983] 144 ITR 171 (SC)]

In a case where a Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner issued instructions under section 142(2A) nominating a Chartered Accountant for auditing the assessee's accounts and though the concerned assessee was willing to produce the records, the concerned Chartered Accountant refused to audit the accounts, a question arose as to whether there was a failure on the assessee's part to comply with the directions under section 142(2A) and consequently the best judgement assessment could be made under section 144(b).

The Supreme Court held that if for a frivolous reason the Chartered Accountant **declined to undertake the audit of the assessee's accounts, the assessee could not be held responsible.** In such a case, there was no default or failure to comply with the direction issued under section 142(2A) on the assessee's part so as to attract the provisions of section 144(b). The best judgement made by the Assessing Officer was set aside with the directions to appoint another Chartered Accountant within one month to get the accounts audited.

Note - The above ruling is with respect to a special audit refused by a nominated Chartered Accountant. The rationale of the said Apex Court ruling can also be applied in case inventory valuation is refused by the Cost Accountant.



15.28 POWER OF ASSESSING OFFICER TO MAKE A REFERENCE TO THE VALUATION OFFICER [SECTION 142A]

- (1) **Reference to the Valuation Officer** - As per section 142A, the Assessing Officer may, for the purposes of assessment or reassessment, make a reference to a Valuation Officer to estimate the value, including fair market value, of any asset, property or investment and submit the report to him.

Section 142A further clarifies that the Assessing Officer may make a reference to the Valuation Officer whether or not he is satisfied about the correctness or completeness of the accounts of the assessee.

- (2) **Estimation of value of asset, property or investment** - The Valuation Officer is required to estimate the value of the asset, property or investment after taking into account the evidence produced by the assessee and any other evidence in his possession gathered, after giving an opportunity of being heard to the assessee.

If the **assessee does not co-operate** or comply with the directions of the Valuation Officer he may, **estimate the value** of the asset, property or investment **to the best of his judgment**.

- (3) **Time limit for submission of valuation report** - The Valuation Officer shall send a copy of his estimate to the Assessing Officer and the assessee **within a period of six months from the end of the month in which the reference is made**. Thus, a specific time limit has now been provided, within which the Valuation Officer has to send his report to the Assessing Officer.
- (4) **Completion of assessment by taking into account valuation report** - On receipt of the report from the Valuation Officer, the Assessing Officer may, after giving the assessee an opportunity of being heard, take into account such report in making the assessment or reassessment.



15.29 FACELESS INQUIRY & VALUATION [SECTION 142B]

Section 142B empowers the Central Government to notify scheme for faceless processes for eliminating physical interface.

- (1) **Faceless scheme [Section 142B(1)]** - The Central Government is empowered to make a scheme (faceless inquiry and valuation scheme) by notification in Official Gazette for the purpose of:

- a. issuing notice under section 142(1) or
- b. making inquiry to obtain full information in respect of the income or loss of any person under section 142(2) or
- c. directing the assessee to get the accounts audited by an accountant or inventory valuation by a cost accountant under section 142(2A) or
- d. making a reference to the valuation officer to estimate the value of any asset, property or investment under section 142A.

The objective of the scheme is to impart greater efficiency, transparency and accountability by:

- (i) eliminating the interface between the income-tax authority or Valuation Officer and the assessee or any person to the extent technologically feasible;
 - (ii) optimising utilisation of the resources through economies of scale and functional specialisation;
 - (iii) introducing a team-based issuance of notice or making of enquiries or issuance of directions or valuation with dynamic jurisdiction.
- (2) **Applicability or non-applicability of other provisions of the Act [Section 142B(2)]** - The Central Government may, for the purpose of giving effect to the Faceless Inquiry and Valuation Scheme, by notification in the Official Gazette, direct that any provision of this Act shall not apply or shall apply with such modification, exceptions and adaptations as necessary.
- (3) **Notification issued above to be laid before each House of Parliament [Section 142B(3)]** Every such notification issued by the Central Government either under sub section (1) or (2) of the section 142B has to be laid before each House of Parliament as soon as possible.

Accordingly, Central Government has issued Notification no. 19/2022 dated 30.3.2022, to provide that the Faceless Inquiry and Valuation for the purpose of -

- a. issuing notice under section 142(1) or
- b. making inquiry to obtain full information in respect of the income or loss of any person under section 142(2) or
- c. directing the assessee to get the accounts audited by an accountant or inventory valuation by a cost accountant under section 142(2A) or

- d. making a reference to the valuation officer to estimate the value of any asset, property or investment under section 142A

shall be made in a faceless manner, through automated allocation, in accordance with and to the extent provided in section 144B with reference to making the faceless assessment of total income or loss of assessee.

“Automated allocation” means an algorithm for randomised allocation of cases by using suitable technological tools, including artificial intelligence and machine learning, with a view to optimise the use of resources.



15.30 ASSESSMENT [SECTION 143]

(1) **Summary assessment [Section 143(1)]**

Where a return has been made under section 139 or in response to a notice under section 142(1), such return shall be processed under section 143(1). Thus, summary assessment, commonly referred to as intimation, is a computerised preliminary assessment or processing of the return of income filed by an assessee.

- (i) Section 143(1)(a) provides **for computation of the total income of an assessee after making the following adjustments** to the returned income:-
- (a) any arithmetical error in the return;
 - (b) an incorrect claim, if such incorrect claim is apparent from any information in the return;
 - (c) Disallowance of loss claimed, if return of the previous year for which set-off is claimed was filed beyond due date u/s 139(1);
 - (d) Disallowance of expenditure or increase in income indicated in the audit report but not taken into account in computing the total income in the return;
 - (e) Disallowance of deduction claimed under section 10AA or under any of the provisions of Chapter VI-A under the heading "C.—Deductions in respect of certain incomes", if return is filed beyond due date u/s 139(1);

Intimation

However, before making any such adjustments, in the interest of natural justice, intimation has to be given to the assessee requiring him to respond to such adjustments. Such intimation may be in writing or through electronic mode. The

response received, if any, has to be duly considered before effecting any adjustment. However, **if no response is received within 30 days of the issue of such intimation**, the processing shall be carried out incorporating the adjustments.

- (ii) **The term “an incorrect claim apparent from any information in the return” shall mean** such claim on the basis of an entry, in the return, –
- (a) of an item, which is inconsistent with another entry of the same or some other item in such return;
 - (b) in respect of which, information required to be furnished to substantiate such entry, has not been furnished in the return;
 - (c) in respect of a deduction, where such deduction exceeds specified statutory limit which may have been expressed as monetary amount or percentage or ratio or fraction.
- (iii) **Tax, interest and fee should be computed** on the basis of the total income computed after making the adjustments in (i) above.
- (iv) The sum payable by, or the amount of refund due to, the assessee shall be determined after adjustment of such tax, interest and fee, if any, so computed by any tax deducted at source, any tax collected at source, any advance tax paid, any relief allowable under section 89, any relief allowable under an agreement under section 90 or section 90A, or any relief allowable under section 91, any rebate under section 87A, any tax paid on self-assessment and any amount paid otherwise by way of tax, interest or fee.
- (v) Based on the above adjustments, **an intimation** shall be prepared or generated and **sent to the assessee within a period of nine months from the end of the financial year in which the return was made**. The intimation shall specify the sum determined to be payable by, or the amount of refund due to, the assessee.
- (vi) If any amount is payable by the assessee, the communication sent to the assessee is considered a 'Notice of Demand'. The assessee must pay the tax liability within 30 days of receiving the intimation; otherwise, he will be treated as an assessee-in-default. Where any amount of refund is due to the assessee, the same shall be granted to the assessee.

Intimation order can be issued within 9 months from the end of F.Y. in which return furnished

- (vii) An **intimation shall also be sent** to the assessee in a case where **the loss declared in the return by the assessee is adjusted** but **no tax, interest or fee is payable by, or no refund is due to, him**.
- (viii) On the other hand, where there is neither any adjustment nor any tax due from or refund payable to the assessee, the acknowledgement of the return shall be deemed to be the intimation under section 143(1).
- (ix) The scheme contemplates avoiding human interface and therefore, provides for computerised processing of returns for making the above adjustments i.e., the software will be designed to detect arithmetical inaccuracies and internal inconsistencies and make appropriate adjustments in the computation of the total income.

(2) **Mandatory processing of return of income before issuance of assessment order [Section 143(1D)]**

- (i) Section 143(1) requires processing of return of income filed under section 139(1) or in response to a notice issued under section 142(1).
- (ii) An intimation has to be prepared or generated and sent to the assessee specifying the sum payable or the refund due, to the assessee.
- (iii) No intimation can be sent after the expiry of nine months from the end of the financial year in which the return is made. This is provided in the second proviso to section 143(1).
- (iv) In respect of returns furnished for A.Y.2017-18 or thereafter, processing of a return under section 143(1) is necessary even where a notice has been issued to the assessee under section 143(2).

(3) **Regular assessment/Scrutiny assessment [Section 143(2)/(3)]** - If the Assessing Officer or the prescribed income-tax authority [i.e., an income-tax authority not below the rank of an Income-tax Officer who has been authorised by the CBDT to act as income-tax authority] considers it necessary or expedient to ensure that the assessee has not understated his income or has not computed excessive loss or has not underpaid his tax in any manner he can **issue a notice for**

making the assessment in the normal manner as at present. This will be a scrutiny assessment.

It may be noted that notice for detailed scrutiny under section 143(2) **cannot be served after the expiry of 3 months from the end of the financial year** in which the return of income is furnished.

Notice for assessment u/s 143(2) to be issued within 3 months from the end of F.Y. in ROI is furnished

On the day specified in the notice issued under section 143(2), or as soon afterwards as may be, after hearing such evidence as the assessee may produce and such other evidence as the Assessing Officer may require on specified points, and after taking into account all relevant material which he has gathered, the Assessing Officer shall, by an order in writing, make an assessment of total income or loss of the assessee, and determine the sum payable by him or refund of any amount due to him on the basis of such assessment.

It is also obligatory for research associations, news agency, associations and other institutions exempt under clauses (21), (22B), (23A) and (23B) of section 10 to file their returns of income. In these cases, the Assessing Officer cannot make an assessment denying exemption under section 10 without intimating the Central Government or the prescribed authority of the contravention of the provisions of the relevant sections and till the approval granted to these research associations, news agency, associations and other institutions has been withdrawn or notification rescinded [First proviso to section 143(3)].

If any trust or institution or educational institution or hospital or medical institution referred in section 10(23C)(iv), (v), (vi) and (via) or any trust or institution referred to in section 11, has committed any "specified violation" as mentioned under section 10(23C) or under section 12AB(4), the Assessing Officer shall

- send a reference to the Principal Commissioner or Commissioner to withdraw the approval or registration, as the case may be and
- no order making an assessment of the total income or loss of such fund or institution or trust or any university or other educational institution or any hospital or other medical institution shall be made by him without giving effect to the order passed by the Principal Commissioner or Commissioner either cancelling the approval or refusing to cancel the approval of such trust or institution or educational institution or hospital or medical institution under section 10(23C) or section 12AB(4) [Second proviso to section 143(3)].

The time period for completing the assessment in such cases will exclude the period between the date on which the Assessing Officer makes a reference to the Principal Commissioner or Commissioner and date on which copy of the order is received by the Assessing Officer [Clause (xiii) of Explanation 1 of section 153].

Meaning of Specified Violation: The following are considered as Specified Violation

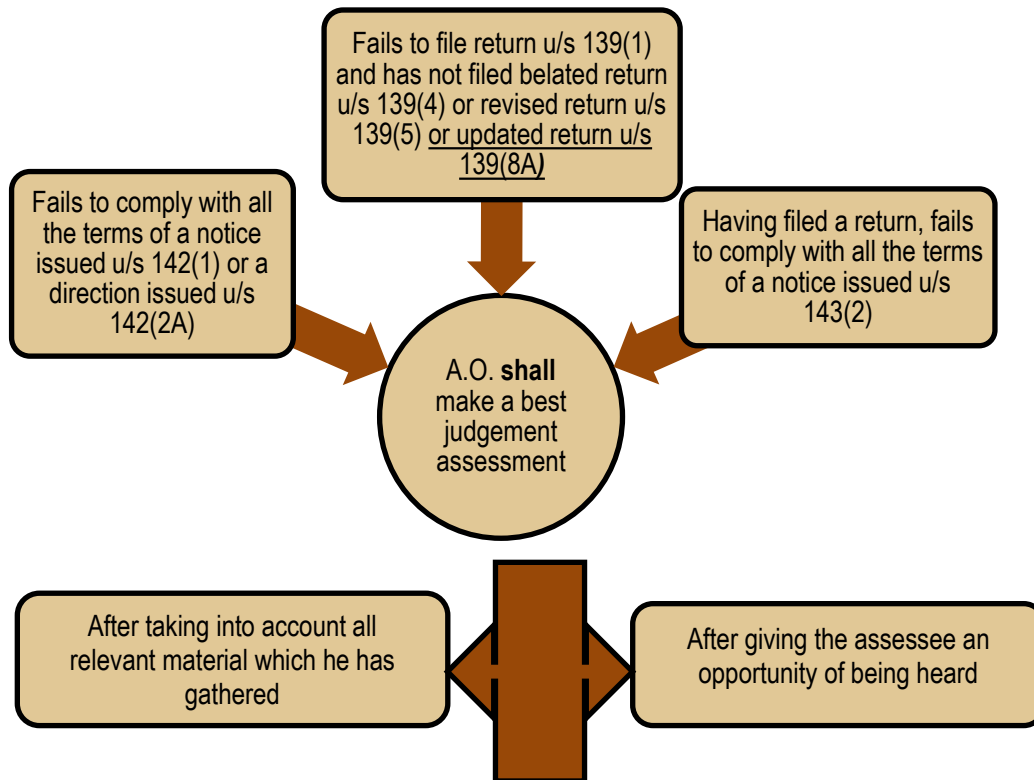
- (a) where any income derived from property held under trust, wholly or in part for charitable or religious purposes, **has been applied, other than for the objects of the trust or institution**; or
- (b) the trust or institution has **income from profits and gains of business which is not incidental** to the attainment of its objectives **or separate books of account are not maintained** by such trust or institution in respect of the business which is incidental to the attainment of its objectives; or
- (c) the trust or institution has **applied** any part of its income from the property held under a trust for **private religious purposes**, which does not enure for the benefit of the public; or
- (d) the trust or institution established for charitable purpose created or established after the commencement of this Act, has **applied** any part of its income for the benefit of any **particular religious community or caste**; or
- (e) any activity being carried out by the trust or institution—
 - (i) **is not genuine**; or
 - (ii) **is not being carried out in accordance with all or any of the conditions** subject to which it was registered; or
- (f) the trust or institution **has not complied with the requirement of any other law**, and the order, direction or decree, by whatever name called, holding that such non-compliance has occurred, has either not been disputed or has attained finality.
- (g) **where the registration application filed by the trust or institution is incomplete or contains false or incorrect information.**

Specified Violation

Note – *The situations mentioned in (c) and (d) are mentioned only in the case of a trust or institution registered under section 11.*

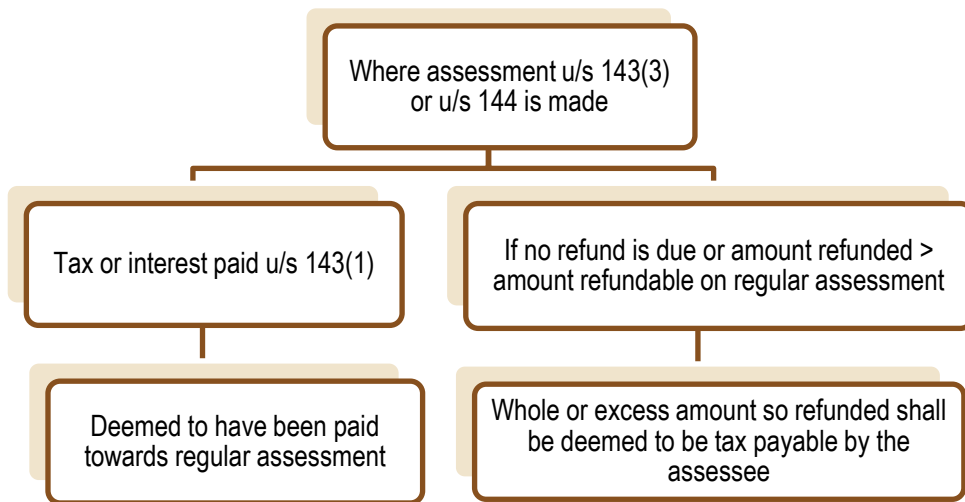
The Assessing Officer is empowered to send a proposal to the Central Government recommending withdrawal of approval of research association, university, college or other institution approved under section 35(1)(ii) and (iii), if the activities are not being carried out in accordance with all or any of the conditions subject to which any of the said entities had been approved. The Assessing Officer may, after giving a reasonable opportunity of showing cause to the concerned entity, send a proposal to the Central Government recommending withdrawal of approval.

The Central Government may, by order, withdraw the approval and forward a copy of the order to the concerned university, college or other institution and to the Assessing Officer.

(4) **Best judgment assessment [Section 144]**

- (i) **Best judgement assessment mandatory in all the three cases stated above** - It is mandatory for the Assessing Officer to make a best judgment assessment and he has no discretion to make or not to make such assessment. These three cases are alternative and not cumulative for the purpose of making an *ex parte* assessment.
- (ii) **Opportunity of being heard** - Before making best judgement assessment, the Assessing Officer has to take into account all relevant material which he has gathered. The assessee must be given an opportunity of being heard. Such opportunity shall be given by an Assessing Officer by serving a notice calling upon the assessee to show cause on a date and time to be specified in the notice, why the assessment should not be completed to the best of his judgment. Thereafter, the Assessing Officer shall make the assessment of total income or loss to the best of his judgment and determine the sum payable on the basis of such assessment. It may be noted that no refund can be granted under section 144.

However, where a notice under section 142(1) has been issued prior to the making of an assessment under this section, it is not necessary to give such opportunity.



15.31 POWER OF JOINT COMMISSIONER TO ISSUE DIRECTIONS IN CERTAIN CASES [SECTION 144A]

- (1) A Joint Commissioner may, on his own motion or on a reference being made to him by the Assessing Officer or on the application of an assessee, call for and examine the record of any proceeding in which an assessment is pending and, if he considers that, having regard to the nature of the case or the amount involved or for any other reason it is necessary so to do, he may issue such directions as he thinks fit for the guidance of the Assessing Officer to enable him to complete the assessment. Such directions shall be binding on the Assessing Officer.
- (2) No directions which are prejudicial to the assessee shall be issued before an opportunity is given to the assessee to be heard. However, directions given as to the lines on which investigation is to be made shall not be construed as one prejudicial to the assessee.



15.32 FACELESS ASSESSMENT [SECTION 144B]

The Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 has introduced faceless assessment under section 144B w.e.f. 1st April, 2021. "Faceless assessment" means the assessment proceedings conducted electronically in the 'e-Proceeding' facility through the assessee's registered account in the designated portal. CBDT has ordered www.incometax.gov.in as the "designated portal" for the purpose of Faceless Assessment.

- (1) **Procedure for Faceless Assessment [Section 144B(1)]** - Section 144B(1) provides that assessment under section 143(3) or best judgment assessment under section 144 **or income escaping assessment under section 147** in respect of such territorial area or persons or classes of persons or incomes or class of incomes or cases or class of cases, as specified by the CBDT under section 144B(2), has to be made in a faceless manner in accordance with the following procedure:

Faceless assessment u/s 14(3), 144 and 147

Clause	Provision
Assignment of the case to a Specific Assessment Unit	
(i)	The National Faceless Assessment Centre (NFAC) has to assign the case selected for the purposes of faceless assessment under this section to a specific assessment unit through an automated allocation system.
Intimation by NFAC to the assessee	
(ii)	The NFAC has to intimate the assessee that the assessment in his case would be completed following the procedure laid down under this section.
Serving of notice on the assessee	
(iii)	Service of notice: Notice shall be served on the assessee through the NFAC under section 143(2) or section 142(1).
(iii)	Filing of response to the notice by the assessee: The assessee may file his response to the notice within the date specified therein to the NFAC which shall forward the same to the assessment unit.
Request by Assessment Unit to NFAC for obtaining information/conducting enquiry	
(iv)	Where a case is assigned to the assessment unit, it may make a request to the NFAC for— (a) obtaining such further information, documents or evidence from the assessee or any other person, as it may specify; (b) conducting of enquiry or verification by verification unit; and (c) seeking technical assistance in respect of the determination of arm's length price, valuation of property, withdrawal of registration, approval, exemption or any other technical matter from the technical unit.

Course of Action when Assessment Unit requests for obtaining further information to NFAC as per sub clause (a) of clause (iv)	
(v)	Notice or requisition to the assessee or any other person for obtaining the information: The NFAC has to issue appropriate notice or requisition to the assessee or any other person for obtaining the information, documents or evidence requisitioned by the assessment unit.
	Assessee to file a response to the notice within the specified time: The assessee would be required to file response to the notice within the time specified therein or such time as may be extended based on an application in this regard to the NFAC, which shall forward the reply to the assessment unit.
Course of Action when Assessment Unit makes request for conducting enquiry or seeks technical assistance to NFAC as per sub clause (b) and (c) of clause (iv)	
(vi)	Request for conducting inquiry or verification to be assigned to Verification Unit by NFAC: Where a request for conducting of certain enquiry or verification by the verification unit has been made by the assessment unit, the request would be assigned by the NFAC to a verification unit through an automated allocation system.
	Request for seeking technical assistance to be assigned to Technical Unit by NFAC: Where a request for seeking technical assistance from the technical unit has been made by the assessment unit, the request would be assigned by the NFAC to a technical unit through an automated allocation system.
(vii)	Report received from the Verification Unit/Technical Unit to be sent to Assessment Unit: The NFAC has to send the report received from the verification unit or the technical unit to the concerned assessment unit.
Failure on the part of the assessee	
(viii)	NFAC to intimate the failure to assessment unit: Where the assessee fails to comply with the notice served for obtaining the information, documents or evidence or notice issued under section 142(1) or the terms of a notice issued under section 143(2), the NFAC shall intimate such failure to the assessment unit.
(ix)	Serving notice u/s 144 for failure on the part of the assessee: The assessment unit shall serve upon such assessee a notice, through the NFAC, under section 144, giving him an opportunity to show-cause on a date and time as specified in such notice as to why the assessment in his case should not be completed to the best of its judgment.
(x)	Assessee to file response to a notice under section 144: The assessee has to, within the time specified in the notice or such time as may be extended on the basis of an application in this regard, file his response to the NFAC which shall forward the same to the assessment unit.

(xi)	Intimation to Assessment Unit, of failure on the part of the assessee to file response to notice issued u/s 144: Where the assessee fails to file response to the notice within the time specified therein or within the extended time, if any, the NFAC has to intimate such failure to the assessment unit.
Step to be taken by Assessment Unit after assessee files his response or fails to file his response	
(xii)	The assessment unit shall, after taking into account all the relevant material available on the record, prepare, in writing— (a) <u>an income or loss determination proposal</u> , where <u>no variation prejudicial to the assessee is proposed</u> and send a copy of such income or loss determination proposal to the NFAC; or (b) in any other case, <u>a show cause notice</u> stating the <u>variations prejudicial to the interest of the assessee proposed to be made</u> to the income of the assessee and calling upon him to submit as to why the proposed variation should not be made and serve such show cause notice, on the assessee, through the NFAC
Assessee to file reply of show cause notice served under sub-clause (b) of clause (xii)	
(xiii)	Assessee to file a response to the notice within the specified time: The assessee shall file his reply to the show-cause notice on a date and time as specified therein or such time as may be extended based on an application made in this regard, to the NFAC which shall forward the reply to the assessment unit.
(xiv)	Intimation to Assessment Unit in case of no response from assessee: Where the assessee fails to file a response to the notice served within the time specified therein or within the extended time, if any, the NFAC shall intimate such failure to the assessment unit.
Procedure to be followed after assessee files his response or fails to file his response to show cause notice served under sub-clause (b) of clause (xii)	
(xv)	Assessment unit to prepare an income or loss determination proposal: The assessment unit shall, after considering the response received under clause (xiii) or after receipt of intimation under clause (xiv), as the case may be, and taking into account all relevant material available on record, <u>prepare an income or loss determination proposal</u> and send the same to the NFAC.
(xvi)	Upon receipt of the income or loss determination proposal, as referred to in sub-clause (a) of clause (xii) [where no variations prejudicial to the assessee were proposed] or clause (xv) [where variations prejudicial to the assessee were proposed and then show cause notice was issued to him], as the case may be, the NFAC <u>may</u> , on the basis of guidelines issued by the Board -

	(a) convey to the assessment unit to prepare draft order in accordance with the income or loss determination proposal, which shall thereafter prepare a draft order; or (b) assign the income or loss determination proposal to a review unit through an automated allocation system, for conducting review of such proposal
Where the proposal is assigned to a review unit	
(xvii)	Review Unit to prepare the review report: The review unit shall conduct a review of the income or loss determination proposal assigned to it by the NFAC, after that it shall <u>prepare a review report</u> and send the same to the NFAC;
(xviii)	NFAC to forward the review report to the assessment unit, which has proposed the income or loss determination proposal.
Preparation of Draft Order	
(xix)	Assessment Unit to prepare draft order: The assessment unit shall, after considering such review report, accept or reject some or all of the modifications proposed therein and after recording reasons in case of rejection of such modifications, prepare a draft order.
(xx)	Draft order to be sent to NFAC: The assessment unit shall send such draft order prepared under sub-clause (a) of clause (xvi) [where a proposal is not forwarded to review unit] or under clause (xix) [where a proposal is assigned to review unit] to the NFAC.
Preparation of final assessment order (other than cases in relation to eligible assessee)	
(xxii)	Passing of final assessment order by Assessment Unit: The NFAC shall convey to the assessment unit to pass the final assessment order in accordance with such draft order. After that, the assessment unit shall pass the final assessment order, initiate penalty proceedings, if any, and send it to the NFAC.
(xxiii)	NFAC to serve a copy of such order to the assessee: The NFAC shall serve a copy of the final assessment order and notice for initiating penalty proceedings, if any, on the assessee, along with the demand notice, specifying the sum payable by, or refund of any amount due to, the assessee on the basis of such assessment.
Procedure to be followed by NFAC in case of an eligible assessee (as defined under section 144C)	
(xxi)	NFAC to serve draft order to the eligible assessee: Where there is a proposal to make any variation which is prejudicial to the interest of an eligible assessee, as mentioned under section 144C(1), the NFAC shall serve the draft order referred to in clause (xx) on such assessee.
(xxiv)	Procedure to be followed by the assessee: Where a draft order is served on

	the assessee, he shall— (a) <u>file his acceptance</u> of the variations proposed in such draft order to the NFAC; or (b) <u>file his objections</u>, if any, to such variations, with— (I) the Dispute Resolution Panel, and (II) the NFAC, within 30 days of the receipt by him of the draft order.
(xxv)	Intimation by NFAC to Assessment Unit: The NFAC shall intimate the assessment unit to complete the assessment based on the draft order: (a) upon receipt acceptance from of the eligible assessee; or (b) if no objections are received from the eligible assessee within 30 days of his receipt of the draft order.
(xxvi)	Assessment Unit to pass the assessment order: Upon receipt of intimation from NFAC under clause (xxv), the assessment unit shall pass the assessment order, in accordance with the relevant draft order within one month from the end of the month in which - the acceptance is received or - the period of 30 days for filing objection expired and initiate penalty proceedings, if any, and send the order to the NFAC.
Procedure in case eligible assessee files objection with Dispute Resolution Panel (DRP)	
(xxvii)	NFAC to intimate assessment unit about objections filed by assessee: Where the eligible assessee files objections with the DRP, under sub-clause (b) of clause (xxiv), the NFAC shall send such intimation along with a copy of objections filed to the assessment unit.
(xxviii)	NFAC to forward directions of Dispute Resolution Panel (DRP) to Assessment Unit: Where the eligible assessee files his objections with the DRP, the NFAC has to, <u>upon receipt of the directions</u> issued by the DRP under section 144C(5), <u>forward such directions to the Assessment Unit.</u>
(xxix)	Assessment Unit to prepare the assessment order: In conformity with the directions issued by the DRP under section 144C(5), the Assessment Unit has to complete the assessment within the time allowed under section 144C(13) and initiate penalty proceedings, if any and send a copy of such order to the NFAC.
Serving a copy of assessment order in case of eligible assessee	
(xxx)	NFAC to serve a copy of the order to the assessee: The NFAC shall, upon receipt of the assessment order referred to in clause (xxvi) or clause (xxix), as the case may be, serve a copy of such order and notice for initiating penalty proceedings, if any, on the assessee, along with the demand notice, specifying

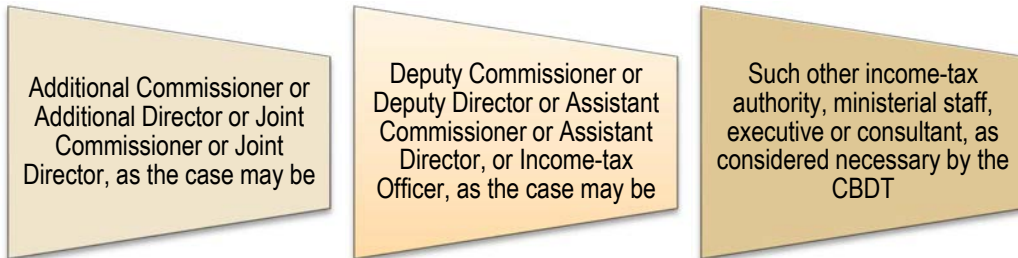
	the sum payable by, or the amount of refund due to, the assessee based on such assessment.
Procedure to be followed by NFAC on completion of the assessment	
(xxxi)	On completion of the assessment, the NFAC shall transfer all the electronic records of the case to the Assessing Officer having jurisdiction over the said case for such action as may be required under the provisions of this Act.

- (2) **NFAC/AUs/VUs/TUs/RUs to be set up for the purpose of faceless assessment [Section 144B(3)]**- For the purpose of faceless assessment, the CBDT, may set up the following Centers and Units and specify their function and jurisdiction –

National Faceless Assessment Center (NFAC)	To facilitate the conduct of faceless assessment proceedings in a centralised manner.
Assessment Units (AUs)	To conduct the faceless assessment, to perform the function of making assessment, which includes • identification of points or issues material for the determination of any liability (including refund) under the Act, • seeking information or clarification on points or issues so identified, • analysis of the material furnished by the assessee or any other person, and such other functions as may be required for making the faceless assessment. The term "assessment unit", shall refer to an Assessing Officer having powers assigned by the Board.
Verification Units (VUs)	To facilitate the conduct of faceless assessment, to perform the function of verification, which includes - enquiry, cross verification, examination of books of account, examination of witnesses and recording of statements, and such other functions as may be required for the purposes of verification.

	The term "verification unit", shall refer to an Assessing Officer having powers assigned by CBDT. The function of the verification unit under section 144B may also be performed by a verification unit located in any other faceless centre set up under the provisions of this Act or under any scheme notified under the provisions of this Act. The request for verification may also be assigned through the NFAC to such a verification unit.
Technical Units (TUs)	To facilitate the conduct of faceless assessment, to perform the function of providing technical assistance which includes any assistance or advice on legal, accounting, forensic, information technology, valuation, transfer pricing, data analytics, management or any other technical matter under this Act or an agreement entered into under section 90 or 90A, which may be required in a particular case or a class of cases, under this section. The term "technical unit", shall refer to an Assessing Officer having powers assigned by CBDT.
Review Units (RUs)	To facilitate the conduct of faceless assessment, to perform the function of the review of the income determination proposal assigned to it by NFAC after receiving from the assessment unit under sub-clause (b) of clause (xvi) of sub-section (1). The function of review includes checking, whether- • the relevant and material evidence has been brought on record, • the relevant points of fact and law have been duly incorporated, • the issues requiring addition or disallowance have been incorporated and such other functions as may be required for the purposes of review. The term "review unit, shall refer to an Assessing Officer having powers assigned by CBDT.

- (3) **Authorities constituting AU/TU/VU/RU [Section 144B(4)]:** The assessment unit, verification unit, technical unit and review unit will have the following authorities:



- (4) **Communication among the units or with assessee [Section 144B(5)]:**

- (i) **Communication among units to be routed through NFAC:** All communication among the assessment unit, review unit, verification unit or technical unit or with the assessee or any other person with respect to the information or documents or evidence or any other details, as may be necessary for the purposes of making a faceless assessment has to be through the NFAC.
- (ii) **Communication to be exchanged exclusively in electronic mode:** All communications between the NFAC, the assessee, his authorised representative, or any other person shall be exchanged exclusively in electronic mode. Similarly, all internal communications between the NFAC and various units must be exchanged exclusively in electronic mode.

However, in certain circumstances, enquiry or verification may be conducted by the verification unit otherwise than by electronic mode. Such circumstances may be specified by the CBDT.

- (5) **Authentication of electronic record through digital signature [Section 144B(6)]:** For the purposes of faceless assessment, an electronic record has to be authenticated by—
- (a) **NFAC:** by way of an electronic communication
- (b) **Various Units:** by affixing digital signature
- (c) **Assessee or any other person:** by affixing his digital signature or under electronic verification code (EVC), or by logging into his registered account in the designated portal.
- (6) **Delivery of notice/order electronically to the assessee or any other person [Section 144B(6)(ii)/(iii)/(iv)/(v)]:** All notices, orders, and other electronic communication have to be delivered to the addressee, being the assessee, by way of—

- (a) placing an authenticated copy thereof in the assessee's registered account; or
- (b) sending an authenticated copy thereof to the registered email address of the assessee or his authorised representative; or
- (c) uploading an authenticated copy on the assessee's Mobile App and followed by a real-time alert.

e-communication

All notices, orders and other electronic communication have to be delivered to the addressee, being any other person, by sending an authenticated copy thereof to the registered e-mail address of such person, followed by a real-time alert.

The assessee has to file his response to any notice or order or any other electronic communication, through his registered account. Once an acknowledgement is sent by the NFAC containing the hash result generated upon successful submission of response, the response shall be deemed to be authenticated.

The time and place of dispatch and receipt of electronic record has to be determined in accordance with section 13 of the Information Technology Act, 2000.

- (7) **No personal appearance required [Section 144B(6)(vi)]:** A person shall not be required to appear either personally or through an authorised representative in connection with any proceedings before any unit set up under this section.
- (8) **Request by the assessee for a personal hearing in specific cases [Section 144B(6)(vii)]:** In a case where a variation is proposed in the income or loss determination proposal or the draft order, and an opportunity is provided to the assessee by serving a notice calling upon him to show cause as to why the assessment should not be completed as per such income or loss determination proposal, the assessee or his authorised representative, as the case may be, may request for personal hearing to make his oral submissions or present his case before the income-tax authority of the relevant unit.
- (9) **Approval of request for personal hearing [Section 144B(6)(viii)]:** Where the request for personal hearing has been received, the income-tax authority of relevant unit shall allow such hearing, through NFAC. Such hearing has to be conducted exclusively through video conferencing or video telephony, including use of any telecommunication application software which supports video conferencing or video telephony, to the extent technologically feasible, in accordance with the procedure laid down by the CBDT.
- (10) **Examination or recording of statement exclusively through video conferencing or video telephony [Section 144B(6)(ix)/(x)]:** Other than enquiry or verification conducted by the verification unit, otherwise than by electronic mode, in the circumstances specified by the

CBDT, any examination or recording of the statement of the assessee or any other person (other than statement recorded in the course of survey under section 133A) has to be conducted by an income-tax authority in the relevant unit, exclusively through video conferencing or video telephony, including use of any telecommunication application software which supports video conferencing or video telephony, to the extent technologically feasible, in accordance with the procedure laid down by the CBDT.

For this purpose, suitable facilities for video conferencing or video telephony shall be established, including telecommunication application software which supports video conferencing or video telephony at such locations as may be necessary, so as to ensure that the assessee, or his authorized representative, or any other person is not denied the benefit of faceless assessment merely on the consideration that such assessee or his authorised representative, or any other person does not have access to video conferencing or video telephony at his end.

(11) Standards to be laid down for effective function of NFAC and other units [Section 144B(6)(xi)]: The Principal Chief Commissioner or the Principal Director General, as the case may be, in-charge of the NFAC shall, with the prior approval of CBDT, lay down the standards, procedures and processes for effective functioning of the NFAC and the units set up, in an automated and mechanised environment.

(12) Audit may be invoked under section 142(2A) during faceless assessment [Section 144B(1)(xxxii)]: If, at any stage of the proceedings before it, the assessment unit is of the opinion that it is necessary to do so,

- having regard to the nature and complexity of the accounts,
- volume of the accounts,
- doubts about the correctness of accounts,
- multiplicity of transactions in the accounts or
- specialised nature of the business activity of the assessee,

it may, upon recording its reasons in writing, refer the case to the NFAC stating that the provisions of section 142(2A) may be invoked. Such a case may be dealt with in accordance with section 144B(7).

NFAC's discretion to forward the reference of invoking audit or inventory valuation under section 142(2A) [Section 144B(7)]:

- (a) The Principal Chief Commissioner or the Principal Director General, as the case may be, in-charge of the NFAC shall, in accordance with the procedure laid down by CBDT in this regard, if he considers appropriate that the provisions of section 142(2A) may

be invoked in the case,—

- (i) forward the reference received from an assessment unit to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner having jurisdiction over such case. The assessment unit shall be informed accordingly.
 - (ii) transfer the case to the Assessing Officer having jurisdiction over such case with the prior approval of CBDT.
- (b) Once the reference has been received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, he shall direct the Assessing Officer, having jurisdiction over the case, to invoke the provisions of section 142(2A)
- (c) It can happen that NFAC may not consider appropriate to forward the reference to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, having jurisdiction over the case.

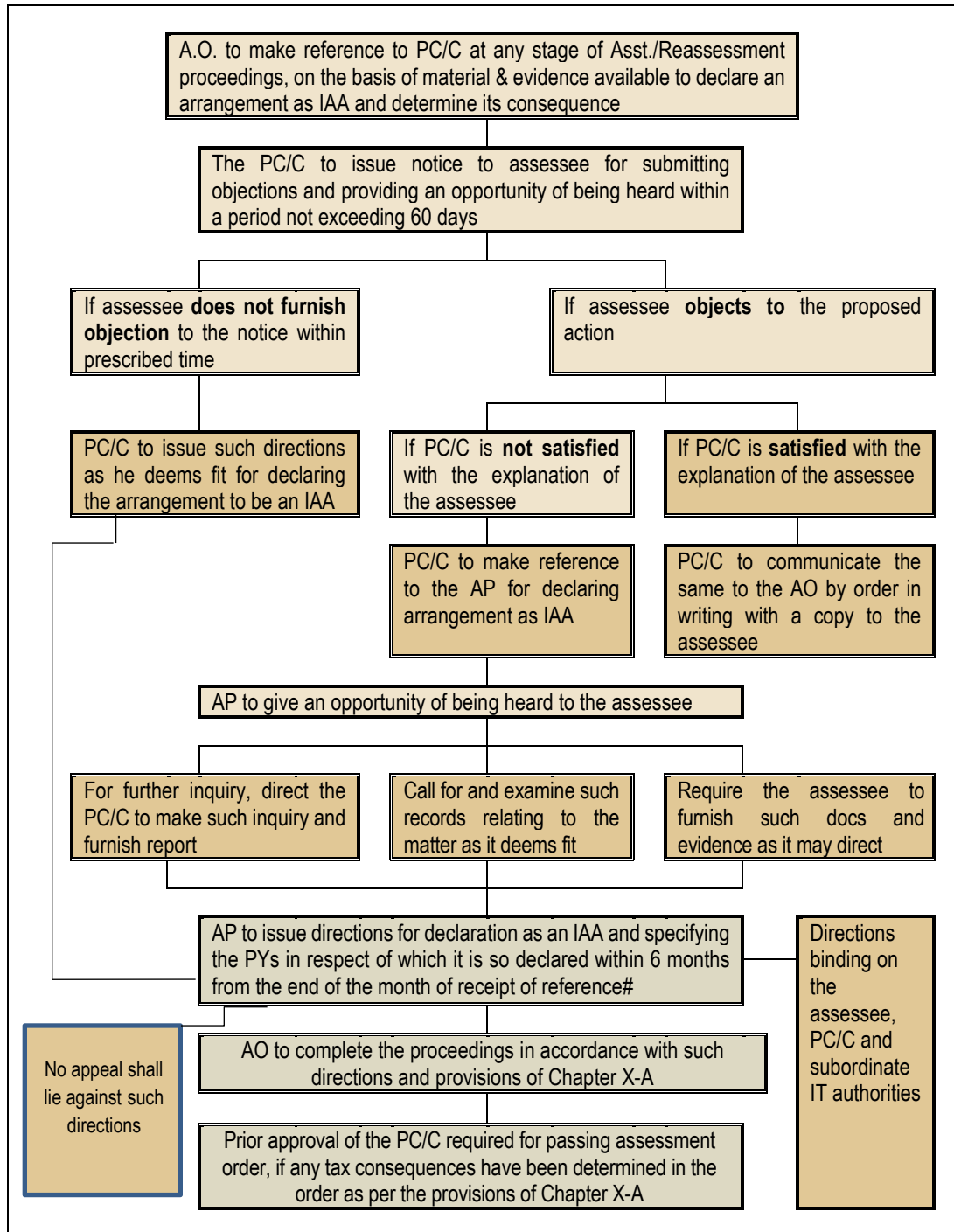
In such a case, the assessment unit has to proceed to complete the assessment in accordance with the procedure laid down in this section.

- (13) Transfer of case to jurisdictional Assessing Officer [Section 144B(8)]:** The Principal Chief Commissioner or the Principal Director General in charge of NFAC may, at any stage of the assessment, if considered necessary, transfer the case to the Assessing Officer having jurisdiction over such case. However, prior approval of the CBDT may be required in such cases.

15.33 REFERENCE TO PRINCIPAL COMMISSIONER OR COMMISSIONER IN CERTAIN CASES [SECTION 144BA]

The diagram given in the next page would give you an understanding of the procedure for declaring any arrangement as an impermissible avoidance arrangement. The short forms used in the diagram are:

PC/C	Principal Commissioner/Commissioner	AP	Approving Panel
IAA	Impermissible Avoidance Arrangement	AO	Assessing Officer



# The following period has to be excluded in computing the said period:	
(i)	The period commencing from the date on which the first direction is issued by the Approving Panel to the Principal Commissioner or the Commissioner for getting inquiries conducted through the authority competent under an agreement referred to in section 90 or section 90A and ending with the date on which the information so requested is last received by the Approving Panel or one year, whichever is less.
(ii)	The period during which the proceeding of the Approving Panel is stayed by an order or injunction of any court.
Note – If, immediately after the exclusion of the aforesaid time or period, the period available to the Approving Panel for issue of directions is less than 60 days, such remaining period shall be extended to 60 days. Consequently, the aforesaid period of six months shall be deemed to have been extended accordingly.	

Approving Panel

	Particulars	Provisions	
(1)	Constitution	The Central Government may constitute one or more Approving Panels as may be necessary	
(2)	Composition	Each Approving Panel may shall consist of three members including a Chairperson	
(3)	Qualification of members	(i)	The Chairman shall be a person who is or has been a judge of a High Court
		(ii)	One member shall be a member of IRS not below the rank of PCCIT/CCIT
		(iii)	One member shall be an academic or scholar having special knowledge of matters, such as direct taxes, business accounts and international trade practices.
(4)	Term	Ordinarily for one year; May be extended from time to time upto a period of three years.	
(5)	Frequency of Meeting	The Chairperson and members of the Approving Panel shall meet, as and when required, to consider the references made to the Panel. They shall be paid the remuneration as may be prescribed.	
(6)	Powers	(i)	The Approving Panel has to issue such directions, as it deems fit, in respect of declaration of the arrangement as an impermissible avoidance arrangement in accordance with the provisions of Chapter X-A including specifying the previous year or years to which such declaration of an arrangement as an impermissible avoidance arrangement shall apply.

		(ii)	The Approving Panel, may, before issuing any direction under section 144BA(6), if it is of the opinion that any further inquiry in the matter is necessary, direct the PC/C to make such inquiry or cause the inquiry to be made by any other IT authority and furnish a report containing the result of such inquiry to it.
		(iii)	Call for and examine such records relating to the matter as it deems fit.
		(iv)	Require the assessee to furnish such documents and evidence as it may direct
		(v)	All the powers which are the vested in the AAR u/s 245U
(7)	Officers	The CBDT shall provide to the Approving Panel such officials as may be necessary for the efficient exercise of powers and discharge of functions of the Approving Panel under the Income-tax Act, 1961.	
(8)	Rules	The CBDT may make rules for the purpose of the constitution and efficient functioning of the Approving Panel and expeditious disposal of the references received.	



15.34 REFERENCE TO DISPUTE RESOLUTION PANEL [SECTION 144C]

An alternate dispute resolution mechanism which will aid speedy resolution of disputes on a fast track basis has now been provided for under the Income-tax Act, 1961. The significant features of the alternate dispute resolution mechanism are briefed hereunder –

- (1) In the case of assessment of an eligible assessee, the Assessing Officer shall, forward a draft proposed order of assessment to the eligible assessee if he proposes to make any variation which is prejudicial to the interest of such assessee.

Eligible Assessee

“Eligible assessee” means,-

- (i) any person in whose case such variation arises as a consequence of the order of the Transfer Pricing Officer passed under sub-section (3) of section 92CA; and
 - (ii) any non-corporate non-resident or any foreign company.
- (2) The eligible assessee shall, within thirty days of the receipt by him of the draft order,-

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

**File acceptance or
objection within 30
days**

“Dispute Resolution Panel” means a collegium comprising of three Principal Commissioners or Commissioners of Income-tax constituted by the CBDT for this purpose.

- (3) The Assessing Officer has to complete the assessment on the basis of the draft order, if—
 - (a) the assessee intimates the acceptance of the variation to the Assessing Officer; or
 - (b) no objections are received within the period of 30 days specified in (2) above.
- (4) The Assessing Officer shall, notwithstanding anything contained in section 153 or section 153B, pass the assessment order within one month from the end of the month in which -
 - (a) the acceptance is received; or
 - (b) the period of filing of objections expires.
- (5) The Dispute Resolution Panel shall, in a case where any objections are received, issue such directions, as it thinks fit, for the guidance of the Assessing Officer to enable him to complete the assessment.
- (6) The Dispute Resolution Panel shall issue such directions, after considering the following, namely -
 - (a) Draft order;
 - (b) Objections filed by the assessee;
 - (c) Evidence furnished by the assessee;
 - (d) Report, if any, of the Assessing Officer, Valuation Officer or Transfer Pricing Officer or any other authority;
 - (e) Records relating to the draft order;
 - (f) Evidence collected by, or caused to be collected by, it; and
 - (g) Result of any enquiry made by, or caused to be made by it.

- (7) The Dispute Resolution Panel may, before issuing any such directions -
- (a) make such further enquiry, as it thinks fit; or
 - (b) cause any further enquiry to be made by any income tax authority and report the result of the same to it.
- (8) The Dispute Resolution Panel may confirm, reduce or enhance the variations proposed in the draft order. However, it cannot set aside any proposed variation or issue any direction as mentioned in (5) above, for further enquiry and passing of the assessment order.

The power of the DRP to enhance the variation as mentioned in section 144C(8) shall include and shall be deemed to have always included the power to consider any matter arising out of the assessment proceedings relating to the draft order. This power to consider any issue shall be irrespective of whether the matter was raised by the eligible assessee or not.

While exercising the aforesaid power for considering any matter arising out of the assessment proceedings relating to the draft order, the DRP can only enhance the variation. The power of reducing the variation is not accorded to DRP in respect of such matters.

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

DRP direction binding on AO

- (10) Every direction issued by the Dispute Resolution Panel shall be binding on the Assessing Officer.
- (11) If any direction is prejudicial to the interest of the assessee or the interest of the revenue, then, the same can be issued only after an opportunity of being heard is given to the assessee or the Assessing Officer, as the case may be.
- (12) Such direction has to be issued within **nine months** from the end of the month in which the draft order is forwarded to the eligible assessee.
- (13) Upon receipt of such direction, the Assessing Officer has to complete the assessment in accordance with the same, within one month from the end of the month in which the direction is received. This is notwithstanding anything contained in section 153 or section 153B. There is no requirement of providing any further opportunity of being heard to the assessee.

Issue direction within 9 months from the end of month in which draft order is forwarded to eligible assessee

- (14) The CBDT is empowered to make rules for the efficient functioning of the Dispute Resolution Panel and speedy resolution of the objections filed by the eligible assessee.
- (15) The provisions of this section shall not apply to any assessment or reassessment order passed by the Assessing Officer with the prior approval of the Principal Commissioner or Commissioner as provided in 144BA(12) where GAAR has been invoked.
- (16) Section 144C(14B)/(14C) and (14D) provide that the Central Government may make a scheme, by notification in the Official Gazette, for the purposes of issuance of directions by the dispute resolution panel, so as to impart greater efficiency, transparency and accountability by—
 - (a) eliminating the interface between the dispute resolution panel and the eligible assessee or any other person to the extent technologically feasible;
 - (b) optimising utilisation of the resources through economies of scale and functional specialisation;
 - (c) introducing a mechanism with dynamic jurisdiction for issuance of directions by dispute resolution panel.

For the purpose of giving effect to this faceless scheme for DRP, the Central Government may, by notification in the Official Gazette, direct that any of the provisions of the Income-tax Act, 1961 would not apply or would apply with such exceptions, modifications and adaptations as may be specified in the notification. However, no such direction shall be issued after 31st March, 2024.

Every such notification issued has to be laid before each House of Parliament, as soon as may be after the notification is issued.

15.35 INCOME ESCAPING ASSESSMENT [SECTIONS 147 TO 151]

With a view to completely reform the system of assessment/ reassessment/ re-computation of income escaping assessment and the assessment of search related cases, the Finance Act, 2021 has substituted the erstwhile sections 147 to 149 with sections 147, 148, 148A, 149 and 151.

Due to the advancement of technology, the department is now collecting all relevant information related to transactions of taxpayers from third parties under section 285BA (Statement of Financial Transaction or Reportable Account). Similarly, information is also received from other law

enforcement agencies. This information is also shared with the taxpayer through Annual Information Statement under section 285BB. Department uses this data to verify the information declared by a taxpayer in the return and to detect non-filers or those who have not disclosed the correct amount of total income. Therefore, assessment or reassessment or re-computation of income escaping assessment, to a large extent, is information-driven. It is expected that the new system would result in less litigation and would provide ease of doing business to taxpayers as there is a reduction in the time limit by which a notice for assessment or reassessment or re-computation can be issued.

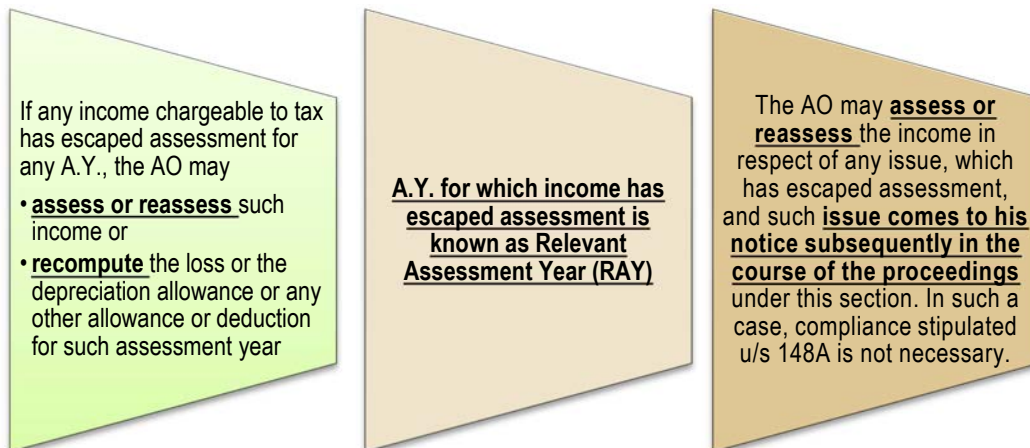
Income Escaping Assessment

The Finance Act, 2021 amended the procedure for assessment or reassessment of income in the Act with effect from the 1st April, 2021. The said amendment modified, *inter alia*, sections 147, section 148, section 149 and also introduced a new section 148A. In cases where search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A, on or after 1st April, 2021, assessment or reassessment can be made under section 143 or 144 or 147.

- (1) **Income escaping assessment [Section 147]** - If any income chargeable to tax, in the case of an assessee, has escaped assessment for any assessment year, the Assessing Officer may, subject to the provisions of sections 148 to 153, assess or reassess such income or recompute the loss or the depreciation allowance or any other allowance or deduction for such assessment year (i.e., relevant assessment year).

The Assessing Officer may also, assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, irrespective of the fact that the provisions of section 148A have not been complied with (Explanation to Section 147).

In other words, Assessing Officer may assess any income in respect of any issue that has escaped assessment which comes to his notice subsequently in the course of the proceeding, even if the steps prescribed in section 148A were not followed in relation thereto.



(2) **Conducting inquiry, providing opportunity before issue of notice [Section 148A]-** The Assessing Officer has to follow the steps given hereunder, before issuing any notice under section 148-

- (a) **conduct any enquiry**, if required, with the prior approval of specified authority, with respect to the information which suggests that the income chargeable to tax has escaped assessment;
- (b) **provide an opportunity of being heard to the assessee by serving upon him a show cause notice to** within such time, as may be specified in the notice, **being 7 days to 30 days** from the date on which such notice is issued, or such time, as may be extended by him on the basis of an application in this behalf, as to why a notice under section 148 should not be issued on the basis of information which suggests that income chargeable to tax has escaped assessment in his case for the relevant assessment year and results of enquiry conducted, if any, as per clause (a);
- (c) **consider the reply of assessee** furnished, if any, in response to the show-cause notice referred to in clause (b);
- (d) **decide**, on the basis of material available on record including reply of the assessee, whether or not it is a fit case to issue a notice under section 148, **by passing an order, with the prior approval of specified authority:**
 - (i) within one month from the end of the month in which the reply referred to in clause (c) is received by him; or
 - (ii) where no such reply is furnished, within one month from the end of the month in which time or extended time allowed to furnish a reply as per clause (b) expires.

Non-applicability of section 148A – The procedure laid down in section 148A shall not apply in a case where-

- (a) a search is initiated under section 132 or books of account, other documents or any assets are requisitioned under section 132A in the case of the assessee on or after 01.04.2021; or
- (b) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any money, bullion, jewellery or other valuable article or thing, seized in a search under section 132 or requisitioned under section 132A, in the case of any other person on or after 01.04.2021, belongs to the assessee; or
- (c) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner that any books of account or documents, seized in a search under section 132 or requisitioned under section 132A, in case of any other person on or after 01.04.2021, pertains or pertain to, or any information contained therein, relate to, the assessee.
- (d) the Assessing Officer has received any information under the scheme notified in respect of faceless collection of information under section 135A pertaining to income chargeable to tax escaping assessment for any assessment year in the case of the assessee

In other words, in cases mentioned above, the Assessing Officer need not conduct enquiry and provide an opportunity of being heard as required under section 148A before issuing notice under section 148.

- (3) **Issue of notice where income has escaped assessment [Section 148]** – Before making the assessment, reassessment or recomputation under section 147,

- the Assessing Officer has to serve on the assessee a notice, requiring him to furnish
- *within a period of 3 months from the end of the month in which such notice is issued or such further period, as may be allowed by the Assessing Officer on the basis of an application made in this regard by the assessee,*
- a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed.

Furnish return within 3 months from the end of month of notice

- The provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139.

However, where return of income is furnished beyond the period allowed above, such return would not be deemed to be a return under section 139.

The Assessing Officer has to conduct an enquiry, provide an opportunity of being heard to the assessee and consider the assessee's reply as per the procedure laid down under section 148A to decide whether or not it is a fit case for the issue of notice under section 148. If it is a fit case for the issue of notice under section 148, then the copy of the order deciding so under section 148A should accompany the notice under section 148. However, this does not apply in case search is initiated under section 132 or books of account requisitioned under section 132A or Assessing Officer has received any information under the scheme notified under section 135A.

Conditions: Notice can be issued only when-

- there is **information** with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment in the case of the assessee for the relevant assessment year and
- the Assessing Officer has obtained prior approval of the specified authority to issue such notice.

No such approval is required where the Assessing Officer, with the prior approval of the specified authority, has passed an order based on material available on record, including the reply of the assessee under clause (d) of section 148A to the effect that it is a fit case to issue a notice under this section.

For the purposes of this section and section 148A, the 'information' with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment means—

- any **information** in the case of the assessee for the relevant assessment year in accordance **with the risk management strategy** formulated by the Board from time to time; or
- any **audit objection** to the effect that the assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of this Act; or
- any **information** received under **an agreement** referred to in section 90 or section 90A ; or

- (iv) any **information made available** to the Assessing Officer under the scheme notified in respect of faceless collection of information **under section 135A**; or
- (v) any information which requires action in consequence of the **order of a Tribunal or a Court.**

Information or deemed information

Cases where Assessing Officer shall be deemed to have information- The Assessing Officer shall be deemed to have information which suggests that the income chargeable to tax has escaped assessment in the case of the assessee where-

- (i) **a search is initiated under section 132** or books of account, other documents or any assets are requisitioned under section 132A, on or after 01.04.2021, in the case of the assessee; or
- (ii) **a survey is conducted under section 133A**, other than survey conducted for verifying tax is deducted or collected at source under section 133A(2A), on or after 01.04.2021, in the case of the assessee; or
- (iii) the Assessing Officer is satisfied, with the prior approval of the Principal Commissioner or Commissioner, **that any money, bullion, jewellery or other valuable article or thing, seized or requisitioned under section 132 or section 132A** in case of any other person on or after 01.04.2021, belongs to the assessee; or
- (iv) the Assessing Officer is satisfied, with the prior approval of Principal Commissioner or Commissioner, that **any books of account or documents, seized or requisitioned under section 132 or section 132A** in case of any other person on or after 01.04.2021, pertains or pertain to, or any information contained therein, relate to, the assessee.

The Assessing Officer shall be deemed to have information which suggests that the income chargeable to tax has escaped assessment in the case of the assessee where the search is initiated or books of account, other documents or any assets are requisitioned or survey is conducted in the case of the assessee or money, bullion, jewellery or other valuable article or thing or books of account or documents are seized or requisitioned in case of any other person.

Note: *Order of assessment or reassessment or recomputation in respect of an assessment year to which the above four cases apply shall NOT be passed by an Assessing Officer below the rank of Joint Commissioner except with the prior approval of the Additional Commissioner or Additional Director or Joint Commissioner or Joint Director [Section 148B].*

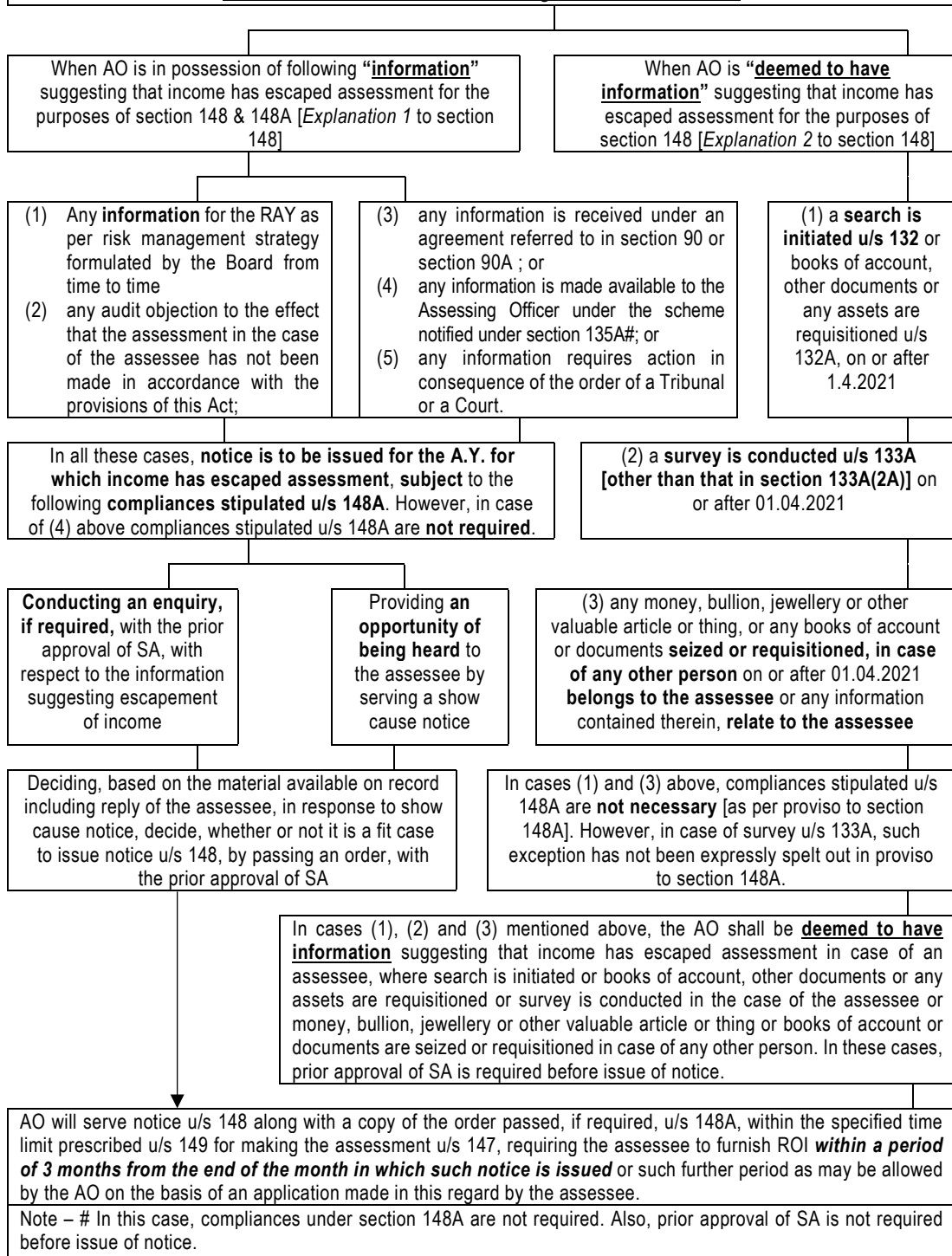
What is the meaning of “Relevant Assessment Year (RAY)”?

<i>Explanation 1 to Section 148</i>	<i>Explanation 2 to Section 148²</i>
I. Where the information with AO suggests that income has escaped assessment:	II. Where AO shall be <u>deemed to have information</u> suggesting that income has escaped assessment
In such a case, the <u>RAY</u> is the assessment year: - for which any information is in the system in accordance with risk management strategy formulated by the CBDT or - for which any audit objection to the effect that the assessment in the case of the assessee has not been made in accordance with the provisions of this Act; or - for which any information is received under an agreement referred to in section 90 or section 90A ; or - for which any information is made available to the Assessing Officer under the scheme notified under section 135A; or - for which any information requires action in consequence of the order of a Tribunal or a Court.	**Where the search is initiated u/s 132 or survey is conducted u/s 133A or money, bullion, jewellery or other valuable article or thing or books of account or documents are seized or requisitioned in case of any other person, the <u>RAY</u> can be any A.Y which is not time-barred under section 149. ** (This applies in respect of search initiated or books of account requisitioned on or after 1.4.2021)

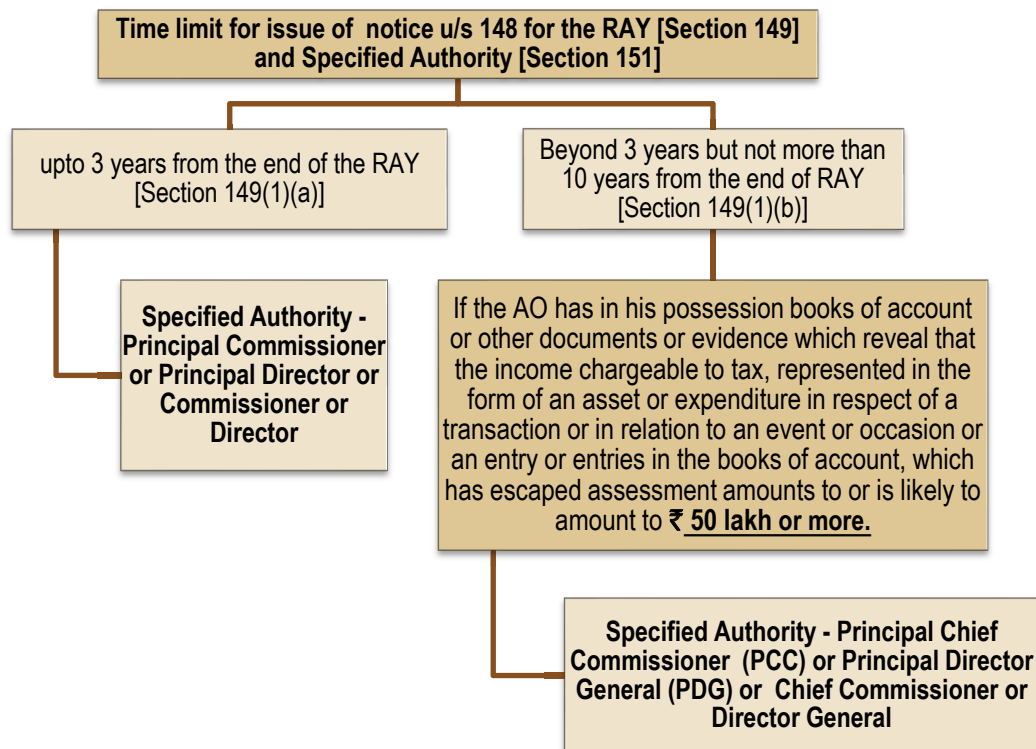
² Where the income chargeable to tax represented in the form of an asset or expenditure in relation to an event or occasion of the value referred to in section 149(1)(b), has escaped the assessment and the investment in such asset or expenditure in relation to such event or occasion has been made or incurred, in more than one previous years relevant to the assessment years within the period referred to in the said clause, a notice under section 148 shall be issued for every such assessment year for assessment, reassessment or recomputation, as the case may be.

The following flow chart attempts to provide an overview of the procedure for making assessment u/s 147:

When can notice be issued for making assessment u/s 147 ?



- (4) **Time limit for notice [Section 149]** – Section 149(1) provides time limit upto which notice under section 148 can be issued for the relevant assessment year. Further, section 149(2), provides that notice under section 149(1) shall be issued subject to the approval of Specified Authority prescribed under section 151 [Section 149(2)].



Where the income chargeable to tax represented in the form of an asset or expenditure in relation to an event or occasion of the value referred to above (₹ 50 lakhs or more), has escaped the assessment and the investment in such asset or expenditure in relation to such event or occasion has been made or incurred, in more than one previous years relevant to the assessment years within the period referred to in (b), a notice under section 148 shall be issued for every such assessment year for assessment, reassessment or recomputation, as the case may be [Section 149(1A)].

"Asset" shall include immovable property, being land or building or both, shares and securities, loans and advances, deposits in bank account.

Meaning of Asset

Extended time limit of 15 days would be available in the following cases -

- (a) where search is initiated or a search for which the last of the authorization is executed or requisition is made under section 132A after the 15th March of any financial year [in cases where the AO is deemed to have information suggesting that income has escaped assessment as per Explanation 2 to section 148]
- (b) where the information as referred to in Explanation 1 to section 148 emanates from a statement recorded or documents impounded under section 131 i.e., summons or section 133A i.e., survey, as the case may be, on or before the 31st March of a financial year, in consequence of, a search initiated or last of the authorization executed under section 132 or a requisition made under section 132A, after the 15th March of such financial year,

and the period for issue of notice under section 148 expires on the 31st March of such financial year. In such cases, a period of 15 days shall be excluded for the purpose of computing the period of limitation as per section 149. Further, notice issued under section 148 and the show cause notice issued under clause (b) of section 148A, as the case may be, shall be deemed to have been issued on the 31st March of such financial year **[Third and Fourth proviso to section 149]**.

Specified Authority would continue to be same even where the time period is extended by 15 days.

Example

In case a search is conducted on 20th March, 2024, the Assessing Officer is deemed to have information suggesting that income has escaped assessment for the purposes of section 148. He can issue notice u/s 148 for A.Y.2020-21, A.Y.2021-22, A.Y.2022-23 and A.Y.2023-24, since the three year time limit for these years has not expired as on the date of search.

However, for A.Y.2020-21, the Assessing Officer has a period of only 12 days for issue of notice u/s 148, after which it would be time barred, as per section 149(1)(a). Hence, in order to allow more time to the Assessing Officer to issue notice, by virtue of third proviso to section 149, in cases referred to in (1) and (3) in the flow chart [Explanation 2 to section 148], where search has been initiated u/s 132 or last of authorisations for search has been executed or requisition has been made u/s 132A after 15th March of any financial year, and the period for issue of notice under section 148 expires on 31st March of the financial year, a period of 15 days shall be excluded for the purpose of computing the period of limitation under section 149 and notice issued under section 148 in such case shall be deemed to have been issue

on 31st March of such financial year. Hence, for A.Y.2020-21, the Assessing Officer can issue notice upto 15th April, 2024 and such notice is deemed to have been issued on 31st March, 2024. Accordingly, the specified authority for the same under section 151 would be the Principal Commissioner/Principal Director/Commissioner/Director.

Notes – (1) To compute the period of limitation as per this section, the time or extended time allowed to the assessee, as per show-cause notice issued under section 148A(b) or the period during which the proceeding under section 148A is stayed by an order or injunction of any court, shall be excluded.

(2) Where immediately after the exclusion of the mentioned period, the period of limitation available to the Assessing Officer for passing an order under section 148A(d) **does not exceed seven days**, such remaining period shall be extended to seven days and the period of limitation under this section 149(1) shall be deemed to be extended accordingly.

(3) The provisions of section 149(1) shall not apply in a case where a notice under section 153A, or section 153C read with section 153A, is required to be issued in relation to a search initiated under section 132 or books of account, other documents or any assets requisitioned under section 132A, on or before 31.3.2021.

Notice for A.Y. 2020-21 or earlier A.Y.s to be issued keeping in mind the time limits prescribed under erstwhile sections 149, 153A and 153C:

No notice under section 148 shall be issued at any time in a case for the relevant assessment year beginning on or before 01.04.2021, if a notice under section 148 or section 153A or section 153C could not have been issued at that time on account of being beyond the time limit specified under the provisions of section 149(1)(b) or section 153A or section 153C, as the case may be, as they stood immediately before the commencement of the Finance Act, 2021.

The following are the time limits specified in the erstwhile sections 149(1)(b) or under section 153A or under section 153C:

Section 149(1)(b)	Section 153A	Section 153C
within 6 years from the end of the relevant A.Y.	6 A.Y.'s immediately preceding the A.Y. relevant to the P.Y. in which the search was conducted under section 132 or requisition was made under section 132A - for the relevant assessment year or years i.e., beyond 6 assessment years but upto 10 assessment years prior to	6 A.Y.'s immediately preceding the A.Y. relevant to the A.Y. in which search is conducted or requisition is made - And - for the relevant assessment year or years as referred in section 153A.

	the assessment year relevant to the previous year in which the search or requisition is conducted, where the AO has in his possession books of account or other documents or evidence which reveal that the income, represented in the form of assets, which has escaped assessment amounts to or is likely to amount to ₹ 50 lakhs or more in the RAY or in aggregate in the RAYs.	
For the purpose of erstwhile section 153A, asset shall include immovable property being land or building or both, shares and securities, deposits in bank account, loans and advances.		

With the help of the following examples, let us understand the concept of RAY and the time limit upto which a notice u/s 148 can be issued in cases mentioned in *Explanation 1 & 2* below to section 148.

Example 1: In a case, where the A.O has information which suggests income has escaped assessment (as per *Explanation 1* to section 148):

Information with the AO	RAY	Date of expiry of the 3 year time limit	Can notice be issued on or after 1.4.2023?
A.Y. 2018-19	2018-19	31.03.2022	No, notice cannot be issued, since 3 years have elapsed from the end of the RAY.
A.Y. 2019-20	2019-20	31.03.2023	
A.Y. 2020-21	2020-21	31.03.2024	Yes, notice can be issued, since 3 years have <u>not</u> elapsed from the end of the RAY. If the search is conducted after 15.3.2024, then notice can be issued on or before 15.4.2024 for A.Y. 2020-21 and the same is deemed to be issued on 31.3.2024.
A.Y. 2021-22	2021-22	31.03.2025	
A.Y. 2022-23	2022-23	31.03.2026	

Example 2

In April, 2023, the business premises of Mr. X and Mr. Y, two unrelated individuals, was searched under section 132. The Assessing Officer (AO) has in possession certain documents showing information relating to –

Asset/expenditure	RAY	Can notice be issued
<u>Mr. X</u>		
Jewellery of ₹ 25 lakhs pertaining to P.Y. 2016-17.	2017-18	No, notice cannot be issued, since 3 years have elapsed from the end of the RAY and the income chargeable to tax which has escaped assessment is less than ₹ 50 lakhs.
Expenditure for celebrating 25 th wedding anniversary on 26 th October, 2010 of ₹ 65 lakhs.	2011-12	No, notice cannot be issued, since such A.Y. falls beyond 10 years from the end of the RAY.
<u>Mr. Y</u>		
Shares purchased in the P.Y.2017-18 and in the P.Y.2018-19 totaling to ₹ 55 lakhs.	2018-19 & 2019-20	Yes, notice can be issued, since such A.Y.'s falls within the period of 10 years and the income chargeable to tax which has escaped assessment is ₹ 55 lakhs. Notice under section 148 is to be issued for both these assessment years.

It may be noted that in case of Mr. Y, the AO shall not issue notice without the prior approval of specified authority. Further, in case AO is below the rank of Joint Commissioner, he shall not issue assessment order except with the prior approval of the Additional Commissioner or Additional Director or Joint Commissioner or Joint Director.

(5) **Provision for cases where assessment is in pursuance of an order on appeal, etc.**

[Section 150]

- (i) As per section 149, no notice can be issued after the expiry of 3 years [unless the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of asset or expenditure in respect of a transaction or in relation to an event or occasion or an entry or entries in the books of account, which has escaped assessment amounts to or is likely to amount to ₹ 50 lakhs or more] for assessment, reassessment or recomputation where income has escaped assessment.
- (ii) The restriction of time limit under section 149(1) is not applicable where notice u/s 148 is issued for making an assessment, reassessment or re-computation to give effect to

any finding or direction contained in an order passed by any authority in any proceeding by way of appeal, reference or revision or by a Court in any proceeding under any other law. This relaxation is contained in section 150(1).

- (iii) However, such relaxation will not apply where any such assessment or reassessment relates to an assessment year in respect of which an assessment or reassessment could not have been made at the time **the order which was the subject matter of appeal, reference or revision**, as the case may be, was made on account of the expiry of the time limit at that point of time itself. This restriction is contained in section 150(2).
- (iv) Section 150(1) operates to relax the time restriction stipulated under section 149. Such relaxation can be used by the Assessing Officer only if the restriction placed under section 150(2) does not affect the operation of section 150(1). It may be noted that the restriction placed under section 150(2) is applicable only in respect of appeal, reference or revision referred to in section 150(1) but it does not apply with reference to an order passed by a Court in any proceeding under any law.

15.36 FACELESS ASSESSMENT OF INCOME ESCAPING ASSESSMENT [SECTION 151A]

Section 151A provide for faceless assessment of income escaping assessment.

- (1) **Faceless assessment scheme for income escaping assessment:** Faceless assessment scheme for income escaping assessment **may be notified by** the Central Government, for the purposes of assessment, reassessment or re-computation under section 147 or issuance of notice under section 148 or conducting of enquiries or issuance of show-cause notice or passing of order under section 148A or sanction for issue of such notice under section 151, so as to impart greater efficiency, transparency and accountability by—
 - (a) eliminating the interface between the income-tax authority and the assessee or any other person to the extent technologically feasible;
 - (b) optimising utilisation of the resources through economies of scale and functional specialisation;
 - (c) introducing a team-based assessment, reassessment, re-computation or issuance or sanction of notice with dynamic jurisdiction.
- (2) **Notification to be laid before each House of Parliament:** Every notification issued has to be laid before each House of Parliament, as soon as may be after the issue.

Accordingly, the Central Government has, vide Notification no. 18/2022 dated 29.3.2022 specified that:

- (a) assessment, reassessment or recomputation under section 147 or
- (b) issuance of notice under section 148

would be through automated allocation, in accordance with risk management strategy formulated by the Board as referred to in section 148 for issuance of notice, and in a faceless manner, to the extent provided in section 144B with reference to making assessment or reassessment of total income or loss of assessee.

- (3) Applicability or non-applicability of any of the provisions of the Act as may be notified by the Central Government to give effect to the Scheme: The Central Government may, for the purpose of giving effect to the scheme, direct that any of the provisions of the Income-tax Act, 1961 shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification. However, no direction shall be issued after 31st March, 2022.



15.37 OTHER PROVISIONS [SECTION 152]

- (1) **Income escaping assessment to be charged to tax at rates applicable for respective years [Section 152(1)]**

In the case of any assessment or reassessment or recomputation made under section 147, the income escaping assessment would be chargeable to tax at the rate applicable to the respective years in which such income is liable to be taxed.

- (2) **Assessee entitled to claim dropping of proceedings under section 147 in certain cases [Section 152(2)]**

Where an assessment is reopened under section 147, the assessee may claim that the proceedings under section 147 shall be dropped on his showing that he had been assessed on an amount not lower than what he would be rightly liable for even if the income alleged to have escaped assessment had been taken into account. Alternatively, he can make such a claim on showing that the assessment or computation had been properly made. An assessee can avail this benefit only if he had not challenged any part of the original assessment order either by filing an appeal or filing a revision petition.

The assessee, while making such claim, shall not be entitled to reopen matters concluded by an order under sections 154, 155, 260, 262 or 263.



15.38 TIME LIMIT FOR COMPLETION OF ASSESSMENTS AND REASSESSMENTS [SECTION 153]

(1) **Time limits in different cases/circumstances –**

Section	Proceeding	Case/Circumstance	Time limit for completion of assessment or reassessment
153(1)	Order of assessment u/s 143 or 144	In respect of an order relating to: A.Y.2017-18 or any earlier A.Y. and made on or after 1.6.2016	21 months from the end of the assessment year in which the income was first assessable
		A.Y.2018-19	18 months from the end of the assessment year in which the income was first assessable
		A.Y.2019-20	12 months from the end of the assessment year in which the income was first assessable
		A.Y. 2020-21	18 months from the end of the assessment year in which the income was first assessable
		A.Y.2021-22 and thereafter	9 months from the end of the assessment year in which the income was first assessable
		A.Y. 2022-23 and thereafter	12 months from the end of the assessment year in which the income was first assessable
	Where an updated return under section 139(8A) is furnished, an order of assessment under section 143 or section 144 may be made at any time <u>before the expiry of 12 months from the end of the financial year</u> in which such return was furnished.		
153(2)	Order of assessment, reassessment or recomputation u/s 147	Where notice u/s 148 is served before 1.4.2019	9 months from the end of the financial year in which the notice was served
		Where notice u/s 148 is served on or after 1.4.2019	12 months from the end of the financial year in which the notice was served

153(3)	Fresh assessment u/s 143/144/ 147 or an fresh order u/s 92CA (reference to TPO), as the case may be, where the original assessment or order u/s 92CA, has been set aside, cancelled and referred back to the Assessing Officer by an order u/s 254/263/264	If order u/s 254/263/ 264 is passed before 1.4.2019	9 months from the end of the financial year in which the said order u/s 254 is received by the PCC/ CC/PC/CIT ³ or the order u/s 263 or u/s 264 is passed by the PCC/CC/ PC/CIT
		If order u/s 254/263/ 264 is passed on or after 1.4.2019	12 months from the end of the financial year in which the said order u/s 254 is received by the PCC/CC/PC/CIT or the order u/s 263 or u/s 264 is passed by the PCC/CC/PC/CIT
153(3A)	<i>Where an assessment or reassessment is pending on the date of initiation of search u/s 132 or making of requisition u/s 132A.</i>		<i>Period available for completion of assessment or reassessment referred under section 153(1)/(1A)/(2)/(3) shall be extended by 12 months in -</i> - <i>a case where such search is initiated u/s 132 or such requisition is made u/s 132A;</i> - <i>the case of an assessee, to whom any money, bullion, jewellery or other valuable article or thing seized or requisitioned belongs to;</i> - <i>the case of an assessee, to whom any books of account or documents seized or requisitioned pertains or pertain to, or any information contained therein, relates to.</i>

³Principal Chief Commissioner (PCC) / Chief Commissioner (CC) / Principal Commissioner (PC) / Commissioner of Income-tax (CIT).

153(4)	Where a reference is made to the TPO u/s 92CA(1) during the course of proceeding for assessment or reassessment:		An additional time period of 12 months is available for completion of assessment/ reassessment in such cases. Thus, the revised time limit shall be as follows:
	Completion of assessment u/s 143 or u/s 144.	In relation to A.Y.2017-18 or earlier A.Y.	33 months from the end of the assessment year in which the income was first assessable.
		In relation to A.Y. 2018-19	30 months from the end of the assessment year in which the income is first assessable
		In relation to A.Y. 2019-20	24 months from the end of the assessment year in which the income is first assessable
		In relation to A.Y. 2020-21	30 months from the end of the assessment year in which the income is first assessable
		A.Y.2021-22 and thereafter	21 months from the end of the assessment year in which the income was first assessable
		A.Y.2022-23 and thereafter	24 months from the end of the assessment year in which the income was first assessable
	<i>Where an updated return under section 139(8A) is furnished, an order of assessment under section 143 or section 144 may be made at any time <u>before the expiry of 24 months from the end of the financial year in which such return was furnished.</u></i>		
	Completion of assessment/ reassessment/re-computation u/s 147	Where notice u/s 148 is served before 1.4.2019	21 months from the end of the financial year in which notice u/s 148 is served.
		Where notice u/s 148 is served on or after 1.4.2019	24 months from the end of the financial year in which the notice u/s 148 is served
	Completion of fresh assessment or fresh order u/s	Where order u/s 254 is received or order u/s 263/264 is passed	21 months from the end of the financial year in which such order u/s 254 is received by the PCC or

	92CA in pursuance of an order u/s 254 (received by the PCC or CC/PC or CIT) or an order passed by the PC or CIT u/s 263 or u/s 264.	before 01.04.2019	CC/PC or CIT or such order u/s 263 or 264 is passed by the PCC or CC or PC or CIT, as the case may be.
		Where order u/s 254 is received or order u/s 263/264 is passed on or after 01.04.2019	24 months from the end of the F.Y. in which the said order u/s 254 is received by the PCC/CC/PC/CIT or the order u/s 263 or u/s 264 is passed by the PCC/CC/PC/CIT if order u/s 254/263/264 is passed on or after 01.04.2019
	Completion of pending assessment or reassessment on the date of initiation of search u/s 132 or making of requisition u/s 132A.		An additional time period of 12 months is available for completion of assessment/ reassessment referred under section 153(1)/(1A)/(2)/(3) .
153(5)	Effect to be given by the Assessing Officer or the Transfer Pricing officer, as the case may be, to an order u/s 250/254/260/262/263/264, wholly or partly, otherwise than by making a fresh assessment or reassessment or fresh order u/s 92CA, as the case may be	Where order u/s 250/254/260/262/263/264 requires verification of issue by submission of any document by assessee or any other person or where opportunity of being heard is to be provided to the assessee.	The order u/s 250/254/260/262/263/264 shall be made within time specified in section 153(3) i.e., within 9 months in respect of order passed on or before 31.03.2019 and 12 months in respect of an order passed on or after 1.4.2019.

		In any other case	3 months from the end of the month in which the order u/s 250/254/260/262 is received by the PCC/CC/PC/CIT or the order u/s 263/264 is passed by the PCC/CC/PC/CIT. Note – Additional period of 6 months may be allowed to the A.O./T.P.O. to give effect to order if the PC/CIT is satisfied, on an application from the A.O. /T.P.O., that the order could not be given effect to within 3 months due to reasons beyond the control of the A.O./T.P.O.
153(5A)	Where the Transfer Pricing Officer gives effect to an order or direction u/s 263 by an order u/s 92CA and forwards such order to the Assessing Officer		The Assessing Officer shall proceed to modify the order of assessment or reassessment or recomputation, in conformity with such order of the Transfer Pricing Officer, within 2 months from the end of the month in which such order of the Transfer Pricing Officer is received by him.
153(6)(i)	Where the assessment, reassessment or recomputation is made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order u/s 250/254/260/262/263/264 or in an order of any court in a proceeding otherwise than by		12 months from the end of the month in which the order is received or passed by the PCC or CC or PC or CIT.

	way of appeal or reference.		
153(6)(ii)	Where, in the case of a firm, an assessment is made on a partner of the firm in consequence of an assessment made on the firm under section 147		12 months from the end of the month in which the assessment order in the case of the firm is passed.

- (2) **Exclusion of period [Explanation 1 to section 153]** - In computing the period of limitation for the purposes of section 153 the following time periods shall be excluded:

	Case	Exclusion of Period	
		Commencing from	Ending with
(i)	Contravention of the provisions of section 10(21)/(22B)/(23A) / (23B)	the date on which the A.O. intimates the Central Government or the prescribed authority, the said contravention as required under clause (i) of the first proviso to section 143(3)	the date on which the copy of the order withdrawing the approval or rescinding the notification, as the case may be, is received by the A.O.
(ii)	Direction to get accounts audited or inventory valued under section 142(2A)	the date on which the A.O. directs the assessee to get his accounts audited or inventory valued under section 142(2A)	the last date on which the assessee is required to furnish a report of such audit or inventory valuation (or) the date on which the order setting aside such direction is received by the PC/CIT, if such direction is challenged before a Court.
(iii)	Reference to the Valuation Officer under section 142A(1)	the date on which the Assessing Officer makes a reference to the Valuation Officer	the date on which the report of the Valuation Officer is received by the Assessing Officer.

(iv)	Where the assessee furnishes declaration claiming that any question of law arising in his case for an assessment year which is pending before the A.O. or any appellate authority is identical with a question of law arising in his case for another A.Y. which is pending before the High Court or Supreme Court.	the date on which the Assessing Officer received the declaration under section 158A(1)	the date on which the order under section 158A(3) is made by him Note – However, such period cannot exceed 60 days.
(v)	Where an application is made before the Board for Advance Rulings u/s 245Q(1)	the date on which an application is made before the Board for Advance Rulings u/s 245Q(1)	the date on which the order rejecting the application is received by the PC/CIT u/s 245R(3) (or) the date on which the advance ruling pronounced by it is received by the PC/CIT u/s 245R(7)
(vi)	Where reference(s) for exchange of information is made by a competent authority	the date on which a reference or first of the references for exchange of information is made by an authority competent under an agreement referred to in section 90 or section 90A	the date on which the information requested is last received by the PC/CIT (or) a period of one year, whichever is less

(vii)	Where a reference is made by A.O. u/s 144BA(1) to PC/C at any stage of assessment or reassessment proceedings, on the basis of material & evidence available to declare an arrangement as IAA and determine its consequence	the date on which a reference for declaration of an arrangement to be an IAA is received by the PC/CIT under section 144BA(1)	the date on which a direction under section 144BA(3) is issued by PC/CIT, if no objections are filed by the assessee (or) the date on which Approving Panel issue directions in respect of the declaration of the arrangement as an IAA under section 144BA(6) (or) the date on which order of PC/CIT not invoking the provisions of Chapter X-A, under section 144BA(5) is received by the A.O.
(viii)	<i>Where the books of account or other documents, or any money, bullion, jewellery or other valuable article or thing seized under section 132 or requisitioned under section 132A, as the case may be, are handed over by the Authorising Officer to the Assessing Officer having jurisdiction over the assessee</i>	<i>the date on which a search is initiated under section 132 or a requisition is made under section 132A</i>	<i>on the date on which the books of account or other documents, or any money, bullion, jewellery or other valuable article or thing seized under section 132 or requisitioned under section 132A, as the case may be, are handed over to the Assessing Officer having jurisdiction over the assessee—</i> <i>(a) in whose case such search is initiated under section 132 or such requisition is made under section 132A; or</i> <i>(b) to whom any money, bullion, jewellery or other valuable article or thing seized or requisitioned belongs to; or</i> <i>(c) to whom any books of account or documents seized or requisitioned</i>

			<i>pertains or pertain to, or any information contained therein, relates to (However, such period should not be more than 180 days)</i>
(ix)	<i>Where the Assessing Officer is satisfied that any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in section 10(23C)(iv)/(v)/(vi)/(via) or any trust or institution referred to in section 11, has committed any specified violation under section 10(23C) or section 12AB(4), as the case may be</i>	<i>the date on which the Assessing Officer makes a reference to the Principal Commissioner or Commissioner under section 143(3)</i>	<i>the date on which the copy of the order either cancelling the approval/registration, as the case may be or refusing to cancel the approval/registration under section 10(23C) or section 12AB(4), as the case may be, is received by the Assessing Officer</i>
(x)	the time taken in reopening the whole or any part of the proceeding or in giving an opportunity to the assessee to be re-heard under the proviso to section 129; or		
(xii)	the period during which the assessment proceeding is stayed by an order or injunction of any court.		

(3) **Period of limitation in certain cases**

	Case	Period of limitation
(i)	Where immediately after the exclusion of the aforesaid period, the period of limitation referred to in section 153(1)/(2)/(3) available to the Assessing Officer for making an order of assessment, reassessment or re-computation, as the case may be, is less than 60 days	Such remaining period shall be extended to 60 days and the aforesaid period of limitation shall be deemed to be extended accordingly.
(ii)	Where the period available to the Transfer Pricing Officer is extended to 60 days in accordance with the proviso to section 92CA(3A), and the period of limitation available to the Assessing Officer for making an order of assessment, reassessment or re-computation, as the case may be, is less than 60 days	Such remaining period shall be extended to 60 days and the aforesaid period of limitation shall be deemed to be accordingly extended.

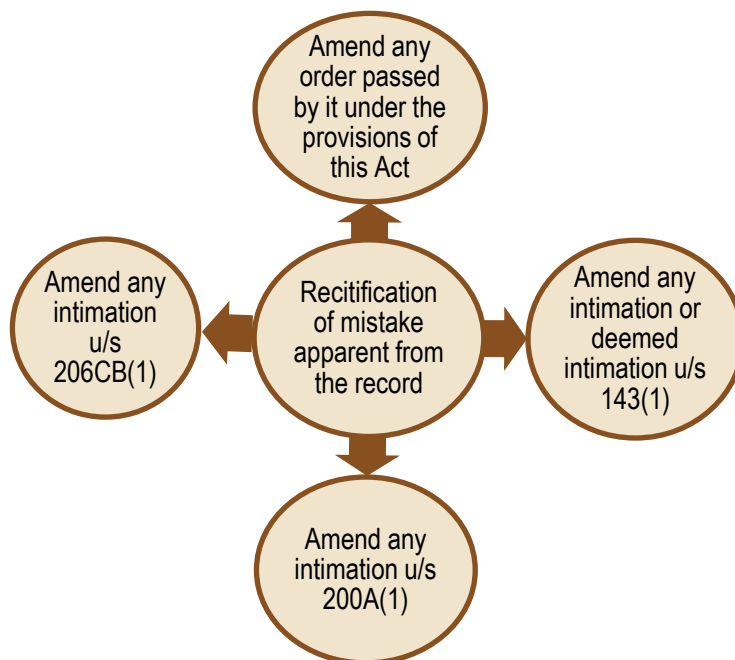
(4) **Deeming provisions in respect of assessment of excluded income for another assessment year or on another person**

	Case	Consequence
(a)	Where, by an order referred to in section 153(6)(i), any income is excluded from the total income of the assessee for an assessment year	An assessment of such income for another assessment year shall, for the purposes of sections 150 and 153, be deemed to be one made in consequence of or to give effect to any finding or direction contained in the said order.
(b)	Where, by an order referred to in section 153(6)(i), any income is excluded from the total income of one person and held to be the income of another person	An assessment of such income on such other person shall, for the purposes of section 150 and section 153, be deemed to be one made in consequence of or to give effect to any finding or direction contained in the said order, provided such other person was given an opportunity of being heard before the said order was passed.



15.39 RECTIFICATION OF MISTAKES [SECTION 154]

- (1) **Manner of rectification of a mistake apparent from the record** - With a view to rectifying any mistake apparent from the record, an income tax authority referred to in section 116 may:



- (2) **Mistake apparent from the record** - The jurisdiction of any authority under the Act to make an order under section 154 depends upon the existence of a mistake apparent on the face of the record.
- (i) **Mistake apparent from the record may be a mistake of fact as well as mistake of law** - For instance, the treatment of non-agricultural income as agricultural income and granting exemption in respect of such income is an obvious mistake of law which could be rectified under section 154.
 - (ii) **Mere change of opinion cannot be basis for rectification** - A mere change of opinion, however, cannot be the basis on which the same or the successor Assessing Officer can treat a case as one of rectification of mistake. A mistake is one apparent from the record in case, where it is a glaring, obvious, patent or self-evident. Mistake, which has to be discovered by a long drawn process of reasoning or examination or arguments on points, where there may be two opinions, cannot be said to be mistake or error apparent from the record.

- (iii) **Subsequent decision of Supreme Court** - A mistake arising as a result of subsequent interpretation of law by the Supreme Court would also constitute error apparent from the record.
- Mistake apparent from record**
- (iv) **Retrospective amendment of law** - could also lead to rectification if an order is plainly and obviously inconsistent with the specific and clear provision, as amended retrospectively.
- (3) **Doctrine of Partial Merger** - Where any matter has been considered and decided in any proceeding by way of appeal or revision relating to a rectifiable order, the authority passing such order may, amend the order in relation to any matter other than the matter which has been so considered and decided.
- (4) **Amendment may be suo motu or the same may be brought to notice by the assessee or deductor or collector** - The concerned authority may make an amendment on its own motion. However, he should mandatorily make the amendment for rectifying any such mistake which has been brought to its notice by the assessee or the deductor or the collector. Where the authority concerned is the **Joint Commissioner (Appeals)** or Commissioner (Appeals), the mistake can be pointed out by the Assessing Officer also.
- (5) **Opportunity of being heard to be given to the assessee or deductor or collector before enhancing an assessment or reducing a refund** - An amendment which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee or the deductor or the collector, shall not be made unless the authority concerned has given notice to the assessee or the deductor or the collector of its intention so to do and has allowed the assessee or the deductor or the collector a reasonable opportunity of being heard.
- (6) **Action to be taken by the Assessing Officer depending upon the effect of the amendment made**

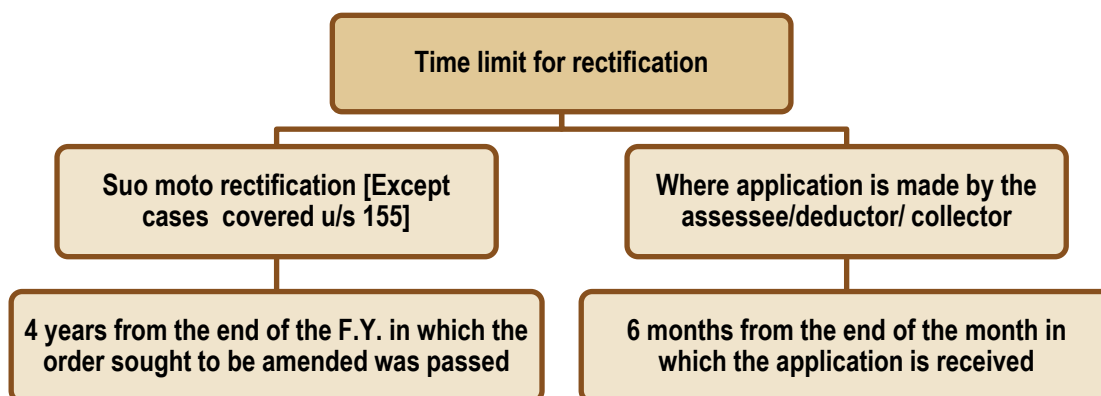
	Case	Action to be taken by A.O.
(i)	Where an amendment is made under this section	An order shall be passed in writing by the authority concerned
(ii)	Where any such amendment has the effect of reducing the assessment, or otherwise reducing the liability of the assessee or the deductor or the collector	The Assessing Officer shall make any refund due to such assessee or the deductor or the collector

(iii)	Where any such amendment has the effect of enhancing the assessment or reducing the refund already made or otherwise increasing the liability of the assessee or the deductor or the collector	The Assessing Officer shall serve on the assessee or the deductor or the collector, as the case may be a notice of demand in the prescribed form specifying the sum payable

- (7) **Time limit for rectification** - Except in cases which are specifically covered by section 155, no amendment under this section shall be made after the expiry of **four years from end of the financial year in which the order sought to be amended was passed.**

Where an application for amendment is made by the assessee or by the deductor or by the collector, the income-tax authority shall pass an order within a period of **six months from the end of the month in which the application is received by it**, either making the amendment or refusing the claim.

It may be noted that the time limit of 6 months from the end of the month in which the application is received from the assessee or deductor or collector cannot exceed the outer time limit of 4 years from the end of the financial year in which the order sought to be rectified was passed.



15.40 OTHER AMENDMENTS [SECTION 155]

Where any assessment made in respect of any assessment year is required to be amended on account of any specific provisions in the Act mentioned hereunder, such an order can be passed within the time mentioned below and in these cases, the time limit of 4 years would not be reckoned from the end of the year in which the order sought to be amended was passed but would be reckoned from the end of the financial year mentioned in column (4) in the table below -

Sub-section	Circumstances – head note	Circumstances – details	Time limit
(1)	(2)	(3)	(4)
(1A)	Rectification of order of assessment of partners consequent to disallowance of the remuneration in the hands of the firm	Where a partner is assessed in respect of any remuneration from a firm under section 28(v) and later in the assessment or reassessment of the firm or reduction or enhancement made in the income of the firm under sections 154/155/250/254/263/264, such remuneration is found not deductible under section 40(b), the assessment order of the partner shall be amended to exclude such remuneration which is not deductible in the firm's case. This is in view of the proviso to section 28(v) which states that the remuneration disallowed in the firm's case cannot be charged to tax in the partner's hands.	The four years period for making the amendment in the assessment of partners would be reckoned from the end of the financial year in which the final order was passed in the case of the firm.
(2)	Rectification of member's assessment consequent to enhancement or reduction of income of the AOP/BOI	Where a member is assessed in respect of any income from the AOP/BOI and later in the assessment of such AOP/BOI, an addition or disallowance is made resulting in variation of the income of the AOP/BOI, or where there is any enhancement or reduction in the income of the AOP/BOI as a result of an order in appeal, reference, revision or rectification, consequential amendment in the assessment of a member of an AOP/BOI is to be made.	The four year period for making the amendment in the case of member would be reckoned from the end of the financial year in which the final order was passed in the case of the AOP/BOI.

(4)	Rectification of assessment consequent to disallowance of excess loss or depreciation allowed as a result of proceedings initiated under section 147	Losses incurred in one year is claimed by the assessee in the subsequent year(s). However, the year of incurring loss may be subject to reassessment proceedings u/s 147 leading re-computation of total income, where excessive loss or depreciation allowance had been allowed. This would result in amending the order/intimation/deemed intimation of the subsequent years in which the loss/allowance (computed as per return/intimation or original assessment) was claimed. The order / intimation / deemed intimation of the subsequent years may need to be amended to give effect to the reduced loss or allowance in consequence of any proceedings initiated u/s 147.	The four year period for making the amendment of the subsequent years' order or intimation or deemed intimation would be reckoned from the end of the financial year in which the order was passed under section 147.
(7B)	Rectification necessitated on account of capital gains, which were not charged to tax by virtue of section 47(iv) or 47(v), becoming chargeable under section 47A	Under the provisions of section 47A, capital gains which were not charged to tax by virtue of section 47(iv) or (v) may be deemed to be chargeable to tax, if, before the expiry of 8 years from the date of transfer. (i) the relevant capital asset was converted into or treated as stock-in-trade or, as the case may be, (ii) the parent company ceases to hold the	Four years from the end of the previous year in which the relevant capital asset was converted into or treated as stock-in-trade or, as the case may be, the parent company ceases to hold the entire share capital of the subsidiary company.

		entire share capital of the subsidiary company In such circumstances, the Assessing Officer, may, accordingly, make an order amending the original order for withdrawal of the exemption granted under section 47(iv)/(v).	
(11A)	<i>Rectification to give effect to deduction under section 10AA which was not allowed earlier.</i>	<i>Deduction u/s 10AA has not been allowed on the ground that such income has not been received in convertible foreign exchange in India or has not been brought into India and subsequently such income or part thereof has been or is received in, or brought into, India. In such case, the AO shall amend the order of assessment so as to allow deduction u/s 10AA in respect of such income or part thereof as is so received in, or brought into, India.</i>	<i>The period of four years shall be reckoned from the end of the previous year in which such income is so received in, or brought into, India.</i>
(14)	Rectification to give effect to TDS/TCS not deducted while computing tax liability	Where credit for TDS/TCS has not been given owing to TDS/TCS certificates not being furnished along with the return of income and such certificates are produced subsequently before the Assessing Officer within two years from the end of the assessment year in which such income is assessable, the Assessing Officer can amend the order of assessment or intimation or deemed intimation under	The law does not explicitly state that the time limit of 4 years for the purpose of section 154(7) would get extended from the end of the year in which the TDS/TCS certificates are produced before the Assessing Officer. All that it says is that the provisions of section 154 shall apply in all such cases. Therefore, one view would be that the time limit of 4

		section 143(1). However, such rectification under section 155(14) is possible only if the income from which tax has been deducted or the income on which tax has been collected has been disclosed in the return of income filed by the assessee for the relevant assessment year.	years would be reckoned from the end of the year in which the order / intimation / deemed intimation was passed. The second view could be that the time limit of 4 years should be reckoned from the end of the year in which the TDS/TCS certificates are produced before the Assessing Officer. Going by the purpose of introduction of section 155, it appears that the second view seems more reasonable.
(14A)	Rectification to give effect to credit for income-tax paid outside India	The assessee may claim rebate or relief u/s 90, 90A or 91 in respect of tax paid outside India on income which was subject matter of double taxation. The credit shall be allowed in India based on the proof of payment of such tax outside India. Sometimes the levy of tax outside India on the assessee may be in dispute and therefore, the assessee might not have paid the same. In the absence of the proof of payment, the credit for the same cannot be given in Indian Income tax proceedings. When the dispute is finally settled, the assessee may pay the tax outside India and seek to claim the same u/s. 90, 90A or 91, to the extent permissible. In such cases, the assessee	The law does not explicitly state that the time limit of 4 years for the purpose of section 154(7) would get extended from the end of the year in which the application is made by the assessee after the settlement of the dispute. All that it says is that the provisions of section 154 shall apply in all such cases. Therefore, one view would be that the time limit of 4 years would be reckoned from the end of the year in which the order / intimation / deemed intimation was passed. The second view could be that the time limit of 4 years should be reckoned from the end of the year in which the assessee files the application after the

		is required to make the claim within a period of six months from the end of the month in which the dispute is settled with - evidence of settlement of dispute - evidence of payment of such tax - undertaking that no credit for such tax has been directly or indirectly claimed or shall be claimed in any other assessment year. In such cases, the Assessing Officer shall amend the order of assessment or any intimation or deemed intimation under section 143(1), as the case may be, and the provisions of section 154 shall, so far as may be, apply thereto. However, the credit of tax which was under dispute shall be allowed for the year in which such income is offered to tax or assessed to tax in India.	dispute in the other country got settled. Going by the purpose of introduction of section 155, it appears that the second view seems more reasonable.
(15)	Rectification consequent to revision of full value of consideration in appeal or revision	Where the Assessing Officer adopts stamp duty value as full value of consideration under section 50C and later, such value is revised in any appeal or revision, the Assessing Officer shall amend the assessment order to compute the capital gain by taking the full value of consideration to be the value so revised in such appeal or revision.	The period of four years shall be reckoned from the end of the previous year in which the order revising the value was passed in that appeal or revision.

(16)	Recomputation of capital gains on account of reduction of any compensation in a compulsory acquisition by any Court, Tribunal or any other authority	Where capital gains are computed u/s 45(5) based on the original or enhanced compensation in a compulsory acquisition and the same is required to be recomputed on account of any reduction of any compensation by any Court, Tribunal, or any other authority, the Assessing Officer shall amend the assessment order so as to re-compute the capital gain by taking the compensation or consideration as reduced by any Court, Tribunal or other authority.	The four years time period shall be reckoned from the end of the previous year in which the order reducing the compensation was passed by the Court, Tribunal or other authority.
(17)	Rectification consequent to revoking of patent or exclusion of name of the assessee from patents register as patentee	Where deduction under section 80RRB is allowed and subsequent to the allowance of such deduction in respect of any patent, the Controller or the High Court passes an order under the Patents Act, 1970 revoking the patent or excluding the name of the assessee from the Patents Register as patentee in respect of that patent, the Assessing Officer shall recompute the total income of assessee for the relevant previous year and make necessary amendments	For the purpose of amending the order (in which deduction under section 80RRB was originally granted), the period of 4 years is to be reckoned from the end of the previous year in which such order of the Controller or High Court, as the case may be, is passed.
(18)	Where any deduction in respect of any surcharge or cess, which is not allowable as deduction under section 40, has been claimed and allowed in the case of an assessee	Explanation 3 to Section 40(a)(ii), inserted by Finance Act, 2022 with retrospective effect from A.Y. 2005-06, provides that the term 'tax' shall include and be deemed to have always included 'surcharge' or 'cess' and	Four year period will begin from the end of the previous year commencing on 1.4.2021. (i.e., from 31.3.2022). Note: If the assessee makes an application to the Assessing Officer in

	in any previous year	hence shall be an inadmissible deduction under section 40(a)(ii). If an assessee has claimed the deduction on account of 'surcharge' or 'cess' in any previous year, it shall be deemed that assessee has under-reported income for such previous years for the purpose of Section 270A(3) and the Assessing Officer shall recompute the total income of the assessee for such previous year and make necessary amendment.	the prescribed form and within the prescribed time (on or before 31.3.2023), requesting for recomputation of the total income of the previous year without allowing the claim for deduction of surcharge or cess and pays the amount due thereon within the specified time, such claim shall not be deemed to be under-reported income for the purposes of section 270A(3). The A.O., on receipt of such application, has to recompute the total income by amending the relevant order and issuing notice u/s 156 specifying the time period within which amount of tax payable, if any, is to be paid – (i) for the A.Y. relevant to the P.Y. for which the assessee has made an application for recomputation of total income; and (ii) for the A.Y.s subsequent to such A.Y. referred to in (i) above, if the order for such A.Y. results in variation in carry forward of loss or allowance or unabsorbed depreciation or credit for tax u/s 115JAA or 115JD [Rule 132 of Income-tax Rules, 1962] After paying the tax

			determined, the assessee has to furnish the details of payment of tax to the Assessing Officer within 30 days from the date of making the payment.
(20)	<i>Where any income has been included in the return of income furnished by an assessee u/s 139 for any assessment year (being the relevant assessment year) and tax on such income has been deducted at source and paid to the credit of the Central Government in accordance with the provisions of Chapter XVII-B in a subsequent financial year.</i>	<i>The Assessing Officer shall, on an application made by the assessee in such prescribed form, within a period of 2 years from the end of the financial year in which such tax was deducted at source, amend the order of assessment or any intimation allowing credit of such tax deducted at source in the relevant assessment year. The credit of such tax deducted at source shall not be allowed in any other assessment year.</i>	<i>The period of four years shall be reckoned from the end of the financial year in which such tax has been deducted.</i>

15.41 NOTICE OF DEMAND [SECTION 156]

- (1) When any tax, interest, penalty or fine or any other sum is payable consequent to any order passed under this Act, the Assessing Officer shall serve upon the assessee, a notice of demand in the prescribed form, specifying the sum so payable.

An intimation under section 143(1) or section 200A(1) or section 206CB(1) would be deemed to be a notice of demand for the purpose of section 156, where any sum is determined to be payable by the assessee under section 143(1) or by the deductor under section 200A(1) or by the collector under section 206CB(1).

Notice of Demand

The Apex Court has, in *Sri Mohan Wahi v. CIT (2001) 248 ITR 799*, held that failure to serve notice of demand renders the recovery proceedings invalid.

Note - As per section 292BB, where an assessee had appeared in any proceedings or co-operated in any enquiry relating to an assessment or reassessment, it shall be deemed that

any notice required to be served upon him, has been duly served upon him in time in accordance with the provisions of the Act and such assessee shall be precluded from raising any objection in any proceeding or enquiry that the notice was (a) not served upon him or (b) not served upon him in time or (c) served upon him in an improper manner. However, the above provision shall not be applicable where the assessee has raised such objection before the completion of such assessment or reassessment.

- (2) Tax on perquisite of specified securities and sweat equity shares must be paid in the year of exercising of option. However, where such shares or securities are allotted by the current employer, being an eligible start-up referred to in section 80-IAC, the perquisite is taxable in the year -

- after the expiry of 48 months from the end of the relevant assessment year
 - in which sale of such security or share are made by the assessee
 - in which the assessee ceases to be the employee of the employer,
- whichever is earliest.

In such cases, tax or interest on such income included in the notice of demand referred to in (1) above shall be payable by the assessee within 14 days –

- after the expiry of 48 months from the end of the relevant assessment year
 - from the date of sale of such security or share are made by the assessee
 - from the date when the assessee ceases to be the employee of the employer,
- whichever is earliest.

15.42 MODIFICATION AND REVISION OF NOTICE IN CERTAIN CASES [SECTION 156A]

Where any tax, interest, penalty, fine or any other sum in respect of which a notice of demand has been issued under section 156, is reduced as a result of an order of the Adjudicating Authority as defined in section 5(1) of the Insolvency and Bankruptcy Code, 2016, the Assessing Officer shall modify the demand payable in conformity with such order and shall thereafter serve on the assessee a notice of demand specifying the sum payable, if any. Such notice of demand shall be deemed to be a notice under section 156 and the provisions of this Act shall accordingly, apply in relation to such notice.

Where the order referred to above is modified by the National Company Law Appellate Tribunal or the Supreme Court, as the case may be, the modified notice of demand issued by the Assessing Officer earlier shall be revised accordingly.

15.43 INTIMATION OF LOSS [SECTION 157]

When, in the course of the assessment of total income of any assessee, it is established that a loss has taken place which the assessee is entitled to have carried forward and set-off business loss under section 72(1), speculation business loss under section 73(2), losses under the head "Capital Gains" under section 74 and loss from activity of owning and maintain race horses under section 74A(3), the Assessing Officer shall notify the assessee by an order in writing the amount of the loss as computed by him for this purpose.

15.44 FACELESS RECTIFICATION, AMENDMENTS AND ISSUANCE OF NOTICE OR INTIMATION [SECTION 157A]

Section 157A provide for faceless rectification, amendments and issuance of notice or intimation.

- (1) **Faceless rectification, amendments and issuance scheme for income escaping assessment:** The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of rectification of any mistake apparent from record under section 154 or other amendments under section 155 or issue of notice of demand under section 156, or intimation of loss under section 157, so as to impart greater efficiency, transparency and accountability by—
 - (a) eliminating the interface between the income-tax authority and the assessee or any other person to the extent technologically feasible;
 - (b) optimising utilisation of the resources through economies of scale and functional specialisation;
 - (c) introducing a team-based rectification of mistakes, amendment of orders, issuance of notice of demand or intimation of loss, with dynamic jurisdiction.
- (2) **Applicability or non-applicability of any of the provisions of the Act as may be notified by the Central Government to give effect to the Scheme:** The Central Government may, direct that any of the provisions of this Act would not apply or would apply with such exceptions, modifications and adaptations as may be specified in the notification. However, no direction shall be issued after 31.03.2022.
- (3) **Notification to be laid before each House of Parliament:** Every notification issued has to be laid before each House of Parliament, as soon as may be after the notification is issued.

SIGNIFICANT SELECT CASES

S. No.	Case Law	
1.	<i>CIT v. Govind Nagar Sugar Ltd. (2011) 334 ITR 13 (Delhi)</i>	
	Issue	Analysis & Decision
	Can unabsorbed depreciation be allowed to be carried forward in case the return of income is not filed within the due date?	The provisions of section 80 and section 139(3), requiring the return of income claiming loss to be filed within the due date, applies to, <i>inter alia</i> , carry forward of business loss and not for the carrying forward of unabsorbed depreciation. As per the provisions of section 32(2), the unabsorbed depreciation becomes part of the next year's depreciation allowance and is allowed to be set-off as per the provisions of the Income-tax Act, 1961, irrespective of whether the return of earlier year was filed within due date or not.
2.	<i>Orissa Rural Housing Development Corpn. Ltd. v. ACIT (2012) 343 ITR 316 (Orissa)</i>	
	Issue	Analysis & Decision
	Can an assessee revise the particulars filed in the original return of income by filing a revised statement of income other than by way of filing revised return as contemplated u/s 139(5) of the Act?	The assessee can make a fresh claim before the Assessing Officer or make a change in the originally filed return of income only by filing revised return of income under section 139(5). There is no provision under the Income-tax Act, 1961 to enable an assessee to revise his income by filing a revised statement of income. Therefore, filing of revised statement of income is of no value and will not be considered by the Assessing Officer for assessment purposes. Therefore, the Assessing Officer has no power to entertain a fresh claim made by the assessee after filing of the original return except by way of filing a revised return. Note: As per section 139(8A) an updated return of income by any person, whether he has filed a return previously for the relevant assessment year, or not, can be furnished within 24 months from the end of the relevant assessment year. However, an assessee cannot file a return of loss or decrease the tax liability determined or increase its refund based on return furnished under section 139(1) or 139(4) or

		139(5). For making a fresh claim, the assessee only has an option to file a revised return under section 139(5).
3.	<i>CIT v. Tony Electronics Limited (2010) 320 ITR 378 (Delhi)</i>	
	Issue	Analysis & Decision
	Whether the time limit of 4 years as per section 154(7) would apply from the date of original assessment order or the order of the Appellate Authority.	Once an appeal against the order passed by an authority is preferred and is decided by the appellate authority, the order of the Assessing Officer merges with the order of the appellate authority. After merger, the order of the original authority ceases to exist and the order of the appellate authority prevails. Thus, the period of limitation of 4 years for the purpose of section 154(7) has to be counted from the date of the order of the Appellate Authority.

TEST YOUR KNOWLEDGE**Questions**

1. *Teachwell Education is a trust approved under section 10(23C)(vi) which runs various educational institutions. During the course of assessment under section 143(3), the Assessing Officer finds that the trust has carried out its activities in contravention of the section under which it was approved for exemption. Hence, the Assessing Officer wants to pass an order without giving exemption under section 10, which the assessee objects. You are required to examine the following with respect to the provisions of Income-tax Act, 1961.*
 - (a) *Whether the Assessing Officer can pass an order without giving exemption under section 10?*
 - (b) *Can the Assessing Officer get any additional time limit in completing this assessment?*
2. *State with reasons whether return of income is to be filed in the following cases for the Assessment Year 2024-25:*
 - (i) *Mr. X, a resident individual, aged 80 years, has a total income of ₹ 2,85,000. He has claimed deduction of ₹ 1,50,000 under section 80C. Long-term capital gains of ₹ 80,000 is not taxable by virtue of the exemption available upto specified threshold under section 112A. Assume that he has opted for the normal provisions of the Income-tax Act.*

Would your answer change if Mr. X has incurred ₹ 1,05,000 towards payment of electricity bills for F.Y. 2023-24?
 - (ii) *ABC, a partnership firm, has a loss of ₹ 10,000 during the previous year 2023-24.*
 - (iii) *A registered association, eligible for exemption under section 10(23B), has income from house property of ₹ 6,60,000.*
 - (iv) *Mr. Y, aged 45 years, an employee of ABC (P) Ltd, draws a salary of ₹ 5,90,000 and has income from fixed deposits with bank of ₹ 10,000.*
3. *The Assessing Officer issued a notice under section 142(1) on the assessee on 24th February, 2024 calling upon him to file return of income for Assessment Year 2023-24. In response to the said notice, the assessee furnished a return of loss and claimed carry forward of business loss and unabsorbed depreciation. State whether the assessee would be entitled to carry forward as claimed in the return.*

4. *State whether the following assesseees have to file return of income and if so, the due date for the assessment year 2024-25:*
 - (i) *A registered trade union having income from let out property of ₹ 1,00,000.*
 - (ii) *A public trust hospital having an aggregate annual receipt of ₹ 505 lacs and availing exemption of ₹ 3,10,000 under section 10(23C)(via) with total income of ₹ 2,40,000*
5. *What will be the consequences when Mr. Raghav paid ₹ 75,000 in cash to a travel agent for his travel to Saudi Arabia to be undertaken for business purposes by intentionally quoting the wrong PAN? Would your answer be different if such cash payment was made for his travel to Nepal, instead of Saudi Arabia?*
6. *For facilitating expeditious resolution of disputes relating to international transactions involving transfer pricing and foreign companies, the Income-tax Act, 1961, has provided for "alternate dispute resolution mechanism". In this context, you are required to answer the following:*
 - (i) *What meanings have been assigned to "dispute resolution panel" and the "eligible assessee" under this mechanism?*
 - (ii) *When can a grievance for resolution be filed by an assessee?*
 - (iii) *What evidences are being considered by the panel to redress the grievance of the assessee?*
7. *The Assessing Officer has the power to make an assessment to the best of his judgment, in certain situations. What are they?*
8. *Mr. Sanskar is engaged in the business of retail trade and has been declaring income of ₹ 10 lakhs to ₹ 15 lakhs every year in the last 10 years. A search was conducted under section 132 in the business premises of Sanskar on 5th December, 2023. The search was concluded by executing last of authorisation for search on 21st December, 2023. The A.O. has in his possession documents which revealed that Mr. Sanskar has incurred ₹ 5 crores in May 2017 for the marriage of his daughter. The A.O intends to issue notice under section 148 to Sanskar for the Assessment Year relevant to the previous year 2017-18. Can he do so?*
9. *Examine whether the Assessing Officer has the power to make any adjustment to income disclosed by the assessee in the return of income in course of processing the return under section 143(1)?*

10. *Tai Ltd. filed its return of income for assessment year 2023-24 on 26th September, 2023. The return is selected for regular assessment under section 143(3) for which notice under section 143(2) is served on the company on 3rd July, 2024. The company responded to the notice under section 143(2). Examine whether the service of the notice is within time and if not, whether the assessment order can be challenged by the assessee.*
11. *Discuss the correctness or otherwise of the following proposition in the context of the Income-tax Act, 1961:*
- “A fresh claim before the Assessing Officer can be made only by filing a revised return and not otherwise”.*
12. *The Assessing Officer within the powers vested in him under section 142(2A), while examining the accounts of PNF Ltd., had ordered to get the same audited. The company challenges this order on the ground “that the opportunity was not provided to them by the Assessing Officer prior to passing of such an order”. Decide the correctness of the action of the Assessing Officer.*
13. *Smt. Kanti, aged 49 years engaged in the business of growing, curing, roasting and grounding of coffee in India after mixing chicory had income of ₹6,00,000 from this business which was her only source of income during the year ended on 31.3.2024. She consults you to have an opinion whether she is required to file return of income for the A.Y. 2024-25 as per provisions of section 139(1).*
- Would your answer change if she had travelled to the USA during the P.Y.2023-24 and incurred ₹ 2.20 lakhs for the same?*
14. *Ram, an individual, filed his return of income for the assessment year 2024-25 on 15.6.2024. He later discovered that he had not claimed deduction under section 80C in the said return though he had opted for the normal provisions of the Act. He claimed the said deduction through a letter addressed to the Assessing Officer. The Assessing Officer completed the assessment without allowing the deduction claimed by Ram. Is the Assessing Officer justified in doing so?*
15. *Examine the correctness or otherwise of the following statements in the context of provisions contained in the Income-tax Act, 1961 and the decided case laws:*
- “The Assessing Officer is bound to allow the set-off of brought forward losses under section 72 even if the assessee has not claimed the same in the return filed”.*

16. X, an individual, has got his books of account for the year ending 31.3.2024 audited under section 44AB. His total income for the assessment year 2024-25 is ₹ 5,20,000. He desires to know if he can furnish his return of income for the assessment year 2024-25 through a Tax Return Preparer.

Answers

1. (a) As per second proviso to section 143(3), if any educational institution referred to in section 10(23C)(iv) has committed any “specified violation” as mentioned under section 10(23C), the Assessing Officer shall send a reference to the Principal Commissioner or Commissioner to withdraw the approval or registration, as the case may be. Specified violation *inter alia* includes a case where income of the institution has been applied other than for the objects for which it is established.

No order making an assessment of the total income or loss of such educational institution shall be made by AO without giving effect to the order passed by the Principal Commissioner or Commissioner either cancelling the approval or refusing to cancel the approval of such educational institution⁴.

Therefore, in the aforesaid case, the Assessing Officer can pass an assessment order without giving exemption under section 10 to Teachwell Education, which is an educational institution approved under section 10(23C)(vi), if he has referred the matter to Principal Commissioner or Commissioner and they have subsequently cancelled the approval of such educational institution under clause (ii) of fifteenth proviso section 10(23C).

- (b) As per *Explanation 1* to section 153, the period commencing from the date on which the Assessing Officer makes a reference to the Principal Commissioner or Commissioner under section 143(3)⁵ and ending with the date on which the copy of the order either cancelling the approval or refusing to cancel the approval under section 10(23C)⁶ is received by the Assessing Officer, shall be excluded for computing the period of limitation for completing the assessment.

Further, in case the time limit available to the Assessing Officer for passing an assessment order, after such exclusion is less than 60 days, such remaining period of

⁴ under clause (ii) or clause (iii) of the fifteenth proviso to section 10(23C)

⁵ second proviso to section 143(3)

⁶ under clause (ii) or clause (iii) of the fifteenth proviso to section 10(23C)

assessment shall be deemed to have been extended to 60 days.

Therefore, the Assessing Officer will get the above mentioned additional time for completing the assessment of Teachwell Education.

2.

S. No.	Is filing of return required?	Reason
(i)	No	As per the provisions of section 139(1), every person, whose total income without giving effect to the provisions of Chapter VI-A exceeds the maximum amount not chargeable to tax, is required to furnish the return of income for the relevant assessment year on or before the due date. The gross total income of Mr. X before giving effect to deduction of ₹ 1,50,000 under section 80C is ₹ 4,35,000, which is less than the basic exemption limit of ₹ 5,00,000 applicable to an individual aged 80 years or more. Therefore, Mr. X need not furnish his return of income for the A.Y. 2024-25. <i>Yes, the answer would change, since Mr. X has incurred expenditure of an amount exceeding ₹ 1 lakh towards the consumption of electricity and he is not liable to file return of income under section 139(1). In such a case, he would have to file his return for A.Y. 2024-25 on or before the due date u/s 139(1).</i>
(ii)	Yes	As per section 139(1), it is mandatory for a firm to furnish its return of income or loss on or before the specified due date. Therefore, M/s ABC has to furnish its return of loss for the A.Y. 2024-25 on or before the due date under section 139(1), even if it has incurred a loss.
(iii)	Yes	As per section 139(4C), every institution referred to, <i>inter alia</i>, in section 10(23B), whose total income without giving effect to the provisions of section 10 exceeds the maximum amount not chargeable to tax, is required to furnish the return of income for the relevant assessment year on or before the due date u/s 139(2). In the above case, the registered association has income from house property of ₹ 6,60,000 before exemption under section 10, which exceeds the basic exemption limit of ₹ 3,00,000. Therefore, it is under an obligation to furnish its return of income for the A.Y. 2024-25.
(iv)	Yes	As per the provisions of section 139(1), every person, whose gross total income exceeds the maximum amount not chargeable to tax, is required to furnish the return of income for the relevant assessment year on or before the due date. Mr. Y's salary income is ₹ 5,40,000

		(i.e., ₹ 5,90,000 less standard deduction of ₹ 50,000). The gross total income of Mr. Y is ₹ 5,50,000 (₹ 5,40,000 + ₹ 10,000) which exceeds the basic exemption limit of ₹ 3,00,000 applicable to an individual as per default regime of section 115BAC. Therefore, Mr. Y has to furnish his return of income for the A.Y. 2024-25.

3. As per the provisions of section 139(3), any person who has sustained loss under the head 'Profit and gains of business or profession' is allowed to carry forward such a loss under section 72(1) or section 73(2), only if he has filed the return of loss within the time allowed under section 139(1). Also, the provisions of section 80 specify that a loss which has not been determined as per the return filed under section 139(3) shall not be allowed to be carried forward and set-off under, inter alia, section 72(1) (relating to business loss) or section 73(2) (losses in speculation business) or section 74(1) (loss under the head "Capital gains") or section 74A(3) (loss from the activity or owning and maintaining race horses) or section 73A (loss relating to a "specified business"). However, there is no such condition for carry forward of loss from house property under section 71B or unabsorbed depreciation under section 32.

In the given case, the assessee has filed its return of loss in response to notice under section 142(1). As per the provisions stated above, assessee furnished return in response to notice under section 142(1) after the due date specified under section 139(1) and therefore, the benefit of carry forward of business loss under section 72(1) or section 73(2) or section 73A shall not be available. The assessee shall, however, be entitled to carry forward the unabsorbed depreciation as per provisions of section 32(2).

4. (i) A registered trade union is having income from house property, which is exempt under section 10(24). Section 139(4C) mandates filing of return only when the total income exceeds the maximum amount which is not chargeable to tax without giving effect to the provisions of section 10. In this case, even without giving effect to section 10(24), the total income of the registered trade union is below basic exemption limit and therefore, there is no mandatory requirement to file the return of income.
- (ii) Since the total income without giving effect to the exemption under section 10(23C)(via) is ₹ 5,50,000, which exceeds ₹ 3,00,000, the trust has to file its return of income by 31st October 2024.
5. If a person who is required to quote his permanent account number in any document referred to in section 139A(5)(c), quotes a number which is false, and which he either knows or believes to be false or does not believe to be true, the Assessing Officer may direct that such a person shall pay by way of penalty a sum of ₹ 10,000 under section 272B(2).

In the given case, if Mr. Raghav travels to Saudi Arabia and pays his travel agent cash in excess of ₹ 50,000, such a transaction is covered by section 139A(5)(c) read with Rule 114B and therefore, Mr. Raghav has to quote his PAN. Since Mr. Raghav has misquoted his PAN, penalty under section 272B(2) is leviable. Mr. Raghav has to be given an opportunity of being heard in the matter. If Mr. Raghav is not able to prove that there was a reasonable cause for the said failure, penalty under section 272B(2) would be imposable.

The answer would remain the same even if such cash payment was made for his travel to Nepal.

6. (i) The term "Dispute Resolution Panel" has been defined to mean a collegium comprising of three Principal Commissioners or Commissioners of Income-tax constituted by the Board for this purpose.

The term "Eligible Assessee" means any person in whose case the variation referred to in section 144C(1) arises as a consequence of the order of the Transfer Pricing Officer passed under section 92CA(3) and any non-corporate non-resident or any foreign company.

- (ii) In case of an assessment of the eligible assessee, the Assessing Officer shall forward a draft of the proposed order of assessment. The eligible assessee shall file his objections to such variation within 30 days of receipt of such order, with the Dispute Resolution Panel and with the Assessing Officer.
- (iii) The Dispute Resolution Panel shall, in a case where any objections are received, take into consideration:-
- (a) the draft order
 - (b) the objections filed by the assessee
 - (e) the evidence furnished by the assessee
 - (d) the report, if any, of the Assessing Officer, Valuation Officer or Transfer Pricing Officer or any other authority
 - (e) the records relating to the draft order
 - (f) the evidence collected by, or caused to be collected by it
 - (g) the result of any enquiry made by or caused to be made by it.
7. Under section 144, the Assessing Officer, after taking into account all relevant material which he has gathered, is under an obligation to make an assessment of the total income or loss to

the best of his judgment and determine the sum payable by the assessee in the following cases –

- (1) Where any person fails to make the return under section 139(1) and has not filed a belated return under section 139(4) or a revised return under section 139(5) or an updated return under section 139(8A).
- (2) Where any person fails to comply with all the terms of a notice issued under section 142(1) or fails to comply with a direction issued under section 142(2A) for getting the accounts audited.
- (3) Where any person, having made a return, fails to comply with all the terms of a notice issued under section 143(2).

Further, section 145(3) of the Income-tax Act, 1961 permits the Assessing Officer to make an assessment in the manner provided in section 144:

- (i) where the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee; or
- (ii) where the method of accounting under section 145(1) has not been regularly followed by the assessee;
- (iii) where the income has not been computed in accordance with “Income Computation and Disclosure Standards” notified by the Central Government under section 145(2).

Faceless assessment as per section 144B shall be applicable to best judgement assessment under section 144 i.e., the assessment proceedings shall be conducted electronically in e-Proceeding facility through assessee’s registered account in designated portal. The faceless assessment shall be made in respect of such territorial area, or persons or class of persons, or incomes or class of incomes, or cases or class of cases, as may be specified by the Board.

8. As per section 148, the Assessing Officer shall be deemed to have information which suggests that the income chargeable to tax has escaped assessment in case of an assessee where a search is initiated under section 132 on or after 01.04.2021. Further, in case of search under section 132, notice under section 148 need not be accompanied by order u/s 148A. Thus, the Assessing Officer can issue a notice under section 148 for any of the relevant assessment years -

- (a) if three years have not elapsed from the end of the relevant assessment year,
- (b) if three years, but not more than ten years, have elapsed from the end of the relevant assessment year and the Assessing Officer has in his possession books of account or

other documents or evidence which reveal that the income chargeable to tax, **represented in the form of**

- (i) asset: or
- (ii) expenditure in respect of a transaction or in relation to an event or occasion; or
- (iii) an entry or entries in the books of account,

which has escaped assessment amounts to or is likely to amount to ₹ 50 lakhs or more for that year.

Where the income chargeable to tax represented in the form of an asset or expenditure in relation to an event or occasion of the value referred to in (b) above, has escaped the assessment and the investment in such asset or expenditure in relation to such event or occasion has been made or incurred, in more than one previous years relevant to the assessment years within the period referred to in (b), a notice under section 148 shall be issued for every such assessment year for assessment, reassessment or recomputation, as the case may be.

In this case, Mr. Sanskar has incurred expenditure of ₹ 5 crores in relation to marriage of his daughter. Hence, the Assessing Officer can issue notice under section 148 for A.Y. 2018-19, since it falls within the 10 year period.

Note – As per section 153A, the Assessing Officer shall assess or reassess the total income of each of the six assessment years immediately preceding the assessment year relevant to the previous year in which the search was conducted under section 132 or requisition was made under section 132A. Moreover, where the Assessing Officer has in his possession books of account or other documents or evidence which reveal that the income, represented in the form of assets, which has escaped assessment amounts to or is likely to amount to ₹ 50 lakhs or more in the relevant assessment year or in aggregate in the relevant assessment years, notice under section 153A can be issued for beyond 6 assessment years but upto 10 assessment years prior to the assessment year relevant to the previous year in which the search or requisition is conducted. In the present case, notice under section 153A can be issued for A.Y. 2018-19, since it falls within the 6 A.Y. immediately preceding the A.Y. 2024-25 relevant to the P.Y. 2023-24 in which search is conducted.

9. The procedure to be followed for summary assessment is contained in section 143(1). As per section 143(1), the total income or loss of an assessee shall be computed after making the following adjustments to the returned income:

- (i) any arithmetical error in the return; or

- (ii) an incorrect claim, if such incorrect claim is apparent from any information in the return.
- (iii) disallowance of loss claimed, if return is filed beyond due date u/s 139(1)
- (iv) disallowance of expenditure or increase in income indicated in the audit report but not taken into account in computing the total income in the return
- (v) disallowance of deduction claimed under *section 10AA or under any of the provisions of Chapter VI-A under the heading "C.—Deductions in respect of certain incomes"*, if return is filed beyond due date u/s 139(1)

No such adjustment shall be made unless an intimation is given to the assessee of such adjustment either in writing or electronic mode. Further, Assessing Officer shall make any adjustment after considering the response received from the assessee, if any. Where no response is received with 30 days of the issue of such notice, the above adjustment can be made.

For the purpose of section 143(1), "an incorrect claim apparent from any information in the return" means such claim on the basis of an entry, in the return of income:

- (i) of an item, which is inconsistent with another entry of the same or some other item in such return;
- (ii) in respect of which, the information required to be furnished under the Income-tax Act, 1961 to substantiate such entry, has not been so furnished;
- (iii) in respect of a deduction, where such deduction exceeds specified statutory limit which may be expressed as monetary amount or percentage or ratio or fraction.

10. The time limit for service of notice under section 143(2) is three months from the end of the financial year in which the return of income was furnished by the assessee. The return of income for assessment year 2023-24 was filed by the assessee on 26th September, 2023. Therefore, the notice under section 143(2) has to be served by 30th June, 2024. However, the notice was served on the assessee only on 3rd July, 2024. Hence, the notice issued under section 143(2) is time-barred.

However, as per section 292BB, where an assessee had appeared in any proceedings or co-operated in any enquiry relating to an assessment or reassessment, it shall be deemed that any notice required to be served upon him, has been duly served upon him in time in accordance with the provisions of the Act and such assessee shall be precluded from raising any objection in any proceeding or enquiry that the notice was (a) not served upon him or (b) not served upon him in time or (c) served upon him in an improper manner.

The above provision shall not be applicable where the assessee has raised such objection before the completion of such assessment or reassessment. Therefore, in the instant case, if the assessee, Tai Limited, had raised an objection to the proceeding, on the ground of non-service of the notice under section 143(2) upon it on time, then, the validity of the assessment order can be challenged. In absence of such objection, the assessment order cannot be challenged.

11. This proposition is correct.

A return of income filed within the due date under section 139(1) or a belated return filed under section 139(4) may be revised by filing a revised return under section 139(5) where the assessee finds any omission or wrong statement in the original return subject to satisfying other conditions. There is no provision in the Income-tax Act, 1961, to make changes or modification in the return of income by filing a letter before the Assessing Officer. The revised return can be filed at any time before three months prior to the end of the relevant assessment year or before the completion of assessment, whichever is earlier. In a case where a return of income has been filed within the due date under section 139(1) or a belated return is filed under section 139(4), the only option available to the assessee to make an amendment to such return is by way of filing a revised return under section 139(5). Therefore, a fresh claim can be made before the Assessing Officer only by filing a revised return and not otherwise. The Supreme Court, in *Goetze (India) Ltd. vs. CIT (2006) 284 ITR 323*, has held that there is no power available under the provisions of the Income-tax Act, 1961 enabling the Assessing Officer to allow a claim made by the assessee except by way of filing a revised return.

Note – Section 139(8A), provides an option to an assessee to file an updated return for an assessment year, at any time within **24 months** from the end of the relevant assessment year. But such updated return should not be a return of a loss or have the effect of decreasing the total tax liability determined on the basis of return furnished under section 139(1) or 139(4) or 139(5) or result in refund or increases the refund due on the basis of return furnished under section 139(1) or 139(4) or 139(5). Hence, for making a fresh claim the only option available with the assessee is to file a revised return under section 139(5).

12. As per the proviso to section 142(2A), the Assessing Officer shall not direct the assessee to get the accounts so audited unless the assessee has been given a reasonable opportunity of being heard.

Therefore, in this case, the order of the Assessing Officer is not valid, since the assessee was not given an opportunity of being heard prior to passing of such order.

13. The clarification regarding filing return of income by the coffee growers being individuals covered by Rule 7B of the Income-tax Rules, 1962 is given in *Circular No.10/2006 dated 16.10.2006*. According to the Circular, an individual deriving income from growing, curing, roasting and grounding of coffee with or without mixing chicory would not be required to file the return of income if the aggregate of 40% of his or her income from growing, curing, roasting and grounding of coffee with or without mixing chicory and income from all other sources liable to tax in accordance with the provisions of this Act, is equal to or less than the basic exemption limit prescribed in the First Schedule of the Finance Act of the relevant year.

In this case, Smt. Kanti has a total income of ₹ 6,00,000 from this business, which was her only source of income for P.Y. 2022-23. 40% of her income works out to ₹ 2,40,000, which is less than the basic exemption limit of ₹ 3,00,000 (under section 115BAC, being default regime) / ₹ 2,50,000 (if opting for normal provisions) in respect of an individual assessee. Therefore, Smt. Kanti is not required to file a return of income for the A.Y. 2024-25 as per the provisions of section 139(1).

If Smt. Kanti had travelled to the USA during the P.Y. 2023-24 and incurred ₹ 2.20 lakhs on such travel, she would be required to mandatorily file a return of income for A.Y. 2024-25 on or before the due date u/s 139(1), even though her total income does not exceed the basic exemption limit.

14. The Supreme Court has, in *Goetze (India) Ltd. v. CIT (2006) 284 ITR 323*, ruled that the Assessing Officer has no power to entertain a claim for deduction made after filing of the return of income otherwise than by way of a revised return. In the instant case, Ram has claimed the deduction under section 80C, which he omitted to claim in the original return of income, through a letter addressed to the Assessing Officer and not by filing a revised return under section 139(5). In view of the decision of the Supreme Court cited above, the Assessing Officer was justified in completing the assessment without allowing the deduction under section 80C.

15. **The statement is correct.**

The Supreme Court has, in *CIT v. Mahalakshmi Sugar Mills Co. Ltd. (1986) 160 ITR 920*, held that it is the duty of the Assessing Officer to apply the relevant provisions of the Act for the purpose of determining the true figure of the assessee's total income and consequential tax liability. Merely because the assessee has not claimed the set-off in the return filed, it cannot relieve the Assessing Officer of his duty to apply section 72 in the appropriate case.

As per *CBDT Circular No.14 (XL-35) of 1955 dated 11.04.1955*, it is the duty of the Assessing Officer to assist a taxpayer in every reasonable way, particularly in the matter of claiming and

securing reliefs and in this regard, they should take the initiative in guiding a taxpayer where proceedings or other particulars before them indicate that some refund or relief is due to him.

Therefore, on the basis of the above Supreme Court ruling and the CBDT Circular, the Assessing Officer is bound to allow the set-off of brought forward losses under section 72, even if the assessee has not claimed the same in the return filed, provided the loss was determined in pursuance of a return filed under section 139(3) in any earlier previous year.

Moreover, the wording used in section 72 is “shall”, indicating that the provisions relating to set off of brought forward business loss are mandatory.

Therefore, the Assessing Officer is bound to allow the claim for set off of brought forward business losses even if the assessee has not claimed the same in the return filed.

16. Section 139B provides for submission of return of income through Tax Return Preparers. It empowers the Central Board of Direct Taxes (CBDT) to frame a scheme for the purpose of enabling any specified class or classes of persons to prepare and furnish their returns of income through Tax Return Preparers. Specified class or classes of persons have been defined to mean any person, other than a company or a person whose accounts are required to be audited under section 44AB or under any other existing law, who is required to furnish a return of income under the Act. Thus, companies and persons whose accounts are liable for tax audit under section 44AB do not fall within the definition of ‘specified class or classes of persons’ and consequently, cannot furnish their returns of income through Tax Return Preparers. In the instant case, the books of account of X for the year ending 31.3.2024 have been audited under section 44AB. As such, he **cannot** furnish his return of income for the A.Y. 2024-25 through a Tax Return Preparer.

APPEALS AND REVISION

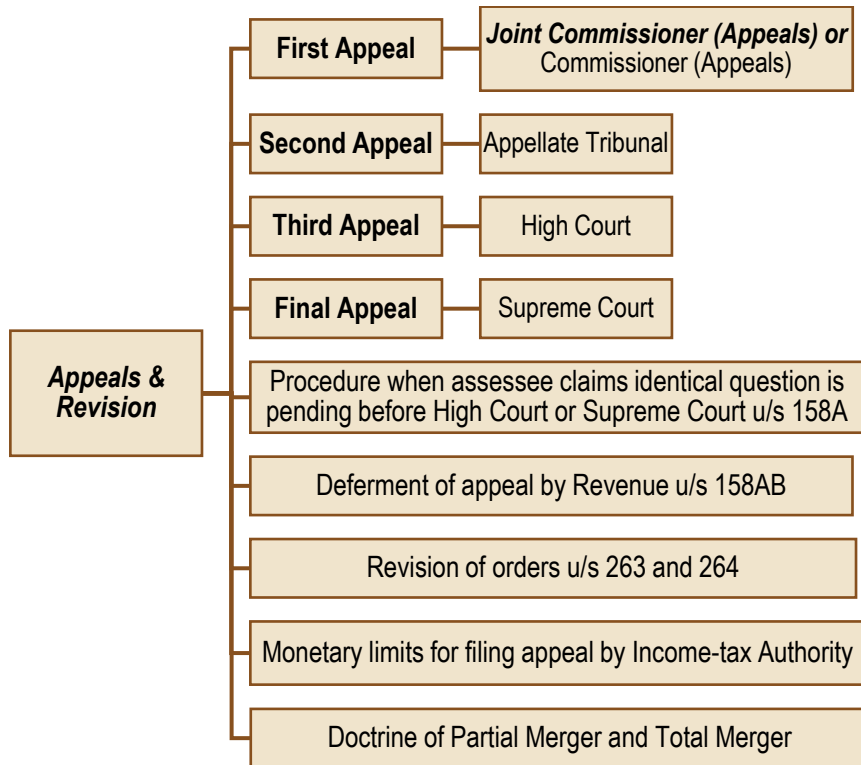


LEARNING OUTCOMES

After studying this chapter, you would be able to -

- ☐ **identify** the orders appealable before different appellate authorities;
- ☐ **recall** the time limit for filing appeals before different appellate authorities;
- ☐ **appreciate** the powers of different appellate authorities;
- ☐ **comprehend and appreciate** the provision in law for avoiding repetitive appeals;
- ☐ **appreciate** the procedure for appeal by Revenue when an identical question of law is pending before Supreme Court;
- ☐ **identify** the circumstances when an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the Revenue, for initiation of revision proceedings under section 263;
- ☐ **appreciate** the procedure for revision of other orders under section 264;
- ☐ **recall** the time limit for revision of orders;
- ☐ **identify** the cases where doctrine of total merger and doctrine of partial merger are applicable;
- ☐ **analyse and apply** the above provisions to determine whether an order is appealable before a particular appellate authority, the time limit for filing of appeal and address other issues in non-complex to moderately complex scenarios.

CHAPTER OVERVIEW



16.1 APPEALS BEFORE JOINT COMMISSIONER (APPEALS) OR COMMISSIONER (APPEALS)

- (1) **Appealable Orders before Joint Commissioner (Appeals) [Section 246(1)]**: On or after 1.4.2023, any assessee aggrieved by any of the following orders of an Assessing Officer (below the rank of Joint Commissioner) may appeal to the Joint Commissioner (Appeals) against -

- (a) an order being an intimation under section 143(1), where the assessee objects to the making of adjustments, or any order of assessment under section 143(3) or section 144, where the assessee objects to-
- (i) the amount of income assessed, or

Intimation u/s 143(1) or assessment order u/s 143(3) or 144 or u/s 147

- (ii) the amount of tax determined, or
- (iii) the amount of loss computed, or
- (iv) the status under which he is assessed;

Status means the category under which the assessee is assessed as "individual", "Hindu undivided family" and so on.

- (b) an order of assessment, reassessment or recomputation under section 147;
- (c) an order being an intimation under section 200A(1) where the deductor objects to the making of adjustments;
- (d) an order under section 201 deeming a person to be an assessee-in-default for failure to deduct the whole or any part of the tax deductible at source;
- (e) an order under section 206C(6A) deeming a person to be an assessee-in-default for failure to collect or pay tax;
- (f) an order being an intimation under section 206CB(1) where the collector objects to the making of adjustments;
- (g) an order imposing a penalty under Chapter XXI; and
- (h) an order under section 154 or section 155 amending any of the orders mentioned in clauses (a) to (g):

Deeming a deductor or collector of tax to be an assessee-in default
or
an order of penalty or a rectification order

No appeal can, however, be filed before the Joint Commissioner (Appeals), if any of the above orders is passed by or with the prior approval of an income-tax authority above the rank of Deputy Commissioner.

- (2) **Appeal pending before Commissioner (Appeals) in respect of appealable orders mention in (1) above may be transferred to Joint Commissioner (Appeals):** Where any appeal filed against an order referred in section 246(1) is pending before the Commissioner (Appeals), the Board or an income-tax authority so authorised by the Board in this regard, may transfer such appeal and any matter arising out of or connected with such appeal and which is so pending, to the Joint Commissioner (Appeals). The Joint Commissioner (Appeals) may then proceed with such appeal or matter from the stage at which it was before it was so transferred [Section 246(2)].

Transfer of appeal

- (3) **Appeal pending before Joint Commissioner (Appeals) may be transferred to the Commissioner (Appeals):** The Board or an income-tax authority so authorised by the Board in this regard, may transfer any appeal which is pending before a Joint Commissioner (Appeals) and any matter arising out of or connected with such appeal and which is so pending, to the Commissioner (Appeals). The Commissioner (Appeals) may then proceed with such appeal or matter from the stage at which it was before it was so transferred [Section 246(3)].
- (4) **Opportunity of being reheard is to be given before transferring the pending appeals:** Where an appeal is transferred under the provisions of section 246(2)/(3), the appellant shall be given an opportunity of being reheard.
- (5) **Central Government empowered to notify faceless appeal scheme:** For the purposes of disposal of appeal by the Joint Commissioner (Appeals), the Central Government may make a scheme, by notification in the Official Gazette. This scheme will facilitate disposal of appeals in an expedient manner with transparency and accountability, by eliminating the interface between the Joint Commissioner (Appeals) and the appellant, in the course of appellate proceedings to the extent technologically feasible. The Central government may direct that any of the provisions of this Act relating to jurisdiction and procedure for disposal of appeals by the Joint Commissioner (Appeals), shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification.
- (6) **Cases or Class of Cases where appeal cannot be made before Joint Commissioner (Appeals):** The Board may specify that the provisions of section 246(1) shall not apply to any case or any class of cases.
- (7) **Appealable Orders before Commissioner (Appeals) [Section 246A]:** An assessee or any deductor or any collector aggrieved by any of the following orders may appeal to the Commissioner (Appeals) against such orders under section 246A -
- (i) an order passed by a Joint Commissioner under section 115VP(3)(ii) refusing to approve the option for tonnage tax scheme; or
 - (ii) an order against the assessee where the assessee denies his liability to be assessed under this Act; or
 - (iii) an intimation under section 143(1) or section 200A(1) or section 206CB(1), where the assessee or the deductor or the collector objects to the making of adjustments; or
 - (iv) any order of assessment under section 143(3) except an order passed in pursuance

**Appealable orders
before CIT(A)**

of the directions of Dispute Resolution Panel or an order of assessment or reassessment passed by the Assessing Officer with the prior approval of Principal Commissioner or Commissioner, where tax consequences have been determined in the order under the provisions of Chapter X-A relating to General Anti Avoidance Rules] or a best judgement order under section 144, in relation to the income assessed, or to the amount of tax determined, or to the amount of loss computed, or to the status under which he is assessed;

- (v) an order of assessment, reassessment or recomputation under section 147 except an order passed in pursuance of the directions of Dispute Resolution Panel or an order of assessment or reassessment passed by the Assessing Officer with the prior approval of Principal Commissioner or Commissioner, where tax consequences have been determined in the order under the provisions of Chapter X-A relating to General Anti Avoidance Rules or section 150 where assessment is in pursuance of an order on appeal;
- (vi) an order made under section 92CD(3) modifying the total income of the relevant assessment year in accordance with the arm's length price (ALP) determined as per the Advance Pricing Agreement (APA) entered into.
- (vii) a rectification order made under section 154 or section 155 having the effect of enhancing the assessment or reducing a refund or an order refusing to allow the claim made by the assessee under either of the said sections except an order of assessment or reassessment passed by the Assessing Officer with the prior approval of Principal Commissioner or Commissioner, where tax consequences have been determined in the order under the provisions of Chapter X-A relating to General Anti Avoidance Rules;
- (viii) an order made under section 163 treating the assessee as the agent of a non-resident;
- (ix) an order made under section 170(2)/(3) assessing income of business prior to succession in the hands of the successor;
- (x) an order made under section 171 relating to assessment after partition of HUF;
- (xi) an order made under section 201 deeming a person to be an assessee-in-default for failure to deduct the whole or any part of the tax deductible at source;
- (xii) an order made under section 206C(6A) deeming a person to be an assessee-in-default for failure to collect or pay tax;

- (xiii) a refund order made under section 237;
- (xiv) an order made under section 239A with respect to refund for denying liability to deduct tax at source.
- (xv) an order imposing a penalty under section 221; or
- (xvi) an order imposing a penalty under Chapter XXI of the Income-tax Act;
- (xvii) an order made by an Assessing Officer other than a Deputy Commissioner under the provisions of this Act in the case of such person or class of persons, as the Board may, having regard to the nature of the cases, the complexities involved and other relevant considerations direct.

It is also provided that an appellant may demand that before proceeding further with the appeal and the matter, the previous proceedings or any part thereof be re-opened or the appellant be re-heard.

- (8) **Form of appeal and prescribed fees [Section 249(1)]:** Every appeal shall be in the prescribed form and shall be verified in the prescribed manner.



Prescribed fees - In case of an appeal made to the Commissioner (Appeals) **or to the Joint Commissioner (Appeals) on or after**

1.4.2023, irrespective of the date of initiation of the assessment proceedings, the appeal shall be accompanied by a fee of:

	Case	Prescribed fees
(i)	where the total income of the assessee as computed by the Assessing Officer is ₹ 1,00,000 or less	₹ 250
(ii)	where the total income of the assessee computed as above is more than ₹ 1,00,000 but not more than ₹ 2,00,000	₹ 500
(iii)	where the total income of the assessee computed as above is more than ₹ 2,00,000	₹ 1,000
(iv)	in any case other than (i), (ii) and (iii) above	₹ 250

- (9) **Time limit [Section 249(2) & (3)]:** An appeal to **Joint Commissioner (Appeals)** or to the Commissioner (Appeals) against any order which is appealable is to be presented within 30 days from the date specified below in the particular cases. However, **Joint Commissioner (Appeals)** or the Commissioner (Appeals) may admit an appeal even after the expiry of the said period of thirty days, if he is satisfied that the appellant

Within 30 days

had sufficient cause for not presenting the appeal within the specified time. The dates from which the limitation period of 30 days has to be reckoned are as follows:

	Appeal relating to	30 days to be reckoned from
1.	Assessment/penalty	Date of service of notice of demand
2.	Any other case	Date on which intimation of the order sought to be appealed against is served.

Period to be excluded while computing 30 days in case of appeal relating to assessment/penalty

Application	Period to be excluded	
	From	To
Under section 270AA(1)	The date on which the application is made	The date on which the order rejecting the application is served on the assessee

- (10) **Tax to be paid at the time of filing the appeal [Section 249(4)]:** No appeal to *the Joint Commissioner (Appeals)* or the Commissioner (Appeals) shall be admitted for consideration unless, at the time of filing the appeal,

**Tax to be paid
before filing appeal**

- **In a case where return has been filed:** The assessee has paid the tax on the amount of income returned by him in a case where a return has been filed by the assessee.
- **In a case where no return has been filed:** If, however, no return has been filed by the assessee and an assessment has been made on him by the Assessing Officer, then, the assessee must pay an amount equal to the amount of advance tax which was payable by him before filing the appeal. In this case, *the Joint Commissioner (Appeals)* or the Commissioner (Appeals) is, however, empowered for good and sufficient reasons to be recorded in writing, to exempt an appellant from the requirement of payment of advance tax, on receipt of an application from the appellant made specifically for this purpose.

- (11) **Procedure in appeal [Section 250]:**

- (i) *The Joint Commissioner (Appeals)* or the Commissioner (Appeals) shall fix a day and place for the hearing of the appeal and shall give notice of the same to the assessee and to the Assessing Officer, against whose order the appeal is made.

**Fix a day and place
for hearing appeal**

- (ii) Both the appellant and the Assessing Officer have the right to be heard at the hearing of the appeal either in person or by an authorised representative.
- (iii) **The Joint Commissioner (Appeals)** or the Commissioner (Appeals) has the power to adjourn the hearing of the appeal from time to time.
- (iv) **The Joint Commissioner (Appeals)** or the Commissioner (Appeals), before passing an order on an appeal, may make such further enquiries as he thinks fit or direct the Assessing Officer to make further enquiries and report the result of the same to him.
- (v) **The Joint Commissioner (Appeals)** or the Commissioner (Appeals) may also allow the appellant to go into any grounds of appeal not specified previously by the appellant if he is satisfied that the omission of that ground was not wilful or unreasonable.
- (vi) The order of the **Joint Commissioner (Appeals)** or the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for the decision. On disposal of the appeal, **the Joint Commissioner (Appeals)** or the Commissioner (Appeals) must communicate the order passed by him to the assessee as well as to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.
- (vii) ***In every appeal, the Joint Commissioner (Appeals) or the Commissioner (Appeals), as the case may be, where it is possible, may hear and decide such appeal within a period of one year from the end of the financial year in which such appeal is filed before him under section 246(1) or transferred to him under section 246(2)/(3) or under section 246A(1), as the case may be.***

**May hear or decide
appeal within 1 year
from the end of F.Y. of
filing appeal**
- (viii) Section 250(6B) empowers the Central Government to make a scheme, by notification in the Official Gazette, for the purposes of disposal of appeal by Commissioner (Appeals), so as to impart greater efficiency, transparency and accountability by—
 - (a) eliminating the interface between the Commissioner (Appeals) and the appellant in the course of appellate proceedings to the extent technologically feasible;
 - (b) optimising utilisation of the resources through economies of scale and functional specialisation;
 - (c) introducing an appellate system with dynamic jurisdiction in which appeal shall be disposed of by one or more Commissioner (Appeals).

Accordingly, in the exercise of powers under section 250(6B) of the Act, the Central Government has notified Faceless Appeal Scheme, 2021.¹

- (ix) The Central Government may, for the purpose of giving effect to such scheme, by notification in the Official Gazette, direct that any of the provisions of the Income-tax Act, 1961 relating to jurisdiction and procedure for disposal of appeals by Commissioner (Appeals) would not apply or would apply with such exceptions, modifications and adaptations as may be specified in the notification. Though no such direction can be issued after 31.3.2022, **the Central Government may however, amend any direction issued on or before 31.3.2022.** [Section 250(6C)].
- (x) Every such notification issued under section 250(6B) or section 250(6C) has to be laid before each House of Parliament as soon as may be after issue of the notification.

(12) Powers of the Joint Commissioner (Appeals) or Commissioner (Appeals) [Section 251(1)/(1A)]: While disposing of an appeal the *Joint Commissioner (Appeals)* or Commissioner (Appeals) is vested with the following powers viz.,

- (i) In an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment.
- (ii) In an appeal against an order imposing a penalty he may confirm or cancel such order or vary it in such a way as to enhance or reduce the penalty.
- (iii) In any other case, the Commissioner (Appeals) may pass such orders in the appeal as he deems fit.

Confirm, reduce, enhance or annul the assessment order or enhance or reduce penalty

The ***Joint Commissioner (Appeals)*** or Commissioner (Appeals), however, is not empowered to enhance an assessment or a penalty or to reduce a refund due to the assessee without giving the assessee a reasonable opportunity of showing cause against such an enhancement or reduction.

In disposing of an appeal, the ***Joint Commissioner (Appeals)*** or the Commissioner (Appeals) may consider and decide any matter arising out of the proceedings in which the order appealed against was passed even if such matters were not raised before the ***Joint Commissioner (Appeals)*** or the Commissioner (Appeals), as the case may be by the appellant.

¹ For detailed reading of the Faceless Appeal Scheme, 2021, students are advised to visit <https://www.incometaxindia.gov.in/Pages/faceless-scheme.aspx>



16.2 APPEALS TO THE APPELLATE TRIBUNAL [SECTIONS 252 TO 255]

(1) **Constitution [Section 252(1)]** - The Central Government shall constitute an Appellate Tribunal consisting of judicial and accountant members to exercise the powers and discharge the functions conferred on the Tribunal by the Act.

(2) **Orders appealable before the Appellate Tribunal [Section 253]:** Section 253(1) provides that an assessee aggrieved by any of the following orders may appeal to the Appellate Tribunal against such order –

Appealable Orders

Order passed by	Section	Particulars
Assessing Officer	115VZC(1)	Power of Assessing Officer to exclude a tonnage tax company from the tonnage tax scheme if such company is a party to any transaction or arrangement which amounts to an abuse of such scheme.
	143(3)/147	An order of assessment passed by an Assessing Officer in pursuance of the directions of Dispute Resolution Panel or an order passed under section 154 in respect of such order.
	143(3)/147	An order of assessment passed by an Assessing Officer with the approval of Principal Commissioner or Commissioner as referred to in section 144BA(12), where tax consequences have been determined under the provisions of Chapter X-A relating to general anti-avoidance rules, or an order passed under section 154 or section 155 in respect of such order.
Joint commissioner (Appeals) or Commissioner (Appeals)	250	Order of the Joint Commissioner (Appeals) or Commissioner (Appeals) disposing of the appeal
	270A	Order levying penalty for under-reporting and misreporting of income.
	271A	Order imposing penalty for failure to keep, maintain or retain books of account, documents etc.
	271AAC	Order imposing penalty in a case where income determined includes income referred under section 68, 69, 69A, 69B, 69C or 69D.
	271AAD	Order imposing penalty if during any proceedings it is found that in the books of account maintained by any person there is a false entry or an omission

		<i>of any entry which is relevant for computation of total income of such person to evade tax liability.</i>
	271J	Order imposing penalty for furnishing incorrect information in any report or certificate by an accountant, merchant banker or registered valuer.
	154	Order rectifying a mistake
Commissioner (Appeals)	271AAB	<i>Order imposing penalty in a case where search is initiated under section 132.</i>
	272A	Order imposing penalty for failure to answer questions, sign statements, furnish information returns or statements, allow inspections etc.
Principal Commissioner or Commissioner	12AA/12AB	Order refusing/canceling registration of trust or institution
	80G(5)(vi)	Refusal to grant approval to the Institutions or Fund
	263	Revision of erroneous order passed by Assessing Officer
	270A	Order imposing penalty for under-reporting of income and mis-reporting of income.
	272A	Order imposing penalty for failure to answer questions, sign statements, furnish information returns or statements, allow inspections etc.
	154	Amending any of the orders passed by him
Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General or Principal Director or Director	263	<i>Revision of erroneous order passed by Assessing Officer</i>
	272A	<i>Order imposing penalty for failure to answer questions, sign statements, furnish information returns or statements, allow inspections etc.</i>
	154	<i>Amending any of the orders passed by him</i>
Principal Commissioner or Commissioner	10(23C)(iv)/(v)/(vi)/(via)	Order passed by the prescribed authority refusing approval of a fund/ institution for charitable purposes or trust or institution for public religious purposes or wholly for public religious and charitable purposes, university or other educational institution solely for educational purposes and not for purposes of profit or hospital or other institution solely for philanthropic purposes and not for purposes of profit under section 10(23C)(iv)/(v)/(vi)/(via).

Section 253(2) provides that the Principal Commissioner or Commissioner may, if he objects to any order passed by the **Joint Commissioner (Appeals)** or the Commissioner (Appeals) under section 154 or section 250, direct the Assessing Officer to appeal to the Appellate Tribunal against such order.

(3) Time limit for filing appeal or memorandum of cross objection under section 253(1)&(2) [Section 253(3), (4) & (5)]

- (i) Every appeal to the Appellate Tribunal has to be filed within 60 days from the date on which the order sought to be appealed against is communicated to the assessee or the Principal Commissioner or Commissioner, as the case may be.

Appeal to be filed within 60 days

- (ii) Further, on receipt of notice that appeal against an order has been preferred by the Assessing Officer or the assessee, as the case may be, the other party can file memorandum of cross objections within 30 days of receipt of notice against any part of such order. The Appellate Tribunal has to dispose of the memorandum of cross objections as if it were an appeal filed within the given time limit.

Memorandum of cross objection within 30 days

- (iii) However, the Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross objection even after expiry of the prescribed time limit, if he is satisfied that there was sufficient cause for not presenting it within that period.

(4) Fees [Section 253(6) & (7)]

	Case	Prescribed fees
(i)	Where the total income of the assessee as computed by the Assessing Officer in the case to which the appeal relates is ₹ 1,00,000 or less	₹ 500
(ii)	Where the total income exceeds ₹ 1,00,000 but is not more than ₹ 2,00,000	₹ 1,500
(iii)	Where the total income is more than ₹ 2,00,000	1% of the assessed income, subject to a maximum of ₹ 10,000.
(iv)	In any other case	₹ 500
(v)	Where appeal is filed to the Appellate Tribunal by an Assessing Officer on the direction of the Commissioner or Principal Commissioner, against the order of the Joint	No fees

	Commissioner (Appeals) or the Commissioner (Appeals) under section 154 or 250	
(vi)	Filing of memorandum of cross-objections.	No fees
(vii)	Application for stay of demand	₹ 500

(5) Scheme for Appeal to Appellate Tribunal [Section 253(8), (9) & (10)]

Section 253(8) empowers the Central Government to make a scheme, by notification in the Official Gazette, for the purposes of appeal to the Appellate Tribunal, so as to impart greater efficiency, transparency and accountability by—

- optimising utilisation of the resources through economies of scale and functional specialisation;
- introducing a team-based mechanism for appeal to Appellate Tribunal, with dynamic Jurisdiction.

The Central Government may, for the purpose of giving effect to such scheme, by notification in the Official Gazette, direct that any of the provisions of the Income-tax Act, 1961 would not apply or would apply with such exceptions, modifications and adaptations as may be specified in the notification. However, no such direction can be issued after 31.3.2024 [Section 253(9)].

Every such notification issued under section 253(8) or section 253(9) has to be laid before each House of Parliament as soon as may be after issue of the notification.

(6) Order [Section 254(2), (3) & (4)]: The Appellate Tribunal may, after giving both the parties to the appeal a reasonable opportunity of being heard, pass such orders on any appeal as it thinks fit. The Tribunal must send a copy of any orders passed by it to the assessee and to the Principal Commissioner or Commissioner. Such orders passed by the Appellate Tribunal shall be final unless appeal is made to the High Court under section 260A.

(7) Rectification: The Appellate Tribunal may, at any time within **6 months from the end of the month in which order is passed**, with a view to rectifying any **mistake apparent from record**, amend

Amendment or order within 6 months from end of the month in which order is passed by it.

any order passed by it. However, if the mistake is brought to its notice by the assessee or the Assessing Officer, the Tribunal is bound to rectify the same. In cases where the amendment has the effect of enhancing the assessment or reducing a refund or otherwise increasing the liability of the

assessee, the Tribunal shall not pass any order of amendment unless it has given notice to the assessee of its intention to do so and has allowed him a reasonable opportunity of being heard.

(8) **Fees for rectification:** Any application for rectification filed by the assessee shall be accompanied by a fee of ₹ 50.

(9) **Time limit:** In every appeal, the Appellate Tribunal, where it is possible, may hear and decide such appeal within a period of four years from the end of the financial year in which such appeal is filed under sub-section (1)/(2) of section 253.

within 4 years from the end of F.Y.

Under section 254(2A), the Appellate Tribunal can grant stay of demand of tax which can extend only up to 180 days from the date of granting such stay subject to the condition that the assessee deposits not less than twenty per cent of the amount of tax, interest, fee, penalty, or any other sum payable under the provisions of this Act, or furnishes security of equal amount in respect thereof.

Stay of demand

No extension of stay shall be granted by the Appellate Tribunal, where such appeal is not so disposed of within the said period of stay as specified in the order of stay, unless –

- (i) the assessee makes an application and has complied with the condition of depositing 20% of tax, interest, fee, penalty or furnishes security of equal amount and
- (ii) the Appellate Tribunal is satisfied that the delay in disposing of the appeal is not attributable to the assessee,

However, the aggregate of the period of stay originally allowed and the period of stay so extended should not exceed 365 days and the Appellate Tribunal has to dispose of the appeal within the period or periods of stay so extended or allowed.

Aggregate period of stay cannot exceed 365 days

If such appeal is not so disposed of within 180 day period or the period or periods extended not exceeding 365 days, the order of stay shall stand vacated after the expiry of such period or periods, even if the delay in disposing of the appeal is not attributable to the assessee.

(10) **Cost of appeal:** The cost of any appeal to the Appellate Tribunal shall be at the discretion of that Tribunal [Section 254(2B)].

(11) **Final authority on facts:** On all questions of fact the orders passed by the Appellate Tribunal on appeal shall be final and binding on the assessee as well as the Department [Section 255].

(12) Benches:

- (i) Section 255(1) provides that the powers and functions of the Appellate Tribunal may be exercised and discharged by Benches constituted by the President of the Appellate Tribunal among the members thereof.
- (ii) As per section 255(2), a Bench should normally consist of one judicial member and one accountant member.
- (iii) However, section 255(3) provides for constitution of a single member bench and a Special Bench.
- (iv) Section 255(3) provides that the President or any other member of the tribunal authorized by the Central Government in this behalf may dispose of any case which pertains to an assessee whose total income as computed by the Assessing Officer in the said case does not exceed ₹ 50 lakh.
- (v) The President may, for the disposal of any particular case constitute a special Bench consisting of three or more members, one of whom must necessarily be a judicial member and one an accountant member.

Constitution of single member bench or special bench

Where members differ - If the members of a Bench differ in opinion on any point the point shall be decided according to the opinion of the majority, if there is a majority. However, if the members are equally divided, they should state the points on which they differ and the case shall be referred by the President of the Tribunal for hearing on such point by one or more of the other members of the Tribunal: then, such points shall be decided according to the opinion of the majority of the members of the Tribunal who have heard the case, including those who first heard it.

Decision according to opinion of majority

Regulating power - The Appellate Tribunal is empowered to regulate its own procedure and the procedure of its Benches in all matters arising out of the exercise of its power or of the discharge of its functions, including the places at which the Benches shall hold their sittings. The Tribunal is vested with all the powers which are exercisable by Income-tax authorities under section 131 for the purpose of discharging its functions. Any proceeding before the Appellate Tribunal shall be deemed to be a judicial proceeding for the purpose of the Income-tax Act, 1961 and the Indian Penal Code and that Appellate Tribunal shall be deemed to be a Civil Court for all the purposes of the Income-tax Act, 1961 and the Code of Criminal Procedure, 1898.

Scheme for disposing of appeal [Section 255(7), (8) & (9)] - Section 255(7) empowers the Central Government to make a scheme, by notification in the Official Gazette, for the purposes of disposal of appeals by the Appellate Tribunal, so as to impart greater efficiency, transparency and accountability by—

- (a) eliminating the interface between the Appellate Tribunal and the parties to the appeal in the course of appellate proceedings to the extent technologically feasible;
- (b) optimising utilisation of the resources through economies of scale and functional specialisation;
- (c) introducing an appellate system with dynamic Jurisdiction.

The Central Government may, for the purpose of giving effect to such scheme, by notification in the Official Gazette, direct that any of the provisions of the Income-tax Act, 1961 would not apply or would apply with such exceptions, modifications and adaptations as may be specified in the notification. However, no such direction can be issued after 31.3.2024 [Section 255(8)].

Every such notification issued under section 255(7) or section 255(8) has to be laid before each House of Parliament as soon as may be after issue of the notification.



16.3 APPEALS TO HIGH COURT [SECTIONS 260A & 260B]

Section 260A provides for direct appeal to the High Court against the orders of the Appellate Tribunal.

(1) Appeal - Section 260A(1) provides that an appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal, if the High Court is satisfied that the case involves a substantial question of law. If the High Court is so satisfied, it shall formulate that question.

Formulate Substantial question of law

The Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner or an assessee aggrieved by any order passed by the Appellate Tribunal may file an appeal to the High Court under this section.

(2) Form for appeal - The appeal shall be in the form of a memorandum of appeal, precisely stating in it the substantial question of law involved.

(3) Time limit for appeal - The appeal shall be filed within 120 days from the date on which the order appealed against is received by the assessee, or the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.

Appeal to be filed within 120 days

The High Court has and always had the power to condone the delay and admit an appeal after the expiry of the period of 120 days, if it is satisfied that there was sufficient cause for not filing the appeal within that period.

(4) Matters on which appeal can be heard - The appeal shall be heard only on the question formulated. However, the respondent shall at the hearing of appeal, be allowed to argue that the case does not involve such question. Further, the Court shall also have power to hear the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question. However, such power shall be exercised by the Court only after recording the reasons for hearing such other question.

Further, the High Court may determine any issue which -

- (a) has not been determined by the Appellate Tribunal; or
- (b) has been wrongly determined by the Appellate Tribunal, by reason of a decision on such question of law as is referred to in section 260A(1).

(5) Delivery of judgment - After the appeal is heard, the High Court shall decide the question of law so formulated and deliver such judgment thereon, but such judgment should contain the grounds on which such decision is founded.

(6) Award of costs - The High Court is empowered to award such costs as it deems fit.

(7) Code of Civil Procedure - Unless otherwise provided in this Act, the Code of Civil Procedure, 1908, relating to appeals to the High Court, shall apply to appeals under this section.

(8) Case before High Court to be heard by not less than two judges [Section 260B]

Strength of the bench hearing the appeal - The appeal shall be heard by a bench of not less than 2 judges of the High Court.

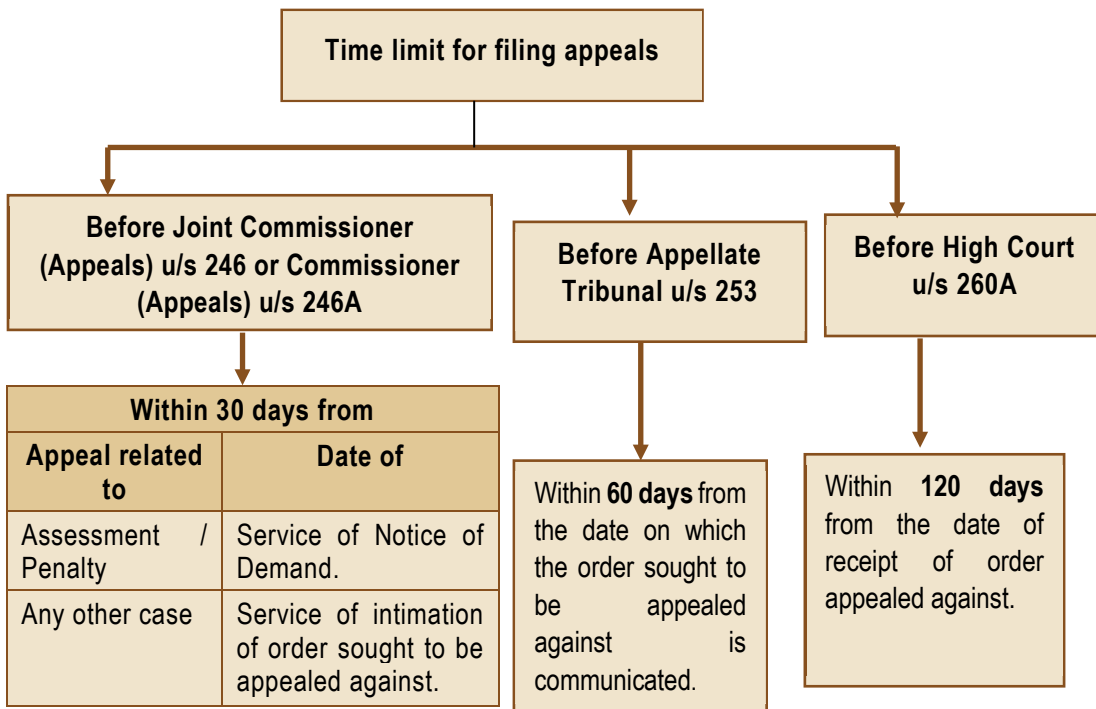
Decision of the majority - The appeal shall be decided in accordance with the opinion of the judges or the majority, if any.

Where there is no such majority, the point of law upon which the judges differ shall be referred to one or more of the other judges of the High Court and such point shall be decided according to the opinion of the majority of the Judges who have heard the case, including those who first heard it.



16.4 APPEAL TO THE SUPREME COURT [SECTION 261]

According to section 261, an appeal shall lie to the Supreme Court from any judgment of the High Court, in a case which the High Court certifies to be a fit one for appeal to the Supreme Court. The provisions of the Code of Civil Procedure, 1908 in regard to appeal shall apply in the case of all appeals to the Supreme Court in the same manner as in the case of all appeals from decrees of a High Court. The cost of appeal shall be decided at the discretion of the Supreme Court. Where the judgment of a High Court is varied in the appeal, effect should be given to the order of the Supreme Court in the same manner as provided in the case of a judgment of the High Court.



Note: The above time period can be extended by the Appellate Authority if the appellant shows sufficient cause for not presenting the appeal within the specified time.



16.5 PROCEDURE WHEN ASSESSEE CLAIMS IDENTICAL QUESTION OF LAW IS PENDING BEFORE THE HIGH COURT OR SUPREME COURT [SECTION 158A]

(1) **Identical question of law pending before High Court/Supreme Court:** Section 158A makes provision for avoiding repetitive appeals when identical question of law is pending before

High Court or Supreme Court. This is applicable to a situation where an assessee claims that any question of law arising in his case for an assessment year which is pending before the Assessing Officer or any appellate authority is identical with a question of law arising in his case for another assessment year which is pending in appeal under section 260A before the High Court or in appeal under section 261 before the Supreme Court.

(2) Assessee to furnish declaration: In such a situation, notwithstanding anything contained in the Act, the assessee may furnish a declaration in the prescribed form that if the Assessing Officer or the appellate authority, as the case may be, agrees to apply in the present case, the final decision passed on the other case, the assessee shall not raise again the same question of law in appeal before any appellate authority or in appeal before the High Court under section 260A or in appeal before the Supreme Court under section 261.

(3) Assessing Officer's report on correctness of claim: Where such a declaration is furnished by the assessee to an appellate authority, the appellate authority shall call for a report from the Assessing Officer on the correctness of the claim. Where the Assessing Officer makes a request to the appellate authority to give him an opportunity of being heard, it shall allow him such opportunity.

(4) Admission or rejection of claim by order in writing: The Assessing Officer or the appellate authority, as the case may be, may, by order in writing –

- (i) admit the claim if satisfied that the question of law is identical in the present as well as the other case; or
- (ii) reject the claim, if not so satisfied.

(5) Consequences where claim is admitted: Where a claim is admitted, -

- (i) the Assessing Officer or appellate authority, as the case may be, may make an order disposing of the present case without waiting for the final decision on the other case.
- (ii) the assessee would then not be entitled to raise in relation to the relevant case, such question of law in appeal before any appellate authority or in appeal before the High Court under section 260A or the Supreme Court under section 261.

(6) Final decision of Supreme Court/High Court to be applied to the case: When the final decision on the question of law is passed in the other case, the Assessing Officer or the appellate authority, as the case may be would apply it to the present case and amend the order passed, if necessary, in order to conform to such decision.

(7) Finality of the order: An order admitting or rejecting the claim of the assessee, as the case may be, would be final. Such order cannot be called in question in any proceeding by way of appeal, reference, revision under the Act.

(8) **Meaning of certain terms:**

Term	Meaning
Appellate authority	Joint Commissioner (Appeals) or Commissioner (Appeals) or Appellate Tribunal.
Case	Any proceeding under the Act for assessment of the total income of the assessee or for the imposition of any penalty or fine on him.



16.6 DEFERMENT OF APPEAL BY REVENUE WHEN AN IDENTICAL QUESTION OF LAW IS PENDING BEFORE HIGH COURT OR SUPREME COURT [SECTION 158AB]

- (1) **Deferment of any appeal against an identical question of law pending before the High Court or Supreme Court:** Section 158AB provides that where the collegium (comprising of two or more Chief Commissioners or Principal Commissioners or Commissioners, as may be specified by the CBDT in this behalf) is of the opinion that

Collegium

- any question of law arising in the case of an assessee for any assessment year (i.e., relevant case) is identical with a question of law already raised
 - in his case for any other A.Y. or
 - in the case of any other assessee for any assessment year,

which is pending before the jurisdictional High Court under section 260A or the Supreme Court in an appeal under section 261 or in a special leave petition under article 136 of the Constitution, against the order of the Appellate Tribunal or the jurisdictional High Court, as the case may be, in favour of such assessee (other case),

the collegium may, decide and inform the Principal Commissioner or Commissioner not to file any appeal, at this stage, to the Appellate Tribunal under section 253(2) or to the jurisdictional High Court under section 260A(2) in the relevant case against the order of **the Joint Commissioner (Appeals)** or the Commissioner (Appeals) or the Appellate Tribunal, as the case may be.

(2) **Direction to Assessing Officer to make an application to the Tribunal or High Court:**

On receipt of a communication from the collegium, the Principal Commissioner or Commissioner shall direct the Assessing Officer **to make an application** to the Appellate Tribunal or jurisdictional High Court, as the case may be, in the prescribed form

Application within 120 days from the date of receipt of order

- within 120 days from the date of receipt of the order of *the Joint Commissioner (Appeals)* or the Commissioner (Appeals) or the Appellate Tribunal, as the case may be,
- stating that an appeal on the question of law arising in the relevant case may be filed when the decision on the question of law becomes final in the other case.

This is notwithstanding anything contained in section 253(3) or 260A(2)(a) which provide the time limit for filing appeal before Tribunal or High Court.

(3) **Application to be made only if the assessee accepts that the question of law is identical:** The Principal Commissioner or Commissioner shall direct the Assessing Officer to make such an application only if an acceptance is received from the assessee to the effect that the question of law in the other case is identical to that arising in the relevant case. In case no such acceptance is received, the Principal Commissioner or Commissioner shall, notwithstanding anything contained in section 253(3) or 260A(2)(a), proceed in accordance with the provisions contained in section 253(2) or section 260A(2)(c).

(4) **Consequences where the order of Joint Commissioner (Appeals) or CIT (Appeals) or the Appellate Tribunal is not in conformity with High Court's or Supreme Court's decision in the other case:** Where the order of the *the Joint Commissioner (Appeals)* or Commissioner (Appeals) or the order of Appellate Tribunal, as the case may be, is not in conformity with the final decision on the question of law in the other case (if the High Court or Supreme Court decides the other case in favour of the Department), as and when such order is received, the Principal Commissioner or the Commissioner may direct the Assessing Officer to appeal to the Appellate Tribunal or Jurisdictional High Court, as the case may be, against such order.

Unless otherwise provided in section 158AB, all other provisions of Part B-“Appeals to Appellate Tribunal” and Part CC – “Appeals to High Court” of Chapter XX would apply accordingly.

- (5) **Time limit for filing appeal in the relevant case:** The appeal in the relevant case shall be filed within 60 days to the Tribunal or 120 days to the High Court, as the case may be, from the date on which the order of the High Court or the Supreme Court in any other case, is communicated to the Principal Commissioner or Commissioner, in accordance with the procedure specified by the CBDT.

60 days - ITAT

120 days - HC



Example: Let us suppose a question of law (Q1) has arisen in case of an assessee Mr. X and he has received a favourable decision on Q1 from the Commissioner (Appeals). Further, in case of another assessee Mr. Y, where Department's appeal on identical question of law (Q2) in his case is pending before the jurisdictional High Court or the Supreme Court. The collegium is of the opinion that Q1 in case of Mr. X and Q2 in case of Mr. Y are identical questions of law. In this situation, the provisions of section 158AB can be invoked by Revenue to defer filing of appeal in respect of Q1 in case of Mr. X to the higher appellate authority till a decision on Q2 in case of Mr. Y is communicated to the Principal Commissioner or Commissioner having jurisdiction over the assessee, Mr. X. Such a decision on deferment will be subject to acceptance by the assessee Mr. X that question of law in his case Q1 is identical to Q2 in the case of the assessee Mr. Y.



16.7 REVISION OF ORDERS [SECTIONS 263 AND 264]

(1) **Revision of Orders prejudicial to the Revenue [Section 263]**

- (i) Under section 263(1), if the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner considers that any order passed by the Assessing Officer or the Transfer Pricing Officer (TPO) under section 92CA, as the case may be, is erroneous in so far as it is prejudicial to the interests of the Revenue, he may, after giving the assessee an opportunity of being heard and after making an enquiry, pass an order, including an order
- (i) enhancing or modifying the assessment or cancelling the assessment and directing a fresh assessment; or
 - (ii) an order modifying the order under section 92CA; or
 - (iii) an order cancelling the order under section 92CA and directing a fresh order under the said section.

**Enhance, modify,
cancel and direct
fresh assessment.**

- (ii) An order passed by the Assessing Officer or the Transfer Pricing Officer (TPO), as the case may be, shall be deemed to be erroneous in so far as it is prejudicial to the interests of the Revenue, if, in the opinion of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner,—
 - (a) the order is passed without making inquiries or verification which should have been made;
 - (b) the order is passed allowing any relief without inquiring into the claim;
 - (c) the order has not been made in accordance with any order, direction or instruction issued by the CBDT under section 119;
 - (d) the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person.
- (iii) The term 'record' shall include and shall be deemed always to have included all records relating to any proceedings under the Act available at the time of examination by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.
- (iv) Where any order referred to in section 263(1) passed by the Assessing Officer or the TPO, as the case may be, had been the subject-matter of any appeal, the powers of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner under section 263(1) shall extend and shall be deemed always to have extended to such matters as had not been considered and decided in such appeal.
- (v) No order shall be made after the expiry of 2 years from the end of the financial year in which the order sought to be revised was passed.
- (vi) In computing the period of 2 years, the time taken in giving an opportunity to the assessee to be reheard under section 129 and any period during which the revision proceeding is stayed by an order or injunction of any court shall be excluded.
- (vii) The time limit, however, does not apply in case where the effect has to be given to a finding or direction contained in the order of the Appellate Tribunal, High Court or the Supreme Court.

(2) Revision of other orders [Section 264]

- (i) In the case of any other order (not being an order prejudicial to the Revenue) passed by any subordinate authority, the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may either on his own motion or on

receipt of an application from the assessee, call for the record of any proceedings under the Act in the course of which the order was passed. After making such enquiries as may be necessary the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may pass such order as he thinks fit.

- (ii) The Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner **is not empowered to revise any order on his own motion if a period of more than one year has expired from the date of the order sought to be revised.**
- (iii) If the application for revision is made by the assessee, it must be made within one year from the date on which the order in question was communicated to him or the date on which he otherwise comes to know of it, whichever is earlier.
- (iv) However, the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner may admit an application even after the expiry of one year, if he is satisfied that the assessee was prevented by sufficient cause from making the application within that period.
- (v) The application to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner for revision must be accompanied by a fee of ₹ 500.
- (vi) If an order is passed by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner declining to interfere in any proceeding, it shall not be deemed to be an order prejudicial to the assessee.
- (vii) However, the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner **is not empowered to revise any order** in the following cases, viz.,

Application to be filed within 1 year from the date of communication of order or from the date he otherwise came to know about it, whichever is earlier.

Fee of ₹ 500

- (a) where an appeal against the order lies to **the Joint Commissioner (Appeals)** or the Commissioner (Appeals) or the Tribunal but has not been made and the time within which the appeal may be made has not expired or in the case of an appeal to **the Joint Commissioner (Appeals)** or to the Commissioner (Appeals) or to the Tribunal the assessee has not waived his right of appeal;
- (b) where the order has been made subject to an appeal to **the Joint Commissioner (Appeals)** or the Commissioner (Appeals) or the Appellate Tribunal.

Revision not permissible if –

- (i) Time for filing appeal before JCIT(A) or CIT(A) or ITAT has not expired or assessee has not waived his right of appeal
- (ii) Order is subject matter of appeal before JCIT(A) or CIT(A) or ITAT

(3) Limitation of time for revision of orders by Principal Commissioner or Commissioner of Income-tax under section 264

Under section 264, the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner of Income-tax is empowered to revise an order passed by the subordinate authority where no appeal has been filed. There is a limitation of one year for filing the application.

- (a) It shall be obligatory on the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner to pass an order within a period of one year from the end of financial year in which such application is made by the assessee for revision.

**Order to be passed within
1 year from the end of F.Y. in
which application is made**

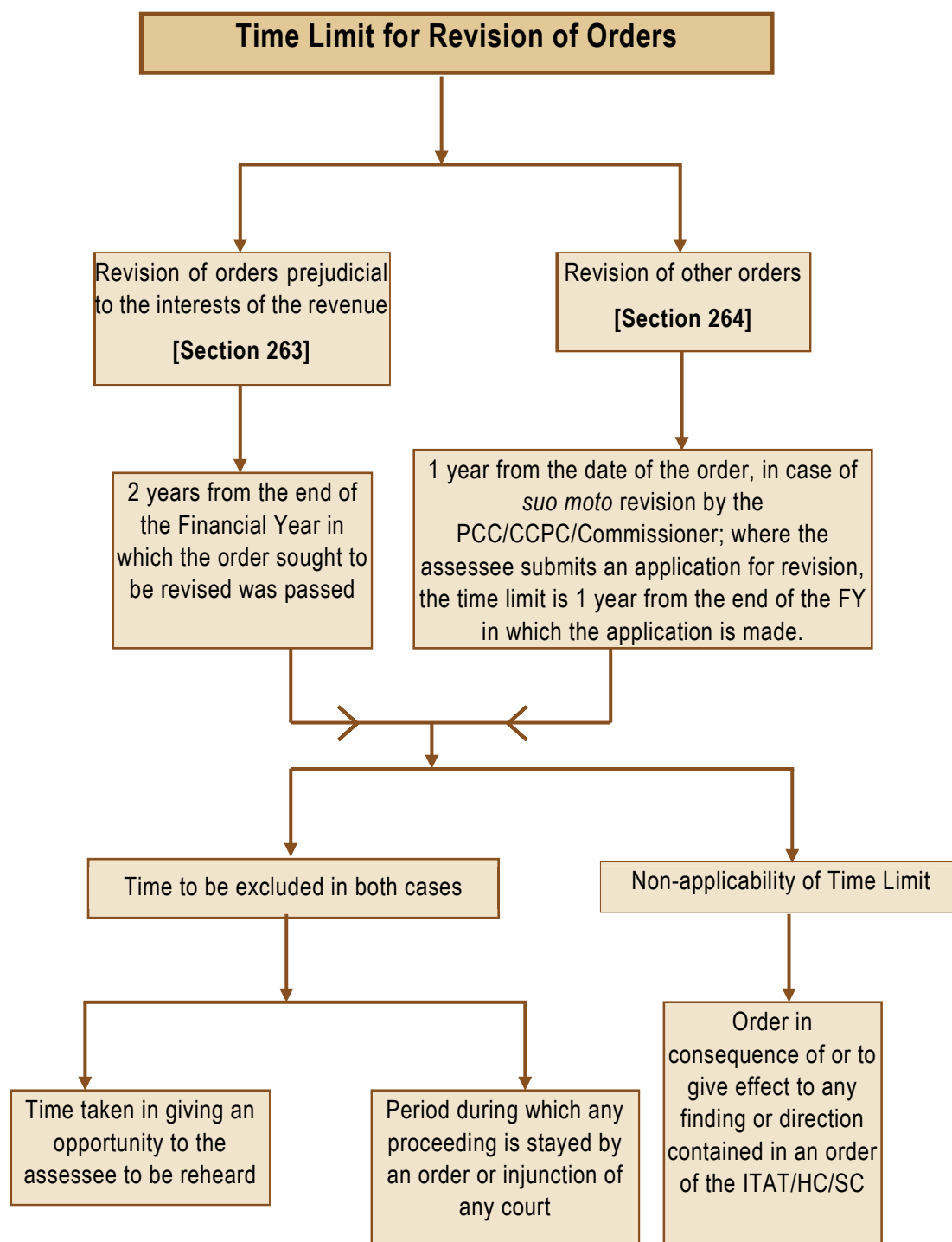
- (b) In computing the above referred period of limitation, the time taken in giving an opportunity to the assessee to be re-heard under the proviso to section 129 and any period during which any proceeding under this section is stayed by an order or injunction of any Court shall be excluded [*Explanation* to section 264(6)].
- (c) The **aforesaid time limit shall not apply** to any order which has been passed in consequence of or to give effect to any finding or direction contained in an order of the Appellate Tribunal, High Court or the Supreme Court.

(4) Faceless Revision [Section 264A]

- (i) The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of revision of orders under section 263 or section 264, so as to impart greater efficiency, transparency and accountability by—
 - (a) eliminating the interface between the income-tax authority and the assessee or any other person to the extent technologically feasible;
 - (b) optimising utilisation of the resources through economies of scale and functional specialisation;
 - (c) introducing a team-based revision of orders, with dynamic jurisdiction.
- (ii) The Central Government, may, for the purpose of giving effect to the scheme made under section 264A(1), by notification in the Official Gazette, direct that any of the provisions of the Income-tax Act, 1961 would not apply or would apply with such exceptions, modifications and adaptations as may be specified in the notification. However, no such direction shall be issued after 31.3.2022.
- (iii) Every notification issued under (i) and (ii) above has to be laid before each House of Parliament, as soon as may be after the notification is issued.

(5) Faceless Effect of Orders [Section 264B]

- (i) The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of giving effect to an order under section 250, 254, 260, 262, 263 or 264, so as to impart greater efficiency, transparency and accountability by—
 - (a) eliminating the interface between the income-tax authority and the assessee or any other person to the extent technologically feasible;
 - (b) optimising utilisation of the resources through economies of scale and functional specialisation;
 - (c) introducing a team-based giving of effect to orders, with dynamic jurisdiction
- (ii) The Central Government, may, for the purpose of giving effect to the scheme made under section 264B(1), by notification in the Official Gazette, direct that any of the provisions of the Income-tax Act, 1961 would not apply or would apply with such exceptions, modifications and adaptations as may be specified in the notification. However, no such direction shall be issued after 31.3.2022.
- (iii) Every notification issued under (i) and (ii) above has to be laid before each House of Parliament, as soon as may be after the notification is issued.





16.8 MONETARY LIMITS FOR REGULATING FILING OF APPEALS BY INCOME TAX AUTHORITIES [SECTION 268A]

- (i) As per section 268A(1), the CBDT is empowered to issue orders, instructions or directions to other income tax authorities, fixing such monetary limits as it may deem fit. Such fixing of monetary limit is for the purpose of regulating filing of appeal or application for reference by any income tax authority.
- (ii) Where an income-tax authority has not filed any appeal or application for reference on any issue in the case of an assessee for any assessment year, due to abovementioned order/instruction/direction of the CBDT, such authority shall not be precluded from filing an appeal or application for reference on the same issue in the case of –
 - (1) the same assessee for any other assessment year; or
 - (2) any other assessee for the same or any other assessment year.
- (iii) Further, in such a case, it shall not be lawful for an assessee to contend that the income-tax authority has acquiesced in the decision on the disputed issue by not filing an appeal or application for reference in any case.
- (iv) The Appellate Tribunal or Court should take into consideration the above mentioned orders/instructions/directions of the CBDT and the circumstances under which such appeal or application for reference was filed or not filed in respect of any case.
- (v) Every order/instruction/direction which has been issued by the CBDT fixing monetary limits for filing an appeal or application for reference shall be deemed to have been issued under sub-section (1) and all the provisions of this section shall apply accordingly.

Monetary limits for filing of appeals by the Department before Income Tax Appellate Tribunal, High Courts and SLPs/appeals before Supreme Court

The CBDT has specified the monetary limits and other conditions for filing departmental appeals before Income Tax Appellate Tribunal, High Courts and SLPs/ appeals before Supreme Court vide Circular No. 3/2018, Dated 11-7-2018, F. No. 279/Misc. 142/2007-ITJ (Pt), Dated 20-8-2018, Circular No. 17/2019, Dated 8-8-2019 and F. No. 279/Misc./M-93/2018-ITJ (Pt), Dated 16-9-2019.

Monetary limits

It has been decided by the CBDT that departmental appeals may be filed on merits before Income Tax Appellate Tribunal and High Courts and SLPs/ appeals before Supreme Court keeping in view the monetary limits and conditions specified below.

Monetary Limits specified:

Appeals/ SLPs shall not be filed in cases where the tax effect does not exceed the monetary limits given hereunder:

S. No.	Appeals/ SLPs in Income-tax matters	Monetary Limit (₹)
1.	Before Appellate Tribunal	50,00,000
2.	Before High Court	1,00,00,000
3.	Before Supreme Court	2,00,00,000

It is clarified that an appeal should not be filed merely because the tax effect in a case exceeds the monetary limits prescribed above. Filing of appeal in such cases is to be decided on merits of the case.

Meaning of Tax Effect:

	Case	Tax Effect
i.	In case not covered in ii, iii and iv below	The tax on the total income assessed (-) The tax that would have been chargeable had such total income been reduced by the amount of income in respect of the issues against which appeal is intended to be filed ("disputed issues"). Note – However, the tax will not include any interest thereon, except where chargeability of interest itself is in dispute.
ii.	In case the chargeability of interest is the issue under dispute	The amount of interest
iii.	In case where returned loss is reduced or assessed as income	The tax effect would include notional tax on disputed additions
iv.	In case of penalty orders	Quantum of penalty deleted or reduced in the order to be appealed against
Note – Tax effect shall be tax including applicable surcharge and cess.		

Computation of tax on the total income assessed where income is computed under the provisions of section 115JB or section 115JC:

In such case, tax on the total income assessed would be computed as given below -

$$(A - B) + (C - D)$$

Where,

- A = the total income assessed as per the provisions other than the provisions contained in section 115JB or section 115JC (i.e., the general provisions)
- B = the total income that would have been chargeable had the total income assessed as per the general provisions been reduced by the amount of the disputed issues under general provisions
- C = the total income assessed as per the provisions contained in section 115JB or section 115JC
- D = the total income that would have been chargeable had the total income assessed as per the provisions contained in section 115JB or section 115JC was reduced by the amount of the disputed issues under said provisions

However, where the amount of disputed issues is considered both under the provisions contained in section 115JB or section 115JC and under general provisions, such amount shall not be reduced from total income assessed while determining the amount under item D.

Manner of calculation of tax effect of different assessment years:

The Assessing Officer has to calculate the tax effect separately for every assessment year in respect of the disputed issues in the case of every assessee. If, in the case of an assessee, the disputed issues arise in more than one assessment year, appeal can be filed in respect of such assessment year or years in which the tax effect in respect of the disputed issues exceeds the specified monetary limit. No appeal shall be filed in respect of an assessment year or years in which the tax effect is less than the monetary limit specified. Further, even in case of a composite order of any High Court or appellate authority, which involves more than one assessment year and common issues in more than one assessment year, no appeal shall be filed in respect of an assessment year or years in which the 'tax effect' is less than the prescribed monetary limit. In case where a composite order/judgement involves more than one assessee, each assessee shall be dealt with separately.

Department not precluded from filing an appeal against disputed issues for subsequent assessment years if the tax effect exceeds the specified monetary limits in those years

In a case where appeal before a Tribunal or a Court is not filed only on account of the tax effect being less than the monetary limit specified above, the Principal Commissioner or Commissioner of

**Cases to be
contested on merits**

Income-tax shall specifically record that "even though the decision is not acceptable, appeal is not being filed only on the consideration that the tax effect is less than the monetary limit specified in the Circular". Further, in such cases, there will be no presumption that the Income-tax Department has acquiesced in the decision on the disputed issues. The Income-tax Department shall not be precluded from filing an appeal against the disputed issues in the case of the same assessee for any other assessment year, or in the case of any other assessee for the same or any other assessment year, if the tax effect exceeds the specified monetary limits.

Cases in respect of which appeal is not filed due to tax effect being less than specified monetary limit not to have any precedent value

In the past, a number of instances have come to the notice of the Board, whereby an assessee has claimed relief from the Tribunal or the Court only on the ground that the Department has implicitly accepted the decision of the Tribunal or Court in the case of the assessee for any other assessment year or in the case of any other assessee for the same or any other assessment year, by not filing an appeal on the same disputed issues. The Departmental representatives/counsels must make every effort to bring to the notice of the Tribunal or the Court that the appeal in such cases was not filed or not admitted only for the reason of the tax effect being less than the specified monetary limit and, therefore, no inference should be drawn that the decisions rendered therein were acceptable to the Department. Accordingly, they should impress upon the Tribunal or the Court that such cases do not have any precedent value and also bring to the notice of the Tribunal/ Court the provisions of section 268A(4) of the Act. As the evidence of not filing appeal due to this Circular may have to be produced in courts, the judicial folders in the office of Pr CsIT/ CsIT must be maintained in a systemic manner for easy retrieval.

Cases where adverse judgments should be contested on merits even if tax effect is less than the specified monetary limits

Adverse judgments relating to the issues enumerated hereunder should be **contested on merits** notwithstanding that the tax effect entailed is less than the specified monetary limits or there is no tax effect:

- (a) Where the Constitutional validity of the provisions of an Act or Rule is under challenge, or
- (b) Where Board's order, Notification, Instruction or Circular has been held to be illegal or ultra vires, or
- (c) Where Revenue Audit objection in the case has been accepted by the Department, or

- (d) Where addition relates to undisclosed foreign income/undisclosed foreign assets (including financial assets)/undisclosed foreign bank account.
- (e) Where addition is based on information received from external sources in the nature of law enforcement agencies such as CBI/ED/DRI/SFIO/Directorate General of GST Intelligence (DGGI).
- (f) Cases where prosecution has been filed by the Department and is pending in the Court.

Specified monetary limit not to apply to writ matters and direct tax matters other than income-tax

Filing of appeals in other direct tax matters shall continue to be governed by the relevant provisions of statute and rules. Further, filing of appeal in cases of income-tax, where the tax effect is not quantifiable or not involved, such as the case of registration of trusts or institutions under section 12A/12AA/12AB, filing of appeal shall not be governed by the specified monetary limits and decision to file appeal in such cases may be taken **on merits** of a particular case.

Retrospective applicability of specified monetary limits

This Circular would apply to SLPs/appeals/cross objections/reference to be filed henceforth in SC/HCs/Tribunal and it shall also apply retrospectively to pending SLPs/appeals/cross objections/reference. Pending appeals below the specified tax limits may be withdrawn/ not pressed.

Non-applicability of specified monetary limits in case involving bogus LTCG/ STCG through penny stocks

However, in exercise of power conferred by section 268A, CBDT has clarified that the above monetary limits shall not apply in case of assessee claiming bogus LTCG/ STCG through penny stocks and appeals/ SLPs in such cases shall be filed on merits.

Exceptions to monetary limits for filing appeals deferred under section 158AB [Circular No. 8/2023 dated 31.5.2023]

The CBDT has, vide this circular clarified that references to collegiums constituted u/s 158AB for deciding on the deferral of appeal(s)/grounds of appeal(s) would be made having regard to the extant monetary limits read along with the exceptions to the same as mentioned above and the exceptions provided below.

**Applicability of
monetary limits
u/s 158AB**

Scenarios on the applicability of monetary limits:

- (i) **Only one ground is contested:** In cases where only one ground is contested and where the tax effect is greater than the monetary threshold as per the extant monetary limits for filing appeals

at relevant judicial fora, set by CBDT, and section 158AB is applicable to it, appeal may be deferred in the current year in which appeal is under consideration in view of the provisions of section 158AB. The appeal is to be filed in the year in which the final decision on the identical question of law is received in favour of Revenue in other case.

(ii) Multiple grounds are contested: In cases where multiple grounds are contested and where the total tax effect of all the disputed grounds (i.e., grounds to which Section 158AB is applicable and otherwise) is greater than the extant monetary limits for filing appeals at relevant judicial fora, set by CBDT, and Section 158AB is applicable only to certain grounds, the guidelines for filing appeal are as follows:

- (a) in the current year in which appeal filing is under consideration
 - filing of appeal on the grounds to which section 158AB is applicable may be deferred in view of the provisions of that section, and
 - appeal may be filed on the residual grounds.
- (b) in the year in which the final decision on the identical question of law is received in favour of Revenue in the other case, appeal is to be filed on the grounds to which section 158AB is applicable, irrespective of the monetary limit at that point in time.

In respect of deferring appeals under section 158AB, while adhering to the guidelines as laid down in the preceding paras, it is to be ensured that when judicial finality is achieved in favour of Revenue in the 'other case', appeal in the 'relevant case' should be contested on merits subsequent to the decision in the 'other case' irrespective of the extant monetary limits.

Further, if the judicial outcome in the 'other case' is not in favour of Revenue and is not accepted by the Department, appeal against the same may be contested on merits in the 'other case' irrespective of the extant monetary limits, to arrive at judicial finality.

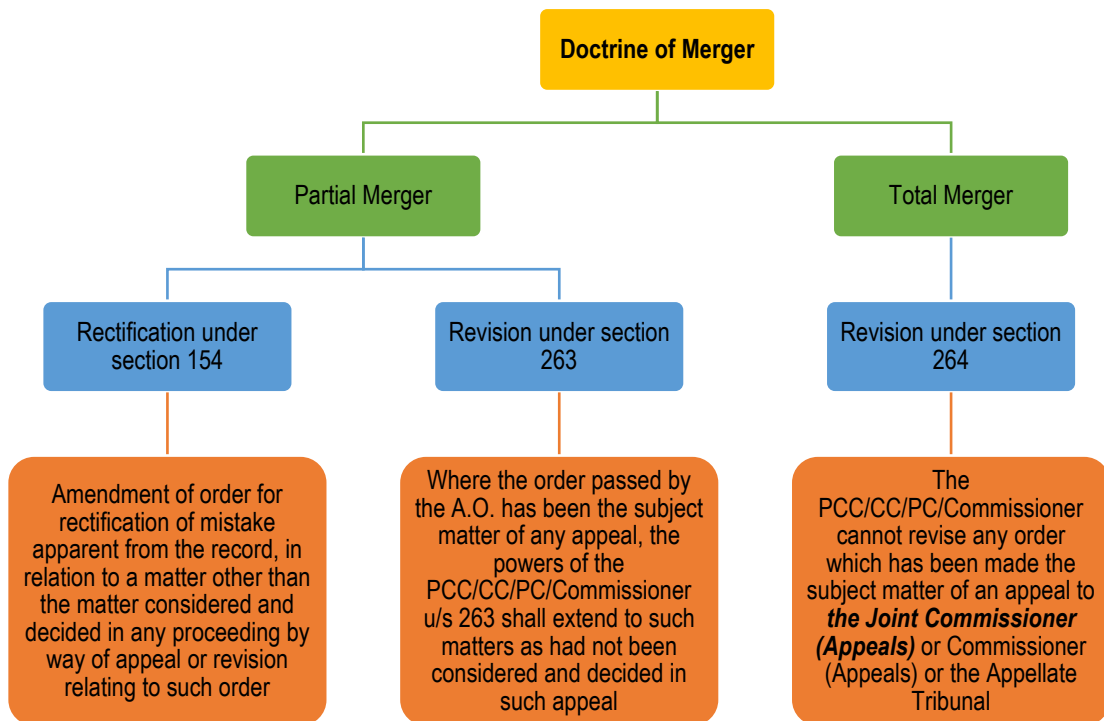


16.9 DOCTRINE OF PARTIAL MERGER AND DOCTRINE OF TOTAL MERGER

Section 154 provides that the doctrine of partial merger shall apply where any matter has been considered and decided in any proceeding, appeal or revision relating to rectifiable order. The authority passing such order may, amend the order in relation to any matter other than the matter which has been so considered and decided. The doctrine of partial merger also holds good for section 263.

However, the concept of total merger would apply in the case of section 264. The Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner of Income-tax has no power to revise any order under section 264, if the order has been made subject to an appeal to the Appellate Tribunal, even if the relief claimed in the revision is different from the relief claimed in the appeal and irrespective of the fact whether the appeal is by the assessee or by the Department.

**Partial Merger –
Sections 154 & 263**
**Total Merger –
Section 264**



SIGNIFICANT SELECT CASES

S.No.	Case Law	
1.	<i>Genpact India Pvt. Ltd. v. DCIT & Ors (2019) 419 ITR 440 (SC)</i>	
	Issue	Analysis & Decision
	Is appellate remedy by way of appeal before Commissioner (Appeals) u/s 246A available to a company denying its liability to pay additional income-tax @ 20% on the distributed income u/s 115QA?	The situations referred to in section 246A(1)(a) of the Income-tax Act, 1961 are: (i) An order against the assessee, where the assessee denies his liability to be assessed under the Act, or (ii) An intimation u/s 143(1), where the assessee objects to the making of adjustments, or (iii) Any order of assessment u/s 143(3)/144, where the assessee objects to the amount of income assessed, or to the amount of tax determined, or to the amount of loss computed, or to the status under which he is assessed. The contingencies detailed in (ii) and (iii) hereinabove arise out of assessment proceedings but the first contingency is a standalone postulate and is not dependent purely on the assessment proceedings either u/s 143 or section 144. The expression "denies his liability to be assessed" is quite comprehensive to take within its fold every case where the assessee denies his liability to be assessed under the Act. Any determination u/s 115QA, be it regarding quantification of the liability or the question whether such company is liable or not, would fall within the ambit of the first postulate referred to hereinabove i.e., "an order against the assessee, where the assessee denies his liability to be assessed under this Act". Accordingly, an appeal u/s 246A to Commissioner (Appeals) would be maintainable against the determination of liability u/s 115QA.
2.	<i>CIT v. Pruthvi Brokers & Shareholders (2012) 349 ITR 336 (Bom.)</i>	
	Issue	Analysis & Decision
	Can an assessee make an additional/new claim before an	The appellate authorities have jurisdiction to permit additional claims before them, however, the exercise of such jurisdiction is entirely the authorities' discretion.

	appellate authority, which was not claimed by the assessee in the return of income (though he was legally entitled to), otherwise than by way of filing a revised return of income?	In case an additional ground was raised before the appellate authority which could not have been raised at the stage when the return was filed or when the assessment order was made, or the ground became available on account of change of circumstances or law, the appellate authority can allow the same. Additional grounds can be raised before the Appellate Authority even otherwise than by way of filing return of income. However, in case the claim has to be made before the Assessing Officer, the same can only be made by way of filing a revised return of income. Note – This view of the High Court has been endorsed by the Apex Court in <i>Wipro Finance Ltd. v. CIT</i> (2022) 443 ITR 250 (SC)
3.	<i>Wipro Finance Ltd. v. CIT</i> (2022) 443 ITR 250 (SC)	
	Issue	Analysis & Decision
	Would the loss incurred in foreign currency fluctuation at the time of repayment of loan taken for financing acquisition of plant and machinery on lease/hire purchase by Indian enterprises with whom the assessee-company has lease/hire purchase agreement be treated as allowable revenue expenditure? Can the Tribunal entertain a fresh claim for the first time in exercise of its powers under section 254?	Under section 37, any expenditure (not being in the nature of expenditure described in sections 30 to 36), and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing income chargeable under the head “Profits and gains of business or profession”. Section 254(1) empowers the Appellate Tribunal to pass such orders as it thinks fit, after giving both the parties to the appeal an opportunity of being heard. Facts of the case: The assessee-company, which was in the leasing business, obtained a loan in foreign currency from Commonwealth Development Corporation (CDC), having its registered office in the United Kingdom, to be utilised by the assessee for financing the procurement of capital equipment by existing Indian enterprises on hire purchase or lease basis. While repaying the loan, due to the difference in the rates of foreign exchange, the assessee had to pay a higher amount, resulting in loss to the assessee. For the relevant assessment year, the assessee declared, <i>inter alia</i>, a loss of Rs.1.11 crores owing to fluctuation in the rates of foreign exchange.

		The assessee in its return had taken a conscious explicit plea with regard to part of the claim being ascribable to capital expenditure (Rs.2.46 crores) and partly to revenue expenditure (Rs.1.11 crores). Thereafter, for the first time before the Tribunal it pleaded that the entire claim must be treated as revenue expenditure. The Tribunal was conscious that this claim was made by the assessee for the first time before it and the same was contrary to the stand taken in the return filed by the assessee for the assessment year including the notings made by the officials of the assessee. Yet, the Tribunal entertained the claim as permissible, relying on the dictum of the court in <i>National Thermal Power Co. Ltd. v. CIT</i> [1998] 229 ITR 383 (SC), wherein it was held that the Tribunal has the power to entertain question raised for the first time. The Tribunal is not confined only to the issues arising out of the appeal before the Commissioner (Appeals). It has the power to allow the assessee to urge any ground not raised before the Commissioner (Appeals). However, the relevant facts in respect of such ground should be on record. Accordingly, in this case, the Tribunal held that the entire loan and the utilisation thereof was in trading operations of the company more profitably leaving the fixed capital untouched and hence the expenditure was on revenue account and allowable. The Tribunal allowed the entire claim of Rs. 3.57 crores. <u>Analysis:</u> The activity of the assessee of financing existing Indian enterprises for procurement or acquisition of plant, machinery and equipment on lease and hire purchase basis, was an independent transaction or activity being the business of the assessee. The transaction of loan between the assessee and CDC was in the nature of borrowing money by the assessee, which was necessary for carrying on its business of financing. It was not for creation of an asset of the assessee as such or acquisition from a country outside India for the purpose of its business. In such a scenario, the assessee would be justified in availing of deduction of the entire expenditure or loss suffered by it in connection with such a transaction in terms of section 37. The loan was wholly and exclusively used for the purpose of business of financing existing Indian enterprises, which in turn, had to acquire plant, machinery and equipment to

		be used by them. It was a different matter that they may do so because of the leasing and hire purchase agreement with the assessee. That would, nevertheless, be an activity concerning the business of the assessee. The Supreme Court held that the analysis and the conclusion arrived at by the Tribunal in respect of the claim of the assessee were correct. As regards the restriction in powers to accept a new claim for the first time, such limitation on accepting new claims would apply to the “assessing authority”, but would not impinge upon the plenary powers of the Tribunal bestowed under section 254. <u>Decision:</u> As a result of allowing the entire claim of the appellant to the tune of Rs. 3.57 crores being revenue expenditure, suitable amendment will have to be effected in the final assessment order passed by the Assessing Officer for the concerned assessment year, thereby treating the consequential benefits such as depreciation availed of by the appellant-assessee in relation to the stated amount towards exchange fluctuation related to leased assets capitalized (being Rs. 2.46 crores), as unavailable. <i>Note</i> – <i>The crux of this case is that the assessee was engaged in leasing business. The assessee also financed the enterprises with whom it had entered into a lease agreement to enable them to obtain the plant, machinery on lease from it. For such financing, the assessee had obtained loan in foreign currency and incurred loss on account of currency fluctuation while repaying the loan. It was held that since the loan was borrowed for the financing activity, which was an activity concerning the business of the assessee, the loss was allowable under section 37. It was not a loan borrowed for acquisition of asset, in which case, the loss would have had to be adjusted against the actual cost of the asset.</i>
4.	Smt. Ritha Sabapathy v. DCIT [2019] 416 ITR 191 (Mad)	
	Issue	Analysis & Decision
	Can the Appellate Tribunal dismiss an appeal, without	Even if the assessee could not appear, the Tribunal could have decided the appeal only on merits, <i>ex parte</i> , after hearing the Revenue's contentions. It reiterates that the

	deciding the case on its merits, solely on the ground that the assessee had not appeared on the appointed date of hearing?	fact finding Appellate Tribunal should not shirk its responsibility to decide a case on its merits. A legal and binding responsibility, therefore, lies upon the Tribunal to decide the appeal on merits, irrespective of the appearance or otherwise of the assessee or his counsel before it.
5.	<i>CIT v. Earnest Exports Ltd. (2010) 323 ITR 577 (Bom.)</i>	
	Issue	Analysis & Decision
	Does the Appellate Tribunal have the power to review or re-appreciate the correctness of its earlier decision u/s 254(2)?	The power u/s 254(2) is limited to rectification of a mistake apparent on record and therefore, the Tribunal must restrict itself within those parameters. Section 254(2) is not a carte blanche for the Tribunal to change its own view by substituting a view which it believes should have been taken in the first instance. Section 254(2) is not a mandate to unsettle decisions taken after due reflection. In this case, the Tribunal, while dealing with the application u/s 254(2), virtually reconsidered the entire matter and came to a different conclusion. This amounted to a reappraisal of the correctness of the earlier decision on merits, which is beyond the scope of the power conferred u/s 254(2)
6.	<i>Lachman Dass Bhatia Hingwala (P) Ltd. v. ACIT (2011) 330 ITR 243 (Delhi)(FB)</i>	
	Issue	Analysis & Decision
	Can the Tribunal exercise its power of rectification u/s 254(2) to recall its order in entirety, where there is a mistake apparent from record?	One of the important reasons for giving the power of rectification to the Tribunal is to see that no prejudice is caused to either of the parties appearing before it by its decision based on a mistake apparent from the record. When prejudice results from an order attributable to the Tribunal's mistake, error or omission, then, it is the duty of the Tribunal to set it right. In that case, the Tribunal had not considered the material which was already on record while passing the judgment. The Apex Court in <i>Honda Sael Power Products Ltd. v. CIT (2007) 295 ITR 466</i> took note of the fact that the Tribunal committed a mistake in not considering material which was already on record and the Tribunal acknowledged its mistake and accordingly, rectified its order. The Tribunal, while exercising the power of rectification u/s 254(2), can recall its order in entirety if

		it is satisfied that prejudice has resulted to the party which is attributable to the Tribunal's mistake, error or omission and the error committed is apparent.
7.	Reliance Telecom Ltd./Reliance Communications Ltd. (2022) 440 ITR 1 (SC)	
	Issue	Analysis & Decision
	Can the powers under section 254(2) be exercised by the Tribunal to recall an order and rehear the entire order on merits?	Section 254(1) empowers the Appellate Tribunal to pass such order thereon as it thinks fit, after giving both the parties to the appeal an opportunity of being heard. Under section 254(2), the Appellate Tribunal, may amend an order passed by it u/s 254(1) with a view to rectifying any mistake apparent from the record. Such amendment may be <i>suo moto</i> or if the mistake is brought to its notice by the assessee or the Assessing Officer. <u>Facts of the Case:</u> The Department filed an appeal before the Tribunal against the order of Commissioner (Appeals). By a detailed order dated September 6, 2013, the Tribunal allowed the Department's appeal. Against this order, the assessee filed a miscellaneous application for rectification u/s 254(2). The contentions of the applicants in the miscellaneous applications, briefly summarized, were that in the initial order of the Tribunal on the income-tax appeals dated September 6, 2013, there are inadvertent errors and which need to be modified/rectified. The first main heading 'Agreement and general terms and conditions of purchase'. The complaint of the assessee is that it was not considered in arriving at the final conclusion. Then comes heading No. 2 which reads thus: 'Mistake in reading the ratio of the Delhi High Court's decision in the case of <i>DIT v. Ericsson A. B. reported in [2012] 343 ITR 470</i>'. The third main heading is 'Ignoring the decisions of the co-ordinate Benches and not constituting larger Bench in case a different view is taken'. Such application was made to the Tribunal seeking correction of the mistakes which are styled as 'apparent from the record'. On being served with such applications, the petitioner-Department raised an objection to the maintainability thereof. Simultaneously, the assessee also filed an appeal before the High Court against the Tribunal's order dated September 6, 2013. By order dated November 18, 2016,

		the Tribunal allowed the assessee's miscellaneous application filed under section 254(2) and recalled its original order dated September 6, 2013. Immediately thereafter, the assessee withdrew the appeal preferred before the High Court against the original order dated September 6, 2013. Against the order passed by the Tribunal allowing the miscellaneous application under section 254(2) of the Act and recalling its order dated September 6, 2013, the Department preferred a writ petition before the High Court. The High Court dismissed the writ petition observing that, <i>inter alia</i>, the Department itself had gone into the merits of the case in detail before the Tribunal and the parties had filed detailed submissions based on which the Tribunal passed its order recalling its earlier order. <u>Analysis:</u> The order dated November 18, 2016 passed by the Tribunal recalling its earlier order dated September 6, 2013 was beyond the scope and ambit of the powers u/s 254(2). While allowing the application u/s 254(2) and recalling its earlier order dated September 6, 2013, the Tribunal had reheard the entire appeal on the merits as if the Tribunal was deciding the appeal against the order passed by the Commissioner (Appeals). A detailed order was passed by the Tribunal on September 6, 2013 holding in favour of the Department. That order could not have been recalled by the Appellate Tribunal in exercise of powers u/s 254(2). If the assessee was of the opinion that the order passed by the Tribunal was erroneous, either on the facts or in law, the only remedy available to the assessee was to prefer an appeal before the High Court. In this case, the assessee had already filed appeal before the High Court, and the same was withdrawn by it after the Tribunal, by order dated November 18, 2016, recalled its earlier order dated September 6, 2013. <u>Decision:</u> The order passed by the Tribunal dated November 18, 2016 recalling its earlier order dated September 6, 2013 was unsustainable, and ought to have been set aside by the High Court.

		Notes -(1) In this case, the Supreme Court directed that the original order passed by the Tribunal dated September 6, 2013 passed in the respective appeal preferred by the Department be restored; and that the assessee may prefer appeal before the High Court against the original order dated September 6, 2013. (2) The Delhi High Court's ruling in case of Lachman Dass Bhatia Hingwala (P) Ltd. reported above at Sl. No. 6 still hold good since it is with respect to power of the Tribunal to recall its order solely to rectify the mistake apparent from record. In the present case, the Supreme Court held that the Tribunal do not have power to recall an order and rehear the entire order on merits. The crux of the both the rulings is that Tribunal have the power to recall its order only for the purpose of rectifying mistake apparent from records. However, it cannot recall its order in entirety to rehear/review its order on merits.
8.	DCIT v. Pepsi Foods Ltd (2021) 433 ITR 295 (SC)	
	Issue	Analysis & Decision
	Would automatic vacation of stay order upon expiry of extended period of stay of 365 days be valid, where the delay in disposing of the appeal is not attributable to the assessee?	The third proviso to section 254(2A) provides that where the appeal filed before the Appellate Tribunal is not disposed of within the period of stay or extended period of stay granted by the Tribunal, the order of stay shall stand vacated after the expiry of 365 days, even if the delay in disposing of the appeal is <u>not</u> attributable to the assessee. The Apex Court observed that the Appellate Tribunal, wherever possible, has to hear and decide appeals within a period of four years from the end of the financial year in which such appeal is filed. It is only when a stay is granted by the Appellate Tribunal, the appeal is required to be disposed of within 365 days. So far as the disposal of an appeal by the Appellate Tribunal is concerned, this is a directory provision. However, the condition of automatic vacation of stay on expiry of the period becomes mandatory so far as the assessee is concerned. The Apex Court also pointed out that the said proviso would result in the automatic vacation of a stay upon the expiry of 365 days, even if the Appellate Tribunal could not take up the appeal in time for no fault of the assessee. Further, vacation of stay in favour of the Department would ensue

		even if the Department is itself responsible for the delay in hearing the appeal. In this sense, the proviso is manifestly arbitrary being a provision which is capricious, irrational and disproportionate so far as the assessee is concerned. Accordingly, the Apex Court held that the third proviso to section 254(2A) has to be read without the word “even” and the word “not” after the words “delay in disposing of the appeal”. Thus, any order of stay shall stand vacated after the expiry of the period or periods mentioned in the section, only if the delay in disposing of the appeal is attributable to the assessee.
9.	<i>CIT v. Fortaleza Developers (2015) 374 ITR 510 (Bom)</i>	
	Issue	Analysis & Decision
	Can the Commissioner invoke revisionary jurisdiction u/s 263, when the subject matter of revision (i.e., whether the manner of allocation of revenue amongst the members of AOP would affect the allowability and/or quantum of deduction u/s 80-IB) has been decided by the Commissioner (Appeals) and the same is pending before the Tribunal?	When the order of the first appellate authority is complete and the appeal is pending before the Tribunal, the Commissioner is precluded from invoking section 263 for revision of the very same matter decided by the first appellate authority since clause (c) of the <i>Explanation 1</i> to section 263 debars the same. Accordingly, the High Court held that the order passed by the Assessing Officer got merged with the order of the first appellate authority. The very same issue cannot be revised by invoking revisionary jurisdiction u/s 263
10.	<i>Sunil Vasudeva & Others v. Sundar Gupta & Others (2019) 415 ITR 281 (SC)</i>	
	Issue	Analysis & Decision
	Does the High Court have the inherent power to review its own order to correct a mistake apparent from the record?	The High Court can review its own order, where the grounds for review were: (i) discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;

		(ii) mistake or error apparent on the face of the record; (iii) any other sufficient reason. A review will, however, not be maintainable in the following cases: (i) repetition of old and overruled argument; (ii) minor mistakes of inconsequential import. The following observations were also made by the Supreme Court in relation to entertaining a review application: (i) review proceedings cannot be equated with the original hearing of the case. (ii) a review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice. (iii) a review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error. (iv) The mere possibility of two views on the subject cannot be a ground for review. (v) The error apparent on the face of the record should not be an error which has to be fished out and searched. (vi) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition. (vii) A review is not maintainable when the same relief sought at the time of arguing the main matter had been negated.
11.	<i>CIT v. Meghalaya Steels Ltd. (2015) 377 ITR 112 (SC)</i>	
	Issue	Analysis & Decision
	Does the High Court have an inherent power under the Income-tax Act, 1961 to review an earlier	High Courts being courts of record under Article 215 of the Constitution of India, the power of review would inhere in them. There is nothing in Article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary

	order passed on merits?	jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. Section 260A(7) does not purport in any manner to curtail or restrict the application of the provisions of the Code of Civil Procedure. Section 260A(7) only states that all the provisions that would apply qua appeals in the Code of Civil Procedure would apply to appeals u/s 260A. That does not in any manner suggest either that the other provisions of the Code of Civil Procedure are necessarily excluded or that the High Court's inherent jurisdiction is in any manner affected.
12.	<i>CIT v. A.A. Estate Pvt. Ltd. (2019) 413 ITR 438 (SC)</i>	
	Issue	Analysis & Decision
	Considering the procedure as prescribed u/s 260A, is the High Court justified in not framing any substantial question of law itself and adjudicating merely on the questions put forth by the appellant?	There lies a distinction between the questions proposed by the appellant for admission of the appeal to the High Court and the questions framed by the High Court. The substantial questions of law, which are proposed by the appellant fall u/s 260A(2)(c) whereas the substantial question of law is required to be framed by the High Court fall u/s 260A(3). U/s 260A(4), the appeal is heard on merits only on the substantial question of law framed by the High Court u/s 260A(3). If the High Court is of the view that the appeal did not involve any substantial question of law, it should have recorded a categorical finding to that effect saying that the questions proposed by the appellant either do not arise in the case or/and are not substantial questions of law so as to attract the rigour of section 260A for its admission and accordingly should have dismissed the appeal <i>in limine</i> . However, this was not done. Instead, the appeal was heard only on the questions urged by the appellant u/s 260A(2)(c), which is not in line with the requirement contained in section 260A(4). The High Court, therefore, did not decide the appeal in conformity with the mandatory procedure prescribed in section 260A.
13.	<i>Spinacom India (P.) Ltd. v. CIT (2018) 258 Taxman 128 (SC)</i>	
	Issue	Analysis & Decision
	Can the delay in filing appeal u/s 260A be condoned where the	The Supreme Court rejected the question of invoking section 14 of the Limitation Act 1963 which allows condonation of delay on demonstration of sufficient cause.

	stated reason for delay is the pursuance of an alternate remedy by way of filing an application before the ITAT u/s 254(2) for rectification of mistake apparent on record?	The Supreme Court refused to accept the submission that the application before the ITAT u/s 254(2) was an alternate remedy to filing of the application u/s 260A. The former is an application for rectifying a 'mistake apparent from the record' which is much narrower in scope than the latter. U/s 260A, an order of the ITAT can be challenged on substantial questions of law. The Supreme Court stated that the appellant had the option of filing an appeal u/s 260A while also mentioning in the Memorandum of Appeal that its application u/s 254(2) was pending before the ITAT. The time period for filing an appeal u/s 260A does not get suspended on account of the pendency of an application before the ITAT u/s 254(2).
14.	<i>SAP Labs India Pvt. Ltd. v. ITO (and other appeals) [2023] 454 ITR 121 (SC)</i>	
	Issue	Analysis and Decision
	In an appeal u/s 260A, is the High Court precluded from examining the correctness of the determination of the ALP on the ground that once the Tribunal determines the ALP, the same is final and cannot be the subject matter of scrutiny by the High Court as it does not give rise to a substantial question of law?	The Apex Court laid down the following with respect to the powers of High Court to consider the substantial question of law involving determination of ALP :- - While determining the ALP, the Tribunal has to follow the guidelines stipulated under Chapter X of the Income-tax Act, 1961, namely, sections 92 to 92F of the Act and Rules 10A to 10E of the Rules. Any determination of the ALP under Chapter X not in accordance with the relevant provisions of the Income-tax Act and Rules can be considered as perverse and it may be considered as a substantial question of law as perversity itself can be said to be a substantial question of law. Therefore, there cannot be any absolute proposition of law that in all cases where the Tribunal has determined the ALP, the same is final and cannot be the subject matter of scrutiny by the High Court in an appeal u/s 260A. When the determination of the ALP is challenged before the High Court, it is always open for the High Court to consider and examine whether the ALP has been determined while taking into consideration the relevant guidelines under the Act and the Rules.

	- The High Court can also examine the question of comparability of two companies or selection of filters and examine whether the same is done judiciously and on the basis of the relevant material/evidence on record. The High Court can also examine whether the comparable transactions have been taken into consideration properly or not, i.e., to the extent as to whether non-comparable transactions are considered as comparable transactions or not. Therefore, the view taken by the Karnataka High Court in the case of <i>Softbrands India (P.) Ltd.</i> that in the transfer pricing matters, the determination of the ALP by the Tribunal is final and cannot be subject matter of appeal under section 260A cannot be accepted. In an appeal challenging the determination of the arm's length price, it is always open for the High Court to examine in each case, within the parameters of section 260A, whether while determining the ALP, the guidelines laid down under the Income-tax Act and the Rules are followed or not and whether the determination of the ALP and the findings recorded by the Tribunal while determining the ALP are perverse or not.

TEST YOUR KNOWLEDGE**Questions**

1. "SVS Propcon" did not make a claim of ₹ 20 lakhs in the return of income filed for A.Y. 2023-24 which was disallowed in the previous assessment year under section 43B. However, the said claim was also not considered by the Assessing Officer during assessment proceedings on the ground that no revised return was filed. Can the assessee now make such claim before the appellate authority?
2. Examine the correctness or otherwise of the following statements with reference to the provisions of the Income-tax Act, 1961:
 - (i) An appeal before Income-tax Appellate Tribunal cannot be decided in the event of difference of opinion between the Judicial Member and the Accountant Member on a particular ground.
 - (ii) A High Court does not have an inherent power to review an earlier order passed by it on merits.
3. Does the Income-tax Appellate Tribunal have the following powers?
 - (i) Power to allow the assessee to urge any ground of appeal which was not raised by him before the Commissioner (Appeals).
 - (ii) Power to recall its own order solely for rectification of mistake apparent from the records.
4. Can a rectification order under section 254 of the Income-tax Act, 1961 be passed by the Income-tax Appellate Tribunal beyond 6 months from the end of the month in which the order sought to be rectified was passed?
5. What do you mean by substantial question of law? Examine.
6. An Income-tax authority did not file an appeal to the Income-tax Appellate Tribunal against an order of the Commissioner (Appeals) decided against the Income-tax department on a particular issue in case of one assessee, Alpi for assessment year 2023-24 on the ground that the tax effect of such dispute was less than the monetary limit prescribed by CBDT. In assessment year 2024-25, similar issue arose in the assessments of Alpi and her sister Palki, which was decided by the Commissioner (Appeals) against the Department. Can the Income-tax department move an appeal to the Tribunal in respect of A.Y. 2024-25 against the orders of the Commissioner (Appeals) for Alpi and her sister Palki?

7. *A petition for stay of demand was filed by XYZ Ltd. before the Income-tax Appellate Tribunal in respect of a disputed demand for which appeal was pending before it. The Appellate Tribunal granted stay vide order dated 1.1.2024 for a period of 180 days from the date of such order, on deposit of 20% of the amount of tax by XYZ Ltd. Thereafter, the bench was functioning intermittently till 1.2.2025 and therefore, the disputed matter could not be disposed of. In the meanwhile, in June 2024, XYZ Ltd. had made an application for extension of stay and was granted extension of stay upto 31.12.2024. Thereafter, on 5.1.2025, the Assessing Officer attached the bank account of XYZ Ltd. and recovered the amount of ₹ 15 lakhs against the arrear demand of ₹ 25 lakhs. The company requested the Assessing Officer to refund the amount as it holds stay over it. The Assessing Officer, however, rejected the contention of the assessee stating that the stay period expired on 30.12.2024 (since 2024 being a leap year), after which the order of stay stood vacated automatically. Examine the correctness of contention of the Assessing Officer.*
8. *An assessee who had been served with an order of assessment passed under section 143(3) on 1.1.2024 had filed an application against this order before the CIT as per section 264 on 11.1.2024. However, the CIT refused to entertain the application on the pretext of premature application. Assessee seeks your opinion.*
9. (a) *The Commissioner of Income-tax issued notice to revise the order passed by an Assessing Officer under section 143. During the pendency of proceedings before the Commissioner, on the basis of material gathered during survey under section 133A after issue of the first notice, the Commissioner of Income-tax issued a second notice, the contents of which were different from the contents of the first notice. Examine whether the action of the Commissioner is justified as to the second notice.*
- (b) *Examine the circumstances where the appellant shall be entitled to produce additional evidence, oral or documentary, before the Commissioner of Income-tax (Appeals) other than the evidence produced during the proceedings before the Assessing Officer.*
10. *Examine the correctness or otherwise of the following propositions in the context of the Income-tax Act, 1961:*
- (a) *The powers of the Commissioner of Income-tax (Appeals) to enhance the assessment are plenary and quite wide.*
- (b) *At the time of hearing of rectification application, the Income-tax Appellate Tribunal can re-appreciate the evidence produced during the proceedings of the appeal hearing.*

- (c) *The High Court cannot interfere with the factual finding recorded by the lower authorities and the Tribunal, without any valid reasons.*
11. *An assessee, who is aggrieved by all or any of the following orders, is desirous to know the available remedial recourse and the time limit against each order under the Income-tax Act, 1961:*
- (i) *passed under section 143(3) by the Assessing Officer.*
 - (ii) *passed under section 263 by the Commissioner of Income-tax.*
 - (iii) *passed under section 272A by the Director General.*
 - (iv) *passed under section 254 by the ITAT.*
12. *Who can file memorandum of cross-objections before the Income-tax Appellate Tribunal? What is the time limit? What is the fee for filing memorandum of cross objections?*

Answers

1. Yes, the assessee is entitled to raise additional claims before the appellate authorities.

The restriction that an additional claim has to be made by filing a revised return applies only in respect of a claim made before the Assessing Officer. An assessee cannot make a claim before the Assessing Officer otherwise than by filing a revised return. It was so held by the Supreme Court in *Goetze (India) Ltd v. CIT (2006) 284 ITR 323*.

However, this restriction does not apply to an additional claim made before an appellate authority. The appellate authorities have jurisdiction to permit additional claims before them, though, the exercise of such jurisdiction is entirely the authorities' discretion. It was so held by the Bombay High Court in *CIT v. Pruthvi Brokers & Shareholders (2012) 349 ITR 336*. This view is also endorsed by the Supreme Court in case of *Wipro Finance Ltd. v. CIT (2022) 443 ITR 250*.

Thus, an additional claim can be raised before the Appellate Authority even if no revised return is filed.

2. (i) **The statement given is not correct.** As per the provisions of section 255, in the event of difference in opinion between the members of the Bench of the Income-tax Appellate Tribunal, the matter shall be decided on the basis of the opinion of the majority of the members. In case the members are equally divided, they shall state the point or points of difference and the case shall be referred by the President of the Tribunal for hearing

on such points by one or more of the other members of the Tribunal. Such point or points shall be decided according to the opinion of majority of the members of the Tribunal who heard the case, including those who had first heard it.

- (ii) **The statement given is not correct.** The Supreme Court, in *CIT v. Meghalaya Steels Ltd. (2015) 377 ITR 112*, observed that the power of review would inhere on High Courts, being courts of record under article 215 of the Constitution of India. There is nothing in article 226² of the Constitution to preclude a High Court from exercising the power of review which is inherent in every court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. The Supreme Court further observed that section 260A(7) does not purport in any manner to curtail or restrict the application of the provisions of the Code of Civil Procedure. Section 260A(7) only states that all the provisions that would apply qua appeals in the Code of Civil Procedure would apply to appeals under section 260A. The Supreme Court opined that this does not in any manner suggest either that the other provisions of the Code of Civil Procedure are necessarily excluded or that the High Court's inherent jurisdiction is in any manner affected.
3. (i) The Income-tax Appellate Tribunal has the power to entertain question raised for the first time. The Tribunal is not confined only to the issues arising out of the appeal before the Commissioner (Appeals). It has the power to allow the assessee to urge any ground not raised before the Commissioner (Appeals). However, the relevant facts in respect of such ground should be on record. The decision of the Supreme Court in the case of *National Thermal Power Company Limited vs. CIT (1998) 229 ITR 383 (SC)* supports this view.
- (ii) The Delhi High Court, in *Lachman Dass Bhatia Hingwala (P) Ltd. v. ACIT (2011) 330 ITR 243* observed that the justification of an order passed by the Tribunal recalling its own order is required to be tested on the basis of the law laid down by the Apex Court in *Honda Siel Power Products Ltd. v. CIT (2007) 295 ITR 466*, dealing with the Tribunal's power under section 254(2) to recall its order where prejudice has resulted to a party due to an apparent omission, mistake or error committed by the Tribunal while passing the order. Such recalling of order for correcting an apparent mistake committed by the Tribunal has nothing to do with the doctrine or concept of inherent

² Article 226, empowers the High Courts to issue, to any person or authority, including the government (in appropriate cases), directions, orders or writs, including writs.

power of review. It is a well settled provision of law that the Tribunal has no inherent power to review its own judgment or order on merits or reappreciate the correctness of its earlier decision on merits. However, the power to recall has to be distinguished from the power to review. While the Tribunal does not have the inherent power to review its order on merits, it can recall its order for the purpose of correcting a mistake apparent from the record.

When prejudice results from an order attributable to the Tribunal's mistake, error or omission, then, it is the duty of the Tribunal to set it right. The Delhi High Court observed that the Tribunal, while exercising the power of rectification under section 254(2), can recall its order in entirety, if it is satisfied that prejudice has resulted to the party which is attributable to the Tribunal's mistake, error or omission and the error committed is apparent.

4. The issue as to whether a rectification order can be passed by the Income-tax Appellate Tribunal under section 254 beyond six months from the end of the month in which order sought to be rectified was passed, has been addressed in *Sree Ayyanar Spinning and Weaving Mills Ltd. v. CIT (2008) 301 ITR 434 (SC)*. Section 254(2), dealing with the power of the Appellate Tribunal to pass an order of rectification of mistakes, is in two parts. The first part refers to the *suo motu* exercise of the power of rectification by the Appellate Tribunal, whereas the second part refers to rectification on an application filed by the assessee or Assessing Officer bringing any mistake apparent from the record to the attention of the Appellate Tribunal.

If Income-tax Appellate Tribunal, *suo motu*, makes the rectification of its order, then the order has to be passed within 6 months from the end of the month in which the order sought to be rectified was passed. Where the application for rectification is made by the Assessing Officer or the assessee within 6 months from the end of the month in which the order sought to be rectified was passed, the Appellate Tribunal is bound to decide the application on merits and not on the ground of limitation i.e. order can be passed after expiry of 6 months from the end of the month in which the order sought to be rectified was passed. However, the application for rectification cannot be filed belatedly after 6 months from the end of the month in which the order sought to be rectified was passed. [*Ajith Kumar Pitaliya vs ITO (2009) 318 ITR 182 (M.P.)*]

5. The expression "substantial question of law" has not been defined anywhere in the Act. However, it has acquired a definite meaning through various judicial pronouncements. The tests are:

- (1) whether directly or indirectly it affects substantial rights of the parties; or
 - (2) the question is of general public importance; or
 - (3) whether it is an open question in the sense that issue is not settled by the pronouncement of the Supreme Court or Privy Council or by the Federal Court; or
 - (4) the issue is not free from difficulty; or
 - (5) it calls for a discussion for alternative view.
6. Under section 268A(1), the CBDT is empowered to issue orders, instructions or directions to the other income-tax authorities, fixing such monetary limits, as it may deem fit, to regulate filing of appeal or application for reference by any income-tax authority.

Under section 268A(2), where an income-tax authority has not filed any appeal or application for reference on any issue in the case of an assessee for any assessment year, due to above-mentioned order/instruction/direction of the CBDT, such authority shall not be precluded from filing an appeal or application for reference on the same issue in the case of the same assessee for any other assessment year or any other assessee for the same or any other assessment year. Further, in such a case, it shall not be lawful for an assessee to contend that the income-tax authority has acquiesced in the decision on the disputed issue by not filing an appeal or application for reference in any case.

In view of above provision, it would be in order for the Income-tax Department to move an appeal to the Tribunal against the orders of the CIT(A) in respect of A.Y. 2024-25 both for Alpi and Palki.

7. As per section 254(2A), the Appellate Tribunal may, on merit, pass an order of stay in any proceedings relating to an appeal. However, such period of stay cannot exceed 180 days from the date of such order subject to the condition that the assessee deposits not less than 20% of the amount of tax, interest, fee, penalty, or any other sum payable under the provisions of this Act, or furnishes security of equal amount in respect thereof.

No extension of stay shall be granted by the Appellate Tribunal, where such appeal is not so disposed of within the said period as specified in the order of stay, unless the assessee makes an application and has complied with the condition of depositing 20% of tax and the Appellate Tribunal is satisfied that the delay in disposing of the appeal is not attributable to the assessee. However, the aggregate of the period of stay originally allowed and the period of stay so extended cannot exceed 365 days and the Appellate Tribunal has to dispose of the appeal within the period or periods of stay so extended or allowed.

If such appeal is not so disposed of within 180 days or the period or periods extended not exceeding 365 days, the order of stay shall stand vacated after the expiry of such period or periods, **only if the delay in disposing of the appeal is attributable to the assessee.** It was so held by the Supreme Court in *DCIT v. Pepsi Foods Ltd (2021) 433 ITR 295*.

Accordingly, if an appeal is not heard by the bench, due to the bench functioning intermittently, the delay is not attributable to XYZ Ltd. In such a case, though the extended stay period of 365 days had expired on 30.12.2024, the recovery of ₹ 15 lakhs against the arrear demand of ₹ 25 lakhs made by the Assessing Officer on 5.1.2025 is not in order, since the delay in disposing of the appeal is not attributable to XYZ Ltd. Therefore, the contention of the Assessing Officer is not correct. The order of stay would stand vacated after 30.12.2024, only in a case where the delay in disposing of the appeal had been attributable to XYZ Ltd.

8. An assessee, who is aggrieved by the order of the Assessing Officer under section 143(3) passed on 1.1.2024, had moved an application for revision of order under section 264 on 11.1.2024. The order passed by the Assessing Officer under section 143(3) is an order appealable before the Joint Commissioner (Appeals) or the Commissioner (Appeals). The time limit for filing an appeal is 30 days from the date of order i.e., upto 31.1.2024. This time limit had not expired on 11.1.2024 and the assessee had also not waived his right of appeal while filing the application for revision on 11.1.2024 before the Commissioner of Income-tax. The application filed before the Commissioner of Income-tax for revision under section 264 by the assessee will only be considered when the conditions specified under section 264(4) have been complied with. One of the conditions is that the Commissioner shall not revise any order where an appeal against the order lies to the Joint Commissioner (Appeals) or Commissioner (Appeals) or Appellate Tribunal and the time within which such appeal may be made has not expired, unless the assessee has waived his right of appeal. In the present case, the time limit had not expired on 11.1.2024 and the assessee had also not waived the right of appeal while filing the application for revision before the Commissioner of Income-tax on 11.1.2024 under section 264. Therefore, the Commissioner's refusal to entertain such application is correct.

Note : *In practical situations, the Commissioner could have kept the proceedings in abeyance till the expiry of the time prescribed for filing appeal by the assessee and thereafter, could have assumed jurisdiction for making revision besides taking an undertaking from the assessee for waiving his right of appeal. In reality, taxpayers usually will not prefer revision in such short time period nor would the Commissioner reject the application, the moment it is received by him.*

9. (a) The action of the Commissioner in issuing the second notice is not justified. The term “record” has been defined in clause (b) of *Explanation* to section 263(1). According to this definition “record” shall include and shall be deemed always to have included all records relating to any proceeding under the Act available at the time of examination by the Commissioner. In other words, the information, material, report etc. which were not in existence at the time the assessment was made and came into existence afterwards can be taken into consideration by the Commissioner for the purpose of invoking his jurisdiction under section 263(1). However, at the same time, in view of the express provisions contained in clause (b) of the *Explanation* to section 263(1), such information, material, report etc. can be relied upon by the Commissioner only if the same forms part of record when the action under section 263 is taken by the Commissioner.

Issuance of a notice under section 263 succeeds the examination of record by Commissioner. In the present case, the Commissioner initially issued a notice under section 263, after the examination of the record available before him. The subsequent second notice was on the basis of material collected under section 133A, which was totally unrelated and irrelevant to the issues sought to be revised in the first notice. Accordingly, the material on the basis of which the second notice was issued could not be said to be “record” available at the time of examination as emphasized in *Explanation (b)* to section 263(1).

- (b) As per Rule 46A(1) of the Income-tax Rules 1962, an appellant shall be entitled to produce before the Commissioner (Appeals), evidence, either oral or documentary, other than the evidence produced by him during the course of proceedings before the Assessing Officer, only in the following circumstances -
- (a) where the Assessing Officer has refused to admit evidence which ought to have been admitted; or
 - (b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the Assessing Officer; or
 - (c) where the appellant was prevented by sufficient cause from producing before the Assessing Officer any evidence which is relevant to any ground of appeal; or
 - (d) where the Assessing Officer has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

Further, no evidence shall be admitted unless the Commissioner (Appeals) records in writing the reasons for its admission.

10. (a) The proposition is correct in law. The Supreme Court has, in *CIT vs. McMilan & Co. (1958) 33 ITR 182* and *CIT vs. Kanpur Coal Syndicate (1964) 53 ITR 225*, held that in disposing of an appeal before him, the appellate authority can travel over a whole range of the assessment order. The scope of his powers is co-terminus with that of the Assessing Officer. He can do what the Assessing Officer can do and can also direct him to do, what he has failed to do. He can assess income from sources which have been considered by the Assessing Officer but not brought to tax. He can consider every aspect of the assessment order and give appropriate relief.

The Allahabad High Court has, in *CIT v. Kashi Nath Chandiwala (2006) 280 ITR 318*, held that the appellate authority is empowered to consider and decide any matter arising out of the proceedings in which the order appealed against was passed notwithstanding the fact that such matter was not raised before him by the assessee. The Commissioner (Appeals) is entitled to direct additions in respect of items of income not considered by the Assessing Officer.

Further, the Apex Court has, in the case of *Jute Corporation of India Ltd. vs. CIT (1991) 187 ITR 688*, held that the appellate authority is vested with all the plenary powers which the subordinate authority may have in the matter.

Thus, the powers of the Commissioner of Income-tax (Appeals) in enhancing the assessment are very wide and plenary.

- (b) The proposition is not correct as per law. This is because section 254(2) specifically empowers the Appellate Tribunal to amend any order passed by it, either *suo-moto* or on an application made by the assessee or Assessing Officer, with a view to rectify any mistake apparent from record, at any time within **6 months** from the end of the month of the order sought to be amended.

The powers of the Tribunal under section 254(2) relating to rectification of its order are very limited. Such powers are confined to rectifying any mistake apparent from the record. The mistake has to be such that for which no elaborate reasons or inquiry is necessary. Accordingly, the re-appreciation of evidence placed before the Tribunal during the course of the appeal hearing is not permitted. It cannot re-adjudicate the issue afresh under the garb of rectification [*CIT vs. Vardhman Spinning (1997) 226 ITR 296 (P & H)*, *CIT v. Ballabh Prasad Agarwalla (1998) 233 ITR 354 (Cal.)* & *Niranjan & Co. Ltd. v. ITAT (1980) 122 ITR 519 (Cal.)*]

- (c) The proposition is correct in law. A finding of fact cannot be disturbed by the High Court in exercise of its powers under section 260A. The Income-tax Appellate Tribunal is the final fact finding authority and the findings of fact recorded by the Tribunal can be interfered with by the High Court under section 260A only on the ground that the same were without evidence or material, or if the finding is contrary to the evidence, or is perverse or there is no direct nexus between conclusion of fact and the primary fact upon which that conclusion is based.

In *CIT vs. P. Mohanakala* (2007) 291 ITR 278 and *M. Janardhana Rao v. Joint CIT* (2005) 273 ITR 50, the Apex Court observed that the High Court had set aside the factual findings of the lower authorities and the Tribunal without any valid reason. The Apex Court held that the findings of fact could not be interfered with by the High Court without carefully considering the facts on record, the surrounding circumstances and the material evidence. There is no scope for interference with the factual findings, unless the findings are *per se* without reason or basis, perverse and/or contrary to the material on record.

Hence, only if the issue gives rise to a substantial question of law, an appeal shall lie before the High Court.

11. (i) An assessee, aggrieved by the order passed under section 143(3) by the Assessing Officer, can file an appeal before the Joint Commissioner (Appeals) under section 246 or the Commissioner of Income-tax (Appeals) under section 246A(1), within 30 days of the date of service of the notice of demand relating to the assessment. However, where the assessee does not want to prefer an appeal, then he can move a revision petition before the Principal Commissioner or Commissioner of Income-tax under section 264 within a period of one year from the date of on which the order was communicated to him or the date on which he otherwise came to know of it, whichever is earlier.
- (ii) An assessee, aggrieved by the order passed under section 263 by the Commissioner of Income-tax, can file an appeal to Income-tax Appellate Tribunal under section 253(1)(c) within 60 days of the date on which the order sought to be appealed against is communicated to the assessee.
- (iii) An assessee, aggrieved by the order passed under section 272A by the Director General, can file an appeal before the Income-tax Appellate Tribunal under section 253(1)(c) within 60 days of the date on which the order sought to be appealed against is communicated to the assessee.

- (iv) An assessee, aggrieved by the order passed under section 254 by the Income-tax Appellate Tribunal, can file an appeal before the High Court under section 260A within 120 days from the date of receipt of order of Income-tax Appellate Tribunal, only where the order gives rise to a substantial question of law.
12. Section 253(4) of the Income-tax Act, 1961 gives the respondent (assessee or the Assessing Officer), in every appeal filed before the Income-tax Appellate Tribunal, a right to file a memorandum of cross-objections against any order of the Joint Commissioner (Appeals) or the Commissioner (Appeals). This right of filing a memorandum of cross-objections is an independent right given to the respondent in an appeal and is in addition to the right of appeal which may or may not be exercised by the assessee or the Assessing Officer under section 253(1) or section 253(2). The memorandum of cross-objections has to be in the prescribed form and verified in the prescribed manner and has to be filed within 30 days of the receipt of notice of the appeal. The Tribunal is empowered to permit filing of memorandum of cross-objections after the expiry of the prescribed period if sufficient cause is shown. Such memorandum of cross-objections will be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in section 253(3). There is no fee for filing a memorandum of cross-objections.

DISPUTE RESOLUTION

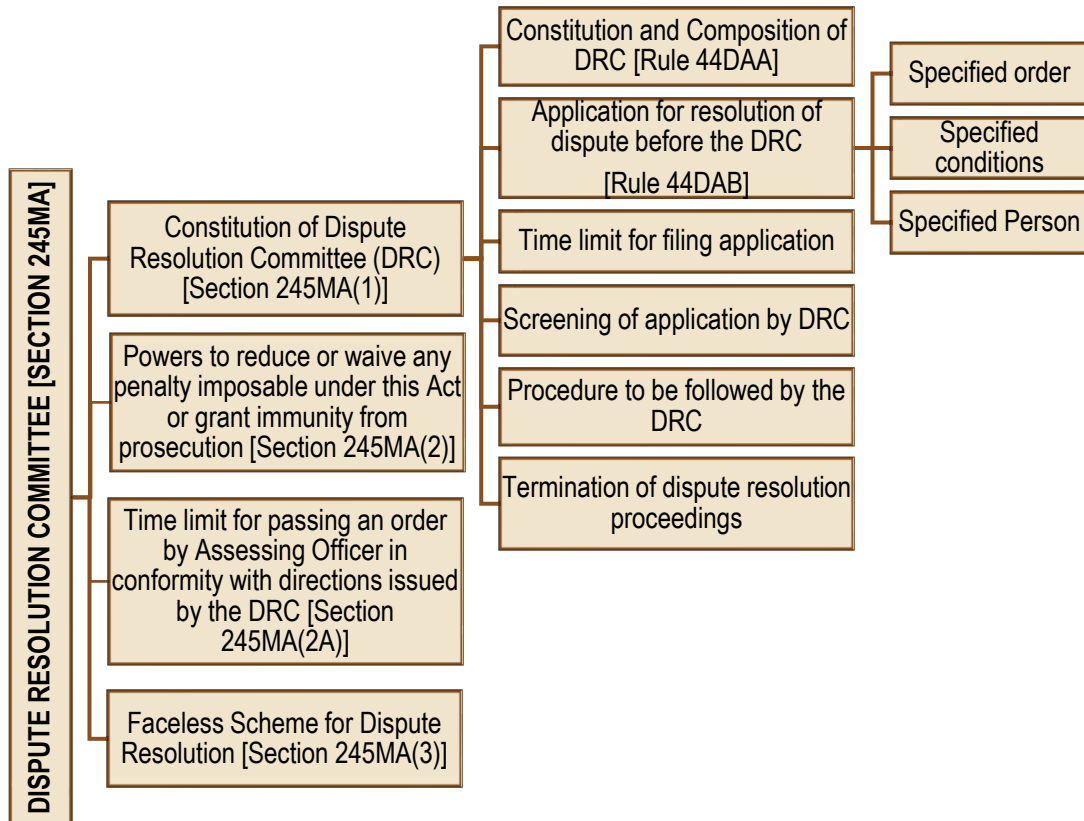


LEARNING OUTCOMES

After studying this chapter, you would be able to:

- ❑ **appreciate** the meaning of “specified order” and “specified conditions”, to be satisfied for making an application before the Dispute Resolution Committee (DRC);
- ❑ **recognise** the need for DRC and its composition and terms;
- ❑ **comprehend** the procedure to be followed by the DRC;
- ❑ **comprehend** the powers of the DRC to reduce or waive penalty or grant immunity from prosecution.
- ❑ **know** the time limit for filing application and time limit for passing an order by the Assessing Officer in conformity with the directions issued by the DRC.

CHAPTER OVERVIEW



17.1 INTRODUCTION

Income-tax Settlement Commission (ITSC) constituted by the Central Government for settlement of cases ceases to operate with effect from 1st February, 2021.

Consequently, no application under section 245C for

settlement of cases before the Settlement Commission can be made on or after 1st February, 2021.

In order to dispose off the pending settlement applications as on 31.01.2021, the Central Government has constituted seven Interim Boards for Settlement vide Notification No. 91 of 2021 dated 10.08.2021.

Constitution of DRC – providing early tax certainty

While pending disputes are being resolved or adjudicated through the Interim Boards for Settlement, it is also necessary to prevent tax disputes in future and settle the issues at initial stage. Therefore, in order to provide early tax certainty to small and medium taxpayers, with effect from 1st April, 2021, new scheme of Dispute Resolution has been formulated for constitution of one or more Dispute Resolution Committee(s) (DRC).



17.2 DISPUTE RESOLUTION COMMITTEE [SECTION 245MA]

- (1) **Constitution of Dispute Resolution Committee (DRC) [Section 245MA(1)]:** The Central Government is empowered to constitute, one or more Dispute Resolution Committees, in accordance with the rules made under this Act, for dispute resolution in the case of such persons or class of persons, as may be specified by the Board, who may opt for dispute resolution under this Chapter in respect of dispute arising from any variation in the specified order in his case and who fulfils the specified conditions.

- (I) **Constitution and Composition of DRC [Rule 44DAA]:** Part IX-AA – Dispute Resolution Committee has been inserted in the Income-tax Rules, 1962, which comprises of Rules 44DAA, 44DAB, 44DAC and 44DAD. Rule 44DAA provides that the Central Government shall constitute a DRC for every region of Principal Chief Commissioner of Income-tax for dispute resolution. Each DRC shall consist of 3 members, as under -

Each DRC to consist of 3 members

- (a) 2 members shall be retired officers from the Indian Revenue Service (Income-tax), who have held the post of Commissioner of Income-tax or any equivalent or higher post for 5 years or more; and
- (b) 1 serving officer not below the rank of Principal Commissioner of Income-tax or Commissioner of Income-tax as specified by the Board.

Decision by majority

The members shall be appointed by the Central Government for a period of **three years**. The decision of the DRC shall be by majority.

The Central Government may fix a sum to be paid as fee to a member, who is retired officer, on a per case basis, along with a sitting fee, so decided by the Board. The

Central Government may remove any member from the DRC, by recording reasons in writing and after giving an opportunity of being heard.

- (II) **Application for resolution of dispute before the DRC [Rule 44DAB]:** DRC would resolve dispute in the case of a person who opt for dispute resolution under Chapter XIX-AA in respect of dispute arising from any variation in the specified order in his case and who fulfils the specified conditions.

Such person has to make an application for resolution of dispute before the DRC in the prescribed form accompanied by a fee of ₹ 1,000.

Fees of ₹ 1,000

- (a) **Specified order [Explanation (b) to the section 245MA read with Rule 44DAD(ii)]:** Specified order in relation to a dispute under section 245MA means:
- (i) a draft order as referred to in section 144C(1) in respect of a person in whose case variation arises as a consequence to order of the TPO passed under section 92CA(3) or a non-corporate non-resident;
 - (ii) an intimation under section 143(1) after processing income-tax returns or under section 200A(1) after processing of TDS statements or section 206CB(1) after processing of TCS statements, where the assessee or the deductor or the collector objects to the adjustments made in the said order;
 - (iii) an order of assessment or reassessment, except an order passed in pursuance of directions of the Dispute Resolution Panel;
 - (iv) a rectification order made under section 154 having the effect of enhancing the assessment or reducing the loss; or
 - (v) an order made under section 201 or an order made under section 206C(6A) deeming a person as an assessee-in-default for failure to deduct/collect tax at source or remit the same as required under the Act, after deduction/collection.

The variation in the specified order relating to default in deduction or collection of tax at source would refer to the amount on which tax has not been deducted or collected in accordance with the Act.

and in respect of which the following conditions are satisfied, namely:-

- (A) the aggregate sum of variations proposed or made in such order does not exceed ₹ 10 lakhs; **Variations ≤ ₹ 10 lakhs**
- (B) the return has been furnished by the assessee for the assessment year relevant to such order and the total income as per such return does not exceed ₹ 50 lakhs; and **TI ≤ ₹ 50 lakhs**
- (C) the order in the case of the assessee is not based on,
- (I) search initiated under section 132 of the Act or requisition made under section 132A of the Act in the case of the assessee or any other person; or
 - (II) survey carried out under section 133A of the Act; or
 - (III) information received under an agreement referred to in section 90 or 90A

(b) **Specified conditions [Explanation (a) to the section 245MA]:** Specified conditions" in relation to a person means a person who fulfils the following conditions:

- (i) He should **not** be a person,
- (A) in respect of whom an order of detention has been made under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974. **COFEPOSA**

Such order of detention should not have been revoked before the expiry of the time stipulated under the relevant provisions of such Act, either on the basis of report of Advisory Board or review under the relevant provisions of that Act. Further, such order of detention should not have been set aside by a court of competent jurisdiction.

The proviso to clause (a)(I)(A) of Explanation to section 245MA reads as follows -

- (i) such order of detention, being an order to which the provisions of section 9 or section 12A of the said Act do not apply, has been revoked on the report of the Advisory Board under section 8 of the said Act or before the receipt of the report of the Advisory Board; or
- (ii) such order of detention being an order to which the provisions of section 9 of the said Act apply, has not been revoked before the expiry of the time for, or on the basis of, the review under section 9(3), or on the report of the Advisory Board under section 8, read with section 9(2), of the said Act; or
- (iii) such order of detention, being an order to which the provisions of section 12A of the said Act apply, has not been revoked before the expiry of the time for, or on the basis of, the first review under sub-section (3) of the said section, or on the basis of the report of the Advisory Board under section 8, read with section 12A(6), of the said Act; or
- (iv) such order of detention should not have been set aside by a court of competent jurisdiction;

Note - Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 provides for preventive detention in certain cases for the purposes of conservation and augmentation of foreign exchange and prevention of smuggling activities and for matters connected therewith. Under this Act, the Central and State Government are empowered to detain a person (including a foreigner) to prevent such a person from smuggling of goods or acting in a manner prejudicial to conservation of foreign exchange.

(B) in respect of whom prosecution for any offence punishable under the provisions of the Indian Penal Code, the Unlawful Activities (Prevention) Act, 1967, the Narcotic Drugs and Psychotropic Substances Act, 1985, the Prohibition of Benami Transactions Act, 1988, the Prevention of Corruption Act, 1988 or the Prevention of Money-laundering Act, 2002 has been instituted and he has been convicted of any offence punishable under any of those Acts;

Prosecution under other Acts

(C) in respect of whom prosecution has been initiated by an income-tax authority for any offence punishable under the provisions of this Act or the Indian Penal Code or for the purpose of enforcement of any civil liability under any law for the time being in force, or such person has been convicted of any such offence consequent upon the prosecution initiated by an income-tax authority;

(D) who is notified under section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992;

(ii) He should fulfill such other conditions, as may be prescribed.

Rule 44DAD(iii) provides that the “**specified conditions**” in relation to a person who opts for dispute resolution under section 245MA, means a person in respect of whom:

(A) the conditions mentioned in (b) above are satisfied.

(B) **proceedings** under the **Black Money** (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 have **not** been **initiated** for the **assessment year for which resolution of dispute is sought**.

(c) **Specified Person:** Rule 44DAD(iv) provides that the specified person is a person who fulfils the specified conditions

(III) **Time limit for filing application** - Such application has to be filed –

	Case	Time limit
(i)	In cases where appeal has already been filed and is pending before the Commissioner (Appeals)	within such time from the date of constitution of the Dispute Resolution Committee, as may be specified by the Board
(ii)	in any other case	within one month from the date of receipt of specified order

(IV) **Screening of application by DRC**

- (i) **Examination of application** - The DRC has to examine the application with respect to the specified conditions and criteria for specified order. Upon such examination, where the DRC considers that the application for dispute resolution should be rejected, it has to serve a notice calling upon the assessee to show cause as to why his application should not be rejected, specifying a date and time for filing a response.
- (ii) **Provision of opportunity of being heard** - The assessee can request for an opportunity of being heard. If the DRC receives a request from the assessee, it has to provide him an opportunity of being heard through video telephony or video conferencing facility, to the extent technologically feasible.
- (iii) **Furnishing response to show cause notice within the specified date** - The assessee has to furnish a response to the show-cause notice referred to in (i) above within the specified date and time or such extended time as may be allowed on the basis of application made in this behalf, to the DRC;
- (iv) **Rejection of application by DRC** - The DRC may, after considering the response furnished by the assessee, reject the application or proceed to decide the application on merits in accordance with the procedure laid out in (V) and (VI) hereinafter. Where no such response is furnished by the assessee, the DRC may reject the application.

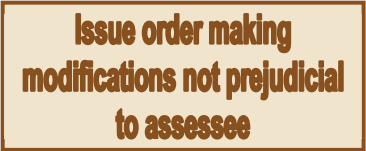
Serve SCN before rejection

Note - In such a case, the assessee may file an appeal to the Commissioner (Appeals). The period taken by the DRC in deciding on the admission has to be excluded from the period available to file such appeal.

- (v) **Communication of decision of DRC to assessee** - The decision of the DRC that the application for dispute resolution should be allowed to be proceeded with or rejected, has to be communicated to the assessee on his registered e-mail address;
- (vi) **Submission of proof of withdrawal of appeal/application before DRP** - Within 30 days of receipt of the communication that the application is admitted, the assessee is required to submit a proof of withdrawal of appeal filed under section 246A or withdrawal of application before the Dispute Resolution panel, if any, to the DRC or convey that there is no aforesaid proceeding pending in his case. If the assessee fails to do so, the DRC may reject the application.

(V) Procedure to be followed by the DRC

- (i) **Calling for records for further examination** - Upon admission of the application and subsequent to the receipt of the response of the assessee, the DRC may call for records from the income-tax authority and further examine, as it may deem fit, with respect to the issues covered in the application;

- (ii) **Seeking report from Assessing Officer** - The DRC may seek a report from the Assessing Officer on the issues covered in the application or on any other issue arising during the course of proceedings;
- (iii) **Calling for further information** - The DRC may before disposing off the application, call for further information from the assessee or any other person by sending an email to his registered email address;
- (iv) **Submission of response within specified time** - The assessee has to electronically submit its response to the DRC, within the time specified or such time as may be extended by the DRC on the basis of an application in this behalf;
- (v) **Decision of DRC** - After considering the material available on record, including any further information or evidence received


from the assessee, income-tax authority or any other person, the DRC may decide —

- (a) to **make modifications to the variations in specified order**, which are not prejudicial to the interest of the assessee, and decide for waiver of penalty and immunity from prosecution in accordance with the provisions of Rule 44DAC, and pass an order of resolution, accordingly; or
- (b) to **not make modifications to the variations in the specified order**. However, the DRC may decide to waive penalty and grant immunity from prosecution provisions in accordance with the provisions of Rule 44DAC and pass an order of resolution accordingly. Such an order will be treated as an order not prejudicial to the interest of the assessee; or
- (c) to **not make any modification to the specified order and pass an order disposing off the application**. Such an order will be treated as an order 'not prejudicial to the interest of the assessee',

within six months from the end of the month in which application for dispute resolution is admitted by the DRC. The order of the DRC for the resolution of a dispute has to be in accordance with the provisions of the Act.

Issue order within 6 months from the end of month in which application admitted

- (vi) **Serving copy of order to AO and assessee** - The DRC has to serve a copy of the order of resolution or order disposing off the application, as the case may be, upon the assessee and also the Assessing Officer for giving effect to the same, if so required;
- (vii) **No appeal or reference will lie against the modified order** - Where the specified order is an order of the eligible assessee as referred to in section 144C(1), the assessee will not be eligible to file any reference to the DRP or an appeal to the Commissioner (Appeals) against the modified order.
- (viii) **Serving copy of modified order to assessee** – The Assessing Officer has to serve a copy of the modified order along with notice of demand upon the assessee specifying a date for making payment of demand. No appeal or revision would lie against the modified order.

AO to serve modified order + Notice of demand to assessee

- (ix) **Assessee to furnish proof of payment of demand** -The assessee has to furnish proof of payment of the said demand to the DRC and also to the Assessing Officer.
 - (x) **Grant of immunity from prosecution and waiver of penalty** – The DRC shall, on receipt of **confirmation** of payment of demand, by an order in writing, grant immunity from prosecution and waiver of penalty if applicable, in accordance with the provisions of rule 44DAC [discussed later on in this chapter].
- (VI) **Termination of dispute resolution proceedings:** The DRC may, at any stage of the dispute resolution proceedings, if considered necessary, for reasons to be recorded in writing and after giving an opportunity of being heard to the assessee, decide to terminate the dispute resolution proceedings if, -
- (i) the assessee fails to cooperate during the course of dispute resolution proceedings; or
 - (ii) the assessee fails to respond to, or submit any information in response to, a notice issued to him; or
 - (iii) the Committee is satisfied that the assessee has concealed any particular material to the proceedings or had given false evidence.
 - (iv) the assessee fails to pay the demand as required in notice of demand.

Where the dispute resolution proceedings are terminated, the DRC has to intimate the income-tax authority for taking necessary action as per the provisions of the Act.

- (2) **Powers to reduce or waive any penalty imposable under this Act or grant immunity from prosecution [Section 245MA(2)]:** The Dispute Resolution Committee, subject to such conditions, as may be prescribed, shall have the powers to reduce or waive any penalty imposable under the Income-tax Act, 1961 or grant immunity from prosecution for any offence punishable under the Act in case of a person whose dispute is resolved under Chapter XIX-AA. Accordingly, Rule 44DAC prescribes the following:

- (i) **Conditions for grant of waiver of penalty or immunity from prosecution** - The DRC, upon receipt of confirmation from the assessee of payment of demand, should grant to the person who made the application for dispute resolution under section 245MA, waiver of penalty imposable or immunity from prosecution or

Paid full tax + co-operated with DRC

both, in respect of the order which is the subject matter of resolution, if it is satisfied that such person has,

- **paid the tax due on the returned income in full** if available; and
- **co-operated with the DRC** in the proceedings before it.

(ii) **Reasons to be recorded in writing** - The DRC would grant such waiver of penalty or immunity from prosecution or both, subject to such conditions as it may think fit to impose for the reasons to be recorded in writing.

(iii) **No immunity if prosecution proceedings were initiated before application** - No immunity would, however, be granted by the DRC in a case where the proceedings for the prosecution for an offence have been initiated before the date of receipt of the application for dispute resolution from the assessee fulfilling the specified conditions.

(iv) **Withdrawal of immunity** - An immunity granted to a person would stand withdrawn, if such person fails to comply with any of the conditions subject to which the immunity was granted. On such withdrawal, the provisions of the Income-tax Act, 1961 would apply as if such immunity or waiver had never been granted.

(3) **Time limit for passing an order by Assessing Officer in conformity with directions issued by the DRC [Section 245MA(2A)]**: Upon receipt of the order of the Dispute Resolution Committee under this section, the Assessing Officer shall:

Within 1 month from the end of month in which DRC order received

- (a) in a case where the specified order is a draft of the proposed order of assessment under section 144C(1), pass an order of assessment, reassessment or recomputation or
- (b) in any other case, modify the order of assessment, reassessment or recomputation, in conformity with the directions contained in the order of the DRC within a period of one month from the end of the month in which such order is received.

An eligible assessee (being any person in whose case variation arises as a consequence of order of Transfer Pricing Officer and any non-resident or a foreign company) may opt for approaching either the Dispute Resolution Panel under section 144C or the DRC under section 245MA. Accordingly, the Assessing Officer shall pass the final order in conformity with the order by the DRC within a period of one month from the end of the month in which such order is received.

- (4) **Faceless Scheme for Dispute Resolution:** The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of dispute resolution under this Chapter, so as to impart greater efficiency, transparency and accountability by -
- (a) eliminating the interface between the Dispute Resolution Committee and the assessee in the course of dispute resolution proceedings to the extent technologically feasible;
 - (b) optimising utilisation of the resources through economies of scale and functional specialization;
 - (c) introducing a dispute resolution system with dynamic jurisdiction.

The Central Government may, for the purposes of giving effect to the scheme by notification in the Official Gazette, direct that any of the provisions of this Act will not apply or will apply with such exceptions, modifications and adaptations as may be specified in the said notification. However, no such direction shall be issued after the 31st March, 2023.

Any direction issued under this section on or before 31st March, 2023, may be amended by way of a notification issued by the Central Government.

Every notification issued shall, as soon as may be after the notification is issued, be laid before each House of Parliament.

TEST YOUR KNOWLEDGE

Questions

1. *What is the need for constitution of Dispute Resolution Committee (DRC)? Can an assessee make an application before DRC against an order which is based on information received under an agreement referred to in section 90 or section 90A?*
2. *Can an assessee opt for dispute resolution before DRC if prosecution for any offence punishable under the provisions of the Indian Penal Code has been instituted against him and he has been convicted in respect of the same under the said Act?*
3. *Mr. Vijay furnished his return of income for A.Y.2023-24 declaring total income of ₹28,00,000. He received an assessment order under section 143(3) on 26.11.2024 enhancing the total income for the A.Y.2023-24 by ₹5,00,000. He is aggrieved by the said order and is desirous of knowing whether he can file an application before the Dispute Resolution Committee (DRC). He informs you that no order of detention has been made and no prosecution proceedings have been initiated or instituted against him under any law for the time being in force. However, penalty under section 271D has been levied on him for failure to comply with the provisions of section 269SS.*

Can Mr. Vijay file an application before the DRC?

- (i) *If yes, what is the time limit for making an application to DRC against such order under the Income-tax Act, 1961. He is also keen to know, whether, in case he is aggrieved by the order passed by the DRC, can he file appeal against such order of DRC?*
- (ii) *Would your answer be different, if assessment order is based on information received under a DTAA with Country X?*

Answers

1. In order to provide early tax certainty to small and medium taxpayers, with effect from 1st April, 2021, new scheme of Dispute Resolution has been formulated for constitution of one or more Dispute Resolution Committee(s) (DRC).

Specified order *inter alia* does not include an order which is based on information received under an agreement referred to in section 90 or section 90A. Thus, an assessee can not opt

for dispute resolution before DRC in respect of an order which is based on information received under an agreement referred to in section 90 or section 90A.

2. Dispute Resolution Committee would resolve dispute in the case of such persons or class of persons, as may be specified by the Board, who may opt for dispute resolution under this Chapter in respect of dispute arising from any variation in the specified order in his case and who fulfils the specified conditions.

Specified conditions include the condition that the person should not be a person in respect of whom prosecution for any offence punishable under the provisions of the Indian Penal Code has been instituted and he has been convicted of any offence punishable under the said Act.

Thus, a person in respect of whom any prosecution has been instituted and who is convicted of any offence punishable under the Indian Penal Code, cannot opt for resolution of dispute in respect of specified order before DRC.

3. Dispute Resolution Committee (DRC) would resolve dispute in the case of a person who opts for dispute resolution under Chapter XIX-AA in respect of dispute arising from any variation in the specified order in his case and who fulfils the specified conditions. Specified order includes an assessment order passed under section 143(3), where the aggregate sum of variations made *vide* such order does not exceed ₹ 10 lakh; the total income as per such return furnished by the assessee for the assessment year relevant to such order does not exceed ₹ 50 lakhs and such order is not based on search or requisition or survey or any information received under a DTAA.

Accordingly, in the present case, Mr. Vijay can file an application before DRC, since the assessment order received on 26.11.2024 is a specified order and he satisfies the specified conditions on account of no order of detention being made and no prosecution proceedings being initiated or instituted against him. Non-levy of penalty under income-tax law is not a specified condition, therefore, the levy of penalty under section 271D on him does not result in non-compliance with the specified condition. Mr. Vijay has to file an application for resolution of dispute in the prescribed form on or before 25.12.2024 i.e., within one month from the date of receipt of the specified order.

However, once a modified order is passed by the DRC, no appeal or revision would lie against such order.

If assessment order is based upon the information received under an DTAA entered with India, Mr. Vijay, will not be eligible to make an application before DRC, since it is not a specified order.

MISCELLANEOUS PROVISIONS



LEARNING OUTCOMES

After studying this chapter, you would be able to -

- ❑ **identify** the permissible mode of taking or accepting certain loans, deposits and money receivable in relation to transfer of immovable property and **examine** the penal consequences for non-compliance;
- ❑ **recognize** the permissible mode of receipt of amounts exceeding a certain threshold limit and **examine** the penal consequences for receipt of such amount by any other mode;
- ❑ **identify** the permissible mode of repayment of certain loans or deposit or advance money repayable in relation to transfer of immovable property and **examine** the penal consequences for non-compliance;
- ❑ **appreciate** the provisions relating to provisional attachment of property to protect the interest of the revenue;
- ❑ **list out** the permissible modes of service of notice and the persons on whom notice should be served;
- ❑ **comprehend** the meaning of “specified financial transaction” and **identify** the specified persons responsible for furnishing statement of financial transaction or reportable account;
- ❑ **list out** the persons who can act as “authorised representatives” on behalf of the assessee.

CHAPTER OVERVIEW



Mode of taking or accepting loan, deposit and specified sum [Section 269SS]

- Penalty u/s 271D attracted for non-compliance

Mode of repayment of certain loan or deposits [Section 269T]

- Penalty u/s 271E attracted for non-compliance

Mode of undertaking transactions [Section 269ST]

- Penalty u/s 271DA attracted for non-compliance

Facility for accepting payment through prescribed electronic modes [Section 269SU]

- Penalty u/s 271DB attracted for non-compliance

Statements by producers of cinematograph films or persons engaged in specified activity [Section 285B]

Statement of Financial Transaction or Reportable Account [Section 285BA]

Annual Information Statement [Section 285BB]

Transfers to defraud revenue void [Section 281]

Provisional Attachment to protect the interest of the Revenue [Section 281B]

Service of Notice [Sections 282, 283 & 284]

Authentication of notices and other documents [Section 282A]

Notice deemed to be valid in certain circumstances [Section 292BB]

Other Miscellaneous Provisions

Sections 287, 287A, 288, 290, 291, 292, 293, 292A, 292B, 292C, 293C, 294, 295 and 296



18.1 MODE OF TAKING OR ACCEPTING CERTAIN LOANS, DEPOSITS AND SPECIFIED SUM [SECTION 269SS]

Section 269SS provides that no person shall take or accept any loan or deposit or specified sum from any other person (depositor) except by account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account or through such other prescribed electronic mode, if –

Loan, deposit and specified sum of ₹ 20,000 or more received otherwise than by specified modes attracts penalty

- (1) The amount of such loan or deposit or specified sum or the aggregate amount of such loan, deposit of specified sum; **or**
- (2) On the date of taking or accepting such loan or deposit or specified sum, any loan or deposit or specified sum taken or accepted earlier by such person from the depositor is remaining unpaid (whether repayment has fallen due or not), the amount or the aggregate amount remaining unpaid; **or**
- (3) The amount or the aggregate amount referred to in (1) together with the amount or the aggregate amount referred to in (2)

is **₹ 20,000 or more.**

However, higher limit of ₹ 2,00,000 is applicable in case of any deposit or loan where, -

**Higher limit
of ₹ 2,00,000 for deposit
accepted by/ loan taken
from PACS or PCARD**

- *such deposit is accepted by a primary agricultural credit society (PACS) or a primary cooperative agricultural and rural development bank (PCARD) from its member or*
- *a loan is taken from a primary agricultural credit society or a primary cooperative agricultural and rural development bank by its member.*

Non-applicability of the above requirement in certain cases

- (1) Loan or deposit or specified sum taken or accepted from, or any loan or deposit taken from or accepted by
 - the Government;
 - any banking company;
 - post office saving bank or

- any co-operative bank,
- any corporation established by a Central, State or Provincial Act or any Government company as defined in 2(45) of the Companies Act, 2013.
- any institution, association or body or class of institutions, associations, bodies which the Central Government may, for reasons to be recorded in writing notify in this behalf in the Official Gazette.

Govt. Bank, PO, Co-operative bank and farmers excluded.

- (2) Cases where the persons involved in the transaction derive income **only** from agriculture or where neither of them has any income chargeable to tax under the Act.

Meaning of certain terms

	Term	Meaning
(i)	Loan or deposit	Any loan or deposit of money
(ii)	Specified sum	any sum of money receivable, whether as advance or otherwise, in relation to transfer of immovable property, whether or not the transfer takes place.
(iii)	Prescribed electronic modes (for the purposes of section 269SS, 269ST and 269T)	(a) Credit Card; (b) Debit Card; (c) Net Banking; (d) IMPS (Immediate Payment Service); (e) UPI (Unified Payment Interface); (f) RTGS (Real Time Gross Settlement); (g) NEFT (National Electronic Funds Transfer), and (h) BHIM (Bharat Interface for Money) Aadhar Pay.

Penalty for failure to comply with the provisions of section 269SS [Section 271D]

If a person takes or accepts any loan or deposit or specified sum in contravention of the provisions of section 269SS, he shall be liable to pay, by way of penalty under section 271D, a sum of equal to the amount of the loan or deposit or specified sum taken or accepted. Further, any such penalty shall be imposed by the Joint Commissioner.

Penalty = amt. of loan, deposit or specified sum



18.2 MODE OF UNDERTAKING TRANSACTIONS [SECTION 269ST]

Section 269ST provides that no person receive an amount of ₹ 2,00,000 or more except by account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account or through such other prescribed electronic mode, –

- (a) in aggregate from a person in a day; or
- (b) in respect of a single transaction; or
- (c) in respect of transactions relating to one event or occasion from a person.

Circulars

- (1) **The CBDT has, vide Circular No. 22/2017 dated 3.7.2017**, clarified that in respect of receipt by **Non-banking Finance Companies (NBFCs) or Housing Finance Companies (HFCs)** in the nature of repayment of loan, the receipt of one instalment of loan repayment in respect of a loan shall constitute a 'single transaction' as specified in clause (b) of section 269ST and all the instalments paid for a loan shall not be aggregated for the purposes of determining applicability of the provisions section 269ST.

**Installments
not to be
aggregated**

- (2) **The CBDT has, vide Circular No. 25/2022 dated 30.12.2022**, clarified that in respect of Co-operative Societies, a dealership/ distributorship contract by itself may not constitute an event or occasion for the purposes of clause (c) of section 269ST.

Moreover, the receipt related to such a dealership/distributorship contract by the Co-operative Society on any day in a previous year, which is within 'the prescribed limit' and complies with clause (a) as well as clause (b) of section 269ST, may not be aggregated across multiple days for purposes of (c) of section 269ST for that previous year.

Non-applicability of the above requirement in certain cases

- (1) any receipt by Government, any banking company, post office savings bank or co-operative bank
- (2) transactions of the nature referred to in section 269SS.

**Receipt by Govt. Bank, PO and
Co-operative bank excluded**

(3) such other persons or class of persons or receipts, notified by the Central Government.

Accordingly, vide Notification No. 28/2017, dated 5-4-2017 and Notification No. 57/2017, dated 3-7-2017, the Central Government has specified that the provision of section 269ST **shall not apply** to the following, namely:-

- (a) receipt (cash withdrawals) by any person from a bank, co-operative bank or a post office savings bank
- (b) receipt by a business correspondent on behalf of a banking company or co-operative bank, in accordance with the guidelines issued by the Reserve Bank of India;
- (c) receipt by a white label automated teller machine operator from retail outlet sources on behalf of a banking company or co-operative bank, in accordance with the authorisation issued by the Reserve Bank of India under the Payment and Settlement Systems Act, 2007;
- (d) receipt from an agent by an issuer of pre-paid payment instruments, in accordance with the authorisation issued by the Reserve Bank of India under the Payment and Settlement Systems Act, 2007;
- (e) receipt by a company or institution issuing credit cards against bills raised in respect of one or more credit cards;
- (f) receipt which is not includible in the total income under section 10(17A).

Penalty for failure to comply with the provisions of section 269ST [Section 271DA]

If a person receives any sum in contravention of the provisions of section 269ST, he shall be liable to pay, by way of penalty under section 271DA, a sum equal to the amount of such receipt. However, no penalty shall be imposed if such person proves that there were good and sufficient reasons for the contravention. Further, any such penalty shall be imposed by the Joint Commissioner.

**Penalty = Amount received
in contravention of section
269ST**

Circular

Applicability of income-tax provisions under section 40A(3), section 269ST and Rule 114B to cash sale of agricultural produce by cultivators/agriculturists to traders [Circular No. 27/2017, dated 3-11-2017]

The provisions of section 40A(3) provide for the disallowance of expenditure exceeding ₹ 10,000 made otherwise than by an account payee cheque/draft or use of electronic clearing system through a bank account. However, Rule 6DD carves out certain exceptions from application of the provisions of section 40A(3) in some specific cases and circumstances, which, *inter alia*, include

payments made for purchase of agricultural produce to the cultivators of such produce. Therefore, no disallowance under section 40A(3) can be made if the trader makes cash purchases of agricultural produce from the cultivator.

Further, section 269ST, subject to certain exceptions, prohibits receipt of ₹ 2 lakh or more, otherwise than by an account payee cheque/draft or by use of electronic clearing system through a bank account from a person in a day or in respect of a single transaction or in respect of transactions relating to an event or occasion from a person. Therefore, any cash sale of an amount of ₹2 lakh or more by a cultivator of agricultural produce is prohibited under section 269ST.

Furthermore, the provisions relating to quoting of PAN or furnishing of Form No. 60 under Rule 114B do not apply to the sale transaction of ₹ 2 lakh or less.

In view of the above, it is clarified by the CBDT that cash sale of the agricultural produce by its cultivator to the trader for an amount less than ₹ 2 lakh will not-

- (a) result in any disallowance of expenditure under section 40A(3) in the case of trader.
- (b) attract prohibition under section 269ST in the case of the cultivator; and
- (c) require the cultivator to quote his PAN or furnish Form No. 60.



18.3 FACILITY FOR ACCEPTING PAYMENT THROUGH PRESCRIBED ELECTRONIC MODES [SECTION 269SU]

- (1) **Legislative intent** - In order to achieve the mission of the Government to move towards a cash less economy to reduce generation and circulation of black money and to promote digital economy, new section 269SU has been inserted w.e.f. 1st November, 2019.

Facility for making digital payments

- (2) **Applicability** - This section requires every person, carrying on business to provide facility for accepting payment through the **prescribed electronic modes**, in addition to the facility for other electronic modes of payment, if any, being provided by such person, if his **total sales, turnover or gross receipts in business exceeds ₹ 50 crore during the immediately preceding previous year.**

The CBDT has, *vide* Circular No. 12/2020 dated 20.5.2020 clarified that the provisions of section 269SU shall not be applicable to a specified person having only B2B transactions (i.e., no transaction with retail customer/consumer) if at least 95% of aggregate of all amounts received during the previous year, including amount received for sales, turnover or gross receipts, are by any mode other than cash.

Rule 119AA prescribe the following electronic modes for making payment, namely -

- (a) Debit Card powered by RuPay;
- (b) Unified Payments Interface (UPI) (BHIM-UPI); and
- (c) Unified Payments Interface Quick Response Code (UPI QR Code) (BHIM-UPI QR Code).

- (3) **Penalty for non-compliance** - In order to ensure compliance of the provisions of section 269SU, section 271DB provides that the failure to provide facility for accepting electronic modes of payment prescribed under section 269SU would attract penalty of a sum of ₹ 5,000, for every day during which such failure continues. However, the penalty shall not be imposed if the person proves that there were good and sufficient reasons for such failure. Further, any such penalty shall be imposed by the Joint Commissioner.

₹ 5,000 per day penalty

- (4) **Consequential amendment in the Payment and Settlement Systems Act, 2007** – This has been effected to ensure that no bank or system provider imposes any charge upon anyone, either directly or indirectly, for using the modes of electronic payment prescribed under section 269SU of the Income-tax Act, 1961.

Further, the CBDT has, vide Circular No.16/2020 dated 30.8.2020 advised banks to immediately refund the charges collected, if any, on or after 1st January, 2020 on transactions carried out using the electronic modes prescribed under section 269SU and not to impose charges on any future transactions carried through the said prescribed modes.

18.4 MODE OF REPAYMENT OF CERTAIN LOANS OR DEPOSITS [SECTION 269T]

Section 269T provides that no branch of the banking company or a co-operative bank or any other company or co-operative society or a firm or other person, shall repay any loan or deposit made with it or any specified advance received by it otherwise than by account payee cheque or account payee bank draft, drawn in the name of the person who has made the loan or depositor paid the specified advance, or by use of electronic clearing system through a bank account or through such other prescribed electronic mode, if –

Repayment of loan

- (1) the amount of loan or deposit or specified advance together with interest, if any, payable thereon; or

- (2) the aggregate amount of such loans or deposits held by such person with the branch of the banking company or co-operative bank or, as the case may be, the other company or co-operative society or the firm, or other person either in his own name or jointly with any other person on the date of such repayment, together with the interest, if any, payable on such loan or deposit; or
- (3) the aggregate amount of the specified advances received by such person either in his own name or jointly with any other person on the date of such repayment together with interest, if any, payable on such specified advances is **₹ 20,000 or more.**

However, higher limit of ₹ 2,00,000 is applicable in case of any deposit or loan where –

- **a deposit is paid by a primary agricultural credit society (PACS) or a primary cooperative agricultural and rural development bank (PCARD) to its member or**
- **a loan is repaid to a primary agricultural credit society or a primary cooperative agricultural and rural development bank by its member.**

**Higher limit
of ₹ 2,00,000 for deposit
paid by/loan repaid to
PACS/PCARD**

Non-applicability of the above requirement in certain cases

- (1) Where the repayment is made by a branch of bank or a co-operative bank, such repayment could be made by crediting the amount of such loan or deposit to the saving bank account or the current account, if any, with such branch of the person to whom such loan or deposit has to be repaid.
- (2) Further, the provisions of this section shall not apply in case of repayment of any loan or deposit or specified advance taken or accepted from -
 - (i) Government;
 - (ii) any banking company, post office savings bank or co-operative bank;
 - (iii) any corporation established by a Central, State or Provincial Act;
 - (iv) any Government company as defined in section 617 of the Companies Act, 1956¹;

Non-applicability

¹Section 2(45) of the Companies Act, 2013

- (v) such other institution, association or body or class of institutions, associations or bodies which the Central Government may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette.

Meaning of certain terms

	Term	Meaning
(1)	Loan or Deposit	Any loan or deposit of money which is repayable after notice or repayable after a period. In the case of any person other than a company, loan or deposit of any nature will be covered by this section.
(2)	Specified Advance	Any sum of money in the nature of advance, by whatever name called, in relation to transfer of an immovable property, whether or not the transfer takes place.

Penalty for failure to comply with the provisions of section 269T [Section 271E]

If a person repays any loan or deposit or specified advance referred to in section 269T otherwise than in accordance with the provisions of that section, he shall be liable to pay, by way of penalty under section 271E, a sum equal to the amount of the loan or deposit or specified advance so repaid. Further, any such penalty shall be imposed by the Joint Commissioner.

**Penalty = Amount repaid
In contravention of
section 269T**

18.5 TRANSFERS TO DEFRAUD REVENUE VOID [SECTION 281]

- (1) As a safeguard against non-realisation of revenue due to fraudulent transferring of assets by a defaulting assessee it is provided under this section that, certain transfers specified therein are deemed to be void for purpose of income-tax.

**Transfer of asset during
pendency of proceedings
shall be void**

- (2) Accordingly, in cases where, during the pendency of any proceeding under the Income-tax Act, 1961 or after the completion thereof, but before the service of notice by the Tax Recovery Officer, any assessee creates a charge on, or parts with, the property by way of sale, mortgage, gift, exchange, or any other mode of transfer whatsoever of any of his assets in favour of any other person, such a charge or

transfer must be deemed to be void as against any claim in respect of any tax, penalty, interest or fine payable by the assessee as a result of the completion of the proceedings or otherwise.

- (3) This provision applies to all cases where the amount of tax or other sum of money which is payable or likely to be payable exceeds ₹ 5,000 and the assets which are charged or transferred by the assessee exceeds ₹ 10,000 in value, in the aggregate.

- (4) The charge or transfer made by the assessee, however, **would not be void** in case where it is made:

- (a) for adequate consideration and without any notice of the pendency of such proceeding or, as the case may be, without any notice of such tax or other monies remaining payable by the assessee; or

- (b) with the previous permission of the Assessing Officer.

- (5) For this purpose, the term 'assets' should be taken to mean land, buildings, machinery, plant, shares, securities and fixed deposits in bank to the extent to which any of these assets do not form part of the stock-in-trade of the business carried on by the assessee. In other words, if these items of properties represent the stock-in-trade of the assessee's business, their transfer would not be treated as void.

Case when transfer is not void

Assets exclude stock-in-trade



18.6 PROVISIONAL ATTACHMENT TO PROTECT THE INTEREST OF THE REVENUE [SECTION 281B]

- (1) **Assessing Officer's power to provisionally attach property for protecting interests of the revenue:** Under section 281B, the Assessing Officer is empowered to provisionally attach any property of the assessee, by an order in writing, during the pendency of assessment or reassessment proceedings of any income which has escaped assessment or for imposition of penalty under section 271AAD (penalty leviable for false entry etc. in books of accounts) where the amount or aggregate of amounts of penalty likely to be imposed under the said section exceeds

Provisional attachment where penalty u/s 271AAD exceeds ₹ 2 crores

₹ 2 crores, with the prior approval of the Principal Chief Commissioner or Chief Commissioner, Principal Commissioner or Commissioner, Principal Director General or Director General, Principal Director or Director, if he is of the opinion that it is necessary to do so for the purpose of protecting the interests of the revenue. Such provisional attachment has to be made in the manner provided in the Second Schedule.

- (2) **Validity of provisional attachment:** The provisional attachment shall be valid for a period of 6 months from the date of the order. However, the Principal Chief Commissioner or Chief

Valid for 6 months

Commissioner, Principal Commissioner or Commissioner, Principal Director General or Director General or Principal Director or Director may extend the period of provisional attachment, for reasons to be recorded in writing, by a further period as he thinks fit. However, the total period of extension should not exceed two years or sixty days after the date of assessment or reassessment, whichever is later.

- (3) **Recommendation of Income Tax Simplification Committee:** The Income Tax Simplification Committee under the chairmanship of Justice R.V. Easwar (Retd.) has recommended that provisional attachment of property could be substituted by a bank guarantee subject to fulfilment of certain conditions.

- (4) **Furnishing bank guarantee in lieu of provisional attachment of property :** Section 281B(3) to (9) provides for furnishing of bank guarantee in lieu of provisional attachment of property.

- (5) **Furnishing of bank guarantee in lieu of provisional attachment [Section 281B(3)]:** The Assessing Officer shall, by an order in writing, revoke provisional attachment of property made under section 281B(1) in a case where the assessee furnishes a guarantee from a scheduled bank, for an amount not less than the fair market value of such provisionally attached property or for an amount which is sufficient to protect the interests of the revenue.

**Bank
gaurantee in
lieu of
provisional
attachment**

- (6) **Reference to Valuation Officer [Section 281B(4)]:** For the purpose of determining the fair market value of the property provisionally attached, the Assessing Officer may, make a reference to the Valuation Officer, who is required to estimate of the fair market value of the property and submit the report of such estimation to the Assessing Officer within a period of 30 days from the date of receipt of such reference.

- (7) **Time limit for passing order revoking the attachment of property [Section 281B(5)]:** For ensuring revocation of attachment of the property in lieu of bank guarantee in a time bound manner, an order revoking the attachment has to be made by the Assessing Officer within the following time period:

	Case	Time period for revoking attachment
(i)	in a case where a reference is made to the Valuation Officer	within 45 days from the date of receipt of such guarantee
(ii)	in any other case	within 15 days from the date of receipt of such guarantee

- (8) **Assessing Officer empowered to invoke bank guarantee for failure to pay sum specified in notice of demand [Section 281B(6)]:** Where a notice of demand specifying a sum payable is served upon the assessee and the assessee fails to pay such sum within the time specified in the notice of demand, the Assessing Officer may invoke the bank guarantee, wholly or partly, to recover the said amount.

**Power to invoke
bank guarantee**

- (9) **Power to invoke bank guarantee on assessee's failure to renew or furnish new guarantee [Section 281B(7)]:** In a case where the assessee fails to renew the bank guarantee or fails to furnish a new guarantee from a scheduled bank for an equal amount fifteen days before the expiry of such guarantee, the Assessing Officer shall, in the interests of the revenue, invoke the bank guarantee.

- (10) **Manner of adjustment of amount realized by invoking bank guarantee [Section 281B(8)]:**

- (i) The amount realised by invoking the bank guarantee shall be adjusted against the existing demand which is payable by the assessee;
- (ii) The balance amount, if any, has to be deposited in the Personal Deposit Account of the Principal Commissioner or Commissioner in the branch of Reserve Bank of India or the State Bank of India or of its subsidiaries or any bank as may be appointed by the Reserve Bank of India as its agent at the place where the office of the Principal Commissioner or Commissioner is situated.

**Adjustment against
existing demand**

- (11) **Release of bank guarantee [Section 281B(9)]:** In a case where the Assessing Officer is satisfied that the bank guarantee is not required anymore to protect the interests of the revenue, he shall release that guarantee forthwith.



18.7 SERVICE OF NOTICE [SECTIONS 282, 283 & 284]

(1) Permissible modes of service of notice [Section

282]: The service of a notice or summon or requisition or order or any other communication under the Act may be made by delivering or transmitting a copy thereof to the person named therein -

Modes of Service

- (i) by post or such courier services as approved by the CBDT; or
- (ii) in such manner as provided in the Code of Civil Procedure, 1908 for the purposes of service of summons; or
- (iii) in the form of any electronic record as provided in Chapter IV of the Information Technology Act, 2000; or
- (iv) by any other means of transmission as may be provided by rules made by the CBDT in this behalf.

(2) **Rules to provide for the addresses for communication:** The CBDT is empowered to make rules providing for the addresses (including the address for electronic mail or electronic mail message) to which such communication may be delivered or transmitted to the person named therein.

(3) **Addressee in case of different assessees:** The following is a list of persons on whom notice should be served and such a notice will be notice to the corresponding assessee mentioned.

	Assessee	Addressee
(i)	An existing firm	Any member of the firm
(ii)	An existing H.U.F.	The Manager or any adult member of the family.
(iii)	A Company	The Principal Officer thereof
(iv)	Local authority	The Principal Officer thereof
(v)	An existing association or body of individuals	The Principal Officer or any member thereof
(vi)	An individual	The individual himself
(vii)	Any other person	The person incharge of the management and control of his affairs.
(viii)	A dissolved firm	Any adult person who was a partner immediately before dissolution.

(ix)	A partitioned H.U.F.	The last manager of the family; if he is dead, all adults who were members immediately before the partition.
(x)	A dissolved association of persons	Any person who was a member immediately before dissolution
(xi)	A discontinued business	The assessee; In the case of a firm or an association of persons, any person who was a member at the time of discontinuance; In the case of a company, its Principal Officer.



18.8 AUTHENTICATION OF NOTICES AND OTHER DOCUMENTS [SECTION 282A]

- (1) Section 282A provides that where any notice or other document is required to be issued by any income-tax authority, such notice or other document should be signed and issued in paper form or communicated in electronic form by that authority in accordance with the prescribed procedure. This is in order to provide adequate legal framework for paperless assessment for improving efficiency and reducing the compliance burden.

Authentication

Accordingly, Rule 127A provides for authentication of notices and other documents. Every notice or other document communicated in electronic form by an income-tax authority under the Income-tax Act, 1961 shall be deemed to be authenticated –

	Case	When it will be deemed as authenticated?
(i)	Electronic mail or Electronic mail message	
	If the notice or other document is in the e-mail body itself	If the name and office of such income-tax authority is printed on the e-mail body and the e-mail is issued from the designated e-mail address of such income-tax authority.
	If the notice or other document is in the attachment	If the name and office of such income-tax authority is printed on the attachment and the e-mail is issued from the designated e-mail address of such income-tax authority

(ii)	An electronic record	
	If the notice or other document is contained as text or remark in the electronic record itself	If the name and office of such income-tax authority is displayed as a part of the electronic record and such electronic record is displayed on the designated website.
	If the notice or other document is in the attachment	If the name and office of such income-tax authority is printed on the attachment in the electronic record and such electronic record is displayed on the designated website.

- (2) Every notice or other document required to be issued, served or given for the purposes of this Act by any income-tax authority, shall be deemed to be authenticated if the name and office of a designated income-tax authority is printed, stamped or otherwise written thereon.
- (3) A designated income-tax authority means any income-tax authority authorised by the CBDT to issue, serve or give such notice or other document after authentication in the manner as provided in (2) above.



18.9 SUBMISSION OF STATEMENTS BY PRODUCERS OF CINEMATOGRAPH FILMS OR PERSONS ENGAGED IN SPECIFIED ACTIVITY [SECTION 285B]

- (1) **Time limit for furnishing statement in prescribed form** - Section 285B read with Rule 121A, requires a producer of a cinematograph film or a person engaged in any specified activity, or both, during the whole or any part of any financial year to furnish a statement in the prescribed form² within 60 days from the end of the previous year, in respect of the period during which such production or specified activity is carried on by him in such financial year.
- (2) **Manner of furnishing the statement** - The said statement has to be furnished electronically 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).

60 days from the end of P.Y.

² Form No. 52A

- (3) **Threshold limit of payments in respect of which particulars have to be included in the statement**- Such statement would contain the particulars of **all payments exceeding ₹ 50,000 in the aggregate made by him or due from him to each such person** as is engaged by him in such production or specified activity. **Threshold limit**

- (4) **Meaning of “specified activity”** - “Specified activity” means any –

- (i) event management
- (ii) documentary production,
- (iii) production of programmes for telecasting on television or over the top platforms or any other similar platform,
- (iv) sports event management,

other performing arts or any other activity as the Central Government may, by notification in the Official Gazette, specify in this behalf.

18.10 OBLIGATION TO FURNISH STATEMENT OF FINANCIAL TRANSACTION OR REPORTABLE ACCOUNT [SECTION 285BA]

- (1) Section 285BA imposes an obligation on specified persons to furnish statement of financial transaction or reportable account. Thus, the section also provides for furnishing of statement by a prescribed reporting financial institution in respect of a specified financial transaction or reportable account to the prescribed income-tax authority. **SFT**
- (2) As per section 285BA(1), the following persons, who are responsible for registering or maintaining books of account or other document containing a record of any specified financial transaction or any reportable account as may be prescribed under any law for the time being in force, are required to furnish a statement in respect of such specified financial transaction or reportable account which is registered or recorded or maintained by him and information relating to which is relevant and required for the purposes of the Income-tax Act, 1961 to the income-tax authority or such other authority or agency as may be prescribed -
- (a) an assessee;
 - (b) a prescribed person in the case of an office of Government;

- (c) a local authority or other public body or association; or
 - (d) the Registrar or Sub-Registrar appointed under the Registration Act, 1908; or
 - (e) the registering authority empowered to register motor vehicles under the Motor Vehicles Act, 1988; or
 - (f) the Post Master General referred to in the Indian Post Office Act, 1898; or
 - (g) the Collector referred to in the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013; or
 - (h) the recognised stock exchange referred to in the Securities Contracts (Regulation) Act, 1956; or
 - (i) an officer of the Reserve Bank of India; or
 - (j) a depository referred to in the Depositories Act, 1996; or
 - (k) a prescribed reporting financial institution; or
 - (l) a person, other than those referred to in clauses (a) to (k), as may be prescribed.
- (3) **“Specified financial transactions”** means any of the following transactions which may be prescribed -
- (a) transaction of purchase, sale or exchange of goods or property or right or interest in a property; or
 - (b) transaction for rendering any service; or
 - (c) transaction under a works contract; or
 - (d) transaction by way of an investment made or an expenditure incurred; or
 - (e) transaction for taking or accepting any loan or deposit,
- (4) The CBDT may prescribe different values for different transactions in respect of different persons having regard to the nature of such transaction.
- (5) As per Rule 114E, the statement of financial transaction or reportable account shall be furnished in Form No. 61A and shall be verified in the manner indicated therein.

Meaning of SFT

On or before 31st May from the end of FY

Accordingly, the statement of financial transactions has to be furnished on or before 31st May, immediately following the financial year in which the transaction is registered or recorded.

- (6) Where the prescribed income-tax authority considers that the statement furnished under section 285BA(1) is defective, he may intimate the defect to the person who has furnished such statement and give him an opportunity of **Rectify the defect within 30 days** rectifying the defect within a period of 30 days from the date of such intimation. The prescribed income-tax authority may allow, on an application made in this behalf, a further period of time, at his discretion.
- (7) If the defect is not rectified within the said period of 30 days or, as the case may be, the further period so allowed, then, notwithstanding anything contained in any other provision of this Act, the provisions of this Act shall apply as if such person had furnished inaccurate information in the statement.
- (8) Where a person who is required to furnish a statement under section 285BA(1), has not furnished the same within the specified time, the prescribed income-tax authority may serve upon such person a notice requiring him to furnish such statement within a period not exceeding thirty days from the date of service of such notice and he shall furnish the statement within the time specified in the notice [Section 285BA(5)]. **Failure to furnish SFT**
- (9) If any person, having furnished a statement under section 285BA(1), or in pursuance of a notice issued under section 285BA(5), comes to know or discovers any inaccuracy in the information provided in the statement, he shall, within a period of **ten days** **Inform Discrepancy within 10 days** inform the income-tax authority or other authority or agency referred to in section 285BA(1), the inaccuracy in such statement and furnish the correct information in the prescribed manner [Section 285BA(6)]
- (10) Under section 285BA(7), the Central Government may, by way of rules, specify —
- (i) the persons referred to in section 285BA(1) to be registered with the prescribed income-tax authority;
 - (ii) the nature of information and the manner in which such information shall be maintained by the persons referred to in point (i); and
 - (iii) the due diligence to be carried out by the persons for the purpose of identification of any reportable account referred to in section 285BA(1).

- (11) **Furnishing of statement of financial transaction [Rule 114E:** The statement of financial transaction required to be furnished under section 285BA(1) of the Income-tax Act, 1961 shall be furnished by every person mentioned in column (3) of the Table below in respect of all the transactions of the nature and value specified in the corresponding entry in column (2) of the said Table, which are registered and recorded by him on or after 1st April, 2016.

S. No.	Nature and value of transaction	Class of person (reporting person)
(1)	(2)	(3)
1.	(a) Payment made in cash for purchase of bank drafts or pay orders or banker's cheque of an amount aggregating to ₹ 10 lakh or more in a financial year. (b) Payments made in cash aggregating to ₹ 10 lakh or more during the financial year for purchase of pre-paid instruments issued by Reserve Bank of India under the Payment and Settlement Systems Act, 2007. (c) Cash deposits or cash withdrawals (including through bearer's cheque) aggregating to ₹ 50 lakhs or more in a financial year, in or from one or more current account of a person.	A banking company or a co-operative bank to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act)
2.	Cash deposits aggregating to ₹ 10 lakhs or more in a financial year, in one or more accounts (other than a current account and time deposit) of a person.	(i) A banking company or a co-operative bank to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act); (ii) Post Master General as referred to in the Indian Post Office Act, 1898.
3.	One or more time deposits (other than a time deposit made through renewal of another time deposit) of a person aggregating to ₹ 10 lakhs or more in a financial year of a person.	(i) A banking company or a co-operative bank to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act);

		(ii) Post Master General as referred to in the Indian Post Office Act, 1898; (iii) Nidhi referred to in section 406 of the Companies Act, 2013; (iv) NBFC which holds a certificate of registration under section 45-IA of the Reserve Bank of India Act, 1934, to hold or accept deposit from public.
4.	Payments made by any person of an amount aggregating to- (i) ₹ 1 lakh or more in cash; or (ii) ₹ 10 lakh or more by any other mode, against bills raised in respect of one or more credit cards issued to that person, in a financial year.	A banking company or a co-operative bank to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act) or any other company or institution issuing credit card.
5.	Receipt from any person of an amount aggregating to ₹ 10 lakh or more in a financial year for acquiring bonds or debentures issued by the company or institution (other than the amount received on account of renewal of the bond or debenture issued by that company).	A company or institution issuing bonds or debentures.
6.	Receipt from any person of an amount aggregating to ₹ 10 lakh or more in a financial year for acquiring shares (including share application money) issued by the company.	A company issuing shares
7.	Buy back of shares from any person (other than the shares bought in the open market) for an amount or value aggregating to ₹ 10 lakh or more in a financial year.	A company listed on a recognised stock exchange purchasing its own securities under section 68 of the Companies Act, 2013.
8.	Receipt from any person of an amount aggregating to ₹ 10 lakh or more in a financial year for acquiring units of one or more schemes of a Mutual Fund (other than the amount received on account of transfer from	A trustee of a Mutual Fund or such other person managing the affairs of the Mutual Fund as may be duly authorised by the trustee in this behalf.

	one scheme to another scheme of that Mutual Fund).	
9.	Receipt from any person for sale of foreign currency including any credit of such currency to foreign exchange card or expense in such currency through a debit or credit card or through issue of travelers cheque or draft or any other instrument of an amount aggregating to ₹ 10 lakh or more during a financial year	Authorised person as referred to in section 2(c) of the Foreign Exchange Management Act, 1999.
10.	Purchase or sale by any person of immovable property for an amount of ₹ 30 lakhs or more or valued by the stamp valuation authority referred to in section 50C at ₹ 30 lakhs or more	Inspector-General appointed under the Registration Act, 1908 or Registrar or Sub-Registrar appointed under that Act
11.	Receipt of cash payment exceeding ₹ 2 lakh for sale, by any person, of goods or services of any nature (other than those specified at Sl. Nos.1 to 10 above, if any).	Any person who is liable for audit under section 44AB.

Manner of application of threshold limit: The reporting person mentioned in column (3) of the Table [other than the person at Sl.No.10 and 11] shall, while aggregating the amounts for determining the threshold limit for reporting the amount in respect of any person as specified in column (2) of the said Table,-

- take into account all the accounts of the same nature as specified in column (2) of the said Table maintained in respect of that person during the financial year;
- aggregate all the transactions of the same nature as specified in column (2) of the said Table recorded in respect of that person during the financial year;
- attribute the entire value of the transaction or the aggregated value of all the transactions to all the persons, in a case where the account is maintained, or transaction is recorded in the name of more than one person;
- apply the threshold limit separately to deposits and withdrawals in respect of transaction specified in item (c) under column (2), against Sl. No.1 of the said Table.

For the purposes of pre-filling the return of income, Rule 114E(5A) provides that the information relating to capital gains on transfer of listed securities or units of Mutual Funds,

dividend income, and interest income mentioned in column (2) of Table below shall be furnished by the persons mentioned in column (3) of the said Table in such form, at such frequency, and in such manner, as may be specified by the Principal Director General of Income Tax (Systems) or the Director General of Income Tax (Systems), as the case may be, with the approval of the CBDT:

Sl. No.	Nature of transaction	Class of person (reporting person)
(1)	(2)	(3)
1.	Capital gains on transfer of listed securities or units of Mutual Funds	(i) Recognised Stock Exchange; (ii) Depository as defined in section 2(1)(e) of the Depositories Act, 1996 (iii) Recognised Clearing Corporation; (iv) Registrar to an issue and share transfer agent registered under section 12(1) of the SEBI Act, 1992
2.	Dividend income	A company
3.	Interest income	(i) A banking company or a co-operative bank to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act) (ii) Post Master General as referred to in section 2(j) of the Indian Post Office Act, 1898 (iii) Non-banking financial company which holds a certificate of registration under section 45-IA of the Reserve Bank of India Act, 1934, to hold or accept deposit from public.

Note - The information is to be reported for all account/deposit holders where any interest exceeds zero per account in the financial year excluding Jan Dhan Accounts [Notification No. 1/2023, dated 5.01.2023].

Meaning of certain terms:

Term	Meaning
Listed securities	Securities which are listed on any recognised stock exchange in India
Mutual Fund	A Mutual Fund as referred to in section 10(23D) of the Income-tax Act, 1961

Recognised clearing corporation	It has the same meaning as assigned to it in regulation 2(1)(o) of the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) Regulations, 2012 made under the Securities Contracts (Regulation) Act, 1956 and the SEBI Act, 1992
Recognised stock exchange	A stock exchange which is for the time being recognised by the Central Government under section 4 of the Securities Contracts (Regulation) Act, 1956
Securities	It has the same meaning as assigned to it in section 2(h) of the Securities Contracts (Regulation) Act, 1956

Penalty for Failure to Furnish Statement of Financial Transaction or Reportable Account [Section 271FA]

Section 271FA provides that if a person who is required to furnish a statement of financial transaction or reportable account, as required under section 285BA(1), fails to furnish such statement within the

Penalty

time prescribed under section 285BA(2) [i.e., on or before 31st May, immediately following the financial year in which the transaction is registered or recorded], the prescribed income-tax authority [i.e., Director of Income-tax (Central Information Branch)] may direct that such person shall pay, by way of penalty, a sum of ₹ 500 for every day during which the failure continues.

Further, where such person fails to furnish the statement of financial transaction or reportable account within the period specified in the notice under section 285BA(5), he shall pay, by way of penalty, a sum of ₹ 1,000 for every day during which the failure continues, beginning from the day immediately following the day on which the time specified in such notice for furnishing the statement expires.

The penal provisions under section 271FA are summarized below -

Non-compliance of section	Penalty under section 271FA	Period
285BA(1)	₹ 500 per day of continuing default	1 st June immediately following the financial year in which the transaction is registered or recorded till the date of furnishing the statement of financial transaction or reportable account or the date of expiry of the time specified in the notice under section 285BA(5), as the case may be.
285BA(5)	₹ 1,000 per day of continuing default	The day immediately following the day on which the time specified in notice under section 285BA(5) for furnishing the statement expires till the date of furnishing of statement.

As per section 273B, no penalty is leviable under section 271FA, if the assessee proves that there was reasonable cause for the said failure.

ILLUSTRATION 1

A private bank has not filed its statement of financial transaction or reportable account in relation to the specified financial transactions for the financial year 2023-24. A notice was issued by the prescribed income-tax authority on 1st October, 2024 requiring the bank to furnish the statement by 31st October, 2024. The bank, however, furnished the statement only on 15th November, 2024. What would be the penalty leviable under section 271FA?

SOLUTION

(1) Non-compliance of section	(2) Penalty under section 271FA	(3) Period	(4) Quantum of penalty under section 271FA	
			(2) × (3)	(₹)
285BA(1)	₹ 500 per day of continuing default	1.6.2024 to 31.10.2024	153 days × ₹ 500	76,500
285BA(5)	₹ 1,000 per day of continuing default	1.11.2024 to 15.11.2024	15 days × ₹ 1,000	15,000
				91,500

Penalty for furnishing inaccurate statement of financial transaction or reportable account
[Section 271FAA]

Section 271FAA provides for levy of penalty in case of **a person referred to in section 285BA(1)** who is required to furnish a statement of financial transaction or reportable account, where such person provides inaccurate information in the statement.

In such a case, the income-tax authority prescribed under section 285BA -

- (I) may direct levy of penalty of ₹ 50,000, subject to further satisfaction of any one of the following conditions –

Penalty for inaccurate SFT

- The inaccuracy is due to a failure to comply with the due diligence requirement prescribed under section 285BA(7) or is deliberate on the part of that person; or
- The person is aware of the inaccuracy at the time of furnishing the statement of financial transaction or reportable account, but does not inform the prescribed income-tax authority or such other authority or agency; or
- The person discovers the inaccuracy after furnishing the statement of financial transaction or reportable account but fails to inform and furnish correct information within ten days, being the time specified under section 285BA(6).

- (II) shall direct levy of ₹ 5,000 for every reportable account, in addition to the levy of penalty of ₹ 50,000, in case of a prescribed reporting financial institution which is required to furnish a statement under section 285BA, if it provides inaccurate information in the statement and the inaccuracy in such statement is due to false or inaccurate information furnished by the holder or holders of the relevant reportable account or accounts.

Where such penalty is paid by the reporting financial institution, such institution would be entitled to recover the sum so paid on behalf of such reportable account holder, or to retain out of any moneys that may be in its possession or may come to it from every such reportable account holder, an amount equal to the sum so paid.

18.11 ANNUAL INFORMATION STATEMENT [SECTION 285BB]

- (1) The prescribed income-tax authority or the person authorised by such authority has to upload in the registered account of the assessee, an annual information statement in the prescribed form and manner and within the prescribed time along with the prescribed information in possession of the said authority.

AIS

- (2) “Registered account” means the electronic filing account registered by the assessee in designated portal, i.e., web portal designated by the prescribed income-tax authority or the person authorised by such authority.

- (3) Accordingly, Rule 114-I requires the Principal Director General of Income-tax (Systems) or the Director General of Income-tax (Systems) or any person authorised by him, under section 285BB, to upload in the registered account of the assessee an annual information statement in Form No. 26AS containing the information specified in column (2) of the table below, which is in his possession within 3 months from the end of the month in which the information is received by him:—

Form No. 26AS

Sl. No.	Nature of information
(i)	Information relating to tax deducted or collected at source
(ii)	Information relating to specified financial transaction

(iii)	Information relating to payment of taxes
(iv)	Information relating to demand and refund
(v)	Information relating to pending proceedings
(vi)	Information relating to completed proceedings

- (4) The CBDT may also authorise the Principal DGIT (Systems) or the DGIT (Systems) or any person authorised by him to upload the information received from any officer, authority or body performing any function under any law or the information received under an agreement referred to in section 90 or section 90A or the information received from any other person to the extent as it may deem fit in the interest of the revenue in the annual information statement.
- (5) The Principal DGIT (Systems) or the DGIT (Systems) has to specify the procedures, formats and standards for the purposes of uploading of annual information statement.

18.12 PUBLICATION OF INFORMATION [SECTION 287]

The Central Government is empowered to publish the name and address of any assessee and other particulars relating to any proceedings or prosecutions in respect of such assessee, if it considers it necessary or expedient in the public interest to do so.

Publication

However, no such publication relating to any penalty or prosecution shall be made until the time for presenting appeal to the **Joint Commissioner (Appeals) or** Commissioner (Appeals) has expired without an appeal having been presented or until the appeal, if presented, has been disposed of.

In the case of a firm, company or other association of persons, the names of the partners of the firm, directors, managing agents, secretaries and treasurers, or managers of the company or members of the associations, as the case may be, may also be published if, in the opinion of the Central Government, the circumstances of the case justify the same.

18.13 APPEARANCE BY REGISTERED VALUERS [SECTION 287A]

Any tax payer who is entitled to or required to attend before any income tax authority or the Appellate Tribunal in connection with any matter relating to the valuation of any asset, otherwise than he is

required under section 131 to attend personally for examination on oath or affirmation, may attend by a registered valuer.



18.14 APPEARANCE BY AUTHORISED REPRESENTATIVE [SECTION 288]

- (1) Section 288 deals with appearance by authorised representative. Accordingly, any assessee who is entitled or required to attend before any income-tax authority or the Appellate Tribunal in connection with any proceeding under this Act otherwise than when required under section 131 to attend personally for examination on oath or affirmation, may attend by an authorised representative.
- (2) For the purpose of this section, “authorised representative” means, a person authorised by the assessee in writing to appear on his behalf. The following persons can be authorised representatives:
 - (a) A person related to the assessee in any manner or a person regularly employed by the assessee
 - (b) any officer of a Scheduled Bank with which the assessee maintains a current account or has other regular dealings
 - (c) any legal practitioner who is entitled to practice in any Civil Court in India
 - (d) an Accountant i.e., a chartered accountant as defined in section 2(1)(b) of the Chartered Accountants Act, 1949 who holds a valid certificate of practice under section 6(1) of that Act. However, the following persons are not included in the definition of “accountant” -

	Assessee	Person
(i)	Company	A person who is not eligible for appointment as an auditor of the said company under section 141(3) of the Companies Act, 2013, namely, (a) A body corporate other than a limited liability partnership registered under the Limited Liability Partnership Act, 2008; (b) an officer or employee of the company

		(c) a person who is a partner, or who is in the employment, of an officer or employee of the company (d) a person who, or his relative or partner – (i) is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company³ (ii) is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of ₹ 5 lakh. (iii) has given a guarantee or provided any security in connection with the indebtedness of any third person to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of ₹ 1 lakh. (e) a person or a firm who, whether directly or indirectly, has business relationship with the company, or its subsidiary, or its holding or associate company or subsidiary of such holding company or associate company of such nature as may be prescribed. (f) a person whose relative is a director or is in the employment of the company as a director or key managerial personnel. (g) a person who is in full time employment elsewhere or a person or a partner of a firm holding appointment as its auditor, if such persons or partner is at the date of such appointment or reappointment holding appointment as auditor of more than 20 companies (h) a person who has been convicted by a court of an offence involving fraud and a period of 10 years has not elapsed from the date of such conviction (i) any person whose subsidiary or associate company or any other form of entity, is engaged as on the date of appointment in consulting and specialised services as provided in section 144 of the Companies Act, 2013.

³However, the relative may hold security or interest in the company of face value not exceeding ₹ 1,000 or such sum as may be prescribed.

(ii)	Individual	The assessee himself or his relative
(iii)	Firm	Partner of the firm or his relative
(iv)	AOP	Member of the AOP or his relative
(v)	HUF	Member of the HUF or his relative
(vi)	Trust or Institution	(1) The author of the trust or founder of the institution or his relative (2) Any person who has made a substantial contribution to the trust or institution, i.e., any person whose total contribution upto the end of the relevant previous year exceeds ₹ 50,000, or his relative (3) Where such author, founder or person is a HUF, a member of the HUF or relative of such member (4) Any trustee of the trust or manager of the institution, or relative of the trustee or manager
(vii)	Any other person	The person who is competent to verify the return under section 139 in accordance with the provisions of section 140 or his relative.
(viii)	Any assessee referred to in (ii) to (vii)	(1) An officer or employee of the assessee (2) An individual who is a partner, or who is in the employment, of an officer or employee of the assessee. (3) An individual who, or his relative or partner - (I) is holding any security of, or interest in, the assessee⁴. (II) is indebted to the assessee⁵. (III) has given a guarantee or provided any security in connection with the indebtedness of any third person to the assessee⁶.

⁴However, the relative may hold security or interest in the assessee of the face value not exceeding ₹ 1 lakh

⁵However, the relative may be indebted to the assessee for an amount not exceeding ₹ 1 lakh

⁶However, the relative may give guarantee or provide any security in connection with the indebtedness of any third person to the assessee for an amount not exceeding ₹ 1 lakh

		(4) a person who, whether directly or indirectly, has business relationship with the assessee of such nature as may be prescribed. “Business relationship” shall be construed as any transaction entered into for a commercial purpose, other than – (i) commercial transactions which are in the nature of professional services permitted to be rendered by an auditor or audit firm under the Income-tax Act, 1961 and the Chartered Accountants Act, 1949 and the rules and regulations made thereunder; (ii) commercial transactions which are in the ordinary course of business of the company at ALP – like sale of products or services to auditor, as customer, in the ordinary course of business, by companies engaged in the business of telecommunications, airlines, hospitals, hotels and such other similar businesses. (5) a person who has been convicted by a court of an offence involving fraud and a period of ten years has not elapsed from the date of such conviction.

However, the ineligibility for carrying out any audit or furnishing of any report/certificate in respect of an assessee shall not make an accountant ineligible for attending income-tax proceeding referred to in section 288(1) as authorised representative on behalf of that assessee.

- (e) any person who has passed any accountancy examination recognised in this behalf by the Board. Rule 50 prescribes the accountancy examination recognised for this purpose. They are as follows:
- (i) The National Diploma in Commerce awarded by the All India Council for Technical Education under the Ministry of Education, New Delhi, provided the diploma-holder has taken Advanced Accountancy and Auditing as an elective subject for the Diploma Examination
 - (ii) Government Diploma in Company Secretaryship awarded by the Department of Company Affairs under the Ministry of Industrial Development and Company Affairs, New Delhi
 - (iii) Final Examination of the Institute of Company Secretaries of India, New Delhi

- (iv) The Final Examination of the Institute of Cost and Work Accountants of India constituted under the Cost and Works Accountants Act, 1959
 - (v) The Departmental Examination conducted by or on behalf of the Central Board of Direct Taxes for promotion
 - (vi) The Revenue Audit Examination for Section Officers conducted by the Office of the Comptroller and Auditor General of India
- (f) any person who has acquired such education qualifications as the CBDT may, prescribe for this purpose. Rule 51 prescribes the concerned educational qualifications as follows:

Educational Qualifications

A degree in Commerce or Law conferred by any of the following Universities:

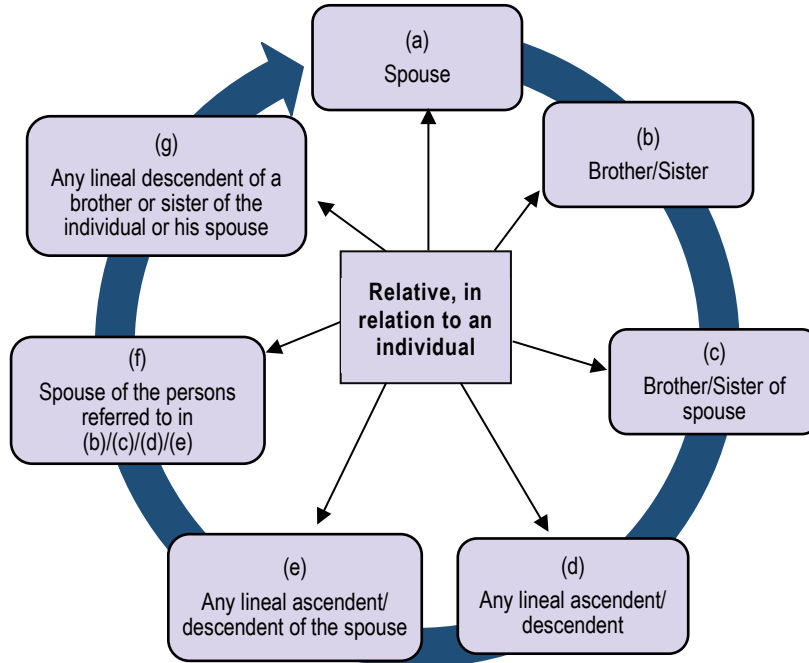
- (i) Indian Universities: Any Indian University incorporated by any law for the time being in force.
 - (ii) Rangoon University
 - (iii) English and Welsh Universities: The Universities of Birmingham, Bristol, Cambridge, Durham, Leeds, Liverpool, London, Manchester, Oxford, Reading, Sheffield and Wales
 - (iv) Scottish Universities: The Universities of Aberdeen, Edinburgh, Glasgow and St. Andrews
 - (v) Irish Universities: The Universities of Dublin (Trinity College), the Queen's University, Belfast and the National University of Dublin
 - (vi) Pakistan Universities: Any Pakistan University incorporated by any law for the time being in force.
- (g) Any other person as may be prescribed.

Accordingly, Rule 51B prescribes that any other person, in respect of a company or a limited liability partnership, as the case may be, shall be the person appointed by the Adjudicating Authority (i.e., National Company Law Tribunal constituted under section 408 of the Companies Act, 2013) for discharging the duties and functions of an interim resolution professional, a resolution professional, or a liquidator, as the case may be, under the Insolvency and Bankruptcy Code, 2016 and the rules and regulations made thereunder.

- (3) The following persons shall **not** be qualified to represent an assessee:
- (i) A person who has been dismissed or removed from government service.
 - (ii) **A person who has been convicted of an offence** connected with any income-tax proceeding or on whom a penalty has been imposed under this Act other than a penalty imposed on him under section 272A(1)(d) - In this case, the person will be disqualified for such time as the Principal Chief Commissioner or Chief Commissioner or the Principal Commissioner or Commissioner may, by order, determine.
 - (iii) **A person has become insolvent** - In this case, he will be disqualified for a period during which the insolvency continues.
 - (iv) **A person convicted by a court of an offence involving fraud** - He shall not be eligible to act as authorised representative for a period of 10 years from the date of such conviction.
- (4) If any person is a legal practitioner or an accountant and is found guilty of misconduct in his professional capacity by any authority entitled to institute disciplinary proceedings against him, an order passed by that authority shall have effect in relation to his right to attend before an income-tax authority as it has in relation to his right to practice as a legal practitioner or accountant.
- (5) If a person is not a legal practitioner or an accountant and is found guilty of misconduct in connection with any income-tax proceedings by the prescribed authority, the prescribed authority, may direct that he shall henceforth be disqualified to represent an assessee.
- (6) Before any order or direction of disqualification under point 3(ii) or 5 above is made, the following conditions must be satisfied:
- (a) No such order or direction shall be made in respect of any person unless he has been given a reasonable opportunity of being heard
 - (b) any person against whom any such order or direction is made, may within one month of the making of the order or direction, may appeal to the Board to have the order or direction cancelled
 - (c) No such order or direction shall take effect until the expiration of one month from the making thereof or, where an appeal has been preferred, until the disposal of the appeal.

Persons Not Qualified

- (7) A person disqualified to represent an assessee under Indian Income-tax Act, 1922 shall stand disqualified under this Act also
- (8) Meaning of the term “relative” for the purpose of section 288:



18.15 POWER TO TENDER IMMUNITY FROM PROSECUTION [SECTION 291]

The Central Government is empowered under section 291 to tender any person immunity from prosecution for any offence under this Act if it is of the opinion that it is necessary or expedient in the public interest to do so for the purpose of obtaining the evidence directly or indirectly concerned in or privy to the concealment of the income or to the evasion of payment to tax on any income taxable under the Act.

CG empowered to tender immunity from prosecution

A tender of immunity made to or accepted by the person concerned shall, to that extent, render him immune from prosecution for any offence in respect of which tender was made or from the imposition of any penalty under the Act. If it appears to the Central Government that any person to whom immunity has been tendered under this section has not complied with the condition on which the

tender was made or is willfully concealing anything or is giving false evidence, the Central Government may record a finding to that effect, and thereupon the immunity shall be deemed to have been withdrawn. Further, any such person may be tried for the offence in respect of which tender of immunity was made or for any other offence of which he appears to have been guilty in connection with the same matter and shall also become liable to the imposition of any penalty under this Act to which he would otherwise have been liable.

18.16 COGNIZANCE OF OFFENCES AND BAR OF SUITS IN CIVIL COURTS [SECTIONS 292 AND 293]

- (1) No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence under this Act.
- (2) No suit can be brought in any Civil Court to set aside or modify any proceeding taken or order made under this Act; and no prosecution, suit or other proceedings shall lie against the Government or any Government Officer for anything done or intended to be done in good faith under the Act.

18.17 CERTAIN LAWS NOT TO APPLY [SECTION 292A]

This section provides that the provisions of section 360 of the Code of Criminal Procedure, 1973 or the Probation of Offenders Act, 1958 shall not be applicable to any person who is convicted of an offence under the Income tax Act, 1961 unless that person is under 18 years of age.

18.18 RETURN OF INCOME ETC. NOT TO BECOME INVALID [SECTION 292B]

Section 292B provides that no return of income, order of assessment, notice, summons or other proceedings furnished or made or taken or purported to have been furnished or made in pursuance of

Mistakes or defects not to make ROI invalid

any of the provisions of the Income-tax Act, 1961 shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such return of income, assessment, notice, summons or other proceeding, if they are in substance and effect in conformity with or according to the intent and purposes of the Income-tax Act, 1961.

The provision, thus, enables tax authorities to accept returns and other documents and tax payers to accept orders, notice, etc., received from tax authorities even in cases where there are a few typographical, arithmetical or other mistakes which do not materially affect the objects with which the document was submitted by the assessee or order was issued by the department..

18.19 NOTICE DEEMED TO BE VALID IN CERTAIN CIRCUMSTANCES [SECTION 292BB]

- (1) This section provides that the assessee would be precluded from raising any objection in any proceeding or inquiry that the notice was not served upon him or was not served in time or was served in an improper manner if he had appeared in any proceedings or co-operated in any enquiry relating to assessment or re-assessment.
- (2) In short, if the assessee had appeared in any proceedings or co-operated in any enquiry, it shall be deemed that any notice required to be served on him has been duly served upon him in time in accordance with the provisions of the Act.

**Appeared in proceedings or
Co-operated in enquiry**

However, such deeming provision would not apply where the assessee has raised an objection (regarding non-service of notice or non-service of notice in time or improper service of notice) before the completion of such assessment or reassessment.

18.20 PRESUMPTION AS TO ASSETS, BOOKS OF ACCOUNT, ETC. [SECTION 292C]

- (1) Under section 132(4A), it is provided that the books of account, money, bullion, jewellery or other valuable article or thing found in the possession or control of any person in the course of a search under section 132 will be presumed to belong to the said person.
- (2) It is further provided that it will be presumed that -
 - (i) the contents of such books of account and other documents are true; and
 - (ii) the signature and every other part of such books of account and other documents which purport to be in handwriting of any particular person or which may reasonably be assumed to have been signed

Presumption

by, or to be in the handwriting of, any particular person, are in that person's handwriting, and

- (iii) in the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested.
- (3) Therefore, section 292C was inserted to clarify that presumptions provided in section 132(4A) can be made in any proceeding under this Act. It would also be available for regular assessment.
- (4) This section provides that where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search under section 132 or survey under section 133A, it may, in any proceeding under this Act, be presumed that -
- (i) such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person;
 - (ii) the contents of such books of account and other documents are true; and
 - (iii) the signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting;
 - (iv) In the case of a document stamped, executed or attested, that it was duly stamped and executed or attested by the person by whom it purports to have been so executed or attested.
- (5) Further, this presumption has also been extended to books of account, other documents or assets which have been delivered to the requisitioning officer in accordance with the provisions of section 132A. For this purpose, section 132A(2) provides that where any books of accounts, other documents or assets have been delivered to the requisitioning officer in accordance with the provision of section 132A then, the presumption would apply as if such books of accounts, other documents or assets which had been taken into custody from the person referred to in clause (a) or clause (b) or clause(c), as the case may be, of section 132A(1), had been found in the possession or control of that person in the course of a search under section 132.

Search or Survey



18.21 AUTHORITY EMPOWERED TO GRANT AN APPROVAL UNDER THE INCOME TAX ACT, 1961 DEEMED TO HAVE POWER TO WITHDRAW THE APPROVAL GRANTED [SECTION 293C]

- (1) The Central Government, CBDT and income-tax Authorities are empowered under the various provisions of the Income-tax Act to grant approval to the assessee for availing the benefit of incentives available under the Act.

(2)

Power to Withdraw

However, only some provisions of the Income-tax Act, 1961 specifically contain provisions for withdrawal of approval. In all other cases, there is no specific power to withdraw the approval granted.

- (3) Therefore, section 293C provides explicitly, such power to withdraw an approval granted. This section provides that an approval granting authority (i.e., the Central Government, CBDT or income-tax authority, as the case may be) shall also have the powers to withdraw the approval at any time.
- (4) However, such withdrawal can be made only after giving a reasonable opportunity to the concerned assessee of showing cause against the proposed withdrawal. Further, the reasons for withdrawal of the approval should be recorded by the concerned authority.



18.22 ACT TO HAVE EFFECT PENDING LEGISLATIVE PROVISION FOR CHARGE OF TAX [SECTION 294]

If on the 1st April in any assessment year, provision has not yet been made by a Central Act for the charging of income-tax for that assessment year, this Act shall nevertheless have effect until such provision is so made as if the provision in force in the preceding assessment year or the provision proposed in the Bill then before Parliament, whichever is more favourable to the assessee, were actually in force.

Existing Act

18.23 RULES [SECTIONS 295 AND 296]

Section 295 authorises the CBDT to make rules for the whole or any part of India for carrying out the purposes and to implement the provisions of the Act. The powers of the Board in this regard are subject to the supervision and control of the Central Government. The Rules framed by the Board

Notifications

and approved by the Central Government are required to be placed before each House of the Parliament before enforcing the same. In exercise of the powers conferred on it by this section, the Board, with the approval and sanction of the Central Government and the Parliament, has framed the Income-tax Rules, 1962 which have been amended from time to time.

This section also enumerates the important matters on which rules may be framed by the Board: the rules framed under this Act have the same force of the section of the Act. The rules must be interpreted in the light of the sections under which they have been made. But the rules should be so framed as not to adversely affect or derogate from the full operative effect of the provisions of the sections. The rules must be within the term of the mandate given to the Board and must be framed in such a way as to be consistent with and supplementary to the provisions of the Act.

18.24 SCHEDULES TO THE INCOME TAX ACT, 1961

There are fourteen Schedules to the Income-tax Act, 1961. The matters dealt with in certain schedules are highlighted below:

Schedule I	Method of computing profits and gains of Insurance business Section 44
Schedule II	Procedure for Recovery of Tax
Schedule III	Procedure for distraint by Assessing Officer or Tax Recovery Officer
Schedule IV	Recognised Provident Funds, approved superannuation funds and approved gratuity funds
Schedule VII	List of minerals and group of associated minerals in the context of section 35E.

SIGNIFICANT SELECT CASES

S. No.	Case Law	
1.	<i>CIT v. V. Sivakumar (2013) 354 ITR 9 (Mad.)</i>	
	Issue	Analysis & Decision
	Can loan, exceeding the specified limit, advanced by a partnership firm to the sole-proprietorship concern of its partner be viewed as a violation of section 269SS to attract levy of penalty?	In the present case, the assessee was a partner in four firms and also had a sole-proprietary business. In the relevant previous year, the partnership firms had advanced loan to the assessee in cash exceeding the specified amount mentioned in section 269SS. There is no separate identity for the partnership firm and that the partner is entitled to use the funds of the firm. In the present case, the assessee has acted <i>bona fide</i> and that there was a reasonable cause within the meaning of section 273B. Therefore, the transaction cannot be said to be in violation of section 269SS and no penalty is attracted in this case.
2.	<i>CIT v. Muthoot Financiers (2015) 371 ITR 408 (Del)</i>	
	Issue	Analysis & Decision
	Is penalty u/s 271D imposable for cash loans/deposits received from partners?	There are three different High Courts, which have held that section 269SS would not be violative when money is exchanged <i>inter se</i> between the partners and the firm, since the partnership firm is not a separate legal entity. However, the Supreme Court has held that partners of the firm are distinct as civil entities while the firm as such is a separate and distinct unit for the purpose of assessment. In this case, there was no dispute as regards the money brought in by the partners of the assessee-firm. The source of money was also not doubted. The transaction was <i>bona fide</i> and not aimed to avoid any tax liability. The credit worthiness of the partners and genuineness of the transactions coupled with relationship between the 'two persons' and two different legal interpretations put forward, could constitute a reasonable cause in a given case for not invoking sections 271D/271E read with section 273B.

3.	<i>CIT v. Triumph International Finance (I.) Ltd. (2012) 345 ITR 270 (Bom.)</i>	
	Issue Where an assessee repays a loan merely by passing adjustment entries in its books of account, can such repayment of loan by the assessee be taken as a contravention of the provisions of section 269T to attract penalty under section 271E?	Analysis & Decision The obligation to repay the loan or deposit by account payee cheque/bank draft as specified in section 269T is mandatory in nature. The contravention of the said section will attract penalty under section 271E. The cause shown by the assessee for repayment of the loan otherwise than by account payee cheque/bank draft was on account of the fact that the assessee was liable to receive amount towards the sale price of the shares sold by the assessee to the person from whom loan was received by the assessee. In order to avoid the unnecessary circular transfer of shares, both the parties agreed to set-off the amount payable and receivable by way of passing journal entries and the balance loan amount was paid by the assessee by way of an account payee cheque. The amount of loan settled by way of passing journal entries exceeds ₹ 20,000. It would have been mere formality to repay the loan amount by account payee cheque/draft and receive back almost the same amount towards the sale price of the shares. Also, neither the genuineness of the receipt of loan nor the transaction of repayment of loan by way of adjustment through book entries carried out in the ordinary course of business has been doubted in the regular assessment. Therefore, there is nothing on record to suggest that the amounts advanced to the assessee represented the unaccounted money of either party and also it cannot be said that the whole transaction was entered into to avoid tax. This is accepted as a reasonable cause under section 273B. Section 269T does not make a distinction between a <i>bonafide</i> or a <i>non-bonafide</i> transaction neither does it require the fulfillment of the condition mentioned therein only in case where there is outflow of funds. It merely puts a condition that in case a loan or deposit is repaid, it should be by way of an account payee cheque/draft. Therefore, in the present case, the assessee has repaid a portion of loan in contravention of provisions of section 269T. In effect, the assessee has violated the provisions of section 269T by repaying the loan amount by way of passing book entries and therefore, penalty under section 271E is

		applicable. However, since the transaction is <i>bona fide</i> in nature being a normal business transaction and has not been made with a view to avoid tax and since the assessee has shown reasonable cause for the failure under section 269T, no penalty under section 271E could be imposed on the assessee for contravening the provisions of section 269T by virtue of the provisions of section 273B. Note: <i>In order to mitigate the hardship caused by certain penalty provisions in case of genuine business transactions, section 273B provides that no penalty under, inter alia, section 271E shall be imposed on a person for any failure referred to in the said section, if such person proves that there was reasonable cause for such failure.</i>
4.	Dr. Manoj Kabra v. ITO (2014) 364 ITR 541 (All)	
	Issue	Analysis & Decision
	Can the Assessing Officer <i>suo moto</i> assume jurisdiction to declare sale of property as void under section 281?	The legislature had no intention to confer any exclusive power or jurisdiction upon the income-tax authority to decide any question arising under section 281. The Income-tax Act, 1961, does not prescribe any adjudicatory machinery for deciding any question which may arise under section 281. In order to declare a transfer as fraudulent under section 281, an appropriate proceeding in accordance with law was required to be taken under section 53 of the Transfer of Property Act, 1882. The Assessing Officer is required to file a suit for declaration to the effect that the transaction of transfer was void under section 281 of the Income-tax Act; but he himself cannot assume jurisdiction <i>suo moto</i> to declare the sale deed as void.
5.	CIT v. Laxman Das Khandelwal (2019) 417 ITR 325 (SC)	
	Issue	Analysis & Decision
	Is the omission to issue notice u/s 143(2) a defect not curable in spite of section 292BB, inspite of participation by the assessee in assessment proceedings?	Without the statutory notice u/s 143(2), the Assessing Officer could not assume jurisdiction. According to section 292BB, if the assessee had participated in the proceedings, by way of legal fiction, notice issued would be deemed to be valid even if there be infractions as detailed in the said section. The scope of the provision is to make service of notice having certain infirmities to be proper and valid if there was requisite participation on the part of the assessee. It is, however, to be noted that the section does not save complete absence

		of issue of notice. For section 292BB to apply, the notice must have emanated from the Department. It is only the infirmities in the manner of service of notice that the section seeks to cure. The section is not intended to cure complete absence of notice itself. Non-issuance of notice u/s 143(2) is not a curable defect u/s 292BB inspite of participation by the assessee in assessment proceedings.
6.	<i>Principal CIT v. Maruti Suzuki India Ltd. (2019) 416 ITR 613 (SC)</i>	
	Issue	Analysis & Decision
	Is notice issued u/s 143(2) and 142(1) to the amalgamating company, after approval of the Scheme of amalgamation by the High Court and intimation of the same to the A.O., a defect not curable u/s 292BB?	The consequence of the scheme of amalgamation approved u/s 394 of the Companies Act, 1956 (section 232 of the Companies Act, 2013) was that the amalgamating company ceased to exist. It could not thereafter be regarded as a person u/s 2(31) against which assessment proceedings could be initiated or an order of assessment made. Notice u/s 143(2) was issued to the amalgamating company. Prior to the date on which the jurisdictional notice u/s 143(2) was issued, the scheme of amalgamation had been approved by the High Court. Since the notice u/s 143(2) was issued in the name of the amalgamating company in spite of the fact that the amalgamated company had, prior to that date, addressed a communication to the Assessing Officer intimating the fact of amalgamation, the initiation of assessment proceedings against an entity which had ceased to exist was void ab initio. Further, participation in the proceedings by the amalgamated company would not cure this illegality.

TEST YOUR KNOWLEDGE

Questions

1. *Fearless General Finance & Investment Limited, a residuary non-banking company, accepts public deposits, issues deposit certificate and repays the same after some period of time alongwith interest, under different schemes run by it. Following transactions were noted from their books of account:*
 - (i) *Mr. A, an individual, has deposited ₹ 15,000 on 1st May, 2020 for 48 months by bearer cheque and another ₹ 15,000 on 30th June, 2023 in cash to purchase a new certificate of 48 months tenure.*
 - (ii) *Mr. A has applied for premature withdrawal against both the certificates and the company has paid him ₹ 16,500, by a bearer cheque, against principal and interest on 23rd March, 2024, due against his first certificate (purchased in 2020) and ₹ 15,500 in cash on 25th March, 2024, against the second certificate.*

Discuss the violation of income tax provision, if any, and consequential penalty for each transaction. Will it make any difference if the certificates were held by Mr. A with his wife Mrs. A, jointly, while repaying back in cash or bearer cheque?
2. *The proceedings before the Income-tax Authorities either can be attended by the assessee in person or through an authorized representative. Who can be treated as an authorized representative of the assessee? Mention any five persons who can be treated as an authorized representative of the assessee.*
3. *An order for A.Y. 2022-23 was passed by the Assessing Officer as per section 143(3), but the typist wrongly typed in the order, the assessment year as A.Y.2021-22 and the relevant previous year as ending on 31.3.2021. The assessee claimed in appeal that the same is an invalid order which was not accepted by the CIT (Appeals) on the ground of the error being of clerical nature. Discuss the correctness of the order of the CIT(Appeals).*
4. *"Proceedings cannot be initiated under the Act, unless a proper notice to this effect has been served upon." In this context answer:*
 - (i) *What are the prescribed modes of service of such notice?*
 - (ii) *On whom should the notice be addressed and served upon in the cases where the assessee is a dissolved firm, a deceased person and a partitioned HUF.*

5. *Explain the circumstances under which the Assessing Officer can resort to provisional attachment of the property of the assessee. Also, state the period of time for which such attachment can take place.*

When can the Assessing Officer revoke provisional assessment of property? Discuss.

6. *Mr. Biswas, a stock broker, has defaulted with regard to his income-tax payments and the Assessing Officer has attached his membership card of Stock Exchange under section 281B of the Income-tax Act, 1961. Mr. Biswas contends that the membership card is not transferable and is not his personal asset. Discuss the validity of attachment of the card by the Assessing Officer in the context of Section 281B.*
7. *An assessee had credited a sum of ₹ 50,000 in cash in the account of Madan, said to represent a loan obtained from him. The Assessing Officer, having gone into the genuineness of the transaction, disbelieved the story of loan and treated the sum of ₹ 50,000 as the income of the assessee from undisclosed sources. He also started proceedings under section 271D and levied a penalty of ₹ 60,000 on the assessee for having accepted the loan in contravention of section 269SS. Examine the correctness of the levy.*

Answers

1. (i) There is no violation of section 269SS at the time of acceptance of the first deposit of ₹ 15,000 by bearer cheque on 1.5.2020, since it is not in excess of the threshold limit of ₹ 20,000. However, violation under section 269SS is attracted at the time of acceptance of the second deposit in cash on 30th June, 2023, since as on that date, there is already an outstanding deposit of ₹ 15,000 and another cash deposit of ₹ 15,000 would take the aggregate to ₹ 30,000, which exceeds the threshold limit of ₹ 20,000. Therefore, penalty under section 271D of a sum equal to the amount of deposit taken from Mr. A is attracted for failure to comply with the provisions of section 269SS.
- (ii) In this case, there is a violation of the provisions of section 269T at the time of first repayment by bearer cheque on 23rd March, 2024, since on that date, the aggregate amount of deposits held by Mr. A with the non-banking company (together with interest payable on such deposits) is more than ₹ 20,000. Therefore, penalty under section 271E equal to the amount of deposit so repaid will be attracted for failure to comply with the provisions of section 269T.

However, the second repayment of ₹ 15,500 on 25th March, 2024 in cash cannot be considered as a violation of section 269T, since neither the amount of deposit with interest thereon nor the aggregate amount of deposits held by Mr. A on that date together with interest exceeds the threshold limit of ₹ 20,000.

The provisions of section 269T will be attracted at the time of first repayment of bearer cheque even if the certificate is being held by Mr. A in joint name with his wife.

2. As per section 288, the proceedings before the income-tax authorities can be attended by an assessee in person or through an authorised representative, i.e., a person authorized by the assessee in writing to appear on his behalf, being -
 - (i) a person who is a relative or a regular employee of the assessee; or
 - (ii) any officer of a Scheduled Bank in which the assessee maintains a current account or has other regular dealings; or
 - (iii) a legal practitioner who is entitled to practise in any civil court in India; or
 - (iv) a chartered accountant within the meaning of the Chartered Accountants Act, 1949 who hold a valid certificate of practice
 - (v) any person who has passed any accountancy examination recognized in this behalf by the CBDT for this purpose; or
3. Section 292B provides that no return of income, assessment, notice or summons furnished or made or issued or taken in pursuance of any of the provisions of the Income-tax Act, 1961 shall be invalid or deemed to be invalid merely by reason of any mistake, defect or omission in such return of income, assessment or notice etc., if such return of income, assessment, notice, summons etc. is in substance and effect in conformity with or according to the intent and purpose of the Act. **Therefore, a clerical mistake cannot invalidate an otherwise valid assessment.** Thus, the typographical error in the assessment order as to assessment year and previous year does not make the same invalid unless established otherwise. Accordingly, the action of the CIT(Appeals) in not accepting the claim of the assessee is valid.
4. (i) As per section 282(1), the service of notice or summon or requisition or order or any other communication under this Act may be made by delivering or transmitting a copy thereof to the person named therein -
 - (1) by post or such courier services as approved by the CBDT; or

- (2) in such manner as provided in the Code of Civil Procedure, 1908 for the purposes of service of summons; or
- (3) in the form of any electronic record as provided in Chapter IV of the Information Technology Act, 2000; or
- (4) by any other means of transmission of documents as may be provided by rules made by the CBDT in this behalf.

The CBDT is empowered to make rules providing for the addresses (including the address for electronic mail or electronic mail message) to which such communication may be delivered or transmitted to the person named therein.

- (ii) The service of notice in the given cases should be on the persons mentioned hereunder:-

Person	Notice to be addressed and served on
A dissolved firm	Any person who was a partner (not being a minor) immediately before dissolution.
A deceased person	The legal heirs of the deceased.
A partitioned HUF	Last Manager of the HUF, or, if he is dead, then, all adult members of the erstwhile HUF.

- 5. As per the provisions of section 281B, there can be provisional attachment to protect the interest of Revenue in certain cases i.e.-

- (i) The proceeding for the assessment of any income or for the assessment or reassessment of any income which has escaped assessment or for imposition of penalty under section 271AAD (penalty leviable for false entry etc. in books of accounts) where the amount or aggregate of amounts of penalty likely to be imposed under the said section exceeds ₹ 2 crores should be pending.
- (ii) Such attachment should be necessary for the purpose of protecting the interest of Revenue in the opinion of the Assessing Officer.
- (iii) The previous approval of the Principal Chief Commissioner or Chief Commissioner, Principal Commissioner or Commissioner, Principal Director General or Director General or Principal Director or Director has been obtained by the Assessing Officer.
- (iv) The Assessing Officer, may, by an order in writing attach provisionally any property belonging to the assessee in the manner provided in the Second Schedule.

- (v) Such provisional attachment shall cease to have effect after the expiry of a period of six months from the date of order made under section 281B(1). However, the period can be extended by the Principal Chief Commissioner or Chief Commissioner, Principal Commissioner or Commissioner, Principal Director General or Director General or Principal Director or Director, as the case may be, for the reasons to be recorded in writing for a further period or periods as he thinks fit. The total period of extension in any case cannot exceed 2 years or 60 days after the date of order of assessment or reassessment, whichever is later.

The Assessing Officer shall, by order in writing, revoke provisional attachment of a property made under section 281B(1) in a case where the assessee furnishes a guarantee from a scheduled bank, for an amount not less than the fair market value of such provisionally attached property or for an amount which is sufficient to protect the interests of the revenue.

6. The right of membership is not a private asset and it is merely a personal privilege granted to the member. It is non-transferable and incapable of alienation by the member or his legal representative except to the limited extent provided in the rules and regulations of the stock exchange and subject to the fulfillment of conditions prescribed by the stock exchange. The nomination, even if permitted, is subject to the rules and is not automatic. The right of nomination is vested in the stock exchange absolutely in the case of death of or default of a member. Thus, the membership card is not the property of the assessee and therefore cannot be attached under section 281B. It has been so held by the Apex Court in the case of *Stock Exchange Ahmedabad vs. ACIT (2001) 248 ITR 209*.
7. There are several flaws in the penalty levied by the Assessing Officer. Firstly, the penalty leviable under section 271D cannot exceed the sum equal to the loan taken. Hence, the maximum penalty leviable would be ₹ 50,000. Secondly, any penalty imposable under section 271D shall be imposed by the Joint Commissioner. Hence, unless the Assessing Officer happens to be a Joint Commissioner the levy of penalty will be invalid. Thirdly, the Assessing Officer cannot, on the one hand, treat the loan as undisclosed income of the assessee and on the other, treat it as a loan for the purpose of section 269SS read with section 271D. Such a treatment will be self-contradictory. The moment the amount of ₹ 50,000 is treated as undisclosed income, it ceases to bear the character of loan and therefore, the foundation for the levy of penalty under section 271D disappears. [*Diwan Enterprises v. CIT and Others (2000) 246 ITR 571*].

PROVISIONS TO COUNTERACT UNETHICAL TAX PRACTICES



LEARNING OUTCOMES

After studying this chapter, you would be able to -

- ❑ **identify and examine** the cases where penalty is leviable and **determine** the quantum of penalty for defaults under various provisions of the Income-tax Act, 1961;
- ❑ **list** the conditions to be fulfilled by an assessee for making an application for grant of immunity from penalty and prosecution and the time limit for making such application;
- ❑ **appreciate** the powers of the Commissioner to waive penalty in certain cases or grant immunity from penalty in certain cases;
- ❑ **comprehend** the procedure to be complied with for imposing penalty under the Act;
- ❑ **recall** the limitation period, beyond which penalty cannot be imposed;
- ❑ **appreciate** the provisions of Income-tax law relating to offences and prosecution;
- ❑ **integrate, analyse and apply** the relevant provisions of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 and related Rules to address relevant issues and make computations.

CHAPTER OVERVIEW

Penal provisions
[Sections 270A to
275]

Offences and
Prosecution
[Sections 275A to
280]

Black Money Law

**19.1 INTRODUCTION**

As per Taxpayers' Charter, a taxpayer is expected to be honest, disclose full information, keep accurate records as required under laws, pay timely tax and comply with other requirements of the tax laws. However, where a taxpayer fails in complying with such requirements or indulges in unlawful activities, the Income-tax Act, 1961 provides for imposition of penalty. The Income-tax Act, 1961 also contains prosecution provisions, which are used as a tool for effective enforcement of tax laws and deterring tax avoidance and tax evasion.

While penalties may be imposed by the income-tax authorities, the imposition of a fine or the launching of prosecution for any offence under the Act can be made only by the Magistrate of a Court under sections 275A to 280. In respect of the same default of an assessee, penalty may be imposed, and a prosecution also may be launched against him.

Penal consequences

In addition to the provisions contained under the Income-tax Act to counteract unlawful tax practices, Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 contains provisions to tax undisclosed foreign income and assets.

The provisions to counteract ethical failures include the penal and prosecution provisions contained under the Income-tax Act, 1961 and the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015.



19.2 PENAL PROVISIONS UNDER THE INCOME TAX ACT

Penalty is levied over and above the amount of any tax or interest payable by the assessee and thus, penalty is distinct and different from the tax payable. Penalty proceedings, however, are a part of the assessment proceedings. The authority concerned is entitled to levy penalty only if he is satisfied in the course of any proceedings under the Act that a person has been found guilty of any default in complying with the provisions of the Act. If the order of the penalty is set aside in appeal on the ground that the assessee was not given a reasonable opportunity of being heard, the Assessing Officer would be entitled to levy a penalty again after rectifying the mistakes in proceedings. The penalty to be levied on an assessee is to be based upon the law as it stood at the time the default was committed and not the law as it stands in the financial year for which the assessment is made.

The various sections prescribe the minimum and the maximum penalty that can be levied in certain cases though the Principal Commissioner or the Commissioner is empowered to waive or reduce the penalty in some cases. The authority concerned has been given the discretion to levy or not to levy a penalty. However, penalty levied cannot be less than the prescribed minimum nor can it exceed the maximum amount prescribed by the Act. The quantum of penalty levied by a lower authority can be modified by a higher authority on appeal, reference or revision. The various defaults in respect of which penalty can be levied under the Act are discussed as follows:

19.2.1 PENALTY LEVIABLE FOR UNDER REPORTING OF INCOME [SECTION 270A]

Upto A.Y. 2016-17, section 271(1)(c) provided for penalty on account of concealment of particulars of income or furnishing inaccurate particulars of income.

For the purpose of ensuring objectivity, certainty and clarity in the penalty provisions, section 270A provides for levy of penalty in cases of under reporting and misreporting of income with effect from A.Y.2017-18. Consequently, the penal provisions under section 271 shall not apply in relation to A.Y.2017-18 and onwards.

Under reporting of income

- (1) **Authorities empowered to levy penalty:** Section 270A(1) empowers the Assessing Officer, **the Joint Commissioner (Appeals)** or the Commissioner (Appeals) or the Principal Commissioner or the Commissioner to direct levy of penalty, during the course of proceedings under the Income-tax Act, 1961, if a person has under reported his income. Such penalty

shall be imposed by an order in writing by such authority.

- (2) **Cases of under-reporting of income [Section 270A(2)]**: A person shall be considered to have under reported his income if, $A > B$ in the cases given hereunder—

is greater than



	Case	(A)	(B)
(i)	Return of income has been filed	Income assessed	Income determined in the return processed u/s 143(1)(a);
(ii)	No return of income has been filed or where return is furnished for the first time u/s 148	Income assessed	Basic exemption limit
(iii)	Reassessment	Income reassessed	Income assessed or reassessed immediately before such re-assessment
(iv)	Return of income has been filed and assessment/ reassessment is made on the basis of MAT/AMT provisions	The amount of deemed total income assessed or reassessed as per the provisions of section 115JB or 115JC	The deemed total income determined in the return processed u/s 143(1)(a)
(v)	No return of income is filed or where return has been furnished for the first time u/s 148 and assessment/ reassessment is made on the basis of MAT/AMT provisions	the amount of deemed total income assessed as per the provisions of section 115JB or 115JC	The basic exemption limit, in case of an assessee being an individual, HUF, AOP, BOI, in respect of whom the provisions of AMT are applicable.
(vi)	Reassessment as per the provisions of sections 115JB or 115JC	The amount of deemed total income reassessed as per the provisions of sections 115JB or 115JC	The deemed total income assessed or reassessed immediately before such reassessment.
Further, a person would be considered to have under-reported his income if the income assessed or reassessed has the effect of reducing the loss or converting such loss into income.			

(3) **Calculation of under-reported income in different scenarios [Section 270A(3)]:**

	Case	Manner of computation of under-reported income						
(i)	Where return is furnished and assessment is made for the first time.	Assessed income (-) Income determined under section 143(1)(a) [in case of all persons]						
(ii)	Where no return has been furnished or where return has been furnished for the first time u/s 148 and the assessment is made for the first time	<table><tr><th>Person</th><th>Under-reported income</th></tr><tr><td>Company, firm or local authority</td><td>Assessed income</td></tr><tr><td>Other persons</td><td>Assessed income (-) Basic exemption limit</td></tr></table>	Person	Under-reported income	Company, firm or local authority	Assessed income	Other persons	Assessed income (-) Basic exemption limit
Person	Under-reported income							
Company, firm or local authority	Assessed income							
Other persons	Assessed income (-) Basic exemption limit							
(iii)	Where income is not assessed for the first time	Income reassessed or recomputed (-) Income assessed or reassessed or recomputed in the order immediately preceding the order during the course of which penalty u/s 270A(1) has been initiated.						
(iv)	Where under reported income arises out of determination of deemed total income in accordance with the provisions of section 115JB or section 115JC	$(A - B) + (C - D)$ where, A = Total income assessed as per the general provisions i.e., provisions other than the provisions contained in section 115JB or section 115JC; B = The total income that would have been chargeable had the total income assessed as per the general provisions been reduced by the amount of under reported income; C = The total income assessed as per the provisions contained in section 115JB or section 115JC; D = The total income that would have been chargeable had the total income assessed as per the provisions contained in section 115JB or section 115JC been reduced by the amount of under reported income. However, where the amount of under reported income on any issue is considered both under the provisions						

(v)	Where an assessment or reassessment has the effect of reducing the loss declared in the return or converting that loss into income	contained in section 115JB or section 115JC and under general provisions, such amount shall not be reduced from total income assessed while determining the amount under item D. The loss claimed (-) The income or loss, as the case may be, assessed or reassessed.

(4) Meaning of Under-reported income in a case where the source of any receipt, deposit or investment is linked to an earlier year [Section 270A(4) & (5)]:

In a case where the source of any receipt, deposit or investment appearing in the current assessment year is claimed to be an amount added to income or deducted while computing loss, as the case may be, in the assessment of such person in any earlier assessment year and no penalty was levied for such preceding year, under-reported income shall include such amount as is sufficient to cover such receipt, deposit or investment.

Note – Such amount shall be deemed to be the amount of income under-reported for the preceding year in the following order –

(i)	<i>The preceding year immediately before the year in which the receipt, deposit or investment appears, being the first preceding year; and</i>
(ii)	<i>Where the amount added or deducted in the first preceding year is not sufficient to cover the receipt, deposit or investment, the year immediately preceding the first preceding year and so on.</i>

(5) Cases not included within the scope of under-reported income under section 270A [Section 270A(6)]:

	Case	Condition
(i)	The amount of income in respect of which the assessee offers an explanation	The Assessing Officer/CIT/PC/ the Joint Commissioner (Appeals) /the Commissioner (Appeals) is satisfied that the explanation is <i>bona fide</i> and all the material facts have been disclosed to substantiate the explanation.
(ii)	The amount of under-reported income determined on the basis of an estimate	If the accounts are correct and complete to the satisfaction of the income-tax authority but the method employed is such that the income cannot properly be deduced therefrom

(iii)	The amount of under-reported income determined on the basis of an estimate	If the assessee has, on his own, estimated a lower amount of addition or disallowance on the same issue and has included such amount in the computation of his income and disclosed all the facts material to the addition or disallowance
(iv)	The amount of under-reported income represented by any addition made in conformity with the arm's length price determined by the Transfer Pricing Officer	Where the assessee had maintained information and documents as prescribed under section 92D, declared the international transaction under Chapter X and disclosed all the material facts relating to the transaction
(v)	The amount of undisclosed income on account of a search operation	Where penalty is leviable under section 271AAB in respect of such undisclosed income.

(6) **Cases of misreporting of income [Section 270A(9)]:**

- (i) misrepresentation or suppression of facts;
- (ii) failure to record investments in the books of account;
- (iii) claim of expenditure not substantiated by any evidence;
- (iv) recording of any false entry in the books of account;
- (v) failure to record any receipt in the books of account having a bearing on total income; and
- (vi) failure to report any international transaction or deemed international transaction or specified domestic transaction under Chapter X.

Misreporting of Income

(7) **Quantum of penalty leviable:**

	Section	Case	Penalty
(i)	270A(7)	Under reporting of income	50% of tax payable on under-reported income
(ii)	270A(8)	Where under reporting of income results from misreporting of income by any person.	200% of tax payable on such under-reported income

(8) Manner of computation of tax payable on under-reported income [Section 270A(10)]:

	Case	Manner of computation of tax payable on under-reported income
(i)	Where no return of income has been furnished or where return has been furnished for the first time u/s 148 and the income has been assessed for the first time	The tax payable on under-reported income shall be the amount of tax calculated on the under-reported income as increased by the basic exemption limit as if it were the total income.
(ii)	Where the total income determined u/s 143(1)(a) or assessed or reassessed or recomputed in a preceding order is a loss	The tax payable in respect of the under-reported income shall be the amount of tax calculated on the under-reported income as if it were the total income.
(iii)	In any other case	The amount of tax calculated on the under-reported income as increased by the total income determined under section 143(1)(a) or total income assessed, reassessed or recomputed in a preceding order as if it were the total income Minus The amount of tax calculated on the total income determined under section 143(1)(a) or total income assessed, reassessed or recomputed in a preceding order.

- (9)** No addition or disallowance of an amount shall form the basis for imposition of penalty, if such addition or disallowance has formed the basis of imposition of penalty in the case of the person for the same or any other assessment year [Section 270A(11)].

(10) Consequential amendments in other provisions:

Consequential amendments have been made in sections 119, 253, 271A, 271AA, 271AAB, 273A, 276C and 279 to provide reference to section 270A.

	Section	Provision	Amendment
(i)	119(2)(a)	Power of CBDT to relax certain provisions, by way of a general or special order, for the purpose of proper and efficient management of the work of assessment and collection of revenue.	The CBDT has been empowered to relax the provisions for levy of penalty u/s 270A also.

(ii)	253(1)	Enlists the orders appealable to the Appellate Tribunal.	The order passed by the Joint Commissioner (Appeals) or the Commissioner (Appeals), the Principal Commissioner or the Commissioner u/s 270A would also be appealable to the Appellate Tribunal.
(iii)	271A	Levy of penalty of ₹ 25,000 for failure to keep, maintain or retain books of account as required under section 44AA.	The penalty under this section would be without prejudice to the provisions of section 270A.
(iv)	271AA	Levy of penalty of 2% of value of international transaction or specified domestic transaction, where the person fails to maintain information and documents required u/s 92D or report such transaction or maintains or furnishes an incorrect information or document.	The penalty under this section would be without prejudice to the provisions of section 270A.
(v)	271AAB	Levy of penalty where search is initiated under section 132 on or after 15.12.2016. Such penalty may be levied either by the Assessing Officer or Commissioner(Appeals)	No penalty under section 270A would be imposable in respect of undisclosed income on which penalty has been levied under section 271AAB(1A).
(vi)	273A(1)	Power of the Principal Commissioner or the Commissioner to reduce or waive penalty in certain cases.	Reduction or waiver of penalty imposable on a person u/s 270A, if prior to detection by the Assessing Officer, the person has voluntarily and in good faith made full and true disclosure of particulars of income i.e., where the excess of income assessed over the income returned is of such a nature as not to attract the penal provisions u/s 270A.
(vii)	273A(2)	Order reducing or waiving penalty under section 273A(1) to be made by the PC/CIT only with the previous approval of the PCC/CC/	Previous approval of higher authorities also required if, in a case falling u/s 270A, the amount of income in respect of which the

		PDG/DG, as the case may be.	penalty is imposed or imposable for the relevant A.Y., or where such disclosure relates to more than one A.Y., the aggregate amount of such income for those years exceed ₹ 5 lakh.
(viii)	276C	Prosecution to be instituted if a person willfully attempts in any manner to evade any tax, penalty or interest chargeable or imposable under the Income-tax Act, 1961. Rigorous imprisonment for a period of 6 months to 7 years and fine would be attracted in a case where the amount sought to be evaded exceeds ₹ 25 lakhs.	Prosecution to also be instituted if a person under-reports his income under the Income-tax Act, 1961 Rigorous imprisonment for a period of 6 months to 7 years and fine would also be attracted in a case where the tax on under-reported income exceeds ₹ 25 lakhs.
(ix)	279(1A)	Prosecution not to be instituted against a person u/s 276C or 277 in relation to the assessment for an assessment year in respect of which penalty imposed or imposable u/s 271(1)(iii) has been reduced or waived by an order u/s 273A.	Prosecution not to be instituted against a person u/s 276C or 277 in relation to the assessment for an AY in respect of which penalty imposed or imposable u/s 270A or u/s 271(1)(iii) has been reduced or waived by an order u/s 273A.

19.2.2 REDUCTION OR WAIVER OF PENALTY [SECTION 273A]

(1) **Power to reduce/ waive penalty under section 270A**

- (a) **Exercise of power to reduce/waive penalty under section 270A** - Section 273A(1) authorises the Principal Commissioner or the Commissioner of Income-tax to reduce or waive the amount of penalty imposed or imposable on a person under section 270A. The exercise of this power by the Principal Commissioner or the Commissioner is purely at his discretion and may be done either on his own motion or otherwise, that is on receipt of an application from the assessee.
- (b) **Conditions to be satisfied** - The Principal Commissioner or the Commissioner can reduce or waive the penalty payable by any person only if the following conditions are satisfied:

- (i) **Full and true disclosure** - The reduction or waiver by the Principal Commissioner or the Commissioner would be permissible only if, prior to the detection by the Assessing Officer of the concealment of income or the inaccuracy of particulars furnished in respect of such income, the assessee has made a full and true disclosure of all the particulars in respect of his income and, that, too voluntarily and in good faith.

For this purpose, a person would be deemed to have made a full and true disclosure of his income or of all the particulars relating thereto, in any case where the excess of income assessed over the income returned is of such a nature as not to attract the imposition of any penalty under section 270A.

- (ii) **Co-operation in enquiry** - It is essential that the assessee must have co-operated with the department in any enquiry relating to the assessment of his income

- (iii) **Payment of tax or interest** - He must also have either paid or made satisfactory arrangements for the payment of any tax or interest, which may become payable in consequence of any order passed under the Income-tax Act, 1961 in respect of the assessment year.

- (c) **Prior approval of higher authorities required in certain cases** - If, in a case falling under section 270A, the amount of income in respect of which the penalty is imposed or imposable for the relevant assessment year or where such disclosure relates to more than one assessment year, the aggregate amount of such income for those years exceeds ₹ 5,00,000, the Principal Commissioner or the Commissioner of Income-tax can exercise his power to reduce or waive penalty, only after getting the previous approval of the Principal Chief Commissioner or the Chief Commissioner or the Principal Director General or the Director General.

PC or C can reduce or waive penalty

- Without approval of higher authorities, where income ≤ 5 lakhs
- With approval of PCC or CC or PDG or DG, where income > 5 lakhs

- (d) **Relief available only once in life time** - Where an order has been made under section 273A(1) in favour of any person, whether such order relates to one or more assessment years, he shall not be entitled to any relief under this section in relation to any other assessment year at any time after the making of such order.

(2) **Power to reduce/ waive penalty payable under the Act**

(a) **Exercise of power to reduce/waive any penalty** - Section 273A(4) authorises the Principal Commissioner or the Commissioner of Income-tax, without prejudice to the powers conferred on him by any other provision of the Act, to reduce or waive the amount of any penalty payable by the assessee under this Act. The Principal Commissioner or the Commissioner may exercise this power on an application made by the assessee, after recording his reason in writing for so doing. He is also empowered to stay or compound any proceedings for the recovery of any penalty in cases where he is satisfied that:

- (i) to do otherwise would cause genuine hardship to the assessee having due regard to all the facts and circumstances of the case; and
- (ii) the assessee has co-operated in any enquiry relating to the assessment or any proceeding for the recovery of any amount due from him.

Such order accepting or rejecting application of an assessee in full or part has to be passed within a period of **12 months from the end of the month in which such application is received by the PC or CIT**.

However, order rejecting the application of the assessee shall not be passed unless the assessee has been an opportunity of being heard.

(b) **Prior approval of higher authorities required in certain cases** - In case the quantum of penalty payable under this Act exceeds ₹ 1 lakh or the application relates to more than one penalty and the aggregate amount of such penalties exceeds ₹ 1 lakh, the PC or the CIT grant relief only with the previous approval of the PCC or the CC or the PDG or the DG, as the case may be.

PC or C can reduce or waive penalty

- Without approval of higher authorities, where income ≤ 1 lakh
- With approval of PCC or CC or PDG or DG, where income > 1 lakh

(3) **Finality of order**

The Principal Commissioner or the Commissioner's order under section 273A for reduction or waiver of penalty is final and cannot be challenged in any court or before any authority.

Waiver order cannot be challenged

ILLUSTRATION 1

M/s. XYZ is a firm liable to tax@30%. The following are the particulars furnished by the firm for A.Y.2024-25:

	Particulars of total income	₹
(1)	As per the return of income furnished u/s 139(1)	50,00,000
(2)	Determined under section 143(1)(a)	60,00,000
(3)	Assessed under section 143(3)	75,00,000
(4)	Reassessed under section 147	95,00,000

Can penalty be levied u/s 270A on M/s. XYZ? If the answer is in the affirmative, compute the penalty leviable u/s 270A.

SOLUTION

M/s. XYZ is deemed to have under-reported its income since:

- (1) its income assessed u/s 143(3) exceeds its income determined in a return processed u/s 143(1)(a); and
- (2) the income reassessed under section 147 exceeds the income assessed u/s 143(3).

Therefore, penalty is leviable under section 270A for under-reporting of income.

Computation of penalty leviable under section 270A

Particulars	₹	₹
<u>Assessment under section 143(3) Under-reported income:</u>		
Total income assessed under section 143(3)	75,00,000	
(-) Total income determined u/s 143(1)(a)	60,00,000	
	15,00,000	
<u>Tax payable on under-reported income:</u>		
Tax on under-reported income of ₹ 15 lakhs <i>plus</i> tax on total income of ₹ 60 lakhs determined u/s 143(1)(a) [30% of ₹ 75 lakh + HEC@4%]	23,40,000	
Less: Tax on total income determined u/s 143(1)(a) [30% of ₹ 60 lakh + HEC@4%]	18,72,000	
	4,68,000	
Penalty leviable@50% of tax payable		2,34,000
<u>Reassessment under section 147 Under-reported income:</u>		
Total income reassessed under section 147	95,00,000	

(-) Total income assessed under section 143(3)	75,00,000	
	20,00,000	
Tax payable on under-reported income:		
Tax on under-reported income of ₹ 20 lakhs <i>plus</i> tax on total income of ₹ 75 lakhs assessed u/s 143(3) [30% of ₹ 95 lakh + HEC@4%]	29,64,000	
Less: Tax on total income assessed u/s 143(3) [30% of ₹ 75 lakh + HEC@4%]	23,40,000	
	6,24,000	
Penalty leviable@50% of tax payable		3,12,000

Note – The following assumptions have been made -

- (1) None of the additions or disallowances made in assessment or reassessment qualifies under section 270A(6); and
- (2) The under-reported income is not on account of misreporting.

ILLUSTRATION 2

Mr. Ram, a resident individual of the age of 55 years, has not furnished his return of income for A.Y. 2024-25. However, the total income assessed in respect of such year under section 144 is ₹ 12 lakh. Is penalty u/s 270A attracted in this case, and if so, what is the quantum of penalty leviable?

SOLUTION

Mr. Ram is deemed to have under-reported his income since he has not filed his return of income and his tax liability would be computed applying the provisions of section 115BAC, since w.e.f. A.Y. 2024-25 he has to specifically exercise the option to shift to normal provisions along with the return of income. Hence, penalty under section 270A is leviable in his case in the following manner.

Computation of penalty leviable under section 270A

Particulars	₹	₹
<u>Assessment under section 144</u>		
<u>Under-reported income:</u>		
Total income assessed under section 144	12,00,000	
Tax payable on under-reported income as per section 115BAC		
Upto ₹ 3,00,000	Nil	
₹ 3,00,001 – ₹ 6,00,000 @ 5%	15,000	
₹ 6,00,001 – ₹ 9,00,000 @ 10%	30,000	

₹ 9,00,001 – ₹ 12,00,000 @15%	45,000	90,000	
Add: HEC@4%		3,600	
		93,600	
Penalty leviable@50% of tax payable			
			46,800

Note – It is assumed that the under-reported income is not on account of misreporting.

ILLUSTRATION 3

ABC Ltd. is a domestic company liable to tax@25%. The following are the particulars furnished by the company for A.Y.2024-25:

	Particulars of total income	₹
(1)	As per the return of income furnished u/s 139(1)	(15,00,000)
(2)	Determined under section 143(1)(a)	(8,00,000)
(3)	Assessed under section 143(3)	(5,00,000)
(4)	Reassessed under section 147	4,00,000

Is penalty leviable under section 270A on ABC Ltd., and if so, what is the quantum of penalty?

SOLUTION

ABC Ltd. is deemed to have under-reported its income since:

- (1) the assessment u/s 143(3) has the effect of reducing the loss determined in a return processed u/s 143(1)(a); and
- (2) the reassessment u/s 147 has the effect of converting the loss assessed u/s 143(3) into income.

Therefore, penalty is leviable under section 270A for under-reporting of income.

Computation of penalty leviable under section 270A

Particulars	₹	₹
<u>Assessment under section 143(3) Under-reported income:</u>		
Loss assessed u/s 143(3)	(5,00,000)	
(-) Loss determined under section 143(1)(a)	(8,00,000)	
	3,00,000	
Tax payable on under-reported income@25%	75,000	
Add: HEC@4%	3,000	
	78,000	
Penalty leviable@50% of tax payable		39,000

Reassessment under section 147 Under-reported income:		
Total income reassessed under section 147	4,00,000	
(-) Loss assessed under section 143(3)	(5,00,000)	
	9,00,000	
Tax payable on under-reported income@25%	2,25,000	
Add: HEC@4%	9,000	
	2,34,000	
Penalty leviable@50% of tax payable		1,17,000

Notes – The following assumptions have been made -

- (1) None of the additions or disallowances made in assessment or reassessment qualifies u/s 270A(6); and
- (2) The under-reported income is not on account of misreporting.

19.2.3 OTHER PENAL PROVISIONS UNDER THE INCOME TAX ACT

Chapter XXI of the Income-tax Act, 1961 contains various penal provisions which are attracted for failure to comply with the requirements of the provisions contained in other chapters of the Act. To provide easy correlation certain penal provisions are discussed along with related provisions in the respective chapters of the Study Material. To give a bird's eye view of the penal provisions discussed in other chapters, the following table summarizes these penal provisions:

Section	Nature of Default	Penalty Leviable	Remarks
271A	Failure to keep or maintain or retain books of account, document etc. as required u/s 44AA or rules made thereunder.	₹ 25,000	Penalty may be levied by the Assessing Officer or the Joint Commissioner (Appeals) or the Commissioner (Appeals). Penalty is leviable without prejudice to section 270A.
271AA(1)	Failure to keep and maintain any information and document as required u/s 92D(1)/(2); Failure to report such transaction which he is required to do so; Maintaining or furnishing an incorrect information or document.	2% of the value of each international transaction or specified domestic transaction entered into by such person	Penalty may be levied by the Assessing Officer or Commissioner (Appeals). Penalty is leviable without prejudice to section 270A or section 271BA.

271AA(2)	Fails to furnish the information and documents as required under section 92D(4)	₹ 5,000	Prescribed Income-tax Authority
271AAB (1A)	In case of search initiated under section 132 on or after 15.12.2016		Penalty may be levied by the Assessing Officer or Commissioner (Appeals).
(a)	If undisclosed income is admitted during the course of search in the statement furnished u/s 132(4), and the assessee explains the manner in which such income was derived, pays the tax, together with interest if any, in respect of the undisclosed income, and furnishes the return of income for the specified previous year declaring such undisclosed income on or before the specified date (i.e., the due date of filing return of income or the date on which the period specified in the notice issued under section 148 expires, as the case may be).	30% of undisclosed income	No penalty under section 270A would be imposable in respect of undisclosed income on which penalty has been levied under this section.
(b)	In any other case	60% of undisclosed income	
271AAD	Penalty for false entry etc. in books of account or omission of any entry which is relevant for computation of total income of such person, to evade tax liability. False entry includes use or intention to use – • Forged or falsified documents such as a false invoice or, in	Sum equal to the aggregate amount of false entry or omitted entry	Penalty may be levied by the Assessing Officer or Joint Commissioner (Appeals) or Commissioner (Appeals). Such penalty is leviable on • the person who makes such false entry or omits an entry to evade tax liability; <u>and</u> • any other person, who

	general, a false piece of documentary evidence; or • Invoice in respect of supply or receipt of goods or services or both issued by the person or any other person without actual supply or receipt of such goods or services or both; or • Invoice in respect of supply or receipt of goods or services or both to or from a person who does not exist		caused the person in any manner to make a false entry or omit any entry to evade tax liability.
271AAE	If during any proceeding under this Act, it is found that any person, being any fund or institution or trust referred under section 10(23C)(iv)/(v)/ (vi)/(via) or any trust or institution referred to in section 11 applied income of the trust or institution, directly or indirectly, for the benefit of any person referred to in section 13(3)	Sum equal to - (i) 100% of the aggregate amount of income so applied, where the violation is noticed for the first time during any previous year; and (ii) 200% of the aggregate amount of income so applied, where violation is noticed again in any subsequent previous year.	Penalty may be levied by the Assessing Officer

271B	Failure to get accounts audited or obtain audit report u/s 44AB or to furnish the report of such auditor with return of income.	$\frac{1}{2}\%$ of total sales, turnover or gross receipts of business/ gross receipts of profession or ₹ 1,50,000, whichever is less.	Penalty may be levied by the Assessing Officer
271BA	Failure to furnish audit report as required under section 92E	₹ 1,00,000	Penalty may be levied by the Assessing Officer
271C	Failure to deduct tax at source as per chapter XVII-B or to pay or ensure payment of the whole or any part of the tax as required by - - the proviso to section 194B [winnings from lottery or crossword puzzle] or - the first proviso to section 194R(1) [on benefits and perquisites in respect of business or profession] or - the proviso to section 194S(1) [consideration on transfer of virtual digital assets] or - section 194BA(2) [winnings from online games (inserted w.e.f. 1.7.2023)]. Note – In all the four situations mentioned above, the winnings/ benefit/perquisite/consideration for transfer, as the case may be, is wholly in kind or partly in cash and partly in kind and the part in cash is not sufficient to meet the TDS liability.	A sum equal to the amount of tax which he failed to deduct or pay or ensure payment of said tax at source.	Penalty imposable by the Joint Commissioner.

271CA	Failure to collect the whole or any part of the tax as required by or under the provisions of Chapter XVII-BB	A sum equal to the amount of tax which he failed to collect.	Penalty imposable by the Joint Commissioner.
271D	Failure to comply with the provisions of section 269SS.	Penalty of a fixed sum equal to amount of loan or deposit or specified sum taken or accepted otherwise than by way of account payee cheque/ bank draft or use of ECS through a bank A/c.	Penalty imposable by the Joint Commissioner.
271DA	Failure to comply with the provisions of section 269ST	Penalty of sum received in contravention of the provisions of section 269ST i.e., sum of ₹ 2 lakh or more received in aggregate from a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasion from a person, otherwise than by an account payee cheque/ bank draft or use of ECS through a bank A/c.	Penalty imposable by the Joint Commissioner.
271DB	Failure to comply with the provisions of section 269SU	Penalty of ₹ 5,000 per day of continuing default,	Penalty imposable by the Joint Commissioner.

		if the person who is required to provide facility for accepting payment through the prescribed electronic modes of payment referred to in section 269SU, fails to provide such facility	No penalty imposable if the person proves that there were good and sufficient reasons for such failure
271E	Failure to comply with the provisions of section 269T	A sum equal to the amount of loan or deposit or specified advance repaid otherwise than by an account payee cheque/bank draft or use of ECS through a bank A/c.	Penalty imposable by the Joint Commissioner.
271FA	Failure to furnish Statement of financial transaction or reportable account within the time prescribed u/s 285BA(2), i.e., on or before 31 st May, immediately following the F.Y. in which the transaction is registered or recorded.	A sum of ₹ 500 for every day during which failure continues.	Penalty leviable by Income Tax Authority prescribed u/s 285BA
	Failure to furnish Statement of Financial Transaction or Reportable Account within the time prescribed u/s 285BA(5).	A sum of ₹ 1,000 for every day during which failure continues, beginning from the day immediately following the day on which the time specified in such notice for furnishing the statement expires.	

271FAA(1)	Furnishing statement of financial transaction or reportable account	inaccurate	₹ 50,000	Leviable by the income-tax authority prescribed under section 285BA
271FAA(2)	<i>Furnishing statement of financial transaction or reportable account by reporting financial institution, where the inaccuracy is due to false/inaccurate information furnished by the holder(s) of the relevant reportable account(s).</i>	<i>inaccurate</i>	₹ 5,000 for every reportable account, in addition to the penalty of ₹ 50,000 levied under section 271FAA(1) above. <i>The reportable financial institution is entitled to recover the sum so paid on behalf of such reportable account holder or to retain out of any money that may be in its possession or may come to it from every such reportable account holder, an amount equal to the sum so paid.</i>	
271FAB	Failure to furnish within the prescribed time, a statement or any information or document as required u/s 9A(5) by an eligible investment fund		₹ 5,00,000	Leviable by the income-tax authority prescribed under section 9A(5)
271G	Failure to furnish information or document under section 92D(3)		2% of the value of the international transaction or specified transaction for each such failure	Competent Authority to levy penalty: The Assessing Officer/ the Transfer Pricing Officer/ the Commissioner (Appeals).

271GA	Failure to furnish information or document by an Indian concern under section 285A	2% of the value of the transaction in respect of which such failure has taken place, if such transaction has the effect of directly or indirectly transferring the right of management or control in relation to the Indian concern. In any other case; ₹ 5,00,000.	Penalty imposable by an income-tax authority prescribed under section 285A.
271GB	Non-furnishing of the report by any reporting entity which is obligated to furnish Country-by-Country report as required under section 286		For details, refer section 286 discussed in Chapter 24 on Transfer Pricing
	<u>Period of delay/default</u>	<u>Penalty</u>	
	Not more than a month	₹ 5,000 per day	
	Beyond one month	₹ 15,000 per day for the period exceeding one month	
	Continuing default even after service of order levying penalty	₹ 50,000 per day of continuing failure beginning from the date of service of order	
	Failure to produce information and documents within prescribed time		
	Failure to produce information before prescribed authority within	₹ 5,000 per day of continuing failure, from the day	

	the period allowed u/s 286(6)	immediately following the day on which the period for furnishing the information and document expires.	
	Continuing default even after service of penalty order	₹ 50,000 per day for the period of default beyond the date of service of penalty order.	
	Penalty for submission of inaccurate information in the CBC report	₹ 5,00,000	Penalty would be leviable on the reporting entity, if,- (a) the entity has knowledge of the inaccuracy at the time of furnishing the report but does not inform the prescribed authority; or (b) the entity discovers the inaccuracy after the report is furnished and fails to inform the prescribed authority and furnish correct report within a period of fifteen days of such discovery; or (c) the entity furnishes inaccurate information or document in response to notice of the prescribed authority under section 286(6).
271H			Competent Authority to levy penalty: Assessing Officer

(a)	Failure to furnish TDS/TCS statements within the prescribed time.	₹ 10,000 to ₹ 1,00,000	No penalty would be leviable if the person proves that after paying tax deducted or collected along with the fee under section 234E and interest, if any, to the credit of the Central Government, he had delivered or caused to be delivered the TDS/TCS statements before the expiry of one year from the time prescribed for delivering or causing to be delivered such statements.
(b)	Furnishing incorrect information in the said statements in respect of tax deducted or collected	₹ 10,000 to ₹ 1,00,000	
271-I	Failure to furnish information or furnishing inaccurate information by a person who is required to furnish information under section 195(6)	₹ 1,00,000	Penalty leviable by Assessing Officer
271J	Furnishing of incorrect information in reports or certificates furnished by an accountant, merchant banker or a registered valuer	₹ 10,000 for each such report or certificate	Penalty leviable by the Assessing Officer or the Joint Commissioner (Appeals) or the Commissioner (Appeals) who, in the course of proceedings under the Act, finds that the accountant, merchant banker or registered valuer has furnished incorrect information in reports or certificates
271K	Where a research association, university, college or other institution referred to 35(1)(ii)/(iii) or the company referred to in		

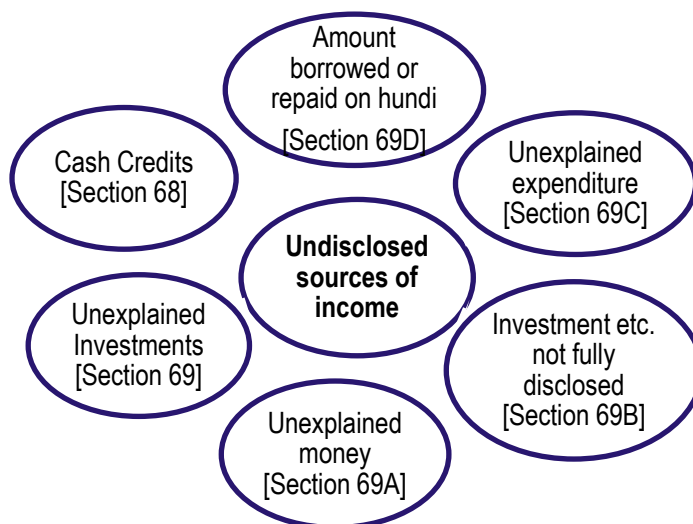
	section 35(1)(iia) fails to deliver or cause to be delivered a statement within the time prescribed under 35(1)(i), or furnish a certificate prescribed under 35(1A)(ii). Where an institution or a fund, fails to deliver or cause to be delivered a statement within the time prescribed under section 80G(5)(viii) or furnish a certificate prescribed under section 80G(5)(ix).	₹ 10,000 to 1,00,000	Penalty leviable by the Assessing Officer
272A(1)	(a) Refusal to answer questions put by income tax authority	₹ 10,000 for each such default or failure	Penalty imposable by Joint director or Joint Commissioner.
	(b) Refusal to sign statements made in the course of income tax proceedings.		However, where the contravention, failure default occurs in the course of any proceeding before income-tax authority not lower in rank than a Joint director or Joint Commissioner, penalty is imposable by such income-tax authority.
	(c) Non-compliance with summons issued u/s 131(1) to give evidence or produce books of accounts.		
	(d) Failure to comply with a notice issued u/s 142(1) or section 143(2) or failure to comply with a direction issued u/s 142(2A)		Penalty imposable by the income-tax authority who had issued the notice or direction after giving the person an opportunity of being heard in the matter.
272A(2)	Failure: – To comply with notice u/s 94(6) – To give notice of discontinuance of business/ profession u/s	₹ 500 for every day during which default continues. However, the amount of penalty for failure in relation to a	Section 272A(3) specifies that for the default committed u/s 272A(1) and (2), where the contravention occurs in the course of any proceeding before an income-tax authority not lower in rank than a Joint Director or a Joint

272AA	Failure to comply with the provision of section 133B	Any amount upto ₹ 1,000	Penalty imposable by the Joint Commissioner/Asst. Director/ Dy. Director/Assessing Officer after giving the person an opportunity of being heard in the matter.
272B	Failure to comply with the provisions of section 139A Failure to quote/intimate PAN/Aadhaar No. in any document referred to in section 139(5)(c) or to intimate such no. as required u/s 139A(5A) or 139A(5C) or quoting/intimating false PAN/Aadhaar No. Failure to quote PAN/Aadhaar No. in documents referred to in section 139A(6A) Failure to authenticate PAN/Aadhaar No. in accordance with section 139A(6A) Failure to ensure that PAN/Aadhaar No. has been - - duly quoted in documents relating to transactions referred to in section 139A(5)(c) or 139A(6A); or - duly authenticated in respect of transactions referred to u/s 139A(6A).	₹ 10,000 ₹ 10,000 for each such default ₹ 10,000 for each such default ₹ 10,000 for each such default ₹ 10,000 for each such default	Penalty imposable by Assessing Officer No penalty imposable unless the person on whom penalty is to be imposed is given an opportunity of being heard in the matter.
272BB(1)	Failure to comply with the provisions of section 203A	₹ 10,000	Penalty imposable by Assessing Officer

272BB(1A)	Quoting false TAN willfully in challans/certificates/statements/other documents referred to in section 203A(2)		No penalty imposable unless the person on whom penalty is to be imposed is given an opportunity of being heard in the matter.

19.2.4 TAXATION OF 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:



(1) Cash Credits [Section 68]

Where any sum is found credited in the books of an assessee maintained for any previous year 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.

Cash Credits

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 Company – The above-mentioned 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.¹

(2) 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.

Unexplained Investment or money

(3) 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 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.

¹ defined under section 10(23FB)

may be deemed to be the income of the assessee for such financial year. Ownership is important and mere possession is not enough.

(4) 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.

(5) 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.

Unexplained expenditure

(6) 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.

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

- (1) In order to control laundering of unaccounted money by availing the benefit of basic exemption limit, the unexplained money, investment, expenditure, etc.

Taxable @ 78%

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) is 78%.

- (2) 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.

- (3) 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.

Penalty in respect of undisclosed income in the form of unexplained money, investments etc. under section 271AAC:

In a case where income determined includes any income referred to in sections 68, 69, 69A to 69D for any previous year, in addition to the tax payable under section 115BBE, penalty@10% of tax payable under section 115BBE would be attracted.

Penalty @ 10% of tax payable u/s 115BBE

Penalty may be levied by the Assessing Officer or **the Joint Commissioner (Appeals)** or the Commissioner (Appeals). However, no such penalty would be levied on such income to the extent the same has been included by the assessee in return of income furnished u/s 139 and tax in accordance with section 115BBE has been paid on or before the end of the relevant previous year.

The provisions of section 271AAC are notwithstanding anything contained in the Income-tax Act, 1961, other than the provisions for levy of penalty under section 271AAB on undisclosed income detected in search cases.

No penalty under section 270A for under-reporting of income is leviable in respect of income on which penalty is leviable under this section.

**19.2.5 PENALTY NOT LEVIABLE IN CERTAIN CASES
[SECTION 273B]**

No penalty is leviable under sections 271A, 271AA, 271B, 271BA, 271C, 271CA, 271D, 271E, 271FA, 271FAB, 271G, 271GA, 271GB, 271H, 271-I, 271J, 272A(1)(c) or 272(A)(1)(d), 272A(2), 272AA(1), 272B, 272BB(1)/(1A), if the assessee proves that there was reasonable cause for the said failure.

**19.2.6 PROCEDURE FOR ASSESSMENT OF PENALTIES
[SECTION 274]**

- (1) Section 274(1) provides that no penalty under Chapter XXI can be imposed unless the assessee has been heard or has been given a reasonable opportunity of being heard.
- (2) Section 274(2) stipulates obtaining prior approval of the Joint Commissioner by the income-

tax authorities mentioned in column (2) where the quantum of penalty exceeds the amount specified in column (3).

S. No.	Income-tax authority passing the penalty order	Quantum of penalty
(i)	The Income-tax Officer	> ₹ 10,000
(ii)	The Assistant Commissioner or the Deputy Commissioner	> ₹ 20,000

- (3) Section 274(2A) empowers the Central Government to formulate a scheme², by notification in the Official Gazette

To impart greater efficiency, transparency and accountability by		
eliminating the interface between the Income-tax authority and the assessee or any other person in the course of proceedings to the extent technologically feasible	optimising utilisation of the resources through economies of scale and functional specialisation	introducing a mechanism for imposing of penalty with dynamic jurisdiction in which penalty shall be imposed by one or more income-tax authorities

- (4) In order to give effect to the scheme so formulated, section 274(2B) empowers the Central Government to direct, by notification in the Official Gazette, that any of the provisions of the Income-tax Act, 1961 relating to jurisdiction and procedure for imposing penalty would not apply or would apply with such exceptions, modifications and adaptations as may be mentioned in the notification. Though such direction cannot be issued after 31.3.2022, **however, the Central Government may amend such direction by issuing notification.**
- (5) Every notification issued under section 274(2A)/(2B) has to be laid before each House of Parliament as soon as may be after the notification is issued.
- (6) An income-tax authority making an order imposing penalty under Chapter XXI has to send a copy of such order to the Assessing Officer, unless he himself is the Assessing Officer.

² Accordingly, the Central Government has notified Faceless Penalty Scheme, 2021 which is available at <https://incometaxindia.gov.in/Pages/faceless-scheme.aspx>

19.2.7 TIME LIMIT FOR IMPOSITION OF PENALTY [SECTION 275]

Section	Circumstance	Time limit for passing penalty order
275(1)(a)	Where the relevant assessment or other order is the subject matter of an appeal to Appellate Tribunal u/s 253.	An order imposing penalty shall not be passed after – (a) the expiry of the financial year in which the proceedings, in the course of which action for imposition of penalty has been initiated, are completed; or (b) six months from the end of the month in which the order of Appellate Tribunal is received by the Principal Chief Commissioner or Chief Commissioner or the Principal Commissioner or the Commissioner, whichever period expires later.
Proviso to section 275(1)(a)	Where the relevant assessment or other order is the subject matter of an appeal to the Joint Commissioner (Appeals) or the Commissioner (Appeals) under section 246 or section 246A, and the Joint Commissioner (Appeals) or the Commissioner (Appeals) passes the order on or after 1st June, 2003 disposing of such appeal.	An order imposing penalty shall be passed– (a) before the expiry of the financial year in which the proceedings, in the course of which action for imposition of penalty has been initiated, are completed; or (b) within one year from the end of the financial year in which the order of the Joint Commissioner (Appeals) or the Commissioner (Appeals) is received by the Principal Chief Commissioner or Chief Commissioner or the Principal Commissioner or the Commissioner, whichever is later.
275(1)(b)	Where the relevant assessment or other order is the subject matter of revision under section 263 or section 264	An order imposing penalty shall not be passed after the expiry of six months from the end of the month in which such order of revision is passed
275(1)(c)	In any other case	An order imposing penalty shall not be passed (a) after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed, or

		(b) six months from the end of the month in which action for imposition of penalty is initiated whichever period expires later
275(1A)	Sub-section (1A) facilitates the revision of an order for the imposition of penalty or dropping the proceedings for the imposition of penalty, on the basis of subsequent revision of assessment by the Joint Commissioner (Appeals) or the Commissioner (Appeals) or the Appellate Tribunal or the High Court or the Supreme Court or by the Principal Commissioner or the Commissioner under section 263 or section 264. In a case where the relevant assessment or other order is the subject-matter of – (1) an appeal to the Joint Commissioner (Appeals) or the Commissioner (Appeals) under section 246 or section 246A; or (2) an appeal to the Appellate Tribunal under section 253; or (3) an appeal to the High Court under section 260A; or (4) an appeal to the Supreme Court under section 261; or (5) revision under section 263 or section 264 and an order imposing or enhancing or reducing penalty or dropping the proceedings for the imposition of penalty is passed before the order of the Joint Commissioner (Appeals) or the Commissioner (Appeals) or the Appellate Tribunal or the High	(1) An order imposing or enhancing or reducing penalty or dropping the proceedings for the imposition of penalty may be passed on the basis of assessment as revised by giving effect to such order of the Joint Commissioner (Appeals) or the Commissioner (Appeals) or the Appellate Tribunal or, the High Court, or the Supreme Court or order of revision under section 263 or 264. A revision order under this sub-section can again be revised under this sub-section. (2) No such order can be passed after the expiry of six months from the end of the month in which - (i) the order of the Joint Commissioner (Appeals) or the Commissioner (Appeals) or the Appellate Tribunal or the High Court or the Supreme Court is received by the Principal Chief Commissioner or the Chief Commissioner or the Principal Commissioner or the Commissioner; or (ii) the order of revision under section 263 or section 264 is passed. Note: (1) No such order imposing or enhancing or reducing or canceling penalty or dropping the proceedings shall be passed without hearing the assessee or giving him a reasonable opportunity of being heard. (2) The provisions of section 274(2) shall apply in respect of such order imposing or enhancing or reducing penalty.

	Court or the Supreme Court is received by the Principal Chief Commissioner or the Chief Commissioner or the Principal Commissioner or Commissioner, or the order of revision under section 263 or 264 is passed.	Note - Section 274(2) provides that for passing an order imposing penalty exceeding ₹ 10,000, the Income-tax authority has to take the prior approval of the Joint Commissioner. Also, for passing an order imposing penalty exceeding ₹ 20,000, the Assistant Commissioner or the Deputy Commissioner should take the prior approval of the Joint Commissioner.

Note - In computing the period of limitation, the time taken to give the assessee a reasonable opportunity of being heard or reheard under section 129 and any period during which the proceedings for the levy of the penalty are stayed by an order or injunction of the Court, has to be excluded.



19.3 OFFENCES AND PROSECUTION UNDER THE INCOME TAX ACT

The punishable offences as well as the prosecution for such offences under the Income-tax Act, 1961 are discussed under Chapter XXII. The prosecution provisions are discussed hereinbelow-

Section	Nature of default	Rigorous imprisonment	Quantum of Fine
275A	Contravention of order made under the second proviso to sub-section (1) or sub-section (3) of section 132 regarding search and seizure	Upto 2 Years (+) fine	No limit specified
275B	Failure to afford the authorized officer the necessary facility to inspect the books of account or other documents as required under section 132(1)(iib)	Upto 2 years (+) fine	No limit specified
276	Removal, concealment, transfer or delivery of property to thwart tax recovery	Upto 2 years (+) fine	No limit specified
276B	Failure to pay to the credit of the Central Government, tax deducted at source by a person as required by or under the provisions of Chapter XVII-B or	3 months to 7 years (+) fine	No limit specified

	Failure to pay tax or ensure payment of tax to the credit of the Central Government as required by or under - the proviso to section 194B [winnings from lottery or crossword puzzle] or - the first proviso to section 194R(1) [on benefits and perquisites in respect of business or profession] or - the proviso to section 194S(1) [on transfer of virtual digital assets] or - section 194BA(2) [Winnings from online games (inserted w.e.f. 1.7.2023)]. Note – In all the four situations mentioned above, the winnings/benefit/perquisite/consideration for transfer, as the case may be, is wholly in kind or partly in cash and partly in kind but the part in cash is not sufficient to meet the TDS liability.		
276BB	Failure to pay to the Central Government tax collected under section 206C	3 months to 7 years (+) fine	No limit specified
276C(1)	Wilful attempt to evade tax, penalty or interest chargeable or imposable or under reports his income	Evaded amount/Tax on under reported income exceeding ₹ 25 lakh: 6 months to 7 years (+) fine Other cases : 3 months to 2 years (+) fine	No limit specified
276C(2)	Wilful attempt to evade payment of tax, penalty or interest.	3 months to 2 years (+) fine, at the discretion of the court.	No limit specified
276CC	Wilful failure to furnish in due time a return of income u/s 139(1) or u/s 142(1)(i) or u/s 148.	Evaded tax exceeding ₹ 25	No limit specified

	Note: If return of income u/s 139(1) is furnished before expiry of the assessment year or an updated return is furnished within the time specified under section 139(8A) or the tax payable by a person, not being a company, on the total income determined on regular assessment, as reduced by advance tax or self-assessment tax, if any, paid before the expiry of the assessment year, and any TDS/TCS does not exceed ₹ 10,000³ - No prosecution.	lakh : 6 months to 7 years (+) fine Other cases: 3 months to 2 years (+) fine	
276D	Willful failure to produce accounts and documents under section 142(1)/142(2A)	Up to one year (+) fine	No limit specified
277	False statements in verification.	Evaded tax exceeding ₹ 25 lakh: 6 months to 7 years (+) fine In other cases: 3 months to 2 years (+) fine	No limit specified
277A	Falsification of books or documents, etc. to induce or abet any person to evade any tax, penalty or interest chargeable or imposable under the Act. It is not necessary to prove that the other person has actually evaded any tax, penalty or interest chargeable or imposable under the Act for the purpose of establishing the charge under this section.	Imprisonment of 3 months to 2 years (+) fine	No limit specified

³ The enhanced tax payable limit of ₹ 10,000 for not attracting prosecution proceedings u/s 276CC is effective in respect of total income of A.Y.2020-21 and subsequent assessment years. In respect of earlier assessment years, the tax payable limit for not attracting prosecution proceedings u/s 276CC is ₹ 3,000. In respect of those years, the tax payable on regular assessment can be reduced by only by advance tax paid and TDS.

278	Abetment of false return etc. (relating to any income chargeable to tax)	Evaded tax exceeding ₹ 25 lakh: 6 months to 7 years(+) fine In other cases: 3 months to 2 years (+) fine	No limit specified
278A	Second and subsequent offences under section 276B, 276BB, 276C(1), 276CC, 277, 278.	6 months to 7 years for every subsequent offence (+) fine	No limit specified
280(1)	Disclosure of particulars by public servants in contravention of section 138(2). Prosecution after previous sanction of Central Government under section 280(2).	Up to 6 months(+) fine	No limit specified

Section 278AA provides that where a reasonable cause for the failure is proved, punishment shall not be imposed for offences specified in sections 276B or 276BB.

For the purposes of offences and prosecutions, the following individuals will be deemed to be guilty of the offence committed by the respective person:

Person	Section	Individual
Company	278B	Every person in charge of affairs; Director, Manager, Secretary and every officer who is guilty of offence
Firm	278B	Partner
AOP/BOI	278B	Members controlling the affairs
HUF	278C	Karta or member either by acquiescence or negligence.

Section 278B(3) provides that if an offence under the Act has been committed by a person being a company, it shall be punished with fine. Every other person who was in charge of and was responsible for the conduct of business of the company, or any director, manager, secretary or other officer of the company (with whose consent or connivance or due to whose neglect the offence was committed) would be liable for punishment of imprisonment and fine wherever so provided.

19.3.1 PRESUMPTION AS TO CULPABLE MENTAL STATE [SECTION 278E]

- (1) **Onus of proof on accused** - In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Presumption

It may be noted that penalty proceedings being quasi-criminal in nature, it has been judicially held in the context of various penalty and prosecution proceedings, that the burden is on the department to establish that the assessee concealed the particulars of his income or deliberately furnished inaccurate particulars thereof and it is not enough for the revenue merely to show that a certain amount was received by the assessee. Section 278E has clearly overruled this view and has specifically placed the burden of proof on the assessee.

It specifically provided that where any prosecution requires a culpable mental state (*mens rea*) the court shall presume the existence of such mental state but the assessee is entitled to prove that he had no such mental state with respect to the act charged with. Thus, the burden to prove the non-existence of *mens rea* has been effectively placed on the assessee in prosecution cases.

- (2) **Meaning of 'Culpable mental state'** - Culpable mental state includes intention, motive or knowledge of a fact or belief in, or reason to believe, a fact.
- (3) **Proof of fact** - For the purposes of this section a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

19.3.2 PROSECUTION TO BE MADE AT THE INSTANCE OF THE PRINCIPAL CHIEF COMMISSIONER OR CHIEF COMMISSIONER OR PRINCIPAL COMMISSIONER OR COMMISSIONER [SECTIONS 279 AND 279A]

- (1) **Prior sanction of higher authorities** - Section 279(1) provides that the proceedings to punish a person for an offence under sections 275A, 275B, 276, 276B, 276BB, 276C, 276CC, 276D, 277, 277A and 278 can be initiated only after previous sanction of the Principal

Commissioner or Commissioner or **the Joint Commissioner (Appeals)** or the Commissioner (Appeals) or the appropriate authority. However, the Principal Chief Commissioner or the Chief Commissioner or the Principal Director General or Director General may issue such instructions or directions to the said authorities for institution of proceedings under section 279(1).

- (2) **Cases where prosecution cannot be initiated** - Section 279(1A) provides that the proceedings to punish a person for an offence under section 276C or 277 cannot be initiated in relation to the assessment of an assessment year in respect of which the penalty imposed or imposable on him under section 270A has been waived or reduced under section 273A.
- (3) **Compounding of offences** - An offence may, either before or after the institution of prosecution proceedings be compounded by the concerned authorities under section 279(2).
- (4) **Admissibility of statement made or books of account produced as evidence** - If a person is proceeded against under section 279(1), then a statement made or account or documents produced before any authority under Act shall not be inadmissible as evidence for purpose of the prosecution proceedings merely on the ground that such account or document was produced or statement was made in the belief that the penalty imposed or imposable under section 270A would be reduced or waived under section 273A or that the offence would be compounded.
- (5) **Scheme to be formulated by Central Government** - The Central Government is empowered to make a scheme, by notification in the Official Gazette, for the purposes of granting sanction under section 279(1) or compounding under section 279(2), so as to impart greater efficiency, transparency and accountability by—
 - (a) eliminating the interface between the income-tax authority and the assessee or any other person to the extent technologically feasible;
 - (b) optimising utilisation of the resources through economies of scale and functional specialisation;
 - (c) introducing a team-based sanction to proceed against, or for compounding of, an offence, with dynamic jurisdiction.

In order to give effect to such scheme, the Central Government may, by notification in the Official Gazette, direct that any of the provisions of the Income-tax Act, 1961 shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification. However, no such direction can be issued after 31st March, 2022. Further, every

such notification issued has to be laid before each House of Parliament, as soon as may be after the notification is issued.

- (6) **Non-cognizable offences** - Section 279A provides that offences punishable under sections 276B, 276C, 276CC, 277 and 278 shall be deemed to be non-cognizable offences.

19.3.3 IMMUNITY FROM IMPOSITION OF PENALTY AND PROSECUTION [SECTION 270AA]

- (1) Application to be made by the assessee to the Assessing Officer for grant of immunity from penalty and prosecution [Section 270AA(1)]

An assessee may make an application to the Assessing Officer for grant of immunity from imposition of penalty under section 270A and initiation of proceedings under section 276C or section 276CC, if he -

Pay tax and interest + No appeal

- (i) **pays the tax and interest payable** as per the order of assessment under section 143(3) or reassessment under section 147, within the period specified in such notice of demand; and
- (ii) **does not prefer an appeal** against such assessment/reassessment order.

- (2) **Time limit for making application [Section 270AA(2)]**

The assessee can make such application in the prescribed form and verified in the prescribed manner **within one month from the end of the month** in which the order of assessment or reassessment is received

- (3) **Circumstances in which the Assessing Officer cannot grant immunity from penalty and prosecution [Section 270AA(3)]**

The Assessing Officer shall grant immunity from initiation of penalty under section 270A and prosecution under section 276C or section 276CC, on fulfilment of the conditions specified in (1) above, and after the expiry of period of filing appeal as specified in section 249(2)(b).

However, immunity shall be granted by the Assessing Officer only if the penalty proceedings u/s 270A have not been initiated on account of the following, namely:—

- (a) misrepresentation or suppression of facts;
- (b) failure to record investments in the books of account;
- (c) claim of expenditure not substantiated by any evidence;
- (d) recording of any false entry in the books of account;
- (e) failure to record any receipt in the books of account having a bearing on total income; or
- (f) failure to report any international transaction or any transaction deemed to be an international transaction or any specified domestic transaction to which the provisions of Chapter X apply.

**No immunity
for
misreporting**

(4) Time limit for passing order accepting or rejecting application for immunity from penalty and prosecution [Section 270AA(4)]

The Assessing Officer shall pass an order accepting or rejecting the application for immunity from penalty under section 270A or prosecution under section 276C or section 276CC within a period of **one month from the end of the**

**1 month from
the end of the
month of receipt
of application**

month in which such application is received. However, in the interest of natural justice, no order rejecting the application shall be passed by the Assessing Officer **unless the assessee has been given an opportunity of being heard.**

(5) Finality of order passed by the Assessing Officer under section 270AA(4) [Section 270AA(5)]

The order of the Assessing Officer passed under section 270AA(4) accepting or rejecting the application made by the assessee for immunity from penalty under section 270A or prosecution under section 276C or section 276CC shall be final.

(6) Order of assessment/reassessment, in respect of which application for immunity is accepted, is neither appealable before the Commissioner (Appeals) nor can the same be admitted by the Commissioner for revision under section 264 [Section 270AA(6)]

No appeal under **section 246 or** section 246A or an application for revision under section 264 shall be admissible against the order of assessment or reassessment referred to in section 270AA(1)(a), in a case where an order under section 270AA(4) has been made accepting the application.

- (7) **Exclusion of period when application for immunity is pending before Assessing Officer from the time limit for filing of appeal before the Commissioner (Appeals), in a case where such application is rejected [Second Proviso to section 249(2)(b)]**

As per section 249(2)(b), an appeal before the Commissioner (Appeals) is to be made within 30 days of the receipt of the notice of demand relating to an assessment or penalty, where the appeal relates to such assessment or penalty.

In a case where the assessee makes an application under section 270AA seeking immunity from penalty, then, the following period has to be excluded for calculation of the aforesaid 30 day period –

Exclusion of period	
beginning from	ending with
the date on which application under section 270AA for immunity from penalty under section 270A is made	the date on which the order rejecting the application is served on the assessee.

19.4 OVERVIEW OF THE BLACK MONEY & IMPOSITION OF TAX LAW

The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, passed on 26.5.2015, provides for stringent taxation of any undisclosed income in relation to foreign income and assets. This new law has been formulated to act as a strong deterrent and curb the menace of black money stashed away abroad by Indians. This law would be effective from **A.Y.2016-17**, unless otherwise provided in any section of this Act, and extends to the **whole of India**.

19.4.1 BASIS OF CHARGE [CHAPTER II – SECTIONS 3 TO 5]

- (i) **Charge of tax [Section 3]**

- (A) **Rate of tax [Section 3(1)]** - Every assessee would be liable to tax@30% in respect of his undisclosed foreign income and asset of the previous year.

However, an **undisclosed asset located outside India** shall be charged to tax on its value in the previous year in which such asset comes to the notice of the Assessing Officer.

Tax@30%

Meaning of certain terms:

Term	Section	Meaning
Undisclosed foreign income and asset	2(12)	The total amount of undisclosed income of an assessee from a source located outside India and the value of an undisclosed asset located outside India, referred to in section 4, and computed in the manner laid down in section 5
Undisclosed asset located outside India	2(11)	An asset (including financial interest in an entity) located outside India, - held by the assessee in his name or - in respect of which he is a beneficial owner, and - he has no explanation about the source of investment in such asset or the explanation given by him is in the opinion of the Assessing Officer unsatisfactory.
Assessee	2(2)	A person,— (a) being a resident in India within the meaning of section 6 of the Income-tax Act, 1961 in the previous year; or (b) being a non-resident or not ordinarily resident in India within the meaning of section 6(6) of the Income-tax Act, 1961 in the previous year, who was resident in India either in the previous year to which the income referred to in section 4 relates; or in the previous year in which the undisclosed asset located outside India was acquired: However, the previous year, in case of acquisition of undisclosed asset outside India, shall be determined without giving effect to the provisions of section 72(c) which states that where any asset has been acquired or made prior to commencement of this Act, and no declaration in respect of such asset is made under Chapter VI (Tax Compliance for Undisclosed Foreign Income and Assets), such asset shall be deemed to have been acquired or made in the year in which a notice under section 10 is issued by the Assessing Officer and the provisions of this Act would apply accordingly In effect, it has been clarified that a person would be an assessee, if he is resident in the previous year in which the undisclosed asset located outside India was actually

		acquired by him and not the year in which notice under section 10 is issued by the Assessing Officer.			
Previous year	2(9)		Circumstance	Period	
				Beginning with	Ending with
		a	In case of a newly set up business	The date of setting up of a business	The date of closure of business or 31 st March following the date of setting up of business, whichever is earlier.
		b	Where a new source of income comes into existence	The date on which the new source comes into existence	The date of closure of business or 31 st March following the date on which such new source comes into existence, whichever is earlier.
		c	In case of discontinuance of business or dissolution/ liquidation	1 st day of the FY	The date of discontinuance of business [other than business referred to in (b) above] or dissolution of an unincorporated body or liquidation of a company, as the case may be.
		d	In any other case	1 st April of the relevant year	31 st March following. (i.e., a period of 12 months commencing from 1 st April and ending on 31 st March)

- (B) **Relevant previous year of chargeability to tax [Proviso to section 3(1)]** -

Undisclosed asset located outside India to be charged to tax on its value in the previous year in which the asset comes to the notice of the Assessing Officer.

Relevant P.Y.

- (C) **Value of an undisclosed asset [Section 3(2)]** - The **fair market value** of an asset (including financial interest in any entity) determined in the prescribed manner as laid down in Rule 3 of Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Rules, 2015, would be the value of an undisclosed asset. The following table gives the manner of determination of fair market value of different assets -

	Asset	Fair market value as per Rule 3(1)
(a)	Bullion, jewellery or precious stone	Higher of – (i) its cost of acquisition; and (ii) the price that the bullion, jewellery or precious stone shall ordinarily fetch if sold in the open market on the valuation date. For this purpose, the assessee may obtain a report from a valuer recognised by the Government of a country or specified territory outside India or any of its agencies for the purpose of valuation of bullion, jewellery or precious stone under any regulation or law.
(b)	Archaeological collections, drawings, paintings, sculptures or any work of art (artistic work)	Higher of - (i) Cost of acquisition; and (ii) the price that the artistic work shall ordinarily fetch if sold in the open market on the valuation date for which the assessee may obtain a report from a valuer recognised by the Government of a country or specified territory outside India or any of its agencies for the purpose of valuation of artistic work under any regulation or law;
(c)(i)	Quoted Shares and securities	Higher of – (i) cost of acquisition; and (ii) the price as determined in the following manner, namely:—

		(A) the average of the lowest and highest price of such shares and securities quoted on any established securities market on the valuation date; or (B) where on the valuation date there is no trading in such shares and securities on any established securities market, average of the lowest and highest price of such shares and securities on any established securities market on a date immediately preceding the valuation date when such shares and securities were traded on such securities market;
(c)(II)	Unquoted shares and securities	Higher of –
		(i) Cost of acquisition; and
		(ii) The value, on the valuation date, of such equity shares as determined in the following manner, namely:—
		the fair market value of unquoted equity shares =
		$\frac{(A + B - L)}{PE} \times PV$
		Where,
	A	book value of all the assets (other than bullion, jewellery, precious stone, artistic work, shares, securities and immovable property) minus (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	fair market value of bullion, jewellery, precious stone, artistic work, shares, securities and immovable property as determined in the manner provided in this rule

		L	book value of liabilities, 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;
		(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;
		PE	total amount of paid up equity share capital as shown in the balance sheet;
		PV	the paid up value of such equity shares
(c)(III)	Unquoted share and security other than equity share in a company	Higher of,— (i) its cost of acquisition; and (ii) the price that the share or security shall ordinarily fetch if sold in the open market on the valuation date for which the assessee may obtain a report from a valuer recognised by the Government of a country or specified territory outside India or any of its agencies for the purpose of valuation of share and security under any regulation or law	

(d)	Immovable property	Higher of,— (i) its cost of acquisition; and (ii) the price that the property shall ordinarily fetch if sold in the open market on the valuation date for which the assessee may obtain a valuation report from a valuer recognised by the Government of a country or specified territory outside India in which the property is located or any of its agencies for the purpose of valuation of immovable property under any regulation or law				
(e)	An account with a bank	(I) the sum of all the deposits made in the account with the bank since the date of opening of the account; or (II) where a declaration of such account has been made under Chapter VI and the value of the account as computed under sub-clause (I) has been charged to tax and penalty under that Chapter, the sum of all the deposits made in the account with the bank since the date of such declaration. However, where any deposit is made from the proceeds of any withdrawal from the account, such deposit shall not be taken into consideration while computing the value of the account				
(f) & (g)	value of an interest of a person in a partnership firm or in an AOP or a LLP of which he is a member	The net asset of the firm, AOP or LLP on the valuation date shall first be determined. Thereafter, the portion of the net wealth of the firm, AOP or LLP as is equal to the amount of its capital shall be allocated among its partners or members in the proportion in which capital has been contributed by them. The residue of the net asset shall be allocated among the partners or members in the following manner: <table><tr><th>Circumstance</th><th>Manner of allocation</th></tr><tr><td>In the event of dissolution of the firm or AOP</td><td>In accordance with the agreement of partnership or association for distribution of assets</td></tr></table>	Circumstance	Manner of allocation	In the event of dissolution of the firm or AOP	In accordance with the agreement of partnership or association for distribution of assets
Circumstance	Manner of allocation					
In the event of dissolution of the firm or AOP	In accordance with the agreement of partnership or association for distribution of assets					

		In the absence of such agreement for distribution of assets on dissolution The sum total of the amount so allocated to a partner or member shall be treated as the value of the interest of that partner or member in the partnership or association. Net asset of the firm, AOP or LLP shall be $(A + B - L)$, determined in the manner specified in C(II) above.	in the proportion in which the partners or members are entitled to share profits
(h)	Any other asset	Higher of – (I) its cost of acquisition or the amount invested; and (II) the price that the asset would fetch if sold in the open market on the valuation date in an arm's-length transaction.	

FMV of an asset (other than bank account) transferred before the valuation date [Rule 3(2)]:

Where an asset (other than a bank account) was transferred before the valuation date, the FMV of such asset shall be **higher of its cost of acquisition and the sale price**. This is notwithstanding the valuation rules given in Rule 3(1),

However, where such asset was transferred without consideration or for inadequate consideration before the valuation date, the FMV of the asset shall be higher of its cost of acquisition and the FMV on the date of transfer.

FMV, in a case where a new asset is acquired out of consideration received on account of transfer of an old asset or withdrawal from a bank account [Rule 3(3)]:

In such a case, the fair market value of the old asset or the bank account, as the case may be, determined in accordance with Rule 3(1) and Rule 3(2), shall be reduced by the amount of the consideration invested in the new asset.

Example

House A located in a country outside India was bought in 1995 for ₹ 15 lakh. It was sold in 2000 for ₹ 22 lakh. This amount was deposited in a bank account in that country. In the year 2001 another House B was purchased for ₹ 35 lakh. The investment in House B was made through withdrawal from the bank account in the foreign country. House B has not been transferred before the valuation date and its value on the valuation date is ₹ 48 lakh.

Assuming that the value of foreign bank account as computed under Rule 3(1)(e) is ₹ 60 lakh, the fair market value (FMV) of the assets would be computed in the following manner:

FMV of House A = ₹ 22 lakh (being higher of ₹ 15 lakh and ₹ 22 lakh) - ₹ 22 lakh (invested in foreign bank account) = Nil

FMV of Foreign Bank account = ₹ 60 lakh - ₹ 35 lakh (invested in House B) = ₹ 25 lakh

FMV of House B = Higher of ₹ 35 lakh and ₹ 48 lakh = ₹ 48 lakh

Rate of conversion of currency used to determine FMV of an asset [Rule 3(4) & 3(5)]:

The fair market value of an asset determined in a currency which is one of the permitted currencies designated by the RBI under the Foreign Exchange Management Regulations, has to be converted into Indian currency as per the reference rate of the RBI on the date of valuation.

Where the FMV of an asset is determined in a currency other than one of the permitted currencies designated by the RBI, then, such value shall be converted into United States Dollar on the date of valuation as per the rate specified by the Central Bank of the country or jurisdiction in which the asset is located. Such value in United States Dollar shall be converted into Indian currency as per the reference rate of the RBI on the date of valuation:

Rate of Conversion

However, where the Central Bank of the country or jurisdiction in which the asset is located does not specify the rate of conversion from its local currency to United States Dollar, then, such rate shall be the one as specified by any other bank regulated under the laws of that country or jurisdiction.

Meaning of certain terms [Explanation 1 to Rule 3]

	Term	Meaning
(a)	Established securities market	An exchange that is officially recognised and supervised by a Governmental entity in which the market is located and that has a meaningful annual value of shares traded on the exchange
(b)	Meaningful annual value of shares traded on the exchange	With respect to an exchange, it means it has an annual value of shares traded on the exchange (or a predecessor exchange) exceeding one billion United States Dollar during each of the three calendar years

		immediately preceding the calendar year in which the determination is being made.
(c)	Meaningful volume of trading on an on-going basis	With respect to each class of shares, it means,- (i) trades in each such class are effected, other than in <i>de minimis</i> quantities, on one or more established securities markets on at least 60 business days during the prior calendar year; and (ii) the aggregate number of shares in each such class that are traded on such market or markets during the prior year are at least 10% of the average number of shares outstanding in that class during the prior calendar year
(d)	Quoted share or security	The share or security which has a meaningful volume of trading on an ongoing basis on an established securities market and is regularly quoted by dealers where they actively do offer to, and in fact do, purchase the share from, and sell the share to, customers who are not related to the dealer in the ordinary course of a business.
(e)	Unquoted share and security	In relation to share or security, means share or security which is not a quoted share or security.

Relevant Date for determination of market value and conversion of currency

[Explanation 2 to Rule 3]

For the purpose of determining the market value as on valuation date referred to in Rule 3(1), and for the purpose of conversion into Indian currency or conversion of foreign currency into United States Dollar and thereafter into Indian currency, the date would be —

Relevant Date

	Case	Date
(a)	in respect of asset declared under section 59 of the Act	1 st July, 2015
(b)	in any other case	1 st April of the previous year

(ii) Scope of total undisclosed foreign income and asset [Section 4]

(a) **Total undisclosed foreign income and asset** of any previous year would be -

- (1) the income from a source located outside India **which has not been disclosed in the return of income** filed under the Income-tax Act, 1961 on or before the due u/s 139(1) or in the belated return of income u/s 139(4) or in the revised return of income u/s 139(5).

- (2) the income from a source located outside India in respect of which a return is required to be filed under section 139 of the Income-tax Act, 1961, but **no return, belated return or revised return has been filed under section 139(1)/(4)/(5) of that Act.**
- (3) the value of any **undisclosed asset located outside India.**
- (b) Any variation made in the income from a source outside India in the assessment or reassessment of the total income of any previous year, of the assessee under the Income-tax Act, 1961 in accordance with the following provisions of the Income-tax Act, 1961 is not includible in the total undisclosed foreign income:

Section	Provision
29	Manner of computation of income under the head "Profits and gains of business or profession"
43C	Special provision for computation of cost of acquisition of an asset which becomes the property of an amalgamated company under a scheme of amalgamation and is sold by the amalgamated company as stock-in-trade of the business carried on by it.
57	Manner of computation of income chargeable under the head "Income from other sources"
59	Profits (Deemed income) chargeable to tax
92C	Computation of arm's length price

- (c) **Non-inclusion of income included in undisclosed foreign income and asset in the total income under the Income-tax Act, 1961** - The income included in the total undisclosed foreign income and asset under this enactment would not form part of total income under the Income-tax Act, 1961.

(iii) **Computation of total undisclosed foreign income and asset [Section 5]**

- (a) **Disallowance of expenditure and set-off of loss** - No deduction in respect of any expenditure or allowance or set off of any loss would be allowed in computing the total undisclosed foreign income and asset of any previous year of an assessee, irrespective of whether the same is allowable under the Income-tax Act, 1961.
- (b) **Permissible deduction from value of undisclosed asset located outside India** - From the value of undisclosed asset located outside India, **any income which has so far been assessed to tax** for any assessment year under the Income-tax Act, 1961

Computation

prior to the assessment year to which the Act applies and **any income which is assessable or has been assessed to tax** for any assessment year under this Act, will be **reduced**.

However, the assessee has to furnish evidence to the satisfaction of the Assessing Officer that the asset has been acquired from the income which has been assessed or assessable to tax.

- (c) **Permissible deduction from value of immovable property** - If the deduction referred to in (b) above in respect of income which is assessable or has been assessed to tax is in relation to an **immovable property**, the quantum of deduction would be the amount which bears to the value of the asset as on the first day of the financial year in which it comes to the notice of the Assessing Officer, the same proportion as the assessable or assessed foreign income bears to the total cost of the asset.

Example

A house property located in a country outside India was acquired by Mr. A, an assessee in the previous year 2012-13 for ₹ 60 lakh. Out of the investment of ₹ 60 lakh, ₹ 35 lakh was assessed to tax in the total income of the previous year 2012-13 and earlier years. Such undisclosed asset comes to the notice of the Assessing Officer in the year 2023-24. If the value of the house property in the year 2023-24 is ₹ 120 lakh, the amount chargeable to tax shall be $X - Y = Z$ where,

$X = ₹ 120 \text{ lakh},$

$Y = ₹ 120 \text{ lakh} \times 35/60 = ₹ 70 \text{ lakh},$

$Z = ₹ 120 \text{ lakh} - ₹ 70 \text{ lakh} = ₹ 50 \text{ lakh}.$

19.4.2 PENALTIES [CHAPTER IV – SECTIONS 40 TO 47]

- (i) **Penalty in relation to undisclosed foreign income and asset [Section 41]** - In case, where tax has been computed in respect of undisclosed foreign income and asset, the Assessing Officer may direct the assessee to pay by way of penalty, in addition to tax, if any, payable by him, a sum equal to **three times the tax so computed**.

Penalty

- (ii) **Penalty for failure to furnish return in relation to foreign income and asset [Section 42]** - Failure to furnish return of income as required under section 139(1) before the end of the relevant assessment year by a person, being a resident other than not ordinarily resident in India, holding any asset

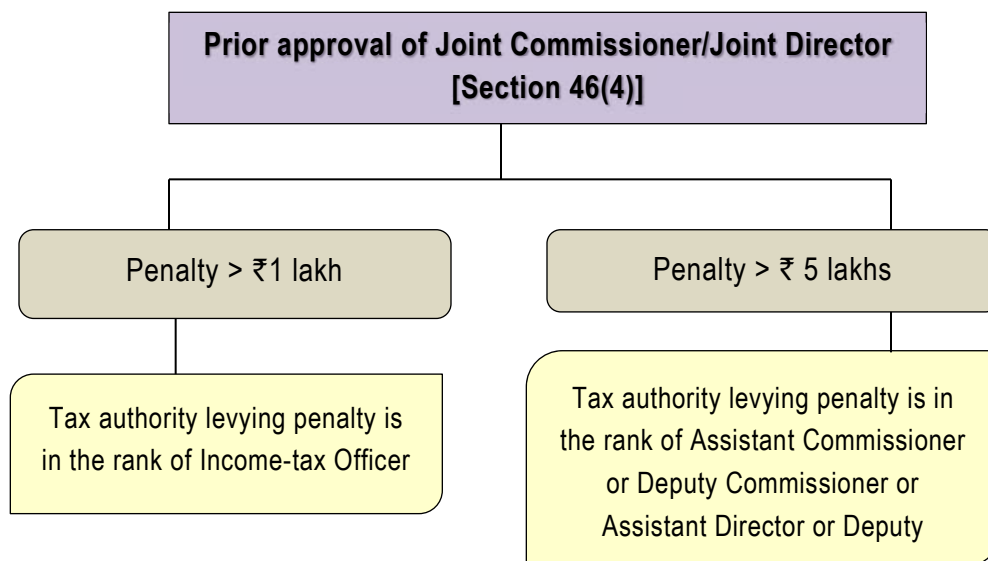
(including financial interest in any entity) located outside India as a beneficial owner or otherwise or being a beneficiary of any asset (including financial interest in any entity) located outside India or having any income from a source located outside India, would attract penalty of ₹ 10 lakh.

- (iii) **Penalty for failure to furnish information in the return of income or for furnishing inaccurate particulars about an asset located outside India [Section 43]** - If such failure is in relation to an asset (including financial interest in any entity) held by a person, being a resident other than not ordinarily resident in India, as a beneficial owner or otherwise, or in respect of which such person was a beneficiary, or if such failure is in relation to any income from a source located outside India, at any time during such previous year, the Assessing Officer may direct such person to pay, by way of penalty, a sum of ₹10 lakh..
- (iv) **Non-applicability of penalty under sections 42 & 43 in certain cases [Proviso to sections 42 & 43]** - Such penalty under sections 42 and 43 would, however, not apply in respect of an asset, being one or more bank accounts having an aggregate balance which does not exceed a value equivalent to ₹5 lakh at any time during the previous year
- (v) **Determination of the value equivalent in rupees of the balance in an account maintained in foreign currency [Explanation to sections 42 & 43]** – For determining the value equivalent in rupees of the balance in an account maintained in foreign currency, the rate of exchange for calculation of the value in rupees shall be the telegraphic transfer buying rate of such currency as on the date for which the value is to be determined as adopted by the State Bank of India constituted under the SBI Act, 1955.
- (vi) **Penalty for default in payment of tax arrear [Section 44]** – Penalty equal to the amount of tax arrears is leviable in case of an assessee in default or an assessee deemed to be in default in making payment of tax and in case of continuing default by such assessee. An assessee shall not cease to be liable to any penalty merely by reason of the fact that before levy of such penalty, tax has been paid by him.
- (vii) **Penalty for other defaults [Section 45]** – Penalty of a sum not less than ₹50,000 but extending upto ₹ 2 lakh would be attracted in case a person liable to penalty has, without reasonable cause, failed to -
 - (a) answer any question put to him by a tax authority in exercise of his powers under the Act
 - (b) sign any statement made by him in the course of any proceedings under the Act which a tax authority may legally require him to sign

- (c) attend or produce books of account or documents at the place or time, if he is required to attend or to give evidence or produce books of account or other documents at certain place and time in response to summons issued under section 8.

(viii) Prior approval of Joint Commissioner or Joint Director - An order imposing a penalty under this Chapter shall be made with the approval of the Joint Commissioner or Joint Director, if –

- (1) the penalty exceeds ₹1 lakh and the tax authority levying the penalty is in the rank of Income-tax Officer; or
- (2) the penalty exceeds ₹ 5 lakhs and the tax authority levying the penalty is in the rank of Assistant Commissioner or Deputy Commissioner or Assistant Director or Deputy Director



Summary of Penal Provisions contained in Chapter IV

Section	Failure/Default	Quantum of penalty
41	Where tax has been computed in relation to undisclosed foreign income and asset	In addition to tax, a sum equal to three times the tax so computed.
42	Failure to furnish return in relation to foreign income and asset	₹ 10 lakh
43	Failure to furnish information in the return of income or for furnishing	₹ 10 lakh

	inaccurate particulars about an asset located outside India	
44	Default in payment of tax arrear	Amount equal to the amount of tax arrears
45	Failure, without reasonable cause, to answer any question put to him by a tax authority or to sign any statement made by him in the course of any proceedings under the Act or to attend or produce books of account or documents at the place or time in response to summons issued under section 8	₹ 50,000 to ₹ 2 lakh

19.4.4 OFFENCES AND PROSECUTION [CHAPTER V]

- (i) **Provisions of Chapter V not in derogation of any other law or any other provision of the Act [Section 48]** – The provisions relating to offences and prosecution contained in Chapter V are in addition to, and not in derogation of, the provisions of any other law providing for prosecution for offences thereunder. Further, the provisions of Chapter V to be independent of any order under this Act that may be made, or has not been made, on any person. Also, it shall not be a defence that the order has not been made on account of time limitation or for any other reason.
- (ii) **Punishment for failure to furnish return in relation to foreign income and asset [Section 49]** – Willful failure to furnish return required to be furnished under section 139(1) of the Income-tax Act, 1961 in due time, by a person, being a resident other than not ordinarily resident in India, who at any time during the previous year, held any asset (including financial interest in any entity) located outside India as a beneficial owner or otherwise, or was a beneficiary of such asset or had income from a source outside India, would be punishable with rigorous imprisonment for a term which would **not be less than six months but which may extend to seven years and with fine. However, prosecution would not be attracted if he furnishes such return before the expiry of the assessment year.**
- (iii) **Punishment for failure to furnish information about an asset located outside India in the return of income [Section 50]** – If such failure in relation to an asset (including financial interest in any entity) held by a person, being a resident other than not ordinarily resident in

Prosecution

India, as a beneficial owner or otherwise, or in respect of which he was a beneficiary, or if such failure in relation to any income from a source located outside India, at any time during such previous year, is willful, the punishment would be rigorous imprisonment for a term which would **not be less than six months but which may extend to seven years and with fine.**

- (iv) **Punishment for willful attempt to evade tax [Section 51]** – Willful attempt to evade any tax, penalty or interest under this Act by a person, being a resident other than not ordinarily resident in India, is punishable with rigorous imprisonment for a term **not less than three years but extending to ten years and with fine.**

Willful attempt to evade payment of any tax, penalty or interest under the Act, is punishable with rigorous imprisonment for a term **not less than three months but extending upto three years** and also a fine, in the discretion of the Court.

Meaning of willful attempt to evade tax, penalty or interest

A willful attempt to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof includes a case where any person—

- (1) has in his possession or control any books of account or other documents (being books of account or other documents relevant to any proceeding under this Act) containing a false entry or statement; or
 - (2) makes or causes to be made any false entry or statement in such books of account or other documents; or
 - (3) willfully omits or causes to be omitted any relevant entry or statement in such books of account or other documents; or
 - (4) causes any other circumstance to exist which will have the effect of enabling such person to evade any tax, penalty or interest chargeable or imposable under this Act or the payment thereof.
- (v) **Punishment for false statement in verification [Section 52]** – If a person, makes a statement in any verification under this Act or under any rule made thereunder, or delivers an account or statement which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable with rigorous imprisonment for a term **not less than six months but extending to seven years and with fine.**
- (vi) **Punishment for abetment [Section 53]** – Rigorous imprisonment for a term **not less than six months but extending to seven years and fine** would be attracted for abetment to

make and deliver an account or statement or declaration relating to tax payable under this Act which is false or to commit an offence under section 51(1).

- (vii) **Presumption as to culpable mental state [Section 54]** – In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state. However, it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution. “Culpable mental state” includes intention, motive or knowledge of a fact or belief in, or reason to believe, a fact. For this purpose, a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability
- (viii) **Prosecution to be at instance of Principal Chief Commissioner or Principal Director General or Chief Commissioner or Director General or Principal Commissioner or Commissioner. [Section 55]** - A person shall not be proceeded against for an offence under section 49 to section 53 except with the sanction of the Principal Commissioner or Commissioner or the Commissioner (Appeals), as the case may be. The Principal Chief Commissioner or the Chief Commissioner or the Principal Director General or the Director General may issue such instructions, or directions, to the tax authorities as he may think fit for the institution of proceedings under this section.
- (ix) **Offences by companies [Section 56]** -
- (a) **Persons incharge at the time when offence was committed deemed guilty of offence** - Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company would be deemed to be guilty of the offence and would be liable to be proceeded against and punished accordingly. If, however, such person proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence, he would not be deemed guilty of the offence.
- (b) **Director/manager/secretary/officer of company deemed guilty of offence committed with their consent or connivance** - Where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager,

secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

- (c) **Fine and imprisonment** - Where an offence under this Act has been committed by a person, being a company, and the punishment for such offence is imprisonment and fine, then, such company shall be punished with fine. Further, every person, referred to in (a), or the director, manager, secretary or other officer of the company referred to in (b), would be proceeded against and punished in accordance with the provisions of this Act.
- (d) **Meaning of certain terms for this section**

	Term	Meaning																		
(1)	Company	Means a body corporate. Includes — (i) an unincorporated body (i.e., a firm, AOP or BOI); (ii) a Hindu undivided family.																		
(2)	Director	<table> <tr> <th></th><th>In relation to</th><th>Meaning of Director</th></tr> <tr> <td>(i)</td><td>A firm</td><td>A partner in the firm</td></tr> <tr> <td>(ii)</td><td>An AOP/BOI</td><td>A member of the AOP/BOI</td></tr> <tr> <td>(iii)</td><td>A HUF</td><td>An adult member of the family</td></tr> <tr> <td>(iv)</td><td>A company</td><td>A whole-time director</td></tr> <tr> <td>(v)</td><td>A company not having a whole-time director</td><td>Any other director or manager or officer, who is in charge of the affairs of the company</td></tr> </table>		In relation to	Meaning of Director	(i)	A firm	A partner in the firm	(ii)	An AOP/BOI	A member of the AOP/BOI	(iii)	A HUF	An adult member of the family	(iv)	A company	A whole-time director	(v)	A company not having a whole-time director	Any other director or manager or officer, who is in charge of the affairs of the company
	In relation to	Meaning of Director																		
(i)	A firm	A partner in the firm																		
(ii)	An AOP/BOI	A member of the AOP/BOI																		
(iii)	A HUF	An adult member of the family																		
(iv)	A company	A whole-time director																		
(v)	A company not having a whole-time director	Any other director or manager or officer, who is in charge of the affairs of the company																		

(x) **Proof of entries in records or documents [Section 57]**

The entries in the records, or other documents, in the custody of a tax authority are admissible in evidence in any proceeding for the prosecution of any person for an offence under Chapter V of this Act. These entries may be proved by the production of –

- (a) the records or other documents (containing such entries) in the custody of the tax authority; or
- (b) a copy of the entries certified by that authority under its signature, as true copy of the original entries contained in the records or other documents in its custody.

(xi) Punishment for second and subsequent offences [Section 58]

If any person convicted of an offence under section 49 to section 53 is again convicted of an offence under any of the aforesaid provisions, he shall be punishable for the second and every subsequent offence with rigorous imprisonment for a term of three to ten years and with fine ranging from ₹ 5 lakh to ₹ 1 crore.

(xii) Summary of Prosecution Provisions in Chapter V

Section	Offence	Punishment
49	Willful failure to furnish return in relation to foreign income and asset (including financial interest in any entity) before the expiry of the assessment year by a person, being a resident other than not ordinarily resident in India	Rigorous Imprisonment: 6 months to 7 years (+) Fine
50	Willful failure to furnish in the return of income, any information about an asset (including financial interest in any entity) located outside India by a person, being a resident other than not ordinarily resident in India	Rigorous Imprisonment: 6 months to 7 years (+) Fine
51(1)	Willful attempt to evade any tax, penalty or interest chargeable or imposable under the Act by a person, being a resident other than not ordinarily resident in India	Rigorous Imprisonment: 3 to 10 years (+) Fine
51(2)	Willful attempt to evade payment of any tax, penalty or interest under the Act by any person	Rigorous Imprisonment: 3 months to 3 years (+) Fine, at the discretion of the court.
52	Making false statement in verification or delivering an account of statement which is false knowingly	Rigorous Imprisonment: 6 months to 7 years (+) Fine
53	Abetting or inducing a person to make or deliver a false statement, account or declaration knowingly or to commit an offence u/s 51(1)	Rigorous Imprisonment: 6 months to 7 years (+) Fine

58	Second and subsequent offence	Rigorous Imprisonment: 3 to 10 years (+) Fine: ₹ 5 lakh to ₹1 crore.

Note: Students are advised to read the *Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015* and the *Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Rules, 2015* available at the website of the Income-tax Department, Government of India, www.incometaxindia.gov.in

SIGNIFICANT SELECT CASES

S. No.	Case Law	
1.	<i>US Technologies International Pvt. Ltd. v. CIT [2023] 453 ITR 644 (SC)</i>	
	Issue	Analysis and Decision
	Can penalty under section 271C be levied for non-payment or belated remittance of the tax deducted at source under Chapter XVII-B to the credit of the Central Government?	Section 271C(1)(a) is applicable in a case of failure on the part of the assessee to “deduct” the whole or any part of the tax as required by or under the provisions of Chapter XVII-B of the Act. The words “fails to deduct” used in section 271C(1)(a) are clear; and it does not speak about belated remittance of the tax deducted at source. On a plain reading of section 271C(1)(a), no penalty would be leviable on belated remittance of TDS after it is deducted by the assessee. The scope of section 271C(1)(a) and the extent of its application are discernible from the provision itself, in unambiguous terms. Wherever Parliament intended consequences for non-payment or belated remittance of the tax deducted at source, Parliament has provided for it, such as in section 201(1A) and section 276B of the Act. Section 201(1A) provides that in case a tax has been deducted at source but is subsequently remitted belatedly, such a person is liable to pay interest as provided under section 201(1A). The consequences of non-payment or belated remittance/payment of the tax deducted at source are specifically provided under section 201(1A). Similarly, section 276B speaks about prosecution for failure to pay the tax deducted at source to the credit of the Central Government within the prescribed time. The words “fails to deduct” in section 271C(1)(a) cannot be read as “failure to deposit/pay the tax deducted”. Therefore, on correct interpretation of section 271C, no penalty would be leviable under section 271C on delay in remittance of the tax deducted at source after deducting it on time. Note: Section 271C provides that if any person fails to (a) deduct the whole or any part of the tax as required by or under the provisions of Chapter XVII-B; or

		(b) pay or ensure payment of the whole or any part of the tax as required by or under - the second proviso to section 194B, - the first proviso to section 194R(1); - the proviso to section 194S(1) - w.e.f. 1.7.2023, under section 194BA(2) then, such person shall be liable to pay, by way of penalty, a sum equal to the amount of tax which such person failed to deduct or pay or ensure payment of, as aforesaid. Penalty under clause (a) above is attracted where a person fails to deduct tax wholly or partly. However, under clause (b) penalty is attracted for failure to pay tax or to ensure payment of such tax. These are specific cases where winnings/ benefits/ perquisites/ consideration for transfer, as the case may be, are wholly in kind or partly in cash or partly in kind, but the cash portion is not sufficient to meet the TDS liability. Therefore, the above Apex court ruling is applicable only with respect to clause (a) of section 271C(1). In respect of clause (b), both penalty u/s 271C and prosecution u/s 276B would be attracted.
2.	ACIT v. AT-Dev Prabha (JV) and others (2023) 454 ITR 59 (SC)	
	Issue	Analysis & Decision
	Can prosecution proceedings under section 276B be launched for delay in depositing tax to the credit of Central Government, where the period of delay and the amount of TDS were not substantial and the amount of TDS has been subsequently deposited with some delay along with interest?	<u>Relevant provision of law:</u> As per section 276B, if a person fails to pay to the credit of the Central Government, the tax deducted at source by him as required under Chapter XVII-B, he shall be punishable with rigorous imprisonment for not less than 3 months but which may extend to 7 years. <u>Analysis and Decision:</u> In the present case, the High Court, considering the CBDT Circular (wherein it is mentioned that prosecution under section 276B shall not normally be proposed when the amount involved, or the period of default was not substantial and the amount in default had been deposited in the meantime to the credit of the Central Government) quashed the criminal proceedings and orders passed by the Special Economic Offences court against the

		assessee holding that the tax deducted at source in all the cases had been deposited with interest, though there was some delay in depositing the tax. Moreover, apart from one or two cases, the deducted amounts were not more than ₹ 50,000. The Apex Court upheld the High Court decision and accordingly, dismissed the special leave petition. Note - The CBDT has, vide Circular No. 24/2019 dated 9.9.2019, in exercise of the powers under section 119, listed out the offences covered under Chapter XXII of the Income-tax Act, 1961 in respect of which prosecution proceedings shall be launched by Approving Authority being the Sanctioning Authority where the quantum of offences exceed the prescribed monetary threshold. Accordingly, in case of failure to pay TDS under section 276B or failure to pay TCS u/s 276BB, no prosecution will be processed if the TDS/TCS amount does not exceed ₹ 25 lakhs and delay in deposit is less than 60 days. However, for these offences, in exceptional cases like habitual defaulters, based on particular facts and circumstances of each case, prosecution may be initiated only with the previous administrative approval of the Collegium of two CCIT/DGIT rank officers though the amount involved does not exceed the threshold limit of ₹ 25 lakhs. Students may read the detailed circular available at the following link – https://incometaxindia.gov.in/communications/circular/circular-24-2019-11-09-2019.pdf
3.	Union of India v. Bhavcha Machinery and Others (2010) 320 ITR 263 (MP)	
	Issue	Analysis & Decision
	Would prosecution proceedings under section 276CC be attracted where the failure to furnish return in time was not willful?	The provisions of section 276CC to get attracted, there should be a willful delay in filing return and not merely a failure to file return in time. There should be clear, cogent and reliable evidence that the failure to file return in time was 'willful' and there should be no possible doubt of its being 'willful'. The failure must be intentional, deliberate, calculated and conscious with complete knowledge of legal consequences flowing from them.

		In this case, it was observed that there were sufficient grounds for delay in filing the return of income and such delay was not willful. Therefore, prosecution proceedings under section 276CC are not attracted in such a case.
4.	<i>Income-tax department v. D. K. Shivakumar [2021] 434 ITR 367 (Kar)</i>	
	Issue	Analysis & Decision
	Can prosecution be launched in every case where unaccounted transactions (like unaccounted loan) are unearthed during search, irrespective of whether there is a liability to pay tax, penalty or interest under the Act in respect thereof?	The gist of the offence under section 276C(1) is the wilful attempt to evade any tax, penalty or interest chargeable or imposable on income. What is made punishable is “attempt to evade tax, penalty or interest”. In legal parlance, an “attempt” is understood to mean “an act or movement towards commission of an intended crime”. It is doing “something in the direction of commission of offence”. A positive act on the part of the accused is required to be established to bring home the charge against the accused for the offence under section 276C(2). There is no presumption under law that every unaccounted transaction (unaccounted loan, in the present case) would lead to imposition of tax, penalty or interest. Therefore, until and unless it is determined that the unaccounted transactions unearthed during search were liable for payment of tax, penalty or interest, no prosecution could be launched on the ground of attempt to evade such tax, penalty or interest.

TEST YOUR KNOWLEDGE**Questions**

1. What is the quantum of penalty that could be levied in each of the following cases -
 - (i) Failure to get books of accounts audited as required under section 44AB within the time prescribed under the Act.
 - (ii) Failure to comply with a direction issued under section 142(2A).
 - (iii) Failure to furnish report from an accountant as required under section 92E.
2. X, an individual whose total sales in the business of food grains for the year ending 31.3.2024 was ₹205 lakhs, did not maintain books of account for P.Y.2023-24, even though his turnover was ₹ 28 lakhs in the P.Y.2022-23. During the previous year 2023-24, majority of payment were made either in cash or by bearer cheque by Mr. X. The Assessing Officer levied penalty of ₹ 25,000 under section 271A for non-maintenance of books of account and penalty of ₹ 1,02,500 under section 271B for not getting the books audited as required by section 44AB. Is the Assessing Officer justified in levying penalty under section 271B?
3. State the conditions, if any, to be satisfied by an assessee in order to get relief under section 273A(4) regarding the waiver of penalty. Can the Principal Commissioner or the Commissioner refuse to grant relief, when the conditions laid down in the section was complied with, by the assessee?
4. Examine the following cases and state whether the same are liable for penalty as per the provisions of the Income-tax Act, 1961.
 - (i) Raman & Associates had made payment in excess of the limits prescribed to the contractors for carrying out labour job work at various sites, but had not deducted tax at source as per section 194C.
 - (ii) Hotels and Hotels were asked by Income-tax Officer (CIB) to furnish details of all such tourists who stayed in their hotels and had paid bill amount in excess of ₹ 10,000. They have not furnished the requisite information in spite of various reminders.
5. Fox Limited failed to furnish information and documents sought by the Transfer Pricing Officer (TPO). Can TPO levy penalty for such failure? How much would be the quantum of penalty imposable for the said failure?

6. What would be the penalty leviable under section 270A in case of the following assessees, if none of the additions or disallowances made in the assessment or reassessment qualify under section 270A(6) and the under-reported income is not on account of misreporting?

	Particulars of total income of A.Y.2024-25	M/s. Alpha, a resident firm	Beta Ltd., an Indian company
		(₹)	(₹)
(1)	As per the return of income furnished u/s 139(1)	35,00,000	(12,00,000)
(2)	Determined under section 143(1)(a)	45,00,000	(6,00,000)
(3)	Assessed under section 143(3)	62,00,000	(2,00,000)
(4)	Reassessed under section 147	81,00,000	6,00,000

Note – Beta Ltd. is a trading company. The total turnover of Beta Ltd. for the P.Y.2021-22 was ₹ 401 crore and the company has not exercised option under section 115BAA.

7. Can prosecution be launched for each of the following actions or defaults committed? If yes, then explain the relevant provisions of the Act and the quantum of prescribed punishment.
- The assessee had restrained and not allowed the officer authorized as per section 132(1)(iib) of the Act to inspect the documents maintained in the form of electronic record and the books of accounts.
 - The assessee deliberately has failed to comply with the requirement of section 142(1) and/or 142(2A).
 - The assessee deliberately has failed to make the payment of the tax collected under section 206C.
8. The Assessing Officer lodged a complaint against M/s. KLM, a firm, under section 276CC of the Income-tax Act, 1961 for failure to furnish its return of income for the A.Y.2022-23 within the due date under section 139(1). The tax payable on the assessed income, as reduced by the advance tax paid and tax deducted at source, was ₹ 60,000. The appeal filed by the firm against the order of assessment was allowed by the Commissioner (Appeals). The Assessing Officer passed an order giving effect to the order of the Commissioner (Appeals). The tax payable by the firm as per the said order of the Assessing Officer was ₹ 8,900. The Assessing Officer has accepted the order of the Commissioner (Appeals) and has not preferred an appeal against it to the Income Tax Appellate Tribunal. The firm desires to know of the maintainability of the prosecution proceedings in the facts and circumstances of the case.

Would your answer change if the person against whom complaint was lodged was KLM Ltd., a company, instead of a firm?

9. *Explain section 278C applicable in respect of offences committed by Hindu undivided families.*
10. *Can the Department launch prosecution in a case where they have accepted the revised return filed by the assessee, rectifying a mistake in the original return of income?*
11. *Ravinder, an Indian citizen, left India and settled in United Kingdom from 10.4.2016. He had never left India previously since April, 2008. He acquired a property worth ₹ 200 lakhs in his name in the financial year 2013-14 at Malaysia. The Assessing Officer came to know of this in March, 2024 based on the investigation made by Enforcement Directorate in some other person's case.*

The Assessing Officer, having recorded some concrete evidences against Ravinder, issued a notice under section 10 of the Black Money and Imposition of Tax Act, 2015 on 27.3.2024. Mr. Ravinder's counsel contended that since Mr. Ravinder is not a resident in the financial year 2023-24, a notice under section 10 could not be issued to him.

Is the issue of notice on Ravinder under section 10 of the Black Money Act, 2015 tenable in law? Examine.

12. *Mr. Harshit stayed in India only for 48 days during P.Y.2023-24. He had acquired a house property located in Country A in September 2013 for ₹ 80 lakh. Out of the investment of ₹ 80 lakh, ₹ 55 lakh was assessed to tax in the total income of the P.Y.2013-14 and P.Y.2012-13, when he was resident in India. The remaining income has not been assessed to tax in any year. This asset comes to the notice of the Assessing Officer in March 2024. The value of the house property on 1.4.2023 was ₹ 120 lakh.*

What is the value of undisclosed asset (house property located in Country A) in the hands of Mr. Harshit for the purpose of Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 and in which year would the same be chargeable to tax?

13. *An apartment located in Country X was bought in 1988 for ₹ 10 lakh. It was sold in the year 2003 for ₹ 30 lakh. This amount was deposited in a bank account in Country X. In the year 2004, another apartment was purchased for ₹ 45 lakh. The investment in the new apartment was made through withdrawal from the bank account in Country X. The new apartment has not been transferred before the valuation date and its value on the valuation date is ₹ 55 lakh. Assuming that the value of foreign bank account in Country X as computed under Rule 3(1)(e)*

is ₹70 lakh, what would be the fair market value of the new apartment as per Rule 3 of Black Money (Undisclosed Foreign Income and Assets) Imposition of Tax Rules, 2015?

14. Mr. Piloo (age 72) was the managing director of Ashok (P) Ltd. at Surat. He retired in June, 2009 and left India permanently in January, 2012. It came to the notice of the Joint Director of Income-tax (Investigation) in June, 2023 that Mr. Piloo had accumulated assets during the previous year 2008-09 exceeding ₹ 500 lakhs outside India (consisting of residential apartments and deposits in banks) which were not disclosed for income-tax purposes up to the assessment year 2012-13 for which the return of income was filed in India. Mr. Piloo was served with a notice under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 in August, 2023.

Mr. Piloo is of the opinion that since 10 years have elapsed from the last assessment year in which he was assessed in India, no proceedings could be initiated against him under the Income-tax Act, 1961 and the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015. Mr. Piloo is a non-resident for the assessment year 2024-25.

Discuss the liability of Mr. Piloo under the Black Money law and state the procedure and methodology for determination of the value of undisclosed asset outside after evaluating the validity of the contentions raised by him.

15. Deepak, aged 45 (an Indian citizen) has settled in California, USA since 2015. Prior to that, he has always been in India. He had acquired a residential property in California on 25-06-2009 for USD 20,000. He kept bank deposit of USD 10,000 in a bank account in New York since 15-04-2010.

Notice under Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 was issued on 20-10-2023. The fair market value of residential property as on 01-04-2023 was USD 25,000; on 01-04-2024 USD 32,000 and 20-10-2023 USD 30,000. The bank deposit with accrued interest thereon was USD 12,500 on 01-04-2023; USD 12,800 on 01-04-2024 and USD 12,700 on 20-10-2023.

Note: USD = United States Dollar

The exchange rate of Indian currency per 1 USD as per the reference rate of the RBI on the various dates are:

01-04-2023 = ₹71

20-10-2023 = ₹72

01-04-2024 = ₹73

Compute the value of undisclosed foreign asset chargeable to tax in the hands of Deepak as per Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015.

Answers

1. The penalty that could be levied in each case is:
 - (i) **Failure to get books of accounts audited as required under section 44AB of the Income-tax Act, 1961** - a sum equal to $\frac{1}{2}\%$ of the 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 years, or a sum of ₹ 1,50,000, whichever is less [Section 271B].
 - (ii) **Failure to comply with a direction issued under section 142(2A)** – a sum of ₹ 10,000 [Section 272A(1)(d)].
 - (iii) **Failure to furnish report from an accountant as required by section 92E** - a sum of ₹ 1,00,000 [Section 271BA].

2. X is required to maintain books of account as per section 44AA for the P.Y.2023-24 since his turnover exceeded ₹ 25 lakhs in the P.Y.2022-23. He also has to get them audited under section 44AB, since his gross sales in the P.Y.2023-24 exceeds ₹ 1 crore. He is liable to pay penalty under section 271A for not maintaining his books of account as per section 44AA. Accordingly, the action of the Assessing Officer in levying penalty of ₹ 25,000 under section 271A is correct. However, where books of account have not been maintained, there cannot be a question of getting them audited. Audit of books of account presupposes maintenance of books of account. When admittedly X has not maintained books, he cannot obviously get the audit done.

In *Surajmal Parsuram Todi v. CIT* (1996) 222 ITR 691, the Guwahati High Court has held that when a person commits an offence by not maintaining books of accounts as contemplated by section 44AA, the offence is complete and after that there can be no possibility of any offence as contemplated by section 44AB and, therefore, the imposition of penalty under section 271B is erroneous.

Therefore, in this case, the Assessing Officer is **not** justified in levying penalty under section 271B.

3. There are two conditions to be satisfied by an assessee in order to get relief in the form of a waiver or reduction of penalty by the Principal Commissioner or the Commissioner of Income-tax under section 273A(4) of the Act. These conditions are:

- (i) The payment of penalty would cause "genuine hardship" to the assessee and the Commissioner is satisfied about the existence of genuine hardship having regard to the circumstances of the case. The existence of genuine hardship would entitle the assessee to relief. The CBDT in its *Circular No 784 dated 22-11-1999* has clarified that "genuine hardship" referred to in the provisions of section 273A(4) should exist both at the time at which the application under section 273A(4) is made by the assessee before the Principal Commissioner or the Commissioner and at the time of passing of order under section 273A(4) by the Principal Commissioner or the Commissioner.
- (ii) The assessee has co-operated in any enquiry relating to the assessment or any proceeding for the recovery of any amount due from him.

As per the decision of Andhra Pradesh High Court in *K.S.N. Murthy v. Chairman, CBDT (2001) 252 ITR 269*, if the above conditions laid down for exercise of the discretion are satisfied, the Principal Commissioner or the Commissioner cannot refuse to exercise the discretion. Though the power given to the Commissioner under section 273A is discretionary, the exercise of discretion cannot be either arbitrary or capricious and has to be judicious and objective, once the conditions required for exercise of discretion in any judicial or quasi-judicial proceedings are satisfied. Such discretion must be exercised taking into consideration all relevant facts. The satisfaction for exercise of discretionary power under the section must be based on objective consideration and not on subjective satisfaction.

Also, as per the proviso to section 273A(4), in case the quantum of penalty exceeds ₹ 1 lakh, the Principal Commissioner or the Commissioner can grant relief only with the previous approval of the Principal Chief Commissioner or the Chief Commissioner or the Principal Director General or the Director General, as the case may be.

Note - The Principal Commissioner or the Commissioner has to pass an order under section 273A(4), either accepting or rejecting the application in full or in part, within a period of 12 months from the end of the month in which the application is received. Further, no order rejecting the application, either in full or in part, shall be passed unless the assessee has been given an opportunity of being heard.

- 4. (i) Penalty under section 271C is attracted for failure to deduct tax at source. The penalty would be a sum equal to the amount of tax which such person has failed to deduct. Such penalty can be imposed only by the Joint Commissioner. Therefore, Raman & Associates shall be liable for penalty under section 271C equal to the amount of tax

which they have failed to deduct under section 194C from the payments made to the contractors. The penalty would be in addition to the disallowance of 30% of expenditure/payment under section 40(a)(ia).

- (ii) Section 133(6) empowers the Income-tax authority to require any person to furnish information in relation to such points or matters which will be useful for or relevant to any enquiry or proceeding under the Act. Failure on the part of an assessee to furnish the information in relation to such points or matters as required makes him liable for penalty under section 272A(2) of ₹ 500 for every day during which the failure continues.

Note – An income-tax authority below the rank of the Principal Director or Director or Principal Commissioner or Commissioner can exercise this power in respect of an enquiry in a case where no proceeding is pending, only with the prior approval of the Principal Director or Director or Principal Commissioner or Commissioner. Such power can, however, be exercised by the Joint Director, Deputy Director and Assistant Director, without the prior approval of the Principal Director/Director/Principal Commissioner/Commissioner. In this case, it is presumed that the Income-tax authority has obtained the approval of the Principal Director/Director or Principal Commissioner/ Commissioner before exercising this power.

- 5. Under section 271G, if any person who has entered into an international transaction or specified domestic transaction fails to furnish any such information or document as required by section 92D(3) sought for by the Transfer Pricing Officer, then, such person shall be liable to a penalty which may be levied by the Assessing Officer or the Transfer Pricing Officer or the Commissioner (Appeals). Thus, the Transfer Pricing Officer is a competent authority to levy penalty.

Penalty would be a sum equal to 2% of the value of international transaction or specified domestic transaction for each such failure.

6. Penalty leviable under section 270A in case of M/s. Alpha, a resident firm

M/s. Alpha is deemed to have under-reported its income since:

- (1) its income assessed under 143(3) exceeds its income determined in a return processed under section 143(1)(a); and
- (2) the income reassessed under section 147 exceeds the income assessed under section 143(3).

Therefore, penalty is leviable under section 270A for under-reporting of income.

Computation of penalty leviable under section 270A

Particulars	₹	₹
<u>Assessment under section 143(3)</u>		
<u>Under-reported income:</u>		
Total income assessed under section 143(3)	62,00,000	
(-) Total income determined u/s 143(1)(a)	45,00,000	
	17,00,000	
<u>Tax payable on under-reported income:</u>		
Tax on under-reported income of ₹ 17 lakhs <i>plus</i> total income of ₹ 45 lakhs determined u/s 143(1)(a) [30% of ₹ 62 lakh + HEC@4%]	19,34,400	
Less: Tax on total income determined u/s 143(1)(a) [30% of ₹ 45 lakh + HEC@4%]	14,04,000	
	5,30,400	
Penalty leviable@50% of tax payable		2,65,200
<u>Reassessment under section 147</u>		
<u>Under-reported income:</u>		
Total income reassessed under section 147	81,00,000	
(-) Total income assessed under section 143(3)	62,00,000	
	19,00,000	
<u>Tax payable on under-reported income</u>		
Tax on under-reported income of ₹ 19 lakhs <i>plus</i> total income of ₹ 62 lakhs assessed u/s 143(3) [30% of ₹ 81 lakh + HEC@4%]	25,27,200	
Less: Tax on total income assessed u/s 143(3) [30% of ₹ 62 lakh + HEC@4%]	19,34,400	
	5,92,800	
Penalty leviable@50% of tax payable		2,96,400

Penalty leviable under section 270A in the case of Beta Ltd., an Indian company

Beta Ltd. is deemed to have under-reported its income since:

- (1) the assessment under 143(3) has the effect of reducing the loss determined in a return processed under section 143(1)(a); and
- (2) the reassessment under section 147 has the effect of converting the loss assessed under section 143(3) into income.

Therefore, penalty is leviable under section 270A for under-reporting of income.

Computation of penalty leviable under section 270A

Particulars	₹	₹
<u>Assessment under section 143(3)</u>		
<u>Under-reported income:</u>		
Loss assessed u/s 143(3)	(2,00,000)	
(-) Loss determined under section 143(1)(a)	(6,00,000)	
	4,00,000	
Tax payable on under-reported income@30%	1,20,000	
Add: HEC@4%	4,800	
	1,24,800	
Penalty leviable@50% of tax payable		62,400
<u>Reassessment under section 147</u>		
<u>Under-reported income:</u>		
Total income reassessed under section 147	6,00,000	
(-) Loss assessed under section 143(3)	(2,00,000)	
	8,00,000	
Tax payable on under-reported income@30%	2,40,000	
Add: HEC@4%	9,600	
	2,49,600	
Penalty leviable@50% of tax payable		1,24,800

Note – The applicable rate of tax for Beta Ltd., a trading company, for A.Y.2024-25 is 30%, since its turnover for the P.Y.2021-22 exceeded ₹ 400 crores.

7. (i) Failure to afford facility to the officer authorized as per section 132(1)(iib) is a case for which **prosecution can be launched under section 275B** and such person shall be punishable with rigorous imprisonment **for a term which may extend to two years and shall also be liable to fine.**
- (ii) Willful failure to produce books of account and documents as required under section 142(1) or willful failure to comply with a direction to get the accounts audited under section 142(2A) is a case for which **prosecution can be launched under section 276D** and such person shall be **punishable with rigorous imprisonment for a term which may extend to one year and with fine.**
- (iii) Deliberate failure to deposit the tax collected under section 206C to the credit of the Central Government is a case for which **prosecution can be launched under section**

276BB and such person shall be **punishable with rigorous imprisonment for a term which shall not be less than three months but which may extend to seven years and with fine.**

8. (i) Section 276CC provides for prosecution for wilful failure to furnish a return of income within the prescribed time, in a case where tax would have been evaded had the failure not been discovered. Since the amount of tax which would have been evaded does not exceed ₹ 25 lakh, the imprisonment would be for a term of 3 months to 2 years. In addition, fine would also be attracted.

However, in a case where the return of income is not filed within the due date, prosecution proceedings will not be attracted if the tax payable by a person, other than a company, on the total income determined on regular assessment, as reduced by the advance tax or self assessment tax, if any, paid and any tax deducted at source, does not exceed ₹ 10,000.

In this case, even though the tax liability of the firm as per the original order of assessment exceeded ₹ 10,000, however, as a result of the order of the Commissioner (Appeals), it got reduced to ₹ 8,900, which is less than ₹ 10,000. Therefore, since the tax liability of the firm on final assessment was determined at ₹ 8,900, the prosecution proceedings are not maintainable.

In *Guru Nanak Enterprises v. ITO (2005) 279 ITR 30*, where the facts were similar, the Supreme Court held that prosecution was unwarranted.

- (ii) Yes, in case of a company, the answer would be different and prosecution proceedings would be maintainable.
9. As per section 278C(1) of the Income-tax Act, 1961, where an offence under the Income-tax Act, 1961 has been committed by a Hindu undivided family (HUF), the karta shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. However, the karta shall not be liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.
- As per section 278C(2), where an offence under the Income-tax Act, 1961 has been committed by a HUF and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any member of the HUF, such member shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

10. This question came up before the Karnataka High Court in *K.E. Sunil Babu, Asst. CIT v. Steel Processors (2006) 286 ITR 315*. The High Court observed that since the Department had accepted the revised returns filed under section 139(5), it was clear that there was a *bona fide* mistake in the original return and there was no element of *mens rea*. Therefore, the High Court held that the Department cannot launch prosecution under sections 276C, 277 and 278.
11. Every assessee would be liable to tax@30% in respect of his undisclosed foreign income and asset of the previous year. Undisclosed foreign asset would be liable to tax in the previous year in which such asset comes to the notice of the Assessing Officer.

The term “assessee” defined under section 2(2) of the Black Money Act includes a person being a resident in India within the meaning of section 6 of the Income-tax Act, 1961 in the relevant previous year; or being a non-resident or not ordinarily resident in India within the meaning of section 6(6) of the Income-tax Act, 1961 in the relevant previous year, who was resident in India in the previous year in which the undisclosed asset located outside India was acquired.

Since Mr. Ravinder left India and settled in United Kingdom from 10.4.2016 and has not visited India at any time thereafter, he would be **non-resident in India in the previous year 2023-24** in which notice is issued. However, he was resident and ordinarily resident in India in the financial year 2013-14 when he acquired the property at Malaysia. Accordingly, the issue of notice on Mr. Ravinder under section 10 of the Black Money Act, 2015, is tenable in law.

12. Although Mr. Harshit is a non-resident in A.Y.2024-25 (since he stayed in India only for 48 days in the P.Y.2023-24), he is a resident in the P.Y. 2013-14 in which the undisclosed asset located in Country A was acquired. Hence, he is an assessee under the Black Money (Undisclosed Foreign Income and Assets) Imposition of Tax Act, 2015.

If the value of the house property in the year 2023-24 is ₹ 120 lakh, the amount chargeable to tax shall be $X - Y = Z$ where,

$X = ₹ 120 \text{ lakh}$,

$Y = ₹ 120 \text{ lakh} \times 55/80 = ₹ 82.50 \text{ lakh}$,

$Z = ₹ 120 \text{ lakh} - ₹ 82.50 \text{ lakh} = ₹ 37.50 \text{ lakh}$.

₹ 37.50 lakh chargeable to tax in the hands of Mr. Harshit in the A.Y.2024-25.

13. FMV of the new apartment = Higher of cost of acquisition i.e., ₹ 45 lakh and price which the property would ordinarily fetch if sold in the open market on the valuation date as per the valuation report i.e., ₹ 55 lakh = ₹ 55 lakh.

14. The contention of the assessee that the proceedings under the Black Money law are barred by limitation is not tenable in law. The time limitation given in the Income-tax Act, 1961, will not apply for the purpose of Black Money law. There is no time limit for initiation of proceedings under the Black Money Law, therefore, proceedings can be initiated against Piloo, even though 10 years have elapsed from the last assessment year in which he was assessed in India.

Every assessee would be liable to tax @ 30% in respect of his undisclosed foreign income and asset of the previous year. Undisclosed foreign asset would be liable to tax in the previous year in which such asset comes to the notice of the Assessing Officer.

Since Mr. Piloo left India permanently in January, 2012, he is a non-resident in India for the previous year 2023-24, the year in which the notice under the Black Money Act was served on him. However, he was resident in India during the previous year 2008-09, being the year in which he accumulated assets outside India which were not disclosed by him in the return of income.

The term “assessee” defined under section 2(2) of the Black Money Act, *inter alia* includes a person being a non-resident or not ordinarily resident in India within the meaning of section 6(6) of the Income-tax Act, 1961 in the relevant previous year, but who was resident in India in the previous year in which the undisclosed asset located outside India was acquired. Accordingly, Piloo who was resident in India in the P.Y.2008-09 would be an assessee under the Black Money Act, even though he is a non-resident for P.Y.2023-24.

Accordingly, Piloo is liable to pay tax @30% in respect of undisclosed foreign asset during the previous year 2023-24, the year in which such assets came to the notice of the Assessing Officer.

The relevant date for determination of the value of undisclosed assets would be the first day of April of the previous year in which the undisclosed asset located outside India comes to the notice of the Assessing Officer. The notice under the Black Money law was served in August, 2023 and the question states that it came to the notice of Joint Director of Income-tax (Investigation) in June, 2023. Accordingly, the fair market value of the asset as on 01.04.2023 would be adopted.

He is also liable to pay penalty, in addition to tax, if any, payable by him, of a sum equal to three times the tax so computed.

The value of the undisclosed asset would be the fair market value of an asset (including financial interest in any entity) determined in the prescribed manner as laid down in Rule 3 of Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Rules, 2015.

The value of residential apartments would be the higher of -

- (i) its cost of acquisition; and
- (ii) the price that the property shall ordinarily fetch if sold in the open market on the valuation date

The value of bank deposits would be the sum of all the deposits made in the account with the bank since the date of opening of the account. However, where any deposit is made from the proceeds of any withdrawal from the account, such deposit shall not be taken into consideration while computing the value of the account.

15. The definition of “assessee” under the Black Money Law, *inter alia*, includes a person who, being a non-resident in the previous year when the undisclosed income came to the notice of the Assessing Officer, was resident in India in the previous year in which the undisclosed asset located outside India was acquired. **Therefore, Deepak is an assessee under the Black Money Law since he was resident in India in the P.Y.2009-10, when the property was acquired, even though he is a non-resident in the P.Y.2023-24, when notice under Black Money Law was issued.** Accordingly, the value of undisclosed asset located outside India of Deepak would be chargeable to be tax under the Black Money Law in the previous year in which such asset comes to the notice of the Assessing Officer i.e., P.Y 2023-24, even though he is a non-resident in India for that previous year.

Computation of value of undisclosed foreign asset

Particulars	USD	₹
Value of residential property in California acquired on 25.6.2009	25,000	
Value of residential property would be the fair market value, being the higher of -		
- Cost of acquisition	USD 20,000	
- Price that the property shall ordinarily fetch if sold in the open market on the valuation date, i.e., 1.4.2023	USD 25,000	
Converted into Indian currency taking the rate as on 1.4.2023	₹ 71/USD	17,75,000
Bank Deposits in a bank A/c in New York as on 1st April 2023 [The sum of all the deposits made in the account with the bank since the date of opening of the account would be the value of the bank deposits]	10,000	
Converted into Indian currency taking the rate as on 1.4.2023	₹ 71/USD	7,10,000
Total value of undisclosed foreign asset		24,85,000

TAX AUDIT AND ETHICAL COMPLIANCES

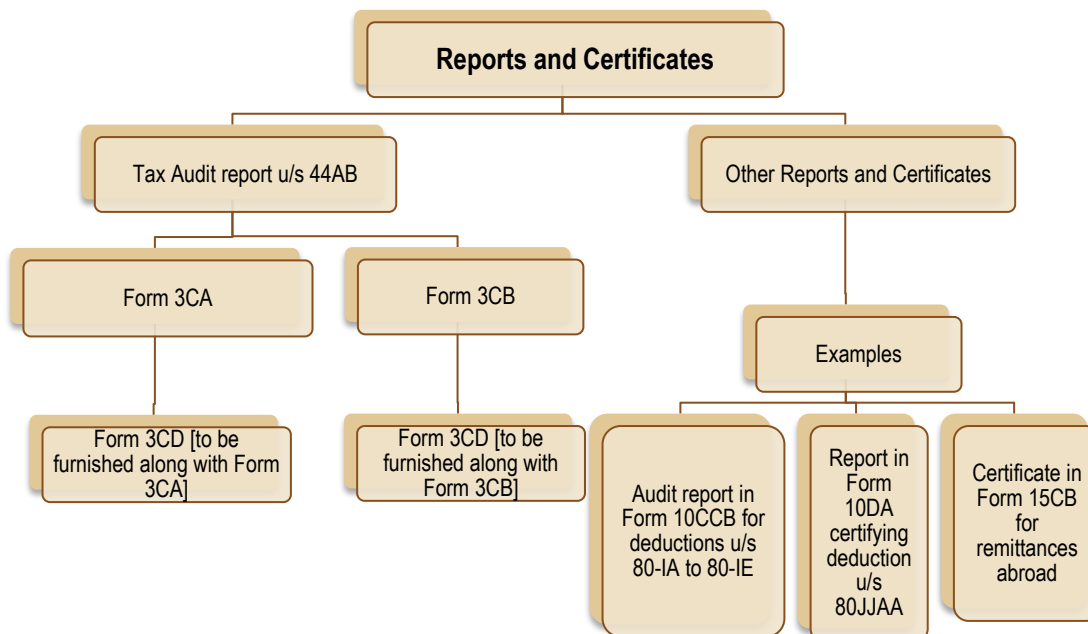


LEARNING OUTCOMES

After studying this chapter, you would be able to -

- ❑ **appreciate** the provisions relating to tax audit and other audit reports and certificates under the Income-tax Act, 1961;
- ❑ **examine** the cases where the assessee is mandatorily required to get the books of accounts audited;
- ❑ **comprehend and apply** the provisions of section 44AD read with Rule 6G to identify the Form No. under which tax audit report is to be furnished;
- ❑ **comprehend** the clause-by-clause reporting requirements in Form 3CD;
- ❑ **analyse** the ethical implications in case of failure to comply with the reporting requirements.

CHAPTER OVERVIEW



20.1 INTRODUCTION

The provisions relating to tax audit were inserted by the Finance Act, 1984 applicable w.e.f. 01.04.1985, marking a milestone in the history of chartered accountancy profession in the realm of professional opportunity in direct taxes. Since tax audit was introduced to ensure the accuracy of books of accounts maintained, which forms the basis of computation of income, this significant responsibility was entrusted by the Government to chartered accountants.

Time and again changes were made in the reporting requirements of tax audit report widening the scope of tax audit. Considering the significant responsibility entrusted by the Government to chartered accountants, the ICAI has issued Guidance Note on Tax Audit u/s 44AB of the Income-



tax Act, 1961” offering guidance to members for conduct of tax audit, making of report and related matters.

Audit Reports & Reports and Certificates under the provisions of the Income-tax Act, 1961

In addition to section 44AB, there are other provisions in the Income-tax Act, 1961 which require furnishing of report by a chartered accountant. Section 12A(1)(b) requires audit of accounts of a trust or institution and furnishing of audit report in Form 10B/10BB before the specified date for claiming the benefit of exemption under section 11 or section 12. Also, the provisions permitting deductions in respect of certain incomes under sections 80-IA to 80-IE of Chapter VI-A of the Income-tax Act, 1961 require audit of accounts and furnishing of audit report in Form 10CCB before the specified date, declaring that the undertaking or enterprise has satisfied the conditions stipulated under the respective sections for claim of deduction and the amount of deduction claimed is as per the provisions of the Income-tax Act, 1961.

For claiming deduction under section 80JJAA, report of a chartered accountant in Form 10DA has to be furnished before the specified date certifying the deduction to be claimed. Further, every company to which the provisions of minimum alternate tax under section 115JB applies has to furnish a report in Form 29B from a chartered accountant certifying the correctness of computation of book profit. There is a similar requirement for every person to whom the provisions of alternate minimum tax under section 115JC are applicable. The report in this case would be in Form 29C certifying that the adjusted total income and alternate minimum tax have been computed in accordance with the provisions of the Act. In case of slump sale under section 50B, the assessee has to furnish in Form 3CEA, a report of a chartered accountant certifying the correctness computation of the net worth of the undertaking or division.

Also, there are certain provisions under the Income-tax Act, 1961 which require certification by a chartered accountant. For instance, certificate from a chartered accountant in Form 15CB is required in case of remittances to non-residents where the remittance or aggregate of such remittances exceed ₹ 5 lakh during the financial year and the remittances are chargeable under the provisions of the Income-tax Act, 1961.

Government's trust on competence and integrity of Chartered Accountants

The requirement of audit of accounts and furnishing of report of chartered accountant certifying the correctness of computations under different provisions of the Income-tax Act, 1961 indicate the trust reposed by the Government on a chartered accountant. Also, Revenue Authorities rely upon the integrity of the chartered accountant to assist tax authorities. The decision rendered by the Delhi

High Court in the case of *Additional CIT v. Jay Engineering Works Ltd. (1978) 113 ITR 389* indicates the extent to which the income-tax authorities place reliance on the audit reports -

“It is quite competent for the income-tax authorities not only to accept the auditor’s report but also to draw proper inference from the same. The income-tax authorities can, therefore, come to the conclusion that, since the auditors were required by the statute to find out if the deductions claimed by the assesseees were supported by the relevant entries in their account books, the auditors must have done so and must have found that the account books supported the claims for deductions.

Where the original account books of the assessee had been destroyed in a fire, it was held that the Appellate Tribunal, in allowing a deduction, could rely upon other material mainly consisting of the auditor’s reports from which it could be inferred that the deductions were properly supported by the relevant entries in the account books”.

This clearly demonstrates the faith which the Government and the Revenue Authorities have in the competency and integrity of a chartered accountant due to which various statutory duties and responsibilities have been cast upon them under the provisions of the Act. It is in this context that the conduct of the chartered accountant has to be appreciated. Chartered accountants cannot be oblivious to their professional duties and sign audit reports and certificates in a mechanical manner.

Paras 13.3 and 13.4 of the Guidance Note on Tax Audit under section 44AB read as follows -

“The audit report given under section 44AB is to assist the income-tax department to assess the correct income of the assessee. The tax auditor should keep necessary working papers about the evidence on which he has relied upon while conducting the audit. Such working papers should include the auditor’s notes on the following, amongst other matters:

- (a) work done while conducting the audit and by whom;*
- (b) explanations and information given to him during the course of the audit and by whom;*
- (c) decision on the various points taken;*
- (d) the judicial pronouncements relied upon by him while making the audit report; and*
- (e) certificates issued by the client/management letters*

The requirements of documentation are applicable in respect of tax audit conducted by chartered accountants. For this purpose, attention is also invited to SA 230, Audit Documentation, which provides that the tax auditor should prepare documentation that provides a sufficient and appropriate record of the basis for the auditor’s report and evidence that the audit was planned and performed in accordance with SA’s and applicable legal and regulatory requirements.”

A chartered accountant in practice would be deemed to be guilty of professional misconduct under clauses (7) of Part I of the Second Schedule to the Chartered Accountant Act, 1949, if he does not exercise due diligence, or is grossly negligent in the conduct of his professional duties. Further, as per clause (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949, a chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he fails to obtain sufficient information which is necessary for expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion.

In this chapter, we would be first discussing the reporting requirements under different clauses of Form 3CD. Thereafter, with the aid of case studies, the ethical aspects to be considered by a chartered accountant while undertaking tax audit and issuing reports and certificates under the different provisions of the Income-tax Act, 1961 and the Rules made thereunder have been explained.

It may be noted that in certain clauses the tax auditor, in addition to the reporting requirements under the said clauses, has to qualify his report in para 3 of Form 3CA or para 5 of Form 3B, as the case may be.

It may also be noted that penalty under section 271J would be attracted in the hands of, *inter alia*, an accountant for furnishing incorrect information in any report or certificate furnished under any provision of the Income-tax Act, 1961 or Income-tax Rules, 1962. The quantum of penalty is ₹ 10,000 for each such report or certificate.



20.2 TAX AUDIT UNDER SECTION 44AB

Under section 44AB, it is obligatory in the following cases for a person carrying on business or profession to get his accounts audited before the “specified date” by a Chartered Accountant:

- (i) if the total sales, turnover or gross receipts in business exceeds ₹ 1 crore in any previous year.

However, tax audit is not required in case of such person carrying on business whose total sales, turnover or gross receipts in business < ₹ 10 crore in the relevant previous year (P.Y.), if:-

- aggregate cash receipts including amount received for sales, turnover, gross receipts in the relevant previous year $\leq$ 5% of such receipts; **and**

- aggregate cash payments including amount incurred for expenditure in the relevant P.Y. $\leq$ 5% of such payments.

Payment or receipt by a cheque or by a bank draft which is not account payee, would be deemed to be made in cash.

The twin conditions of paragraph with respect to cash receipts and cash payments is to be satisfied together. Further, if the sales, turnover or gross receipts is $>$ 10 crores, the person is required to get his accounts audited even if these conditions are fulfilled.

- (ii) if the gross receipts in profession exceed ₹ 50 lakhs in any previous year.
- (iii) where the assessee is covered under section 44AE, 44BB or 44BBB and claims that the profits and gains from business are lower than the profits and gains computed on a presumptive basis in any previous year.
- (iv) where the assessee is carrying on a notified profession under section 44AA, and he claims that the profits and gains from such profession are lower than the profits and gains computed on a presumptive basis under section 44ADA and his income exceeds the basic exemption limit in any previous year.
- (v) where the assessee is covered under section 44AD(4) and his income exceeds the basic exemption limit in any previous year.

The persons mentioned above has to get his accounts audited by an accountant before one month prior to the due date of filing return of income specified under section 139(1) and furnish by that date, the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed.

Section 44AB is not applicable in case of a person who declares profits or gains for the previous year in accordance with the provisions of section 44AD(1) or 44ADA(1).

This section shall also not apply to an assessee, being a non-resident who derives income of the nature referred to in section 44B i.e., from operation of ships or section 44BBA i.e., from operation of aircraft.

For this purpose, the CBDT has prescribed under Rule 6G, Forms 3CA/3CB/3CD containing forms of audit report and particulars to be furnished therewith. In the case of a person who carries on business or profession and who is required by or under any other law to get his accounts audited, Form 3CA has to be furnished. In the case of a person who carries on business or profession whose accounts are not required to be audited under any other law, Form 3CB has to be furnished. The particulars required to be furnished under section 44AB

is to be furnished in Form 3CD. In a case 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 compliance if the person gets his accounts audited under such other law before the specified date and also furnishes by the said date, the report of audit required under such other law and a further report by an accountant in Form 3CA.

Sales, Turnover and Gross Receipts

The provisions relating to tax audit under section 44AB apply to every person carrying on business, if his total sales, turnover or gross receipts in business exceed the prescribed limit (₹ 1 crore or, in certain specified cases, ₹ 10 crore) and to a person carrying on a profession, if his gross receipts from profession exceed the prescribed limit (₹ 50 lakhs) in the previous year 2023-24. However, the terms "sales", "turnover" or "gross receipts" are not defined in the Act, and therefore, the meaning of the aforesaid terms has to be considered for the applicability of the section.

The words "Sales", "Turnover" and "Gross receipts" are commercial terms, they should be construed in accordance with the method of accounting regularly employed by the assessee. Section 145(1) provides that income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" should be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee. The method of accounting followed by the assessee is also relevant for the determination of sales, turnover or gross receipts.

Applying the above generally accepted accounting principles, a few typical cases may be considered:

- (i) Discount allowed in the sales invoice will reduce the sale price and, therefore, the same can be deducted from the turnover.
- (ii) Cash discount otherwise than that allowed in a cash memo/sales invoice is in the nature of a financing charge and is not related to turnover. The same should not be deducted from the figure of turnover.
- (iii) Turnover discount is normally allowed to a customer if the sales made to him exceed a particular quantity. This being dependent on the turnover, as per trade practice, it is in the nature of trade discount and should be deducted from the figure of turnover even if the same is allowed at periodical intervals by separate credit notes.
- (iv) Special rebate allowed to a customer can be deducted from the sales if it is in the nature of trade discount. If it is in the nature of commission on sales, the same cannot be deducted from the figure of turnover.

- (v) Price of goods returned should be deducted from the figure of turnover even if the returns are from the sales made in the earlier year/s.
- (vi) Sale proceeds of fixed assets would not form part of turnover since these are not held for resale.
- (vii) Sale proceeds of property held as investment property will not form part of turnover.
- (viii) Sale proceeds of any shares, securities, debentures, etc., held as investment will not form part of turnover. However, if the shares, securities, debentures etc., are held as stock-in-trade, the sale proceeds thereof will form part of turnover.

The term "gross receipts" is also not defined in the Act. It will include all receipts whether in cash or in kind arising from carrying on of the business which will normally be assessable as business income under the Act. Broadly speaking, the following items of income and/or receipts would be covered by the term "gross receipts in business":

- (i) Cash assistance (by whatever name called) received or receivable by any person against exports under any scheme of the Government of India;
- (ii) Any indirect tax re-paid or repayable as drawback to any person against exports under the Customs and Central Excise Duties and Service Tax Drawback Rules, 1995;
- (iii) The aggregate of gross income by way of interest received by the money lender;
- (iv) Commission, brokerage, service and other incidental charges received in the business of chit funds;
- (v) Reimbursement of expenses incurred (e.g. packing, forwarding, freight, insurance, travelling etc.) and if the same is credited to a separate account in the books, only the net surplus on this account should be added to the turnover for the purposes of section 44AB;
- (vi) The net exchange rate difference on export sales during the year on the basis of the principle explained in (v) above will have to be added;
- (vii) Hire charges of cold storage;
- (viii) Liquidated damages;
- (ix) Insurance claims - except for fixed assets;
- (x) Sale proceeds of scrap, wastage etc. unless treated as part of sale or turnover, whether or not credited to miscellaneous income account;
- (xi) Gross receipts including lease rent in the business of operating lease;

- (xii) Finance income to reimburse and reward the lessor for his investment and services;
- (xiii) Hire charges and instalments received in the course of hire purchase;
- (xiv) Advance received and forfeited from customers.
- (xv) The value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession.

Note - Where the assessee carries on more than one business activity, the results of all business activities should be clubbed together. In other words, the aggregate sales, turnover and/or gross receipts of all businesses carried on by an assessee would be taken into consideration in determining whether the prescribed limit (i.e., ₹ 1 crore & ₹ 10 crore for certain specified cases) as laid down in section 44AB has been exceeded or not.

However, where the business is covered by section 44B or 44BBA, turnover of such business shall be excluded. Similarly, where the business or profession is covered by section 44AD or 44ADA or 44AE and the assessee opts to be assessed under the respective sections on presumptive basis, the turnover thereof shall be excluded.

Example 1. DB Pvt. Ltd. has a total turnover of ₹ 10.25 crore for the F.Y. 2023-24. Its receipts and payment during the P.Y. 2023-24 are made otherwise than by way of cash.

DB Pvt. Ltd has to mandatorily get its books of account audited under section 44AB, since its turnovers for the P.Y. 2023-24 exceed ₹ 10 crores, irrespective of the fact that its entire receipts and payments are in a mode other than cash.

Example 2. DB Ltd. has a total turnover of ₹ 9 crores for the F.Y.2022-23. Out of this, only ₹ 7 crores is received during the previous year 2022-23. These amounts are received through account payee cheque/bank draft and other permissible electronic modes. Apart from this, it also received advance of ₹ 4 crores for the future supply of goods. Out of such advance, it received ₹ 46 lakhs in cash. Assume that all payments are made otherwise than by way of cash. Is DB Pvt. Ltd. mandatorily required to get its accounts audited?

For the purpose of computing the threshold limit of cash receipts, total receipts including the amount received for turnover need to be considered. Since in the present case, ₹ 46 lakhs does not exceed ₹ 55 lakhs i.e., 5% of total receipts of ₹ 11 crores (₹ 7 crores plus ₹ 4 crores), DB Pvt. Ltd. is not required to mandatorily get its accounts audited.

20.3 FORM 3CA & FORM 3CB

	Form 3CA	Form 3CB
Applicability	Tax audit report is to be furnished in Form No. 3CA, in a case where the accounts of the business or profession of a person have been audited under any other law like the Companies Act, 2013 or the Limited Liability Partnership Act, 2008.	Tax audit report is to be furnished in Form No. 3CB, in case of a person who carries on business or profession but who is not required by or under any other law to get his accounts audited. In the case of companies having their accounting year which is different from the financial year, accounts of the financial year are required to be prepared and audited. The audit report shall be in Form No. 3CB. This has been clarified <i>vide Circular No. 561 dated 22.5.1990</i> .
Requirement	In this case, it is not required for the tax auditor appointed under section 44AB to give his opinion, as to whether or not the accounts give a true and fair view. It would only be necessary for him to annex a copy of the audited accounts as well as a copy of the audit report given by the statutory auditor along with his (tax auditor's) report in Form No. 3CA with statement of particulars required to be furnished under section 44AB is annexed in Form No. 3CD. The tax auditor is required to give his opinion whether the prescribed particulars furnished in Form 3CD by the assessee are true and correct, subject to observations and qualifications, if any.	In this case, the tax auditor is required to give his opinion as to whether or not the accounts audited by him give a true and fair view: (i) in the case of the balance sheet, of the state of affairs as at the last date of the accounting year. (ii) in the case of the profit and loss account, of the profit or loss of the assessee for the relevant accounting year. The second part of the report states that the statement of particulars required to be furnished under section 44AB is annexed to the audit report in Form No. 3CD. The tax auditor is required to give his opinion whether the prescribed particulars furnished by the assessee are true and correct, subject to observations and qualifications, if any The tax auditor may have a difference of opinion with regard to the particulars furnished by the assessee These

		differences are to be reported in Para 5 of Form 3CB. [Para 18.6 of the Guidance Note on Tax Audit]
Revision of Tax audit report	As per Rule 6G(3), the report of audit furnished in Form 3CA/3CB along with particulars in Form 3CD may be revised by the person by getting revised report of audit from an accountant, duly signed and verified by such accountant, if there is payment by such person after furnishing of such report which necessitates recalculation of disallowance under section 40 or section 43B. The revised report of audit has to be furnished before the end of the relevant assessment year for which the report pertains. Thus, a scenario may arise where, after issuing the audit report, but before the due date for filing the return u/s 139(1), the assessee may make payment of tax deducted at source or of tax, duty, cess, fee or other payments referred to in section 43B, deduction for which is allowed only on actual payment basis. A question may arise as to whether the revised audit report can be revised again. There is no limit to revise the tax audit reports.	



20.4 FORM 3CD – STATEMENT OF PARTICULARS REQUIRED TO BE FURNISHED UNDER SECTION 44AB

This form prescribes the statement of particulars required to be furnished under section 44AB of the Income-tax Act, 1961 in case of both corporate and non-corporate assessee's carrying on business or profession as Annexure to the audit report in Form 3CA or Form 3CB. This form has been designed to facilitate the determination of assessee's income from business or profession.

As per Para 19.3 of the Guidance Note on Tax Audit, while furnishing the particulars in Form No. 3CD, it would be advisable for the tax auditor to consider the following:

- (a) If a particular item of income/expenditure is covered in more than one of the specified clauses in the statement of particulars, care should be taken to make a suitable cross reference to such items at the appropriate places.
- (b) If there is any difference in the opinion of the tax auditor and that of the assessee in respect of any information furnished in Form No. 3CD by the assessee, the tax auditor may consider stating both the view points and also the relevant information related to matter in order to enable the tax authority to take a decision in the matter.
- (c) If any particular clause in Form No. 3CD is not applicable, he should state that the same is not applicable.

- (d) In computing the allowance or disallowance, he should keep in view the law applicable in the relevant year, even though the form of audit report may not have been amended to bring it in conformity with the amended law.
- (e) In case the assessee has furnished prescribed particulars in part or piecemeal or relevant form is incomplete or the assessee does not give the information against all or any of the clauses, the auditor should not withhold the audit report. In such a case, he should qualify his report in para 3 of Form 3CA or para 5 of Form 3CB as applicable on matters in respect of which information is not furnished or if furnished, are inadequate/insufficient.
- (f) The information in Form No. 3CD should be based on the books of accounts, records, documents, information and explanations made available to the tax auditor for his examination.
- (g) In case the auditor relies on a judicial pronouncement, he may mention the fact as his observations in para 3 of Form No. 3CA or para 5 provided in Form No. 3CB, as the case may be.
- (h) Where in respect of any particular aspect, reporting is required at more than one clause, in that case, information may be furnished at any one of the clause and reference may be given at other clause.

Clause by clause analysis of Form 3CD

Clause	Particulars	Reporting requirements in relation to the relevant clause
PART A		
1.	Name of the assessee	(i) The name of the assessee whose accounts are being audited under section 44AB should be given as specified in PAN. (ii) In case there is a different trade name, the same should be reported. (iii) If the tax audit is in respect of a branch, name of such branch should be mentioned along with the name of the assessee. (iv) In case of change in the name of the assessee, if the change has taken place during the financial year, name at the end of the financial year should be stated. However, if the change in name has taken place after the close of the financial year but before signing of tax audit report, name as at the year ending date should be mentioned. In either case, fact

		of name change should be suitably clarified as an observation in audit report.
2.	Address	(i) The address to be mentioned should be the same as has been communicated by the assessee to the Income-tax Department as on the date of signing of the audit report. (ii) If the tax audit is in respect of a branch or a unit, the address of the branch or the unit should be given. (iii) In the case of a company, the address of the registered office should be stated. (iv) In the case of other assessees, the address of the principal place of business should be stated.  <i>The tax auditor should verify the relevant details of the assessee from the available income tax records or from the profile of the assessee on Income-tax portal. In case of difference, the same should be given as an observation in the audit report.</i>
3.	Permanent Account Number or Aadhaar Number	(i) The permanent account number (PAN) allotted to the assessee should be indicated. (ii) Clause further asks to mention Aadhaar number (in case of Individuals) as an alternative. (iii) It may be noted that in the e-filing format, PAN is a mandatory field and Aadhaar is an optional field.
4.	Whether the assessee is liable to pay indirect tax like excise duty, service tax, sales tax, goods and services tax, customs duty, etc. If yes, please furnish the registration number, GST number or any other identification number allotted for the same	The auditor is required to examine from the appropriate evidence, the registration number or any other identification number, if any. For any indirect tax, if multiple registration numbers are available, all registration numbers should be examined by the tax auditor and duly reported.  <i>The auditor should obtain the list of indirect taxes applicable on him if the different types of indirect taxes are leviable on him and that too in multiple states.</i> <i>It is recommended that the tax auditor should obtain from the assessee:</i> - <i>list of indirect taxes applicable on him</i> - <i>copy of registration certificates issued by the various authorities clearly mentioning the registration number under that relevant law.</i> <i>The auditor should obtain the list of indirect taxes</i>

		<i>applicable on him if the different types of indirect taxes are leviable on him and that too in multiple states.</i> <i>It is recommended that the tax auditor should obtain from the assessee:</i> <i>The auditor should obtain the list of indirect taxes applicable on him if the different types of indirect taxes are leviable on him and that too in multiple states.</i> <i>It is recommended that the tax auditor should obtain from the assessee:</i> - <i>list of indirect taxes applicable on him</i> - <i>copy of registration certificates issued by the various authorities clearly mentioning the registration number under that relevant law.</i> <i>Where indirect tax law does not require any registration, appropriate identification number may be reported in this clause. For example, in Customs Act, 1962, since there is no registration number, a copy of Importer Exporter Code (IEC) may be obtained, and information be accordingly furnished.</i>
5.	Status	The status of the assessee is to be mentioned as included in the definition of person in section 2(31) namely, individual, Hindu Undivided Family, company, firm, an association of persons or a body of individuals, whether incorporated or not, a local authority or artificial juridical person. It should not be confused with the residential status. In case of proprietorship concern, the status shall be quoted as individual.
6	Previous year	The relevant previous year should be mentioned i.e., starting from 1st April to 31st March. If the business is started during the year, the date of starting of business to 31st March. In case of amalgamations, demergers, reconstitution, new business, closure of existing business etc., the date of beginning and ending of the previous year may be different, the auditor may accordingly mention the relevant date of beginning and ending of the previous year.
7.	Assessment Year	The assessment year relevant to the previous year for which the accounts are to be audited should be mentioned.
8.	Indicate the relevant clause of section 44AB under which	The auditor is required to mention the relevant clause of section 44AB under which the audit has been conducted. In case the assessee is carrying on business and his total

	the audit has been conducted	sales, turnover or gross receipts as the case may be, exceeds one crore rupees in the relevant previous year, the auditor is required to mention clause (a) of section 44AB. If the assessee is carrying on profession and his gross receipts exceed fifty lakh rupees in the relevant previous year, the auditor is required to mention clause (b) of section 44AB. Likewise, if the audit under section 44AB is being conducted by virtue of provisions of section 44AE, 44BB and 44BBB, the auditor is required to mention clause (c). For audit being conducted by virtue of provisions of section 44ADA, clause (d) is to be mentioned under this head. Where a person is required by or under any other law to get his accounts audited, say a company, a society etc. then audit under section 44AB is conducted under the third proviso to section 44AB and not under clause (a) or (b) of that section.
8a	Whether the assessee has opted for taxation u/s 115BA/ 115BAA/ 115BAB/ 115BAC ¹ / 115BAD?	Assessee is required to pay income-tax at the rates specified in the annual Finance Act. However, sections 115BA, 115BAA, 115BAB, 115BAD and 115BAE provide option to the assessee to pay tax at special rates and forego certain deductions, exemptions etc. The assessee can opt to pay tax under the rates prescribed in the Finance Act or the one made available by any of the aforesaid sections. The tax auditor has to mention whether the assessee has opted for taxation under any of the aforesaid sections and in case answer is Yes, then, he has to select the appropriate section. With effect from A.Y. 2024-25, tax shall be payable as per section 115BAC, unless the assessee being an individual, HUF, AOP (other than co-operative society) or Bol or an artificial Juridical person exercises the option to shift out of the default scheme and pay tax under the optional tax regime as per the normal provisions of the Act. Companies can pay tax as per the normal provisions of the Income-tax Act, 1961 or opt to pay tax as per section 115BAA or section 115BAB, subject to fulfillment of conditions stipulated thereunder and forgoing certain exemptions/deductions. Likewise, Co-operative Societies can pay tax as per the normal provisions of the Income-

¹ With effect from A.Y. 2024-25, tax shall be payable as per section 115BAC unless the assessee being an individual, HUF, AOPs (other than co-operative society) or Bols or an artificial Juridical person exercises the option to shift out of the default scheme and pay tax as per the normal provisions of the Act.

		tax Act, 1961 or opt to pay tax as per section 115BAD or section 115BAE, subject to fulfillment of conditions stipulated thereunder and forgoing certain exemptions/deductions. The tax auditor has to examine the income tax return of the previous year to verify the option which has been exercised by the assessee.  For the purpose of reporting under clause 8a, the tax auditor should verify whether – ☐ the application for exercise of option in the prescribed form being 10-IB, 10-IC, 10-ID, and 10-IF has been furnished electronically under section 115BA, 115BAA, 115BAB and 115BAD. ☐ In case of section 115BAC, the auditor should verify whether the assessee has furnished in Form 10-IEA the option to shift out of the default tax scheme under section 115BAC and pay tax under the optional tax regime as per the normal provisions of the Act, is filed by the assessee. ☐ In case, the assessee has not filed the relevant form, written representation from the assessee should be obtained whether he will be availing the concessional regime or otherwise and based on written representation, the reporting under this clause should be made. ☐ Where reporting is made solely on the basis of assessee's representation, the fact should be stated in paragraph (3) of Form 3CA or paragraph (5) of Form 3CB.
PART B		
9.	(a)	If firm or association of persons, indicate name of partners/members and their profit sharing ratios. Where the assessee is a firm or association of persons (AOP) or body of individuals, the names of partners of the firm or members of the AOPs or BOIs and their profit sharing ratios (%) have to be stated. In case where the partner of a firm or the member of AOP/BOI acts in a representative capacity, the name of the beneficial partner/member should be stated. Thus, the details of partners or members during the entire previous year will have to be furnished.  ☐ The particulars in this clause should be verified from the instrument or agreement or any other document evidencing partnership or AOPs including any supplementary

			documents or other documents effecting such changes. ☐ The tax auditor should obtain certified copies of the deeds, documents, understanding, notice of changes etc. including certified copies of the acknowledgment, if any, evidencing filing of documents with the concerned authorities, if registered. ☐ In case of certain AOPs/BOIs, where shares are not precisely ascertainable during the previous year resulting in a situation wherein the shares of members are indeterminate or unknown, the relevant fact should be stated.
	(b)	If there is any change in the partners or members or in their profit sharing ratio since the last date of the preceding year, the particulars of such change.	If there is any change in the partners of the firm or members of the AOPs/ BOIs or their profit or loss sharing ratio since the last date of the preceding year, the particulars of such change must be stated. All the changes occurring during the entire previous year must be stated.
10.	(a)	Nature of business or profession (if more than one business or profession is carried on during the previous year, nature of every business or profession).	The principal line of each business is to be reported. If the assessee is in more than one business, the information has to be furnished in respect of all business. i.e., the sector in which the business or profession falls such as manufacturing, trading, commission agent, builder, contractor, professionals, service sector, financial service sector or entertainment industry. In case a person belongs to service sector, the nature of each type of service should be broadly stated. Thereafter, the auditor is required to mention the sub-sector pertaining to the sector selected. The code is to be mentioned against the nature of business pertains to the main area of business activity.
	(b)	If there is any change in the nature of business or profession, the particulars of such change.	Any material change in the business should be precisely set out. The change will include change from manufacturer to trader as well as change in principal line of business. Likewise, any addition to or other than temporary discontinuance of, a particular line of business may also amount to change requiring reporting. However, temporary suspension of the business may not amount to change and therefore need not be reported.  A review of business report or the minutes of meetings would enable the tax auditor to

			<i>note the changes, if any. He may make necessary enquiries on this basis and seek information to determine whether any change has occurred or not. If need be, the tax auditor should get a declaration from the assessee regarding change in the nature of business.</i> In case of a business reorganization/reconstruction, if there is a similar line of activity, no reference needs to be made. However, if a new line of activity emerges, the same may be stated. If any line of activity is being hived off in case of restructuring, the same may be reported.
11.	(a)	Whether books of account are prescribed under section 44AA, if yes, list of books so prescribed.	As per section 2(12A), books or books of account includes ledgers, daybooks, cash books, account-books and other books, whether kept in the written form or in electronic form or in digital form or as print-outs of data stored in such electronic form or in digital form or in a floppy, disc, tape or any other form of electro-magnetic data storage device. Rule 6F has prescribed the books of account and other documents to be kept and maintained by a person carrying on certain professions specified in section 44AA(1). Section 44AA(2) provides that persons carrying on business or profession, other than those specified in section 44AA(1), shall keep and 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, if his income from business or profession exceeds the monetary limits prescribed under section 44AA(2) or his total sales, turnover or gross receipts in business or profession exceed the monetary limits prescribed under section 44AA(2) in any one of the three years immediately preceding the previous year.
	(b)	Lists of books of account maintained and the address at which the books of account are kept. (In case books of account are maintained in a computer system, mention the books of account generated by such computer system. If the books	The address at which the books so maintained are kept is also required to be mentioned under this clause. In case the books of accounts are kept at more than one location then the details of address of each such location along with the detail of books of account maintained thereof is to be stated. In case, where books of account are maintained and generated through computer system, the details of address of the place where the server is located or the principal place of business/Head office or registered office by whatever name called is to be mentioned under this clause.

		of account are not kept at one location, please furnish the addresses of locations along with the details of books of account maintained at each location).	Where the books of account are stored on cloud or online, IP address (unique) of the same may be reported. It is to be specified which books of account have been maintained in computer system and which of the records have been maintained in hard copy form.  <i>The tax auditor should obtain from the assessee a complete list of books of account and other documents maintained by him (both financial and non-financial records) and make appropriate marks of identification to ensure the identification of the books and records produced before him for audit. The list of books of account maintained by the assessee should be given under this clause.</i>
	(c)	List of books of account and nature of relevant documents examined.	Books of accounts examined would constitute the books of original entry and the other books of account. In addition to the list of books of accounts examined, the extent of examination is also to be reported. Whereas sub-clause (b) requires furnishing list of books of account maintained by the assessee and address of the place where books of account are kept, sub-clause (c) requires the tax auditor to state a list of books of account and the nature of relevant documents that he has examined.  <i>The list of books of account prescribed, maintained and examined has to be stated under this clause. There may be difference between the three lists. For example, books of account may have been prescribed but all the prescribed books might not have been maintained or the entire books of accounts maintained might not have been produced for examination. The tax auditor should exercise his professional judgment in order to arrive at the conclusion whether such a situation warrants any disclosure or qualifications while forming his opinion on the matters covered by reporting requirements in Form No. 3CB.</i>
12.		Whether the profit or loss account includes any profits and gains assessable on presumptive basis, if yes, indicate the amount and the relevant section [44AD, 44AE, 44AF,	Where the profit and gains of the business are assessable to the tax under presumptive basis under any of the given sections, the amount of such profit and gains credited to the profit and loss account should be stated under this clause. Express mention of section 44ADA is not made in Form No. 3CD. However, there is a residuary clause requiring reporting under 'any other relevant section'. Therefore, profits and gains assessable under section 44ADA should

		44B, 44BB, 44BBA, 44BBB, Chapter XII-G (provisions relating to shipping business), First Schedule (Insurance business) or any other relevant section].	also be reported under this clause. The amount to be mentioned in this clause means amount included in the profit and loss account. The tax auditor is not required to indicate as to whether such amount corresponds to the amount assessable under the relevant section relating to presumptive taxation. As such, the report requirement gets satisfied, if the amount as per profit and loss account is reported.  <i>Even where the assessee opts for presumptive taxation, the tax auditor should consider to impress upon the assessee that it would be advisable to maintain some basic records to support the turnover/gross receipts declared for presumptive taxation.</i>
13.	(a)	Method of accounting employed in the previous year.	Section 145 provides that the income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" must be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee. The hybrid system of accounting, viz. mixture of cash and mercantile, is not permitted. However, the assessee may adopt cash system of accounting for one business and mercantile system of accounting for other business. Once the choice of method of accounting is decided, the assessee must follow consistently the method of accounting employed.
	(b)	Whether there had been any change in the method of accounting employed vis-à-vis the method employed in the immediately preceding previous year.	If there is any change in the method of accounting, that is to be reported and the effect thereof i.e., increase or decrease in profits has to be stated under this clause.  <i>The tax auditor should apply reasonable checks to the earlier year's accounts to ascertain whether there is any change in the method of accounting as compared to that of the year under audit, after obtaining a written confirmation from the assessee as to the method of accounting followed.</i> It may be noted that in view of Section 128 of the Companies Act, 2013, every company is required to keep books of account on accrual basis. Note - A change in an accounting policy does not amount to change in method of accounting. A change in the method of valuation of stock will be a change in accounting policy and hence, such change need not be mentioned in clause 13(b).

	(c)	If answer to (b) above is in affirmative, give details of such change, and the effect thereof on the profit or loss with increase/ decrease in profits.	In case there is any change in the method of accounting, employed <i>vis-à-vis</i> the method employed in the immediately preceding previous year, the details of the same, along with impact on the profit for the year need to be mentioned. As regards the impact on profit the concept of materiality is the basic governing factor. If it is not possible to quantify the effect of the change in the method of accounting, appropriate disclosure should be made under this clause.
	(d)	Whether any adjustment is required to be made to the profits or loss for complying with the provisions of income computation and disclosure standards notified under section 145(2)?	In exercise of the powers conferred by section 145(2), the Central Government notified the ICDSs to be followed by all assessees (who are required to get their books of account audited) 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". This clause requires the auditor to state whether any adjustment is required to be made to profit and loss for complying with the provisions of income computation and disclosure standards (ICDS). Such adjustment is required to be stated separately. The increase/decrease in profit and net effect should be reported in the absolute terms. The tax auditor should obtain draft computation of the total income and disclosures required under ICDS. <i>For the purpose of clause (d), the tax auditor should obtain draft computation of total income and disclosures required under ICDS. Based on information and books of account, the tax auditor should consider whether any adjustment is required to be made to the profit or loss and if the answer is in affirmative, to state 'yes' otherwise to state 'no'.</i> <i>While reporting, auditor has to consider draft of income computation provided by the assessee. This fact should be mentioned in Audit report in paragraph 3 of Form No. 3CA and paragraph 5 of Form No. 3CB.</i>
	(e)	If answer to (d) above is in the affirmative, give details of such adjustments ICDS wise with increase or decrease in profit and	If answer to 'd' above is in affirmative, the tax auditor is required to quantify the amount of adjustment against each ICDS in clause 'e'. <i>Tax auditor may refer technical guide on ICDS issued by the ICAI in July, 2017. In working paper file of ICDS, checklist should</i>

		net effect.	<i>be prepared and maintained alongwith computation working for any increase/decrease in income as per ICDS. Also, last year tax audit report should be reviewed to ascertain any effect in current year.</i>
	(f)	Disclosure as per ICDS (to be given ICDS wise)	This clause requires disclosure of significant income computation and disclosure policies adopted by a person for computation of income chargeable under the head "Profits and gains from business or profession" or "Income from other sources".  <i>In this clause, if information furnished is based on income computation furnished by the assessee, appropriate disclosure of this fact should be mentioned in Form No. 3CA or 3CB as the case may be.</i>
14.	(a)	Method of valuation of closing stock employed in the previous year.	Ascertain the method of valuation of closing stock employed during the year. Where there is change in the basis of determining cost, market value or net realizable value even though there is no change in the method of valuation. The auditor should understand the procedure followed by the assessee in taking the inventory of closing stock at the end of the year and valuation thereof.  <i>The tax auditor should –</i> ☐ obtain the inventory of closing stock, indicating the basis of valuation thereof for reporting on the method of valuation of closing stock. ☐ review the methods of valuation adopted for valuation of closing stock and compare the same with the method prescribed under section 145A. ☐ obtain from the assessee, the inventory valuation sheet of the stock in trade giving quantitative details, method of valuation, rate and total value of each item. ☐ ascertain whether the method of valuation is such that the value of closing stock includes the amount of any tax, duty or cess actually paid or incurred by the assessee to bring the goods to the place of its location and conditions as on the date of valuation.
	(b)	In case of deviation from the method of valuation prescribed under section 145A, and the effect thereof on the profit and loss	
15.		Give the following particulars of the capital asset converted into stock-in-trade:	For furnishing the particulars required under this clause, the provisions of section 2(47) [meaning of transfer], section 45(2) [conversion of capital asset into stock-in-trade deemed to be transfer of the previous year in which conversion took place], proviso below to section 47(iv) &

	(a) Description of capital asset; (b) Date of acquisition; (c) Cost of acquisition; (d) Amount at which the asset is converted into stock-in-trade.	(v) [transfer of capital asset by a holding company to its subsidiary or vice versa not considered as transfer by virtue of clause (iv) or (v) of section 47 if condition specified thereunder are satisfied. However, such benefit would not be available where capital asset is transferred by a subsidiary company to its holding company or vice versa as stock-in trade] and section 47A [Where transfer of capital asset by a holding company to its subsidiary or vice versa not considered as transfer by virtue of clause (iv) or (v) of section 47 but such capital asset is converted into stock-in trade within eight years from the date of transfer, such capital gain would be deemed to be capital gains of the previous year in which such transfer took place] have to be kept in mind. The particulars to be stated under this clause should be furnished with respect to the previous year in which the capital asset have been converted into stock in trade. The clause does not require the details regarding the taxability of capital gains or business income arising from deemed transfer. The description of the capital assets is required to be mentioned, for example, shares, securities, land, building, plant, machinery etc.  For ascertaining the correct date, the tax auditor will have to refer the accounts of the financial year in which such capital assets is acquired. The date is important to determine whether assets is long term capital assets or short term capital assets. In this clause, the cost of acquisition as per books of accounts is to be mentioned. In case of depreciable assets, the carrying cost appearing in the books will be written down value. But the value to be reported should be the original cost of acquisition. The amount recorded in the books at which the asset is converted into stock in trade should be stated. Such an amount may not be fair market value as on the date of conversion. The valuation of stock-in-trade is to be examined with reference to AS-2: Valuation of Inventories or Ind AS-2: Inventories, as applicable.
16	Amounts not credited to the profit and loss account, being –	
	(a) The items falling within the scope of	Under this clause various amounts falling within the scope of section 28 which are not credited to the profit and loss

		section 28;	account are to be stated. Example. A Ltd., a manufacturing company sponsored the Dubai trip of Mr. B, seller of construction material, along with his spouse, upon achieving of sales target set by the company. Neither any money received in the books, nor any expenses incurred through the books. The same is chargeable to tax as benefit or perquisite arising from business or profession by virtue of section 28(iv). Thus, the same is required to be reported though it is not credited in the profit and loss account.
	(b)	The proforma credits, drawbacks, refund of duty of customs or excise or service tax, or refund of sales tax or value added tax where such credits, drawbacks or refunds are admitted as due by the authorities concerned;	For this clause, the tax auditor should examine all relevant correspondence, records, assessee's particulars on portal of the department and evidence in order to determine whether any particular refund/claim has been admitted as due and accepted during the relevant financial year. The words 'admitted by the concerned authorities' would mean 'admitted by the authorities within the relevant previous year'. Credits/claims which have been admitted as due after the relevant previous year need not be reported here. If the assessee is following cash basis of accounting, it should be clearly reported by the auditor that acceptance of claim during the relevant year without actual receipt has no significance. Where such amounts have not been credited in the profit and loss account but netted against the relevant expenditure/income heads, such fact should be clearly brought out.
	(c)	Escalation claims accepted during the previous year;	The escalation claim accepted during the previous year but not credited to the profit and loss account has to be stated here. Escalation claims would normally arise pursuant to a contract (including contracts entered into in earlier years), if so permitted by the contract. Only those claims to which the other party has signified unconditional acceptance could constitute accepted claims. Mere making of claims by the assessee or claims under negotiations or claims which are sub-judice [<i>CIT v. Hindustan Housing & Land Development Trust Ltd. [1986] 161 ITR 524 (SC)</i>] cannot constitute claims accepted.
	(d)	Any other item of income;	Any other item which the auditor considers as an income based on his verification of records and other documents and information gathered, but which has not been credited to the profit and loss account.

			If employees contribution to any provident fund or superannuation fund or any other fund is not paid on or before the due date under the respective Act, then it becomes income of the assessee. Such information is to be stated in this clause. Similar information is also furnished in clause 20(b) of Form 3CD, therefore, cross referencing may be required. Note - In giving the details under sub-clauses (c) and (d), due regard should be given to AS-9: Revenue Recognition/Ind AS 115: Revenue from Contracts with Customers, as applicable.
	(e)	Capital receipt, if any.	The tax auditor should use his professional expertise and judgement in determining whether a receipt is capital or revenue. The capital receipts are not generally credited to the profit and loss account, hence, the auditor should take enough care to check out any transaction generating receipts of capital nature. Note – The information under sub-clauses (a), (d) and (e) of clause (16) is to be given with reference to the entries in the books of account and records made available to the tax auditor for the purpose of tax audit under section 44AB. The auditor should check thoroughly the bank account of the assessee and also the cash book to find out any credits regarding any income earned but not credited to the profit and loss account of the assessee. The tax auditor may obtain a management representation in writing from the assessee in respect of all items falling under this clause The tax auditor may use his professional expertise and judgement in determining whether the receipt is taxable or not for the purpose of reporting under sub-clauses (a) to (d) of clause 16 and may report in the observation para of audit report, disclosing the basis of the same.
17.		Where any land or building or both is transferred during the previous year for a consideration less than value adopted or assessed or assessable by any authority of the State Government referred to in section 43CA or	Where any land or building or both is transferred during the previous year for a consideration less than the value adopted or assessed or assessable by any authority of a State Government referred to in section 43CA or 50C, the auditor is required to furnish the following details: (a) Details of property (b) Consideration received or accrued (c) Value adopted or assessed or assessable. The tax auditor has to furnish the details about the nature of property i.e., whether the property transferred during the

		50C, please furnish details of property, consideration received or accrued and value adopted or assessed or assessable.	year is land or building along with the address of such property. The tax auditor should obtain the list of all properties transferred by the assessee during the previous year. The tax auditor has to furnish the amount of consideration received or accrued, during the relevant previous year of audit, in respect of land/building transferred during the year as disclosed in the books of account of the assessee. For reporting the value adopted or assessed or assessable, the tax auditor should obtain from the assessee relevant information with regard to sale of Land or Building or both during the previous year. In case the property is not registered, the auditor may verify relevant documents from relevant authorities or obtain third party expert like lawyer, solicitor representation to satisfy the compliance of section 43CA/section 50C. In exceptional cases where the auditor is not able to obtain relevant documents, he may state the same through an observation in his report in Form 3CA/CB.
18.		Particulars of depreciation allowable as per the Income Tax Act, 1961 in respect of each asset or block of asset, as the case may be, in the following form:-	With respect to this clause, the tax auditor is required to examine the following: (a) Classification of the asset (b) Classification thereof to a block (c) actual cost or written down value (d) The date of acquisition and the date on which it is put to use (e) The applicable rate of depreciation (f) The additions / deductions and dates thereof (g) Adjustments required – specified as well as on account of sale, etc.
	(a)	Depreciation of asset/block of assets	For the purpose of determining the rate of depreciation, the tax auditor has to examine the classification of the assets into various blocks. The tax auditor should ensure that the classification as made by the assessee is in consonance with legal principles. In this connection, he should traverse through judicial pronouncements as well as through the past assessment history of the assessee, and upon an analysis thereof, if he comes to the conclusion that the matter is not free from doubt or controversy, he has to indicate the fact in his report by way of suitable qualification. It may also be necessary to rely upon technical data for determining the proper classification of the block. Since the tax auditor is

			not a technical expert, he has to obtain suitable certificate from concerned experts.
	(b)	Rate of depreciation	Once the classification has been ascertained and checked properly, the rates applicable as per the Income-tax Rules, 1962 follow as a natural corollary. The tax auditor must have due regard to the Income-tax Rules, 1962, relevant clarifications from the Department and judicial decisions.  <i>Under sub-clauses (a) to (b), information in respect of description of assets, block of assets under which the concerned asset is classifiable and the rate of depreciation are to be stated. This will include information about the existing assets. In respect of the existing assets, the computation of depreciation would involve stating the opening written down value of the block of assets which should be taken from the relevant income-tax records. The tax auditor should ensure the opening block of assets matches with the income-tax return filed for the immediately preceding previous year.</i>
	(c)	Actual cost or written down value, as the case may be.	For the purpose of determination of actual cost, the tax auditor has to be guided by the relevant legal provisions. Since determination of actual cost has got accounting implications, he can rely on the relevant Accounting Standards and Guidance Notes. Depreciation is also allowable on intangible assets like know-how, patents, copyrights, trademarks, licenses, franchises or any other business or commercial rights of similar nature. There may be intangible assets like know-how, patents, copyrights, trade marks, licences, franchises or any other business or commercial rights of similar nature for which the assessee might have incurred costs. From 01.04.2021, intangible asset being goodwill does not qualify for depreciation. The tax auditor should examine this and the basis on which the cost of such intangible assets has been arrived at.
	(d)	Additions/deductions during the year with dates; in the case of any addition of an asset, date put to use; including adjustment on account of: (i) Central Value Added Tax credits	In case an asset is purchased in foreign currency on deferred payment basis, the auditor should verify the actual cost on the basis of section 43A. Addition or reduction will be limited to the exchange difference actually paid during the previous year. The tax auditor is required to verify that the adjustments in the cost of fixed assets on account of changes in the rate of exchange of currency in the schedule of fixed assets prepared for computation of depreciation as per Income-tax Rules are in accordance with the provisions of section 43A and

	claimed and allowed under the Central Excise Rules, 1944, in respect of assets acquired on or after 1st March 1994, (ii) change in rate of currency, and (iii) subsidy or grant or reimbursement, by whatever name called.	information about such adjustment is provided under sub-clause (ii) of clause 18(d) of Form 3CD. The provisions of Section 36(1)(iii) and <i>Explanation 8</i> to section 43(1) i.e., interest related to the period after asset first put to use should not form part of actual cost of such asset, should be kept in mind for capitalization of interest to the cost of assets. <i>Explanation 10</i> to section 43(1) provides that where a portion of the cost of an asset acquired by the assessee has been met directly or indirectly by the Central Government or a State Government or any authority established under any law or by any other person, in the form of a subsidy or grant or reimbursement (by whatever name called), 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. Subsidy in respect of asset acquired in any earlier year(s) and received during the year has to be deducted from the written down value of such assets in the year of receipt. Any expenditure for acquisition of any asset etc. exceeding ₹ 10,000 otherwise than account payee cheque/draft drawn on a bank or use of electronic clearing system, then such expenditure shall be ignored for determining actual cost. The tax auditor should also verify that the amount of GST input credit deducted from cost of capital goods tallies with the credit availed on this account. The additions/deductions during the year have to be reported, with dates. Where any addition was made, the date on which the asset was put to use is to be reported. In respect of deductions, the sale value of the assets disposed of along with dates should be mentioned.  <i>To ascertain when the asset has been put to use, the tax auditor could call for basic records like production records/installation details/excise records/service tax records/ goods and service tax records/records relating to power connection for operating the machine, title deeds or building completion certificate etc. in case of immovable assets and any other relevant evidence. In the absence of any specific documentation with regard to the effective date from which the asset is put to use, he could get a representation letter from the management, in respect of the assets acquired.</i>

	(e)	Depreciation allowable.	The amount of depreciation and written down value of the block at the year-end is calculated correctly by taking the relevant figure at the beginning of the year and adjusted in respect of the additions/deductions during the year. The tax auditor shall check the WDV at the beginning of the year in respect of each block of assets. <i>Wherever a claim for depreciation involves any reliance on any judgement or opinion or other contentions (as to its classification, rate applicable, cost, date on which put to use etc.), it may be advisable for tax auditor to disclose full particulars thereof and the basis on which the depreciation allowable has been determined and vouched by him.</i>
	(f)	Written down value at the end of the year.	
19.		Amounts admissible under sections: 33AB, 33ABA, 35(1)(i), 35(1)(ii), 35(1)(ia), 35(1)(iii), 35(1)(iv), 35(2AA), 35(2AB), 35ABB, 35AD, 35CCA, 35CCC, 35CCD, 35D, 35DD, 35DDA, 35E ²	In case the assessee has obtained a separate Audit Report for claiming deductions under any of these sections, he must make a reference to that report while giving the details under this clause. The Tax Auditor should indicate the amount debited to the Profit & Loss Account and the amount actually admissible in accordance with the applicable provisions of law. The amount not debited to the Profit & Loss Account but admissible under any of the sections mentioned in the clause have to be stated. For example, sections 33AB and 33ABA allow deduction in respect of amount deposited in designated account for specified purposes which as per the accounting principles are not debited to the Profit and loss A/c. The tax auditor should verify the claim of deductions by examining whether the assessee is eligible for deduction under the relevant section, the deduction is correctly computed and whether the assessee fulfils all the conditions specified in the relevant section for allowability of deduction. The tax auditor should also ensure the eligibility of the expenditure/payment for deduction and compliance of the conditions prescribed in the sub-section including approval from the relevant/prescribed authority, notification issued by the Central Government, any other guideline circular etc. issued in this behalf. Tax auditor should also refer Rule 6 of Income-tax Rules, 1962.

² Reference to section 32AC, 32AD, 35AC and 35CCB is not given, since no deduction under these sections is available for the current assessment year.

			 <i>In case the auditor relies on a judicial pronouncement, he may mention the fact in his observations para provided in Form No. 3CA or Form No. 3CB, as the case may be.</i>
20	(a)	Any sum paid to an employee as bonus or commission for services rendered, where such sum was otherwise payable to him as profits or dividend	Section 36(1)(ii) provides for deduction of any sum paid to an employee as bonus or commission for services rendered where such sum would not have been payable to him as profit or dividend, if it had not been paid as bonus or commission.  <i>The tax auditor should obtain the list of employees eligible for bonus or commission for services rendered with amounts and check the basis of calculation of bonus or commission.</i>
	(b)	Details of contributions received from employees for various funds as referred to in section 36(1)(va) namely, nature of fund, sum received from employees, due date for payment, actual amount paid and the actual date of payment to the concerned authorities.	Section 2(24)(x) includes within the scope of income any sum received by the assessee from his employees as contributions to any provident fund or superannuation fund or ESI fund or any other fund for employees welfare. Section 36(1)(va) permits deduction of any sum received by the assessee from any of his employees to which the provisions of section 2(24)(x) are applicable, if it is credited by the assessee to the account of the employees in the relevant statutory fund on or before the due date. In respect of such sum, if any extension is granted by respective authorities, it shall be considered. This can be taken into consideration for determining the due date of payment. Under this clause, details regarding the nature of fund, details of the amount deducted, due date for payment, actual amount paid and actual date of payment to the concerned authorities in respect of provident fund, ESI fund or other staff welfare fund have to be stated.  <i>Under this clause, the requirement is only in respect of the disclosure of the amount and the tax auditor is not expected to express his opinion about its allowability or otherwise. The tax auditor should verify the employment/ contract details of the employees so as to ascertain the nature of payments.</i> <i>The tax auditor should get a list of various contributions recovered from the employees which come within the scope of this clause and the date on which it is deposited. He should also verify the documents relating to provident funds and other welfare funds. He should verify the agreement under which employees have to make</i>

			<i>contributions to provident fund and other welfare funds. The ledger account of contributions from employees should be reviewed; the due dates of payments and the actual dates of payment should be verified with the evidence available. In view of the voluminous nature of the information, the tax auditor can apply test checks and compliance tests to satisfy himself that the system of recovery and remittance is proper.</i>
21	(a)	Please furnish the details of amounts debited to profit and loss account, being in the nature of capital, personal, advertisement expenditure, expenditure incurred at clubs, expenditure by way of penalty or fine for violation of any law for the time being in force etc.	- Capital expenditure is not allowable in computing business income unless specifically provided in any sections of the Act. The details of capital expenditure, if any, debited to the profit and loss account should be maintained in a classified manner stating the amounts under various heads separately. The total amount of capital expenditure debited to the profit and loss account is to be reported under this clause in the e filing portal. - Personal expenses debited to the profit and loss account are to be specified under this sub-clause as they are not deductible in the computation of total income under section 37. Note - Section 143(1)(e) of the Companies Act 2013 specifically requires the auditor to inquire whether personal expenses have been charged to revenue account. In the case of a person whose accounts of the business or profession have been audited under any other law, the tax auditor will have to report in respect of personal expenses debited in the profit and loss account. In the case of a person who carries on business or profession but who is not required by or under any other law to get his accounts audited, the tax auditor will have to verify the personal expenses. if debited in the expenses account while conducting the audit and verify the amount of expenses mentioned under this clause. - Section 37(2B) provides that no allowance shall be made in respect of expenditure incurred by an assessee on advertisement in any souvenir, brochure, tract, pamphlet or the like published by a political party. Therefore, the expenditure of this nature should be segregated and reported under this clause. The auditor may also keep in mind the provisions of section 80GGB and 80GGC which allow deduction in respect of contribution made by

			corporate and non-corporate assessees respectively to political parties and electoral trust, as required to be reported by him in clause 33 of Form no. 3CD. - The amount of payments made to clubs by the assessee during the year being cost for club services and facilities used should be indicated under this clause. The fact whether such expenses are incurred in the course of business or whether they are of personal nature should be ascertained. If they are personal in nature, they are to be shown separately under Clause 21(a) referred to earlier. - This clause requires separate reporting of penalty or fine for violation of any law for the time being in force, and any other penalty or fine. The tax auditor should obtain in writing from the assessee, the details of all payments by way of penalty or fine for violation of any laws have been made and paid or incurred during the relevant previous year and how such amounts have been dealt with in the books of accounts produced for audit. This clause covers only penalty or fine for violation of law and not the payment for contractual breach or liquidator damages. The tax auditor should keep in mind the difference between the amount prohibited by law and the amount paid which is compensatory in nature under the relevant statute. Supreme Court in <i>Mahalakshmi Sugar Mills Co. Ltd. vs CIT</i> 123 ITR 429 and <i>CIT vs Hyderabad Allwyn Metal Works Ltd</i> 172 ITR 113 (SC) wherein it was held that when an amount paid by assessee could be regarded as compensatory in character then it would be allowable u/s 37(1) and if it were penal in nature it was not allowable. Tax auditor is not required to express any opinion as to the allowability or otherwise of the amount of penalty or fine for violation of law. He is only required to give the details of such items as have been charged in the books of accounts. Example: XYZ Ltd. purchased goods from AP Ltd. (medium enterprise) having turnover of ₹ 300 crores with a commitment to pay for the same within 30 days and in case of any delay, XYZ Ltd will pay interest @12% p.a. for the same. Whether such interest is required to be reported here or not?

			The term used in this point is expenditure by way of penalty or fine for violation of any law for the time being in force etc. Since this is not a penalty for violation of any law, the payment of interest by XYZ Ltd is not required to be reported here. However, in case AP Ltd. is a micro or small enterprise, such interest is required to be reported in Clause 22.
	(b)	Amounts inadmissible under section 40(a)(i)/(ia) with details of payment on which tax has not deducted or after deduction, tax has not been paid on or before the due specified under section 139(1) and the amount inadmissible under section 40(a)(iib), 40(a)(iii), 40(a) (iv), 40(a)(v)³	Section 40(a) specifies certain amounts which shall not be deducted in computing the income chargeable under the head "Profits and gains of business or profession". Under section 40(a)(i), 100% disallowance attracted with respect to sum paid or payable to a non-resident and under section 40(a)(i)/(ia) 30% disallowance attracted with respect to sum paid or payable to a resident payee on tax is deductible at source and such tax has not been deducted or after deduction has not been paid on or before the due date of furnishing return of income under section 139(1). Under this clause, the tax auditor is required to report the details of payment on which tax is not deducted at source and also the details of payment on which tax has been deducted but not paid during the previous year or before due date of filing return of income specified under section 139(1). The tax auditor is advised to give details under this clause for each individual payee. Sub clause 40(a)(iib) provides that (a) any amount paid by way of a royalty, license fees, service fees, privilege fees, service charge or any other fees or charge by whatever name called, which is levied exclusively on; or (b) which is appropriated, directly or indirectly from, a State Government undertaking by the State Government is inadmissible expenditure. The Tax auditor should verify any such payment made by State Government undertaking to the State Government and should report under clause. The amount of salary which is paid outside India or to a non-resident in respect of which tax has not been deducted but which is required to be deducted under the applicable provisions of the Income-tax Act, 1961 or tax has not been paid after deduction is not allowed as a deduction u/s. 40(a)(iii) and the same is required to be reported under this sub-clause. This information is

³ Sub-clause (ic) of section 40(a) relates to fringe benefit tax and sub-clause (iia) thereof relates to wealth-tax. Reference to these sub-clauses are not given since these taxes have been abolished.

			required to be given for each individual payee. The tax auditor should also furnish the date of payment along with the name and address of the payee. 40(a)(iv) provides that any payment to a provident or other fund established for the benefit of employees of the assessee shall be disallowed, unless the assessee has made effective arrangements to secure that tax shall be deducted at source from any payments made from the fund which are chargeable to tax under the head "Salaries". The tax auditor is also required to report the same under this sub-clause. Any tax paid by an employer on non-monetary perquisites is exempt in the hands of the employee as per section 10(10CC). Further, as per section 40(a)(v) the tax paid by the employer on non-monetary perquisites provided to employees shall not be deductible in computing profits and gains from business or profession. The tax auditor is required to report the amount of such tax paid by the employer, in case it is debited to the profit and loss account under this sub-clause.  <i>For this purpose the tax auditor may examine the books of accounts and tax deduction returns.</i> <i>In case where the assessee submits that any sum debited to profit and loss account is not inadmissible under the provisions of section 40(a), the tax auditor may exercise his judgement in the light of the applicable laws and report accordingly about the compliance of this provision. The tax auditor may rely upon the judicial pronouncements while taking any particular view. In case of difference of opinion between the tax auditor and the assessee, the tax auditor should state both the view points. In case of voluminous nature of the information, the tax auditor can apply materiality principles, tests checks and compliance tests for verifying the information required to be provided under this clause.</i> Note: Case Studies on the ethical aspects in relation to tax audit under section 44AB and other Audit Reports are presented at the end of this Chapter. <i>Case Study 1 pertains to reporting under Clause 21(b)</i>
	(c)	Amounts debited to profit and loss account being, interest, salary,	Tax auditor is required to state the inadmissible amount under section 40(b)/40(ba) and such information is also required to be given in respect of interest/ remuneration paid to member of an AOP/BOI.

		bonus, commission or remuneration inadmissible under section 40(b)/40(ba) and computation thereof;	The inadmissible remuneration, salary, bonus or commission under section 40(b) has to be determined on the basis of the provisions of sub-clause (v) of section 40(b) read with the limits laid down therein. Such limits are laid down as a percentage of book profits. It is advisable for the auditor to obtain from the assessee a detailed working of the inadmissible remuneration, salary, bonus or commission under section 40(b). He has to verify the computation from the instrument or agreement or any other document evidencing partnership including any supplementary documents or other documents effecting changes which would affect the computation of the inadmissible amounts under section 40(b). Under section 40(b)(iv), any payment of interest to any partner which is authorised by, and is in accordance with, the terms of the partnership deed and relates to any period falling after the date of such partnership deed in so far as such amount exceeds the amount calculated at the rate specified under the Income-tax Act from time to time will not be admissible as a deduction. Section 40(ba) lays down that any interest or remuneration paid by an AOP to its member shall not be allowed as a deduction to the AOP.  <i>In order to determine the amount inadmissible under section 40(b), the tax auditor should obtain the computation of total income from the assessee.</i> <i>The tax auditor may note that the information required to be reported is the amount of inadmissible expenditure as per section 40(b)/40(ba) and not the total amount debited in the profit and loss account.</i>
	(d)	Disallowance under section 40A(3) / deemed income under section 40A(3A) [On the basis of the examination of books of account and other relevant documents/evidence, whether the expenditure covered under section	Disallowance would be made if the payment or aggregate of payments, exceeding ₹ 10,000 (₹ 35,000 in case of plying, hiring or leasing of goods carriage) is 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 electronic mode as may be prescribed. However, no disallowance would be attracted in respect of cases and circumstances prescribed under Rule 6DD.  <i>The tax auditor should obtain a list of all cash payments in respect of expenditure exceeding the prescribed limit under section 40A(3A).</i>

		40A(3)/40A(3A) read with Rule 6DD were made by 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 electronic mode as may be prescribed. If not, please furnish the details of date of payment, nature of payment, amount and name and PAN or Aadhaar number of the payee, if available].	<i>The list should be verified by the tax auditor with the books of accounts in order to ascertain whether the conditions for specific exemption granted under Rule 6DD are satisfied. Details of payments which do not satisfy the above conditions should be stated under this clause. Certain audit tools are available to find out such payments expeditiously and accurately. These tools may be employed in case data is voluminous.</i> <i>Practically, it may not be possible to verify each payment, reflected in the bank statement, as to whether the payment has been made through account payee cheque, demand draft or use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed, it is thus desirable that the tax auditor should obtain suitable certificate from the assessee to the effect that the payments for expenditure referred to in section 40A(3) and section 40A(3A) were made by 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 electronic mode as may be prescribed, as the case may be.</i> <i>Where the reporting has been done on the basis of the certificate of the assessee, the fact has to be reported as an observation in para 3 of Form 3CA and para 5 of Form 3CB, as the case may be. The tax auditor, in his report, may comment on such violation as under:-</i> <i>“It is not possible for me/us to verify whether the payments in excess of ₹ 10,000 have been made otherwise than by account payee cheque or bank draft or prescribed electronic modes, as the necessary evidence is not in the possession of the assessee”.</i> Note: Case Studies on the ethical aspects in relation to tax audit under section 44AB and other Audit Reports are presented at the end of this Chapter. Case Study 2 pertains to reporting under Clause 21(d).
	(e)	Provision for payment of gratuity not allowable under section 40A(7);	As per section 40A(7), no deduction shall be allowed in respect of any provision made by the assessee for the payment of gratuity to his employees on their retirement or on termination of their employment for any reason. The deduction, however, shall be allowed in relation to any provision made by the assessee for the purpose of payment of a sum by way of contribution towards an approved gratuity fund or for the purpose of payment of gratuity that has become payable during the previous year.

			 The tax auditor should call for the order of the Principal Commissioner of Income-tax/ Commissioner of Income-tax granting approval to the gratuity fund, verify the date from which it is effective and also verify whether the provision has been made as provided in the trust deed.
	(f)	Any sum paid by the assessee as an employer not allowable under section 40A(9);	Under section 40A(9), any payment made by an employer towards the setting up or formation of or as contribution to any fund, trust, company, association of person, body of individuals, society registered under Societies Registration Act or other institutions is not allowable.  Tax Auditor shall maintain detailed working papers documenting the factual nature of such expenses incurred and debited to the Profit and Loss for the previous year under consideration which are considered disallowable u/s 40A(9). Tax Auditor should get the relevant content in working papers prepared for such disallowance duly confirmed by the assessee as a necessary safeguard. If any such contribution is made by the assessee in a capacity other than that of an employer, then such contribution is not to be considered as disallowable u/s 40A(9) of the Income-tax Act, 1961. Thus, the Tax Auditor should carefully examine the capacity of assessee while making such contribution before reaching any conclusions for allowing or disallowing such contribution. It may be noted that section 40A(9) allows deduction of any contributions made as an employer towards recognized provident fund or approved superannuation fund or notified pension scheme or approved gratuity fund or as required by or under any other law for the time being in force. Thus, any contribution made to Employees' Welfare Co-op Society will not be allowed as a deduction in the case of the employer company under section 40A(9), unless such contribution is required by or under any other law for the time being in force. <i>Instruction: No. 1799, dated 3-10-1988.</i>
	(g)	Particulars of any liability of a contingent nature;	The assessee is required to furnish particulars of any liability of a contingent nature debited to the profit and loss account. The tax auditor, for verifying the details of contingent liability debited to the profit and loss account, may conduct a detailed scrutiny of various account heads e.g., outstanding liabilities, provision etc., if required.

			Accounting policy followed and disclosed would be helpful in ascertaining and verifying details. The tax auditor may also verify reporting under CARO and disclosure in the Notes on accounts. ICDS X, Para 9 provides that Contingent liability shall not be deductible.  <i>Tax auditor should note that the Contingent liability shown in Notes to Accounts is not required to be reported, as the amounts debited to Profit and Loss account are required to be reported in this sub-clause.</i>
	(h)	Amount of deduction inadmissible in terms of section 14A in respect of the expenditure incurred in relation to income which does not form part of total income;	The expenditure which is relatable to the income which does not form part of total income is not allowed as deduction in terms of Section 14A of the Act. Rule 8D lays down the method for determining the amount of expenditure in relation to income not includable in total income. An assessee may claim that no expenditure has been incurred by him in relation to income which does not form part of total income, even in such case the provision of section 14A will apply. The tax auditor has to verify the amount of inadmissible expenditure as estimated by the assessee with reference to established principles of allocation of expenditure based on logical parameters like proportion of exempt and taxable income recorded, turnover, man hours spent to earn the relevant income etc. For allocation of interest between taxable and nontaxable income, the quantum of investment, the period and the rate of interest are generally the relevant factors to be considered. It is primarily the responsibility of the assessee to furnish the details of amount of deduction inadmissible in terms of section 14A i.e., in respect of the expenditure incurred in relation to income, which does not form part of the total income. The tax auditor has to examine the details of amount of inadmissible expenditure as furnished by the assessee. While carrying out such examination the tax auditor is entitled to rely on the management representation.
	(i)	Amount inadmissible under the proviso to section 36(1)(iii)	The provisions of section 36(1)(iii) provide that the amount of interest paid in respect of capital borrowed for the purposes of business or profession would be allowed as a deduction in computing the income referred to in section

		28. The proviso thereunder provides that any amount of the interest paid, in respect of capital borrowed for acquisition of an asset (whether capitalized in the books or 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 put to use, shall not be allowed as a deduction.  The tax auditor, while determining the admissible/ inadmissible amount under section 36(1)(iii) should also keep in mind the requirements of ICDS X relating to borrowing cost.
22.	Amount of interest inadmissible under section 23 of the Micro, Small and Medium Enterprises Development Act, 2006.	The tax auditor is required to state the amount of interest inadmissible under section 23 of Micro, Small and Medium Enterprises Development Act, 2006 (MSMED Act). MSMED is an Act to provide for facilitating the promotion and development and enhancing the competitiveness of micro, small and medium enterprises. Meaning of Micro and Small enterprise (1) <u>In case enterprise is engaged in the manufacture or production of goods pertaining to any industry</u> Micro enterprise - Where the investment in plant and machinery $\leq$ ₹ 25 lakhs Small enterprise - Where the investment in plant and machinery $>$ ₹ 25 lakhs $\leq$ ₹ 5 crores Note – For calculating investment in plant and machinery, the cost of pollution control, research and development, industrial safety devices and such notified items shall be excluded. (2) <u>In case enterprise is engaged in providing or rendering services</u> Micro enterprise - Where the investment in equipment $\leq$ ₹ 10 lakhs Small enterprise - Where the investment in equipment $>$ ₹ 10 lakhs $\leq$ ₹ 2 crores Section 23 of the MSMED Act lays down that an interest payable or paid by the buyer, under or in accordance with the provisions of this Act, shall not for the purposes of the computation of income under the Income-tax Act, 1961 be

		allowed as a deduction. The inadmissible interest has to be determined on the basis of the provisions of the MSMED Act. Section 16 of the MSMED Act provides for the date from which and the rate at which the interest is payable. Accordingly, where a buyer fails to make payment of the amount to the supplier, being micro and small enterprise, as required under section 15, the buyer shall, notwithstanding anything contained in any agreement between the buyer and the supplier or any law for the time being in force, be liable to pay compound interest with monthly rests to the supplier on that amount from the appointed date or, as the case may be, from the date immediately following the date agreed upon, at three times of the bank rate notified by the Reserve Bank. Section 24 of MSMED Act provides that sections 15 to 23 shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Sections 15 to 24 of the MSMED Act make a buyer liable to pay interest but they, by themselves, do not require the buyer to make payment to the supplier. However, as payment of such interest is considered as penal in nature, no deduction is allowed under section 37 of the Income Tax Act, 1961.  <i>The tax auditor, while reporting in respect of clause 22, should:</i> <i>seek information regarding status of the enterprise i.e., whether the same is covered under the MSMED Act, 2006.</i> <i>cross check the disclosure made in the financial statements, since Section 22 of the MSMED Act, 2006 requires disclosure of information.</i> <i>obtain a full list of suppliers of the assessee which fall within the purview of the definition of "Supplier" under section 2(n) of the Micro, Small and Medium Enterprises Development Act, 2006. It is the responsibility of the auditee to classify and identify those suppliers who are covered by this Act.</i> <i>review the list so obtained.</i> <i>verify from the books of account whether any interest payable or paid to the buyer in terms of section 16 of the MSMED Act has been debited or provided for in the books of account.</i> <i>verify the interest payable or paid as mentioned</i>

		above on test check basis. (g) verify the additional information provided by the auditee relating to interest under section 16 in his financial statement. If on test check basis, the tax auditor is satisfied, then the amount so debited to the profit and loss account should be reported under clause 22. In order to promote timely payments to micro or small enterprises, the Finance Act, 2023 include payments made to such enterprises within the ambit of section 43B of the Income-tax Act. Accordingly, a new clause (h) in section 43B has been inserted w.e.f. A.Y. 2024-25 to provide that any sum payable by the assessee to a micro or small enterprise beyond the time limit specified in section 15 of the MSMED Act shall be allowed as deduction only on actual payment. Note – Section 23 of MSMED Act specifically prohibits the assessee from claiming the deduction in respect of interest paid to MSME. Thus, no deduction would be allowed in respect of such interest even if such sum is actually paid by the assessee. However, any sum payable (not being interest referred under section 23 of MSMED Act, 2006) by the assessee to a micro or small enterprise (being a supplier) beyond the time limit specified in section 15 of MSMED Act, 2006 shall be allowed as deduction only on actual payment.
23.	Particulars of payments made to persons specified under section 40A(2)(b)	The section enjoins on the Assessing Officer, the power to fix the quantum of disallowance. Under this clause, the particulars of payments stated to be made to persons covered under section 40A(2)(b) should be examined. The tax auditor in this connection: - Obtain full list of specified persons as contemplated in this section. - Obtain details of payments made to the specified persons. - Scrutinise all items of payments to the above persons. - Call for all the contracts or agreements entered into by the assessee and list out the contracts and agreements entered into with the specified persons and segregate the items of payments made to them under these agreements. Where the transactions are voluminous or the list contains several names, scrutiny to be made to the extent possible.

		In that case, reliance may be made on the information supplied by the client with adequate disclosure in the report.
24.	Amounts deemed to be profits and gains under section 33AB or 33ABA.	Section 33AB allowed deduction in respect of Tea Development Account, Coffee Development Account and Rubber Development Account. The auditor is required to report the deemed income chargeable as profits and gains of business under the circumstances specified in section 33AB(4)/(5)/(7)/(8). Section 33ABA allowed deduction in respect of Site Restoration Fund. The auditor is required to report the deemed income chargeable as profits and gains of business under the circumstances specified in section 33ABA(5)/(7)/(8).  Tax auditor has to verify the details regarding the deposit account and site restoration account. He also has to verify the accuracy of details given by the assessee by scrutinizing the books of accounts and other relevant documents and evidence. He also has to verify whether the assets acquired through deposit account is not sold or transferred before expiry of eight years from the date of acquisition. Verify the manner of utilization of amount withdrawn from the specified reserve account.
25.	Any amount of profit chargeable to tax under section 41 and computation thereof.	The tax auditor should obtain a list containing all the amounts chargeable under section 41 with the accompanying evidence, correspondence etc. He should examine the past records to satisfy himself about the correctness of the information provided by the assessee.  The tax auditor has to state the profit chargeable to tax under this section. This information has to be given irrespective of the fact whether the relevant amount has been credited to the profit and loss account or not. The computation of the profit chargeable under this clause is also to be stated. The tax auditor should check whether amounts which have been written back in respect of trading liability by way of remission or cessation thereof or otherwise, is credited to Profit & Loss account. If any such liability credited to profit and loss account is already offered to tax in any prior period, the same shall not, once again, be considered as income in the year in which it is so credited. In case the amount given in this clause regarding section 41 of the Act is not routed through profit and loss account or

		income and expenditure account, the auditor may include the said fact in the observation para of the audit report.
26.	In respect of any sum referred to in clauses (a), (b), (c), (d), (e), (f) or (g) of section 43B, the liability for which:-	As per section 43B, deduction in respect of certain expenditure is allowable only on the basis of actual payment made within the time limits specified in section 43B. Section 43B is applicable in respect of expenditure for which a deduction is otherwise allowable under the Act. Therefore, where any expenditure is reported under any other clause indicating that deduction is otherwise not allowable, there is no need of reporting such expenditure under this clause. If the assessee is maintaining its books of accounts on the mercantile system, the tax auditor should verify the aforesaid particulars of section 43B from the books of account for the year under audit as well as from the books of account, vouchers and documents of the immediately succeeding assessment year and the return of income for the earlier assessment years so that the information about the aforesaid payments made in the subsequent year can be furnished.
	(a) Pre-existed on the first day of the previous year but was not allowed in the assessment of any preceding previous year and was (a) paid during the previous year; (b) not paid during the previous year;	The tax auditor should clearly distinguish the liability incurred during the year in respect of all the specified sums for the liability that pre-existed on the first day of the relevant previous year. Note - In order to promote timely payments to micro and small enterprises, the Finance Act, 2023 include payments made to such enterprises within the ambit of section 43B of the Income-tax Act. Accordingly, a new clause (h) in section 43B has been inserted w.e.f. A.Y. 2024-25 to provide that any sum payable by the assessee to a micro or small enterprise beyond the time limit specified in section 15 of the MSMED Act shall be allowed as deduction only on actual payment. Section 15 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. 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
	(b) Was incurred during the previous year and was (a) paid on or before the due date for furnishing the return of income of the previous year under section 139(1); (b) not paid on or before the aforesaid date (State whether sales tax, customs duty, excise duty, or any other indirect tax, levy, cess, impost, etc., is	

		passed through the profit and loss account).	<i>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.</i> <i>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.</i> <i>The deduction with respect payments mentioned in clause (a) to (g) would be allowed during the previous year, if actual payment is made on or before the due date of furnishing return of income. However, deduction in respect of payment made to micro or small enterprises referred in clause (h) beyond the time limit specified in section 15 of the MSMED Act, 2006.would be allowed only on actual payment basis.</i>
27.	(a)	Amount of Central Value Added Tax credits availed of or utilised during the previous year and its treatment in the profit and loss account and treatment of outstanding Central Value Added Tax credits in the accounts.	The amount of CENVAT/GST availed or utilized should be reported under this clause. In some cases, CENVAT/GST availed may be lesser than the CENVAT/GST credit utilized during the year on account of opening balance in CENVAT/GST account or vice versa as such it would be advisable, in order to avoid any misleading conclusion and inferences to report the opening and closing balances of CENVAT/GST. Regarding the reporting of accounting treatment of CENVAT/GST credit, the clause requires that its treatment in profit and loss account and the treatment of outstanding CENVAT/GST credit in the account have to be reported upon. The tax auditor should verify and maintain the information in his working papers for the purpose of reporting in the format given in the e-filing utility.
	(b)	Particulars of income or expenditure of prior period credited or debited to the profit and loss account.	It may be noted that information under this clause would be relevant only in those cases where the assessee follows mercantile system of accounting. Under cash system of accounting, expenses debited/ income credited to the profit and loss account would be current year's expenses/income even though they may relate to earlier years. The tax auditor should obtain the particulars of expenditure or income of any earlier year debited or credited to the profit and loss account of the relevant previous year when mercantile system of accounting is followed.

			It may be noted that there is a difference between expenditure of any earlier year debited to the profit and loss account and the expenditure relating to any earlier year, which has crystallised during the relevant year. Material adjustments necessitated by circumstances which though related to previous periods but determined in the current period, will not be considered as prior period items. In such cases, though the expenditure may relate to the earlier year, it can be considered as arising during the year on the basis that the liability materialised or crystallised during the year and such cases will not be reported under this clause. Similar consideration will apply in relation to income also.
29.		Whether during the previous year the assessee received any consideration for issue of shares which exceeds the fair market value of the shares as referred to in section 56(2)(viib), if yes, please furnish details of the same.	Section 56(2)(viib) provides that where a company, not being a company in which the public are substantially interested, receives, in any previous year, from any person being a resident, any consideration for issue of shares that exceeds the face value of such shares, the aggregate consideration received for such shares as exceeds the fair market value of the shares shall be chargeable to income-tax under the head "Income from other sources". This clause is applicable where a company has issued shares during the year. This can be checked from the financial statement / share register/ MCA records etc. The tax auditor has to check whether during the previous year the assessee received any consideration for issue of shares which exceeds the fair market value of the shares as referred to in section 56(2)(viib). Section 56(2)(viib) is applicable to companies in which public are not substantially interested, therefore, reporting under this clause to be done only for corporate assessee. Note - In case of doubt about the valuation of the assets, it is advisable to obtain the valuation report from the certified valuer.
29A	(a)	Whether any amount is to be included in income chargeable under the head 'income from other sources' as referred to in clause (ix) of sub-section (2) of section 56? (Yes/No)	This clause requires disclosure of whether any amount is chargeable to tax under section 56(2)(ix), and if so, to furnish prescribed details of such income. Section 56(2)(ix) provides for taxability as Income from Other Sources of any sum of money received as an advance or otherwise in the course of negotiations for transfer of a capital asset, if such sum is forfeited and the negotiations do not result in transfer of such capital asset. The auditor is not required to report any such forfeited

	(b)	If yes, please furnish the following details: (i) Nature of income (ii) Amount thereof	amount if it is in respect of a personal capital asset, where such asset or the advance or the forfeiture is not recorded in the books of account relating to the business or profession. If an advance has been received and has been outstanding for a considerable period of time or has become time barred, there is no requirement to report such amount unless and until it is forfeited by an act of the assessee. Forfeiture of amounts received as advance towards transfer of a capital asset is required to be reported under this clause. Any advances received and forfeited towards sale of stock-in-trade would be taxable under section 28(i) and would not be required to be reported since the amount would be credited to profit & loss account.  <i>The tax auditor should obtain a representation from the assessee regarding all such advances received towards transfer of capital assets which have forfeited during the year. He should examine whether any amount of such advances has been written back during the year and examine the basis of such write back was on account of an act of forfeiture.</i>
29B	(a)	Whether any amount is to be included as income chargeable under the head 'Income from other sources' as referred to in clause (x) of sub-section (2) of section 56? (Yes/No)	This clause requires reporting as to whether any amount is to be included as income chargeable under the head 'income from other sources' as referred to in section 56(2)(x). Section 56(2)(x) provides that where any person receives in any previous year, from any person or persons money, immovable property, or other property and conditions stated in the clause are satisfied, then, it is treated as income of the recipient.
	(b)	If yes, please furnish the following details: (i) Nature of income: (ii) Amount (in ₹) thereof:	Receipt of assets, other than immovable property or assets included within the purview of property under the said section, would not be covered by the provisions of this section, and would, therefore not be required to be reported. For e.g., Stock-in-trade, not being a capital asset, is not covered by this provision.  <i>The tax auditor should obtain a representation from the assessee regarding any such receipts during the year, either received in his business or profession and recorded in the books of account of such business or profession. He should also scrutinise the books of account to verify whether receipt of any such amount or asset has been recorded therein. Based on</i>

			<i>such verification, tax auditor has to consider whether the question is to be answered in affirmative or otherwise.</i> <i>In case answer to clause 29B(a) is yes, then tax auditor has to furnish the following details namely nature of income and amount. In case of nature of income, tax auditor should state whether the income is by way of receipt of any sum of money or from acquisition of any immovable property like land, building etc. or other than immovable property like shares and securities, jewellery, drawings, paintings etc.</i>
30.		Details of any amount borrowed on hundi or any amount due thereon (including interest on the amount borrowed) repaid, otherwise than through an account payee cheque [Section 69D]	Details of the amount borrowed on hundi (including interest on such amount borrowed) and details of repayment otherwise than by an account payee cheque, are required to be indicated under this clause. The tax auditor should obtain a complete list of borrowings and repayments of hundi loans otherwise than by account payee cheques and verify the same with the books of account. The tax auditor should obtain from the assessee, particulars of any amount borrowed on hundi or any amount due thereon, including interest on the amount borrowed or repaid otherwise than by an account payee cheque.  <i>The tax auditor should check whether any such repayment/ payment has been made otherwise than by an account payee cheque. If yes, list out the amount involved on a transaction-to-transaction basis indicating date of payment and mode of payment.</i>
30A	(a)	Whether primary adjustment to transfer price, as referred to in sub-section (1) of 92CE, has been made during the previous year? (Yes/No)	This clause is requiring reporting of primary adjustments and various other details, for the purpose of making secondary adjustments under section 92CE.  <i>The tax auditor should obtain a certificate from the assessee as to what transfer pricing adjustments has been made during the previous year so that the primary onus should be with the management and then the same should also be verified from the tax records to check whether there is any such occurrence.</i>
	(b)	If yes, please furnish the following details:- (i) Under which clause of sub-section (1) of 92CE primary	Clause 30A requires reporting of whether primary adjustment to transfer price, as referred to in section 92CE(1), has been made during the previous year. Thus the tax auditor is required to verify whether any primary adjustment is 'made' in terms of section 92CE(1) during the previous year under consideration. The primary

		adjustment is made? (ii) Amount (in ₹) of primary adjustment (iii) Whether the excess money available with the associated enterprise is to be repatriated to India as per the provisions of sub-section (2) of section 92CE? (Yes/No) (iv) If yes, whether the excess money has been repatriated within the prescribed time (Yes/No) (v) If no, the amount (in ₹) of imputed interest income on such excess money which has not been repatriated within the prescribed time.	adjustment made may not necessarily relate to previous year under consideration. It is also necessary that the disclosure under Clause 30A may need to be done in respect of each and every type of primary adjustment made in the relevant financial year, irrespective of the previous year to which this adjustment pertains to. For instance, an assessment order in relation to say, F.Y. 2020-21 may be passed in during F.Y. 2022-23 wherein AO has made a primary adjustment and the same has been accepted by the taxpayer. Such primary adjustment may need to be reported in the tax audit report of F.Y. 2022-23. The tax auditor then needs to report the relevant clause of section 92CE(1) under which the relevant adjustment falls, and the amount of adjustment. Under clause 30A(b)(iii), the requirement is to report whether the excess money available with the associated enterprise is required to be repatriated to India as per the provisions of section 92CE(2). In case any such primary adjustment has taken place, which requires repatriation of the excess money or part thereof, the tax auditor should verify whether the excess money has been received, and whether it has been received within the prescribed time. He should report accordingly. In case the excess money or part thereof has not been repatriated within the prescribed time, the imputed interest income, which would be the secondary adjustment, needs to be computed. Since the reporting is for the previous year, it is advisable for the tax auditor to ensure that the amount of interest imputed till the end of the previous year is furnished. In case the interest up to the date of filing of the tax audit report is given, it is advisable for the tax auditor to provide a break-up of the amount of interest imputed till end of the relevant previous year and for the period post the end of the relevant previous year ending with the date of filing tax audit report. It is possible that interest income may be imputed during the relevant previous year in connection with primary adjustment made during the earlier previous years. Such interest income arising from primary adjustment made in earlier year is also taxable during the previous year under consideration and will be included in the return of income of the concerned previous year. Thus, it may be advisable for the taxpayer to furnish and tax auditor to verify and report the

			information pertaining to such primary adjustments in respect of interest income which is chargeable u/s. 92CE(2).  <i>The tax auditor should obtain a certificate from the assessee, as to what transfer pricing adjustments have been made in the return(s) of income filed during the previous year, whether any advance pricing agreement was entered into during the previous year, whether any transfer pricing adjustment was made/confirmed in an assessment order/appellate authority order passed during the previous year, or whether any agreement has been arrived at under a Mutual Agreement Procedure during the previous year. The tax auditor should also verify tax records to check whether there is any such occurrence. In this regard, the auditor should also obtain a prior management representation on the information obtained to be true and accurate, basis which he should make the disclosure in the tax audit report. Hence the primary onus should be with the management.</i>
30B	(a)	Whether the assessee has incurred expenditure during the previous year by way of interest or of similar nature exceeding one crore rupees as referred to in sub-section (1) of section 94B? (Yes/No)	This clause requires reporting for the purposes of examining allowability of expenditure by way of interest in respect of debt issued by a non-resident Associated Enterprises under section 94B while computing income under the head "Profits and gains from business and profession". The excess interest is to be calculated as the lower of total interest paid or payable in excess of 30% of earning before interest, taxes, depreciation and amortization (EBITDA) of the borrower in the previous year or interest paid or payable to associated enterprises for that previous year.
	(b)	If yes, please furnish the following details:- (i) Amount (in ₹) of expenditure by way of interest or of similar nature incurred: (ii) Earnings before interest, tax, depreciation and amortization (EBITDA)	The excess interest which is disallowed, is allowed to be carried forward for a period of 8 assessment years following the year of disallowance, to be allowed as a deduction against profit and gain of any business in subsequent years, to the extent of maximum allowable interest expenditure under this section. In computing the limit of ₹ 1 crore, only interest and expenditure of similar nature which is deductible while computing income under the head "Profits and Gains of Business or Profession" should be considered, and not interest deductible under any other head of income or interest which is otherwise not deductible. Therefore, any interest disallowable under section 14A, under the proviso

		during the previous year: (iii) Amount (in ₹) of expenditure by way of interest or of similar nature as per (i) above which exceeds 30% of EBITDA as per (ii) above: (iv) Details of interest expenditure brought forward as per section 94B(4) (v) Details of interest expenditure carried forward as per section 94B(4)	to section 36(1)(iii), under section 40(a)(i) or section 40A(2) should not be considered as interest for the purposes of section 92B(1). Similarly, interest disallowed on account of transfer pricing under section 92, should also not be considered, since such interest is not allowable in computing income under the head "Profits and Gains of Business or Profession". In case such interest exceeds ₹ 1 crore, details in part (b) of the clause need to be given. In item (i) of sub-clause (b), details of expenditure incurred by way of interest or of similar nature need needs to be provided. The language in the clause creates a doubt whether details that need to be given are of the total amount of interest and similar expenditure claimed as a deduction and not just the interest paid to non-resident AE(s). However, in view of the requirement of clause (a) where a specific question has been asked only with respect to section 94B(1) the subsequent clauses seem to be consequential and flowing from clause (a). Section 94B(1) confines itself to interest paid to Non-resident AE and section 94B(2) can be regarded as controlled by section 94B(1) since Section 94B(2) operates "for the purposes of sub-section (1)". The computation of "excess interest" as per section 94B(2) should be within the boundaries of interest referred to in section 94B(1), which is NR AE interest paid. The language of para 46.3 of CBDT Circular No. 2 of 2018 containing Explanatory Notes to Provisions of Finance Act, 2017 (dated 15 February 2018) is similar to the format of reporting prescribed by CBDT in clause 30B of Form No. 3CD. The better view is to disclose interest paid only to non-resident AE(s). Thus, the tax auditor has to obtain and report the expenditure incurred by way of interest or of similar nature paid to its non-resident AE or to the lender to whom the AE has provided an implicit or explicit guarantee or has deposited a matching amount of funds, out of the total interest and similar expenditure claimed as deduction. It should be kept in mind that word 'paid' in terms of section 43(2) means actually paid or incurred according to the method of accounting employed.
30C	(a)	Whether the assessee has entered into an impermissible	This clause requires the tax auditor to report impermissible avoidance arrangements as referred to in section 96 entered into by the assessee during the previous year and to quantify the tax benefit arising in the aggregate in the

		avoidance arrangement, as referred to in section 96, during the previous year? (Yes/No)	previous year to all parties to such arrangement. The auditor should examine if, in any earlier year, whether any reference has been made for declaring an arrangement as an impermissible avoidance arrangement, if such reference has been made, the auditor should report the fact in Form 3CA/3CB.
	(b)	If yes, please specify:- (i) Nature of the impermissible avoidance arrangement: (ii) Amount (in ₹) of tax benefit in the previous year arising, in aggregate, to all the parties to the arrangement”;	In the light of the Chapter X-A, provisions of the Income-tax Act relating to GAAR, the rules made thereunder and CBDT Circular thereto, the auditor should examine the following: (i) The tax auditor should examine whether the Principal Commissioner or the Commissioner or the Approving Panel has, in any earlier previous year, declared any arrangement as IAA. In case, if any arrangement has been declared to be an IAA in any earlier previous year, the tax auditor should further examine if any transaction pertaining or in connection with such declared IAA has taken place during the previous year under the audit. (ii) The tax auditor should examine if, in any earlier previous year, whether any reference has been made for declaring an arrangement as an impermissible avoidance arrangement, if such references been made, the auditor should report the fact in Form 3CA or Form 3CB, as the case may be. In both the cases, the auditor should further examine if any transaction pertaining or in connection with such declared IAA or such arrangement in respect of which reference has been made, has taken place during the previous year under the audit. If any transaction pertaining or in connection with such declared IAA or such arrangement has taken place during the previous year under the audit, the tax auditor should report this fact along with the tax benefit arising to all parties. If, however, he is unable to ascertain the tax benefit in the previous year arising, in aggregate, to all the parties to the arrangement, he should indicate the same in Form 3CA or Form 3CB, as the case may be. In either case, where the assessee has given response to any show cause notice or has preferred an appeal, along with outcome thereof should be taken into consideration while reporting.
31.	(a)	Particulars of each loan or deposit in an	This clause seek certain particulars of each loan or deposit in an amount exceeding the limit specified in section

	amount exceeding the limit specified in section 269SS taken or accepted during the previous year - (i) name, address and PAN or Aadhaar Number (if available with the assessee) of the lender or depositor; (ii) amount of loan or deposit taken or accepted; (iii) whether the loan or deposit was squared up during the year; (iv) maximum amount outstanding at any time during the previous year; (v) whether the loan or deposit was taken or accepted by cheque or bank draft or use of electronic clearing system through a bank account; (vi) in case the loan or deposit was taken or accepted by cheque or bank draft,	269SS taken or accepted during the previous year. Particulars of each loan or deposit falling within the scope of this section taken or accepted during the previous year have to be stated under this clause. Reporting is required only where each loan or deposit in an amount of ₹ 20,000 or more severally or in aggregate of the three sums, as specified in the section. This sub-clause requires six specific particulars in respect of each loan or deposit including the permanent account number or Aadhaar number of the lender or depositor, if available. The tax auditor should obtain the details from the assessee in respect of each reportable loan or deposit and verify the same from the records and evidence available with the assessee. There will be practical difficulties while verifying the loan or deposit taken or accepted by the account payee cheque or an account payee bank draft. In such cases, the tax auditor should verify the transactions with reference to such evidence which may be available. In the absence of satisfactory evidence, for answering, as to whether bank cheque or bank draft was 'account payee', the tax auditors should make a suggested comment in his report. The suggested comment is as follows: <i>"It is not possible for me/us to verify whether loans or deposits have been taken or accepted otherwise than by an account payee cheque or account payee bank draft, as the necessary evidence is not in the possession of the assessee".</i> Note – The Finance Act, 2023 has amended section 269SS to provide for higher threshold limit of ₹ 2,00,000 where a deposit is accepted by a primary agricultural credit society or a primary cooperative agricultural and rural development bank from its member or a loan is taken from a primary agricultural credit society or a primary cooperative agricultural and rural development bank by its member [For more details, please refer Chapter 19: Miscellaneous provisions].

		whether the same was taken or accepted by an account payee cheque or account payee bank draft.	
	(b)	Particulars of each specified sum in an amount exceeding the limits specified in section 269SS taken or accepted during the previous year: (i) name, address and PAN or Aadhaar number (if available with the assessee) of the person from whom specified sum is received; (ii) amount of specified sum taken or accepted; (iii) whether the specified sum was taken or accepted by cheque or bank draft or use of electronic clearing system through a bank account; (iv) in case the specified sum was taken or accepted by cheque or bank	Under this clause particulars of any specified sum taken or accepted in relation to transfer of an immovable property, whether or not the transfer takes place has been dealt with. Such specified sum may be any sum of money receivable whether or not the transfer takes place.  <i>The tax auditor should ascertain whether the assessee has any immovable property which has been transferred or was proposed to be transferred during the year and review the relevant agreements, documents etc. in this regard. The auditor should satisfy himself that the proceeds arising from such transfer, based on the review of documents has been duly credited to the bank account by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed.</i>

		draft, whether the same was taken or accepted by an account payee cheque or account payee bank draft (Particulars at (a) and (b) need not be given in the case of a Government company, a banking company or a corporation established by the Central, State or Provincial Act)	
	(ba)	Particulars of each receipt in an amount exceeding the limit specified in section 269ST, in aggregate from a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasion from a person, during the previous year, where such receipt is otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account - (i) Name, address, PAN or Aadhaar Number (if available with the assessee) of	The sub-clauses (ba), (bb), (bc) and (bd) of clause 31 deal with reporting of transactions of receipts and payments in excess of the specified limit made otherwise than by the modes specified in section 269ST. Section 269ST does not distinguish between receipt on capital account and revenue account. Accordingly, sub-clauses (ba), (bb), (bc) and (bd) of clause 31 do not distinguish between receipts and payments on capital account and revenue account. Once the receipt or the payment, as the case may be, exceeds the limit specified in section 269ST, the particulars of such transactions will have to be reported under these clauses. The tax auditor should bear this in mind while examining the books of account and records of the assessee. Particulars are required to be given if receipts or payments, even though individually are lower than ₹ 2 lakh but in aggregate amount to ₹ 2 lakh or more if such receipts or payments are to or from one person in a day (whether related to a single transaction or otherwise) or relate to a single transaction (even if the receipts or the payments, as the case may be, are on different dates and individual receipts or payments are less than ₹ 2 lakh) or are in respect of more than one transaction but relate to a single event or occasion (even if the receipts or the payments, as the case may be, are on different dates and

		the payer; (ii) Nature of transaction; (iii) Amount of receipt (in ₹) (iv) Date of receipt;	individual receipts or payments are less than ₹ 2 lakh). Sub-clauses (ba) and (bb) of clause 31 requires particulars to be furnished in respect of transactions exceeding ₹ 2 lakh <u>where assessee has received the amount</u> from a person, whereas sub-clauses (bc) and (bd) of clause 31 requires information about the transactions exceeding ₹ 2 lakh <u>where the payment has been made</u> by the assessee to a person.
	(bb)	Particulars of each receipt in an amount exceeding the limit specified in section 269ST, in aggregate from a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasions from a person, received by a cheque or bank draft, not being an account payee cheque or an account payee bank draft, during the previous year:- (i) Name, address and Permanent Account Number or Aadhaar Number (if available with the assessee) of the payer; (ii) Amount of receipt (in ₹)	While it is comparatively simple to work out receipts or payments to or from a single person in a day, the tax auditor will have to exercise care and caution while arriving at the particulars of receipts or payments pertaining to a single transaction or relating to a single event or occasion. The tax auditor will need to link all receipts and payments, as the case may be, otherwise than by the modes specified in this section received/ made in respect of single transaction and verify if the aggregate amount exceeds the limits specified in section 269ST. A single invoice may relate to multiple transactions and vice-a-versa, multiple bills may relate to a single transaction. The tax auditor will have to exercise his judgement to decide whether the receipts/payments is pertaining to a single transaction. Similarly, the tax auditor will have to exercise judgement in deciding whether receipts/payments though pertaining to more than one transaction, pertain to a single event or occasion. For example, for a function organized by a person, assessee contractor may have been given catering contract as well as contract for flower decoration. In such a case, while the transactions may be different, the occasion or event would be the same and provisions of section 269ST will be attracted if the receipts exceeding the limits specified under section 269ST are by mode other than those specified in the section. It is possible that the assessee may have purchased goods or services while simultaneously he may have sold goods or services to the same party, consideration for which exceeds ₹ 2 lakh. In such a case, if the amount of consideration for purchase is set off against the amount receivable for the sale of goods or services, such set off is not a receipt as contemplated under section 269ST. If the amount of such set off exceeds ₹ 2 lakh, the tax auditor may give appropriate note to the effect that such set off
	(bc)	Particulars of each payment made in an amount exceeding the limit specified in section 269ST, in aggregate to a person in a day or in respect of a single	

		transaction or in respect of transactions relating to one event or occasions to a person, otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account during the previous year :- (i) Name, address and PAN or Aadhaar number (if available with the assessee) of the payee; (ii) Nature of transaction; (iii) Amount of payment (in ₹); (iv) Date of payment;	not being a receipt or payment has not been included in the particulars given and the relevant sub-clause. If such receipts or payments are otherwise than by account payee cheque or an account payee draft or by use of electronic clearing system through a bank account, then, the tax auditor will have to verify the mode of the receipt or payment, as the case may be. He will have to classify the receipt or the payment, as the case may be, as under: (i) otherwise than by cheque or bank draft or use of electronic clearing system through a bank account, into receipt or payment; (ii) by cheque or bank draft not being an account payee cheque or an account payee bank draft. While section 269ST deals only with receipts exceeding ₹ 2 lakh or more otherwise than by the specified modes, sub-clauses (ba), (bb), (bc) and (bd) of clause 31 require details to be furnished of both receipts and payments. The particulars required under these sub-clauses need not be given in case of a receipt by a or payment to a government company, banking company, a post office saving bank, co-operative bank or in the case of transactions referred to in section 269SS.
	(bd)	Particulars of each payment in an amount exceeding the limit specified in section 269ST, in aggregate to a person in a day or in respect of a single transaction or in respect of transactions relating to one event or occasions to a person, made by a cheque or bank draft, not being an account payee cheque or an account payee bank draft, during the	

		previous year: (i) Name, address and PAN or Aadhaar number (if available with the assessee) of the payee; (ii) Amount of payment (in ₹) (Particulars at (ba), (bb), (bc) and (bd) need not be given in the case of receipt by or payment to a Government company, a banking Company, a post office savings bank, a cooperative bank or in the case of transactions referred to in section 269SS or in the case of persons referred to in <i>Notification No. S.O. 2065(E) dated 13rd July, 2017</i>)	
	(c)	Particulars of each repayment of loan or deposit or any specified advance in an amount exceeding the limit specified in section 269T made during the previous year: (i) Name, address, PAN or Aadhaar number (if available with the assessee) of payee; (ii) amount of	This sub-clause requires particulars of each repayment of loan or deposit in an amount exceeding the limit specified in section 269T made during the previous year. Section 269T is attracted where repayment of the loan or deposit is made to a person, where the aggregate amount of loan or deposits held by such person either in his own name or jointly with any other person on the date of such repayment together with interest, if any, payable on such deposit is ₹ 20,000 or more. In the case of company assessee, loan or deposit is defined to mean deposit repayable after notice or loan or deposit repayable after a period. Therefore, in case of a company, loan or deposit repayable on demand will not be considered for the purpose of this section as loan or deposit. However, in the case of non-company assessee, loan or deposit is defined to mean loan or deposit of any

		repayment; (iii) maximum amount outstanding at any time during the previous year; (iv) whether the repayment was made by cheque or bank draft or use of electronic clearing system through a bank account; (v) in case repayment was made by cheque or bank draft, whether the same was repaid by an account payee cheque or bank draft.	nature. This distinction will have to be kept in mind while giving information under this sub-clause. Loan or deposits discharged by means of transfer entries in the books of account constitute repayment of loan or deposits otherwise than by account payee cheque or account payee bank draft. Hence, such entries have to be reported under this clause.  <i>The tax auditor has to take into account the technological advancements in the field of banking and information technology, where loans have been repaid otherwise than through an account payee cheque or bank draft which are capable of being tracked such as bank transactions made electronically through the internet or through mail transfer or telegraphic transfer. These types of payments, though not made by account payee cheques in the conventional manner, are capable of being tracked. In order to judicially apply the provisions of section 269T, the tax auditor need not report such cases under this clause. The "use of electronic clearing system through a bank account" is a permissible mode for the purposes of section 269T. The entries that relate to transactions with a supplier and customer on account of purchase or sale of goods/ services will not be treated as loans or deposits repaid.</i> The monetary limit of ₹ 20,000 or more is applicable in respect of a banking company or a co-operative bank with reference to each branch and in all other cases, assessee as a whole. Note - <i>The Finance Act, 2023 has amended section 269T to provide for higher threshold limit of ₹ 2,00,000, where a deposit is made by a primary agricultural credit society or a primary co-operative agricultural and rural development bank to its member or a loan is repaid to a primary agricultural credit society or a primary cooperative agricultural and rural development bank by its member. [For more details, please refer Chapter 19: Miscellaneous Provisions].</i>
	(d)	Particulars of repayment of loan or deposit or any specified advance in an amount exceeding the limit specified in section 269T	Under this clause the tax auditor has to provide the details of repayment received by the assessee from a person in respect of loan or deposit or specified advances exceeding the limit specified in section 269ST received otherwise than by a cheque or bank draft or use of electronic clearing system through a bank account during the previous year based on the examination of books of accounts or other

	received otherwise than by a cheque or bank draft or use of ECS through a bank account during the previous year: (i) Name, address, PAN or Aadhaar number (if available with the assessee) of the payer, (ii) amount of repayment of loan or deposit or any specified advance received otherwise than by a cheque or bank draft or use of ECS through a bank account during the previous year.	relevant documents. In case the repayments are voluminous, it may not be possible to verify each repayment, reflected in the bank statement, as to whether the acceptance of deposits or loans or specified advances has been through cheque, bank draft or not.  <i>Tax auditor can obtain a certificate from the assessee to the effect that the repayment referred to in this sub-clause were received through permitted mode. Where the reporting has been done on the basis of the certificate of the assessee, the same shall be reported as an observation in para 3 of Form No. 3CA or para 5 of Form No. 3CB, as the case may be.</i>
(e)	Particulars of repayment of loan or deposit or any specified advance in amount exceeding the limit specified in section 269T received by a cheque or bank draft which is not an account payee cheque or account payee bank draft during the previous year: (i) Name, address, PAN or Aadhar Number (if available with	Under this sub-clause, the tax auditor has to provide details of repayment received by the assessee from a person in respect of loan or deposit or specified advance exceeding the limit specified in section 269T received by cheque or bank draft which is not an account payee cheque or account payee bank draft during the previous year based on the examination of books of accounts or other relevant documents. It may not be possible to verify each repayment, reflected in bank statement, as to whether the acceptance or deposits or loans or specified advances has been made through cheque, bank draft which is not an account payee cheque or account payee bank draft.  <i>The tax auditor should obtain suitable certificate from the assessee to the effect that the repayment referred to in this sub-clause were received in the permitted manner. Where the reporting has been done on the basis of the certificate of</i>

		the assessee), of the payer, (ii) amount of repayment of loan or deposit or any specified advance received by a cheque or a bank draft which is not an account payee bank cheque or account payee bank draft during the previous year. (Particulars at (c), (d) and (e) need not be given in the case of a repayment of any loan or deposit or any specified advance taken or accepted from the Government, Government company, banking company or a corporation established by the Central, State or Provincial Act)	<i>the assessee, the same shall be reported as an observation in para 3 of Form No. 3CA or para 5 of Form No. 3CB.</i>
32.	(a)	Details of brought forward loss or depreciation allowance to the extent available containing information relating to assessment year, nature of loss/allowance (in ₹), amount as returned	The amount of brought forward loss or depreciation allowance is required to be quantified as per return and assessment orders or appellate orders, if any. Depreciation on goodwill will not be available from A.Y. 2021-22. Brought forward losses may relate to different heads of income such as property income, profits and gains of business or profession, speculation business or capital gains. Different provisions are contained in sections 32 and 70 to 79A of the Income-tax Act, 1961, with regard to loss/

		(in ₹)* all losses/allowances not allowed under section 115BAA/ 115BAC/ 115BAD, amount as assessed (give reference to relevant order) and remarks. * If the assessed depreciation is less and no appeal pending than take assessed.	depreciation under different heads. In the remarks column, information about the pending assessment or appellate proceedings or about delay in filing loss returns should be given. For giving the above information, the auditors should study the assessment records i.e., the income-tax returns filed, assessment orders, appellate orders, orders giving effect to appellate order and rectification/revisional orders for the earlier years and ascertain if the figures given in the above clause are correct. The tax auditor should keep in mind the provisions of section 71B regarding carry forward and set-off of loss from house property, section 73A regarding carry forward and set-off of losses by specified business and also section 78 regarding carry forward and set-off of losses in case of change in constitution of firm or on succession. The tax auditor should obtain all the assessment orders or appellate orders completed and pending during the audit. If the consequential order for any revision /appellate order is yet to be passed, the same can be disclosed along with the impact thereof, if material. It means in case of any undisclosed income determined in case of an assessee during any proceedings of search, requisition or survey, then no adjustment or set off shall be allowed against such undisclosed income. The set off shall not be available in case of both brought forward losses as well as the unabsorbed depreciation. From the Assessment Year beginning from 2022-23 onwards, the tax auditor has to confirm and verify whether any search or survey has been taken place or undergoing based on the records of assessment proceedings of the assessee and accordingly shall check if any undisclosed income has been determined in case of assessee. The eligibility of brought forward losses and unabsorbed depreciation against such undisclosed income as computed by the assessee should be checked and based on that, the necessary adjustments should be made to losses to be carried forward by the assessee.
	(b)	Whether a change in the shareholding of the company has taken place during the previous year due to which the losses incurred prior to the	The Tax Auditor should obtain the details of changes in voting power pattern year-on-year and verify the reasons for any such changes before determining the allowability of losses eligible to be carried forward. The Tax Auditor should obtain necessary representation to this effect wherever it is not feasible to verify or cross-check the shareholding pattern and changes therein.

		previous year cannot be allowed to be carried forward in terms of section 79.	The comparison of the composition of the shareholding is to be done with reference to the last day of the current previous year and the last day of every previous year in which the loss was incurred. The carry forward of the loss incurred in respect of different previous years is to be determined with respect to the individual previous years. Such comparison of the shareholding can be done by referring to the Register of Members.
	(c)	Whether the assessee has incurred any speculation loss referred to in section 73 during the previous year. If yes, please furnish details of the same.	Having regard to the definition of “speculative business”, the tax auditor has to verify from the books of account and other relevant documents as to whether the assessee is carrying on any speculation business. On verification if the auditor is of the opinion that the auditee is carrying on speculation business, under this clause, the tax auditor has to furnish the details regarding speculation loss referred to in section 73, if any incurred by the assessee during the previous year. It may be noted that it is not necessary that same speculation business needs to be continued to set off its loss of earlier year(s) against profit of same speculation business. It can be ‘any’ speculation business i.e., a different speculation business.
	(d)	Whether the assessee has incurred any loss referred to in section 73A in respect of any specified business during the previous year, if yes, please furnish details of the same.	Under clause 32(d), the tax auditor has to verify from the books of accounts and other relevant documents as to whether the assessee is carrying on specified business as referred to under section 35AD. In case the auditor is of the opinion that the assessee is carrying on such specified business, he has to furnish the details of the loss incurred, if any, in respect of any specified business during the previous year. In case the assessee carries on more than one specified businesses and loss has been incurred in both the business, the details of the loss incurred with respect of each business is to be specified separately.
	(e)	In case of a company, please state that whether the company is deemed to be carrying on a speculation business as referred in Explanation to section 73, if yes, provide details of speculation loss if any incurred during	The <i>Explanation</i> to Section 73 provides that where part of the business of a company (other than a company whose gross total income consists mainly of income which is chargeable under the heads income from securities, income from house property, capital gain and income from other sources or a company the principal business of which is the business of trading in shares or banking or granting of loans and advances consist in the purchase or sale of shares of the other companies shall be deemed to be carrying on a speculation business to the extent to which business consists of purchase and sale of such shares.

		the previous year.	The tax auditor has to furnish the details regarding the speculation losses incurred, if any, as referred to in <i>Explanation</i> to section 73.
33.		Section-wise details of deductions, if any, admissible under Chapter VIA or Chapter III (Section 10AA) specifying the section under which deduction is claimed and the amounts admissible as per the provision of the Income-tax Act, 1961 and fulfils the conditions, if any, specified under the relevant provisions of Income-tax Act, 1961 or Income-tax Rules, 1962 or any other guidelines, circular, etc., issued in this behalf.	The tax auditor has to ensure that the assessee fulfils all the conditions specified in the sections under which deduction is claimed. For ascertaining this, the tax auditor has to obtain all necessary evidence which would enable him to express the opinion regarding the admissibility of deductions. In order to ascertain the fulfillment of this condition, the tax auditor may have to check all documentary evidence. There may be cases where there is difference between the amount claimed by the assessee and the amount computed by the tax auditor. In such cases, it is quite possible that the assessee's claim is based on some judicial pronouncement on the subject. In such cases, it may be advisable for the tax auditor to report the amount admissible. The amount claimed and the background behind and the basis of the claim of the assessee may form part of the working papers. If the claim of the assessee is well-founded and settled by judicial pronouncement, the tax auditor may accept the claim but he has to record in his working papers that admissible amount has been reported on the basis of such judicial pronouncement. In appropriate circumstances, such judicial pronouncements etc. should be mentioned in the report. It may be noted that separate audit report or certificate is required to be obtained under section 10AA and certain sections like 80-IA, 80-IB, 80-IC, 80-JJAA under Chapter VIA. While giving information with regard to the deduction allowable under these sections, the tax auditor should refer to separate audit reports/ certificates obtained by the assessee. These audit reports/ certificates may have been given by the tax auditor or by any other auditor. The figures given in such separate audit reports/certificates should be taken into consideration while giving information with regard to income covered by these sections. Note: Case Study 3 and Case Study 4 deal with the ethical aspects which have to be considered while issuing audit report in Form 10CCB. Some sections in Chapter VIA such as section 80G (donations), Section 80GGB/80GGC (contributions to political parties), section 80JJAA (wages of new workmen)

			etc. relate to the expenditure incurred by an assessee. There are other sections such as section 80-P (income of cooperative societies), etc. which relate to income of the assessee. In respect of all these sections, the tax auditor should ascertain whether there is any expenditure or income covered by the above sections recorded in the books of accounts audited by him. Section 115BAA, 115BAB, 115BAC and 115BAD provide that no deductions under Chapter VI-A or Chapter III can be claimed by the assessee opting for taxation under any of these sections except deductions mentioned under section 80M and 80JJAA, reply to clause 8a shall be considered and accordingly admissibility of deductions should be examined.
34.	(a)	Whether the assessee is required to deduct or collect tax as per the provisions of Chapter XVII-B or Chapter XVII-BB, if yes, please furnish details of (1) Tax deduction and collection Account Number (TAN) (2) Section No. (3) Nature of payment (4) Total amount of payment or receipt (5) Total amount on which tax was required to be deducted or collected (6) Total amount on which tax was deducted or collected at specified rate	While answering the issue of applicability of the provisions of Chapter XVII-B and/or XVII-BB, a number of debatable issues may arise before the assessee as well as the tax auditor. The auditor may have a difference of opinion with regard to the applicability of the provisions of TDS/TCS on a particular payment. In such a case, the tax auditor has to report the difference of opinion appropriately as an observation in the para 3 of Form No. 3CA or para 5 of Form No. 3CB as the case may be. It is essential to note that it is the primary responsibility of the assessee to prepare the information in such a manner that the tax auditor can verify the compliance as required in the clause. The tax auditor is required to verify that no items have been omitted in the information furnished to him and reasonable test checks would reveal whether or not the information furnished is correct. The extent of check undertaken would have to be indicated by the tax auditor in his working papers and audit notes. The tax auditor would be well advised to so design his tax audit programme as would reveal the extent of checking and to ensure adequate documentation in support of the information being certified. It may be noted that while determining the amount to be reported in this clause, the tax auditor has to check and verify the payments made by the assessee and should not only restrict to verification of expenses debited to Profit & Loss or the TDS/TCS returns filed and provided by the assessee e.g., an advance payment made to any contractor may also be liable for deduction of tax. In the case of payment to non-residents, the applicable rate of

		(7) Amount of tax deducted or collected (8) Total amount on which tax was deducted or collected at less than specified rate or Amount of tax deducted or collected at less than specified rate and amount of tax deducted or collected not deposited to the credit of Central Government.	tax deduction at source is to be read along with the Double Taxation Avoidance Agreement. This clause also requires the tax auditor to furnish the total amount out of the amount deductible or collectible, at which the tax was deducted or collected at the rate less than the specified rate. The lesser deduction is required to be reported in this clause. This will include deduction at a lower rate than what is prescribed, application of wrong section for deduction of tax at source, etc. For example, section 194C requires deduction @2% in case payment is made to a person other than individual or HUF, but the deductor deducts only 1%, the same has to be reported under this clause. The tax auditor should also consider applicability of higher rate of TDS/TCS under certain circumstances like non-furnishing of PAN, non-filers of return as provided in section 206AA/206AB/206CC/206CCA. The tax auditor should verify the cases where the tax has been deducted at source but not paid to the credit of the Central Government till the date of the audit. It may be seen that tax deducted but deposited late will not be –required to be reported.  Tax auditor should obtain a copy of TDS/TCS returns filed by the assessee and reconcile the same with the books of accounts, which shall form the basis of reporting under this clause. The tax auditor should take into consideration the relevant sections, rules, notifications, circulars and various judicial pronouncements in relation to transactions of relevant payment or collections. If the tax auditor has not agreed with the interpretation/ views taken by the assessee, he should report the same in Form 3CA/3CB.
	(b)	Whether the assessee is required to furnish the statement of tax deducted, or tax collected. If yes, please furnish the details of TAN, type of form, due date for furnishing, date of furnishing, if furnished, whether	This clause deals with the information pertaining to statement of tax deducted and collected at source. The tax auditor has to ascertain and report as to whether the assessee is required to furnish the statement of tax deducted or tax collected at source within the prescribed time and answer 'yes' or 'no' depending on his examination. If the answer is 'yes', the tax auditor shall provide further details in a table contained in Clause 34(b) only with regard to the statement required to be furnished by the assessee. The information given in clause 34(a) and (b) should be reconciled with the disallowances reported under section

		the statement of tax deducted or collected contains information about all transactions which are required to be reported. If not, please furnish list of details/transactions which are not reported.	40(a) in clause 21(b) to the extent applicable for cross checking appropriateness of reporting under both the clauses. Depending upon transactions that require tax deduction or collection, tax auditor should ascertain which statements, the assessee was required to furnish for the financial year under audit. He should check which statements have been furnished by the assessee for tax deducted as well as collected. The reporting requirement is notwithstanding the fact that the assessee has furnished the statements of tax deducted at source and tax collected at source or not.  <i>The tax auditor should keep in mind laws relating to tax deductions/collections at source and various case laws so as to detect any case of contravention or default in the provisions of Chapter XVII -B / chapter XVII-BB.</i> <i>If the information is voluminous, then the tax auditor should consider reporting significant deficiencies with appropriate remarks in paragraph (3) of Form 3CA or paragraph (5) of Form 3CB.</i>
	(c)	Whether the assessee is liable to pay interest under section 201(1A) or section 206C(7). If yes, please furnish details of Tax deduction and collection Account Number (TAN), amount of interest under section 201(1A)/ 206C(7) is payable and amount of interest paid along with date of payment.	Under this clause, the tax auditor is required to furnish detailed information in case an assessee is liable to pay interest under section 201(1A) or section 206C(7) of the Act. Where the assessee is liable to pay interest u/s 201(1A) or u/s 206C(7), the tax auditor should verify such amount from the books of account as on 31st March of the relevant previous year and also from PART G of the statement generated by the Department in Form No.26AS. In case the assessee had disputed the levy or calculation of interest under TRACES, in Form No.26AS/AIS/TIS of the assessee, the auditor may re-calculate the amount of interest under section 201(1A) or section 206C(7) up to the date of audit report for reporting under this clause and also mention the fact in his observations paragraph provided in Form No.3CA or Form No.3CB, as the case may be.
35.	(a)	In the case of a trading concern, give quantitative details of principal items of goods traded: (i) Opening Stock;	The tax auditor should examine whether the enterprise is a trading concern or not. If yes, the tax auditor should obtain certificates from the assessee in respect of the principal items of goods traded, the balance of the opening stock, purchases, sales and closing stock and the extent of shortage/excess/damage and the reasons thereof. The entire quantitative information should be examined by

		(ii) purchases during the previous year; (iii) sales during the previous year; (iv) closing stock; (v) shortage / excess, if any	the auditor from the records.
	(b)	In the case of a manufacturing concern, give quantitative details of the principal items of raw materials, finished products and by-products: A. Raw Materials: (i) opening stock; (ii) purchases during the previous year; (iii) consumption during the previous year; (iv) sales during the previous year; (v) closing stock; (vi) yield of finished products; (vii) percentage of yield; (viii) shortage / excess, if any. B. Finished products/by-products: (i) opening stock (ii) purchases during the previous year; (iii) quantity manufactured	The tax auditor should ascertain whether the enterprise is a manufacturing concern and accordingly report it in clause 10(a). If yes, this sub-clause is applicable. The tax auditor should obtain certificate from assessee in respect of principal items of raw materials, finished goods and by-products and quantitative information required to be reported in this sub-clause. Note - This clause requires that quantitative details of "principal items" of raw materials and finished goods should be given. Therefore, information about petty items need not be given. What would constitute principal items will depend on the facts of each case. Normally, items which constitute more than 10% of the aggregate value of purchases, consumption or turnover as the case may be, may be classified as principal items.

		during the previous year; (iv) sales during the previous year; (v) closing stock; (vi) shortage/ excess, if any.	
36A	(a) Whether the assessee has received any amount in the nature of dividend as referred to in sub- clause (e) of clause (22) of section 2? (Yes/No) (b) If yes, please furnish the following details:- (i) Amount received (in ₹): (ii) Date of receipt	The tax auditor should obtain from the tax payer a certificate containing a list of closely held companies in which he is the beneficial owner of shares carrying not less than 10% of the voting power and list of concerns in which he has a substantial interest. The dividend taxable under section 2(22)(e) is restricted to accumulated profits on the date of payment. Thus, the accumulated profits have to be determined as on the date of the payment. Further, if at any time earlier any amount has been considered as income under any of the clauses of section 2(22), the accumulated profits will have to be reduced by such an amount. The tax auditor may not be able to determine the accumulated profits such as on the date of payment of the closely held company making the payment for various reasons. The tax auditor in such a case may arrive at the accumulated profits by appropriating the profit for the year on a time basis. In such a case, the auditor should include appropriate remarks in para 3 of Form No. 3CA or para 5 of Form No. 3CB, as the case may be, about the methodology adopted by him. For attracting section 2(22)(e), it is necessary that the assessee receiving a loan or advance should be a shareholder. Wherever the beneficial shareholder is not the registered shareholder and the closely held company has given loan or advance to the beneficial shareholder or to a concern, the tax auditor should make appropriate remark in Form No. 3CA or Form 3CB, as the case may be.  <i>The tax auditor should also obtain a certificate from the tax payer giving particulars of any loan or advances received by any concern in which he has substantial interest from any closely held company in which he is beneficial owner of shares carrying not less than 10% of the voting power. These certificates are</i>	

		<i>necessary since the tax auditor may not be able to verify the above from the books of account of the assessee.</i> <i>The tax auditor should verify Form 26AS in the case of the tax payer to know if the closely held company has deducted tax at source from any payment made to it to the taxpayer or the concern under section 194.</i>
37.	Whether any cost audit was carried out, if yes, give the details, if any, of disqualification or disagreement on any matter/item/value/quantity as may be reported/identified by the cost auditor.	The tax auditor should ascertain from the management whether cost audit was carried out and if yes, a copy of the same should be obtained from the assessee. Even though the tax auditor is not required to make any detailed study of such report, he has to take note of the details of disqualification or disagreement on any matter/item/value/quantity as may be reported/identified by the cost auditor. The information is required to be given in respect of cost audit report which is received upto the date of tax audit report.  <i>The tax auditor should examine the time period for which the cost audit, if any, has been required to be carried out. Information is required to be given only in respect of such cost audit report, the time period of which falls within the relevant previous year. In effect, the information is required to be given in respect of that cost audit report which is received upto the date of tax audit report.</i>
38.	Whether any audit was conducted under the Central Excise Act, 1944, if yes, give the details, if any, of disqualification or disagreement on any matter/item/value/quantity as may be reported/identified by the auditor.	The tax auditor should ascertain from the management whether any audit was conducted under the Central Excise Act, 1944 and if such audit was carried out, obtain a copy of the report. Even though the tax auditor is not required to make any detailed study of such report, he has to take note of the details if any, of disqualification or disagreement on any matter/item/value/quantity as may be reported/identified by the auditor. The tax auditor need not express any opinion in a case where such audit has been ordered but the same has not been carried out. The information is required to be given in respect of excise audit report which is received upto the date of tax audit report.  <i>The tax auditor should examine the time period for which the excise audit, if any, has been required to be carried out. Information is required to be given only in respect of such excise audit report the time period of which falls within the relevant previous year. In effect, the information is required to be given in respect of that excise audit report which is received upto the date of tax audit report.</i>

40.	Details regarding turnover, gross profit, etc. for the previous year and preceding previous year: 1. Total turnover of the assessee 2. Gross profit/turnover 3. Net profit/turnover 4. Stock-in-trade/turnover 5. Material consumed/finished goods produced (The details required to be furnished for principal items of goods traded or manufactured or services rendered)	These ratios have to be calculated only for assessee who are engaged in manufacturing or trading activities. While calculating these ratios, the tax auditor should assign a meaning to the terms used in the above ratios having due regard to the generally accepted accounting principles. All the ratios mentioned in this clause are to be calculated in terms of value only. For the purpose of calculating the ratio mentioned in (4), only closing stock is to be considered. The term 'stock-in-trade' used therein does not include stores and spare parts or loose tools. The term "stock-in-trade" would include only finished goods and would not include the stock of raw material and work-in-progress since the objective here is to compute the stock turnover ratio. Material consumed would, apart from raw material consumed, include stores, spare parts and loose tools. Under this clause, calculation of the ratios is also to be stated. As such, computation of various components based upon which these ratios have been worked out is required to be stated under this clause. There should be consistency between the numerator and the denominator while calculating the above ratios. Any significant deviation thereof should be pointed out in Form 3CA or Form 3CB, as the case may be. The relevant previous year figures are to be taken from last previous year audit report or the reinstated figures, to make the ratios comparable with current year. In case the preceding previous year is not subject to audit, nothing should be mentioned in the relevant column. The ratios has to be given for the business as a whole and need not be given product wise.
41.	Please furnish details of demand raised or refund issued during the previous year under any tax laws other than Income-tax Act, 1961 and Wealth Tax Act, 1957⁴ alongwith details of relevant proceedings.	The assessee may be assessed under various tax laws other than Income-tax Act, 1961 resulting into a demand order or refund order. The tax auditor should obtain copy of all the demand/refund orders issued by the government authorities during the previous year under any tax law other than Income-tax Act, 1961. The auditor should exercise his professional judgement in determining the applicability to relevant tax laws for reporting under this clause.  <i>It may be noted that even though the demand/refund order is issued during the previous</i>

⁴ abolished with effect from the 1st April, 2016

			year, it may pertain to a period other than the relevant previous year. In such cases also, reporting has to be done under this clause. The tax auditor should verify the books of account and the orders passed by the respective Department for ascertaining whether any such demand has been raised or refund order has been issued under any other tax law and accordingly report the same. It is advisable to cross verify the demands from online portal of the respective Department. If there is any adjustment of refund against any demand, the auditor shall also report the same under this clause. Appropriate representation should be obtained from the assessee. In case of corporate assessee, the auditor may check the said details with the disclosures of contingent liabilities in the audited financials, disclosures in statutory auditor's report pursuant to CARO, if applicable.
42.	(a)	Whether the assessee is required to furnish statement in Form No. 61 or Form No. 61A or Form No. 61B? (Yes/No)	This clause has been introduced where the tax auditor has to report whether the tax payer is required to furnish a statement in Form 61/61A/61B. As per Rule 114D(1), every person referred to in clauses (a) to (k) of rule 114C(1) and Rule 114(2) and who is required to get his accounts audited under section 44AB who has received any declaration in Form 60 (this form is used by an individual or a person other than a company or a firm who does not have PAN and who enter into any of the transactions specified in rule 114B) is required to furnish statement in Form No. 61 containing particulars of such declaration. The Annual Information Return or Statement of financial transaction required to be furnished under section 285BA(1) is to be furnished in Form No. 61A. Statement of Reportable Account under section 285BA(1)(k) is to be furnished by a reporting financial institution in respect of each account which has been identified pursuant to due diligence procedure as a reportable account.
	(b)	If yes, please furnish Income-tax Department Reporting Entity Identification Number, Type of form, Due date for furnishing, Date of furnishing (if furnished), Whether the form contains information about all details/ transactions which are required to be reported. If not, please furnish list of the details/ transactions which are not reported.	 The tax auditor should verify that whether the assessee is liable to report the transaction in the prescribed form or not, if yes, whether the assessee has filed the same and he has furnished all the particulars required in the Form. The tax auditor is further required to state whether the Form contains information about all details or furnished transactions which are required to be reported. In case it is not, the tax auditor is required to furnish list of the details

			<i>of transactions which are not reported. If the volume of deficiencies is large, the tax auditor may state certain deficiencies by way of an illustration and make appropriate remark in para 3 of Form 3CA or para 5 of Form 3CB.</i> <i>Form No. 61, 61A and 61B uploaded on the income tax portal should be examined by the tax auditor for purpose of reporting.</i>
43.	(a)	Whether the assessee or its parent entity or alternate reporting entity is liable to furnish the report as referred to in sub-section (2) of section 286 (Yes/No)	This clause seeks information about applicability to furnish the report as referred to in section 286(2). Section 286(2) casts an obligation on the parent entity or the alternate reporting entity, if it is resident in India to furnish report, in respect of the international group of which it is a constituent, for every accounting year, within a period of 12 months from the end of the said reporting accounting year to the prescribed authority. The reporting requirement under section 286 shall not apply in respect of an international group for an accounting year, if the total consolidated group revenue, as reflected in the consolidated financial statement for the accounting year preceding such accounting year does not exceed ₹ 6,400 crores (Rule 10DB). The obligation to furnish the report referred to in section 286(2) arises under following situations requiring reply in affirmative to clause 43(a): (i) If the assessee itself is the parent entity of the international group and is resident in India, it will have the obligation to furnish the report under section 286(2); (ii) If the assessee is resident in India and has been designated as the alternate reporting entity of the international group; (iii) If the assessee is a constituent of the international group with its parent entity resident in India and the group has not designated any other resident constituent entity as the alternate reporting entity, the parent entity will have the obligation to file the report under section 286(2). (iv) If the assessee is neither the parent entity nor has it been designated as the alternate reporting entity, but other constituent entity resident in India of the international group has been designated as the alternate reporting entity by the group, such other constituent entity resident in India will have obligation

			to file the report under section 286(2).  <i>The tax auditor should verify in the case of the assessee if any of the above four situations exist. The tax auditor should verify if the assessee whose parent is a non-resident has filed Form No. 3CEAC. It will indicate if the assessee or another constituent entity resident in India has been designated as the reporting entity for the international group. The tax auditor may obtain necessary certificate from the assessee in respect of constitution of the international group, entities that are resident in India and not resident in India and entity if appointed as the alternate reporting entity.</i> If none of the above four situations described above exists, the reply to clause 43(a) will be negative.
	(b)	If yes, please furnish the following details: (i) Whether report has been furnished by the assessee or its parent entity or an alternate reporting entity (ii) Name of parent entity (iii) Name of alternate reporting entity (if applicable) (iv) Date of furnishing of report	If the assessee is liable to file Form 3CEAC, the tax auditor has to verify whether the necessary compliance as prescribed in section 286 has been done and the requisite information has been furnished by the assessee. If the assessee has filed a report, the tax auditor should verify acknowledgement for furnishing the same. If the report has been filed either by the parent of the assessee or another constituent entity of the international group, the tax auditor should ask for a copy of the report and acknowledgement for filing the report. The term parent entity is defined in section 286(9)(h). The tax auditor should examine which is the parent entity and report name thereof. The term alternate reporting entity is defined in section 286(9)(c). The tax auditor should examine whether any such alternate reporting entity exists and if yes, name of the alternate reporting entity should be stated. From acknowledgement for furnishing report as referred to in section 286(2), date for furnishing of the said report should be stated. The tax auditor may obtain necessary certificate from the assessee in respect of the constituent entity.
44.		Break-up of total expenditure of entities registered or not registered under the GST. Specifying total amount of expenditure incurred	This clause requires to provide details of the expenditure in respect of entities registered under GST, which is further sub-classified into four categories as follows: (a) Expenditure relating to goods or services exempt from GST - Here, the value of all inward supply of goods or services which are exempt from GST is to be given.

	during the year, expenditure in respect of entities registered under GST relating to goods or services exempt from GST, relating to entities falling under composition scheme, relating to other entities and total payment to registered entities. Expenditure relating to entities not registered under GST also need to be specified.	(b) Expenditure relating to entities falling under composition scheme - Value of all inward supplies from composition dealers is to be mentioned here. (c) Expenditure relating to other registered entities - Value of all inward supplies from registered dealers, other than supplies from composition dealers and exempt supply from registered dealers, are to be mentioned here. (d) Total payment to registered entities - The word 'payment' should harmoniously be interpreted as 'expenditure', as the combined heading is 'Expenditure in respect of entities registered under GST'. Hence, the total expenditure in respect of registered entities i.e., sum total of values reported in (a), (b) and (c) should be reported in (d) above. Under this clause, expenditure relating to entities not registered under GST is also to be given. The value of inward supply of goods and/or services received from unregistered persons should be reported here. It is important to differentiate the 'current status' of supplier's registration from their status as it was at the time of supply. There are several instances where registration may be cancelled with effect from an earlier date which may be prior to the date of supply to assessee. Events occurring after balance sheet date that alter the data relating to year under audit does not alter the nature of the expenditure, that it is from registered suppliers. Auditors may elect to extend their review up to a certain cut-off date or not at all. In either case, disclosure of notes of the position with regard to (i) known cancellations and (ii) treatment in the disclosure considering possibility of such cancellations would go a long way in making the report meaningful and unambiguous. Under clause 44, the language used is "expenditure in respect of". Since, the word used is 'expenditure', it is necessary that the capital expenditure should also be reported in the format prescribed. Separate reporting of capital expenditure will provide ease in reconciliation. In case of multiple GST registrations of an entity, there is likelihood of inter-branch supply, which is eliminated at the consolidated financials. Proper reconciliation for such type of transactions may be kept on record. This report may be prepared for an entity as a whole or for a branch thereof, as may be audited and accordingly the information

			in these columns may have to be filled up consolidating the expenditure incurred under various GST registrations. Note - It may be noted that any expenditure that is incurred, wholly and exclusively for business or profession of the assessee qualifies for the deduction under the Act. Registration or otherwise of the payee under the GST Act has no relevance in considering allowability of expenditure.



20.5 SUMMARY OF PROVISIONS IN RESPECT OF WHICH INFORMATION TO BE FURNISHED IN FORM 3CD

The following table will give you a bird's eye view of certain provisions for which the information is to be given in Form 3CD

Section of the Income-tax Act, 1961	Clause No. of the Guidance Note	Details to be furnished
44AB	8	Indicate the relevant clause of section 44AB under which the audit has been conducted
115BA, 115BAA, 115BAB, 115BAC, 115BAD	8a	Mention whether the individual/HUF/AOP/BOI has opted to shift out of the default regime u/s 115BAC. In case of companies/co-operative societies, mention whether they have opted for concessional rates of taxation under the special regimes under section 115BAA/115BAB or 115BAD, as the case may be.
44AA	11(a)	Mention whether books of account are prescribed under section 44AA, if yes, list of books so prescribed.
44AD, 44AE, 44AF, 44B, 44BB, 44BBA, 44BBB, Chapter XII-G (provisions relating to shipping business)	12	Mention whether the profit or loss account includes any profits and gains assessable on presumptive basis, if yes, indicate the amount and the relevant section.
145(2)	13(d)	Mention whether any adjustment is required to be made to the profits or loss for complying with the provisions of income computation and disclosure standards.

145A	14(b)	Review the methods of valuation adopted for valuation of closing stock and compare the same with the method prescribed under section 145A.
45(2)	15	Mention the details of capital asset converted into stock- in-trade
28	16	Indicate the amounts falling within the scope of section 28 which are not credited to the profit and loss account
43CA or 50C	17	Where any land or building or both is transferred during the previous year for a consideration less than value adopted or assessed or assessable by any authority of a State Government referred to in section 43CA or 50C, furnish the following details: (a) Details of property (b) Consideration received or accrued (c) Value adopted or assessed or assessable
32	18	Mention the particulars of depreciation allowable as per the Income-tax Act, 1961 in respect of each asset or block of asset in the mentioned format. Section 43(1) and Explanations thereunder and section 36(1)(iii) also to be kept in mind.
33AB, 33ABA, 35(1)(i), 35(1)(ii), 35(1)(ia), 35(1)(iii), 35(1) (iv), 35(2AA), 35(2AB), 35ABB, 35AD, 35CCA, 35CCC, 35CCD, 35D, 35DD, 35DDA, 35E	19	State the amounts admissible under these sections
36(1)(ii)	20(a)	Indicate the sums paid to an employee as bonus or commission for services rendered, where such sum was otherwise payable to him as profits or dividend
36(1)(va) read with 2(24)(x)	20(b)	Mention the details of contributions received from employees for various funds as referred to in section 36(1)(va)
37	21(a)	Mention the details of amounts debited to profit and loss account, being in the nature of capital, personal, advertisement expenditure, expenditure incurred at clubs, expenditure by way of penalty or fine for violation of any law for the time being in force etc.

40(a)(i)/(ia)/(iib)/ (iii)(iv)/(v)	21(b)	Indicate the amounts inadmissible under section 40(a)(i)/(ia) with details of payment on which tax has not deducted or after deduction, tax has not been paid on or before the due specified under section 139(1) and the amount inadmissible under section 40(a)(iib), 40(a)(iii), 40(a) (iv), 40(a)(v)
40(b)/40(ba)	21(c)	State the amounts debited to profit and loss account being, interest, salary, bonus, commission or remuneration inadmissible under section 40(b)/40(ba) and computation thereof
40A(3)/ 40A(3A)	21(d)	State the amount of disallowance under section 40A(3)/ deemed income under section 40A(3A)
40A(7)	21(e)	Indicate the provision for payment of gratuity not allowable under section 40A(7)
40A(9)	21(f)	State the amount of payment made to an employer towards the setting up or formation of or as contribution to any fund, trust, company, association of person, body of individuals, society registered under society registration act or other institutions which is not allowable
ICDS X	21(g)	Examine the particulars of any liability of a contingent nature debited to the profit and loss account.
14A	21(h)	Verify and state the amount of expenditure relatable to the income which does not form part of total income which is not allowed as deduction in terms of section 14A
36(1)(iii)	21(i)	Indicate the amount inadmissible under the proviso to section 36(1)(iii)
Section 23 of MSMED Act, 2006	22	Indicate the amount of interest inadmissible under section 23 of the MSMED Act, 2006.
40A(2)(b)	23	Mention the particulars of payments made to persons specified under section 40A(2)(b)
33AB or 33ABA	24	Report the deemed income chargeable as profits and gains of business under the circumstances specified in section 33AB(4)/(5)/(7)/(8) or in section 33ABA(5)/(7)/(8)
41	25	Indicate the amount of profit chargeable to tax under section 41 and computation thereof

43B(a)/(b)/(c)/(d)/(e)/(f) or (g)	26	Indicate the amount of expenditure not allowable as per section 43B.
-	27(a)	Indicate the amount of Central Value Added Tax credits availed of or utilised during the previous year and its treatment in the profit and loss account and treatment of outstanding Central Value Added Tax credits in the accounts.
-	27(b)	Mention the particulars of income or expenditure of prior period credited or debited to the profit and loss account.
56(2)(viib)	29	Mention whether during the previous year the assessee received any consideration for issue of shares which exceeds the fair market value of the shares as referred to in section 56(2)(viib), if yes, please furnish details of the same
56(2)(ix)	29A(a)/(b)	Indicate the sum of money received as an advance or otherwise in the course of negotiations for transfer of a capital asset, if such sum is forfeited and the negotiations do not result in transfer of such capital asset.
56(2)(x)	29B(a)/(b)	Mention the amount which is treated as income in the hands of a person who received in any previous year, from any person or persons money, immovable property, or other property and conditions stated in the clause are satisfied.
69D	30	Details of the amount borrowed on hundi (including interest on such amount borrowed) and details of repayment otherwise than by an account payee cheque, are required to be indicated
92CE	30A(a)/(b)	Mention the details of primary adjustment to transfer price and details of excess money available with the AE.
94B	30B(a)/(b)	Mention the details of expenditure incurred during the previous year by way of interest or of similar nature respect of debt issued by a non-resident Associated Enterprises under section 94B.
96	30C(a)/(b)	Mention the details of impermissible avoidance arrangements as referred to in section 96 entered into by the assessee during the previous year and to quantify the tax benefit arising in the aggregate in the previous year to all parties to such arrangement.

269SS	31(a)/(b)	Furnish the particulars of each loan or deposit or specified sum in an amount exceeding the limit specified in section 269SS taken or accepted during the previous year.
269ST	31(ba)/(bb)/(bc)/(bd)	Furnish the particulars of each receipt in an amount exceeding the limit specified in section 269ST.
269T	31(c)/(d)/(e)	Furnish the particulars of each repayment of loan or deposit or any specified advance in an amount exceeding the limit specified in section 269T made during the previous year.
	32(a)	Furnish the details of brought forward loss or depreciation allowance to the extent available.
79	32(b)	Furnish the details of change in the shareholding of the company taken place during the previous year due to which the losses incurred prior to the previous year cannot be allowed to be carried forward in terms of section 79.
73	32(c)	Furnish the details of speculation loss incurred by the assessee during the previous year.
73A	32(d)	Furnish the details of loss incurred in respect of specified business during the previous year.
Explanation to section 73	32(e)	Mention whether the company is deemed to be carrying on a speculation business as referred in Explanation to section 73.
Chapter VIA or section 10AA	33	Provide section-wise details of deductions, if any, admissible under Chapter VIA or Chapter III.
-	34(a)/(b)	Mention whether the assessee is required to deduct or collect tax as per the provisions of Chapter XVII-B or Chapter XVII-BB.
201(1A)/206C(7)	34(c)	Mention the details of the amount of interest under section 201(1A) or section 206C(7).
-	35(a)/(b)	Provide quantitative details of principal items of goods, in case of a trading or manufacturing concern.
2(22)(e)	36A	Mention whether the assessee has received any amount in the nature of dividend as referred to in section 2(22)(e)
-	37	Mention the details of disqualification or disagreement on any matter/item/value/quantity as may be reported/identified by the cost auditor.

-	38	Mention the details of disqualification or disagreement on any matter/item/value/quantity as may be reported/identified under audit was conducted under the Central Excise Act, 1944.
-	40	Provide the details regarding turnover, gross profit, etc. for the previous year and preceding previous year.
-	41	Provide the details of demand raised or refund issued during the previous year under any tax laws other than Income-tax Act, 1961.
-	42(a)/(b)	Mention whether the assessee is required to furnish statement in Form No. 61 or Form No. 61A or Form No. 61B.
286(2)	43	Mention whether the assessee or its parent entity or alternate reporting entity is liable to furnish the report as referred to in section 286(2).
-	44	Provide the break-up of total expenditure of entities registered or not registered under the GST.



20.6 PENALTY FOR FAILURE TO FURNISH TAX AUDIT REPORT [SECTION 271B]

If any person fails to get his accounts audited in respect of any previous year furnish a tax audit report as required under section 44AB, the Assessing Officer may direct that such person shall pay, by way of penalty, a sum equal to

- $\frac{1}{2}$ % of the 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 years or
 - ₹ 1,50,000,
- whichever is less.

However, according to section 273B, no penalty shall be imposed if reasonable cause for such failure is proved.

Example : DB Ltd's turnover for the FY 2022-23 is ₹ 15 crore from textile business and ₹ 3 Crore from petrol pump business. All transactions are through banking channels. DB Ltd. prepared its financial statements for textile business and got its accounts audited and furnished the same to the Income Tax department within the prescribed time. The company was of the view that since the

turnover from the petrol pump business is ₹ 3 crore and all transactions were through banking channels, the accounts of petrol pump business were not required to be audited. Section 44AB is attracted where the total turnover from business exceeds the threshold of ₹ 10 crore i.e., total turnover indicates that the turnover from all businesses are to be aggregated.

Example: Taking the facts from Example 6, the Assessing Officer wants to invoke penalty on ₹ 18 crore i.e., ₹ 15 crore plus ₹ 3 crore, considering $\frac{1}{2}\%$ of the total turnover. Since the assessee has already furnished the report for ₹ 15 crore, the penalty u/s 271B shall be invoked only on turnover of ₹ 3 crore and not on turnover of ₹ 18 crore.

CASE STUDIES

Case Studies have been included to underline the ethical aspects which have to be considered by a chartered accountant while issuing tax audit report under section 44AB as well as audit reports and certificates under the other provisions of the Income-tax Act, 1961. These case studies are based on the orders passed by the Disciplinary Committee of ICAI and/or the final orders passed by the Appellate Authority constituted by the Central Government under the Chartered Accountants Act, 1949.

Every Case Study begins with “A Word about the Case Study” which, as the phrase suggests, gives an overview as to what the case study is about. Thereafter, each case Study is presented in the following manner, highlighting the -

- I. Relevant provisions of income-tax law
- II. Relevant clauses of Part I of the Second Schedule to the Chartered Accountants Act, 1949
- III. Facts of the case
- IV. Contentions/Submissions of the chartered accountant
- V. Bases for Conclusion
- VI. Key Takeaways

Additional categories have also been included in a Case Study, if found necessary.

CASE STUDY 1

A Word about the Case Study		
This Case Study highlights the ethical aspects which have to be considered by a chartered accountant while issuing tax audit report. The issue involved in this Case Study relates to the responsibility of the chartered accountant in relation to reporting in Clause 34(a) and clause 21(b) of Form 3CD for non-deduction of tax at source and consequent disallowance under section 40(a)(ia).		
I	<u>Relevant provisions of income-tax law</u>	
	(1)	<u>Section 194J</u> Section 194J requires tax deduction at source@10% on, <i>inter alia</i>, fees for professional services, at the time of credit of such sum to the account of the payee or at the time of payment, whichever is earlier. As per clause (a) of the <i>Explanation</i> to section 194J, “Professional services” means services rendered by a person in the course of carrying on, <i>inter alia</i>, medical profession.

(2)	<u>Section 40(a)(ia)</u> Section 40(a)(ia) provides for disallowance of 30% of the sum payable to a resident, on which tax is deductible at source under Chapter XVII-B of the Income-tax Act, 1961 and such tax has not been deducted or after deduction, has not been paid on or before the due date for filing return of income u/s 139(1).																				
(3)	<u>Reporting requirement in Clause 21(b) of Form 3CD (Relevant Extract)</u> Amounts inadmissible under section 40(a) (ii) as payment referred to in sub-clause (ia) (A) Details of payment on which tax is not deducted: (I) date of payment (II) amount of payment (III) nature of payment (IV) name and address of the payee																				
(4)	<u>Reporting requirement in Clause 34(a) of Form 3CD (Relevant Extract)</u> Whether the assessee is required to deduct or collect tax as per the provisions of Chapter XVII-B or Chapter XVII-BB, if yes, please furnish –																				
	<table><tr><th>(1)</th><th>(2)</th><th>(3)</th><th>(4)</th><th>(5)</th><th>(6)</th><th>(7)</th><th>(8)</th><th>(9)</th><th>(10)</th></tr><tr><td>TAN</td><td>Section</td><td>Nature of payment</td><td>Total amt of payment or receipt of the nature specified in column (3)</td><td>Total amt on which tax was required to be deducted or collected out of (4)</td><td>Total amt on which tax was deducted or collected at specified rate out of (5)</td><td>Amt of tax deducted or collected out of (6)</td><td>Total amt on which tax was deducted or collected at less than specified rate out of (7)</td><td>Amt of tax deducted or collected on (8)</td><td>Amt of TDS or TCS not deposited to the credit of the Central Govt. out of (6) & (8)</td></tr></table>	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	TAN	Section	Nature of payment	Total amt of payment or receipt of the nature specified in column (3)	Total amt on which tax was required to be deducted or collected out of (4)	Total amt on which tax was deducted or collected at specified rate out of (5)	Amt of tax deducted or collected out of (6)	Total amt on which tax was deducted or collected at less than specified rate out of (7)	Amt of tax deducted or collected on (8)	Amt of TDS or TCS not deposited to the credit of the Central Govt. out of (6) & (8)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)												
TAN	Section	Nature of payment	Total amt of payment or receipt of the nature specified in column (3)	Total amt on which tax was required to be deducted or collected out of (4)	Total amt on which tax was deducted or collected at specified rate out of (5)	Amt of tax deducted or collected out of (6)	Total amt on which tax was deducted or collected at less than specified rate out of (7)	Amt of tax deducted or collected on (8)	Amt of TDS or TCS not deposited to the credit of the Central Govt. out of (6) & (8)												
II	<u>Relevant clause of Part I of the Second Schedule to the Chartered Accountants Act, 1949</u> As per clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949, a chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he does not exercise due diligence, or is grossly negligent in the conduct of his professional duties.																				

III	<u>Facts of the case</u>
	A survey was conducted on the premises of a hospital consequent to which it was found that the hospital had made payments of consultancy charges to doctors, without deducting tax under section 194J, even though the payments to each doctor exceeded the threshold of ₹ 30,000. In the tax audit report, the amount inadmissible under section 40(a)(ia) was mentioned as NIL in clause 21(b) of Form 3CD. Also, there was no mention of or reporting of TDS section 194J in clause 34(a).
IV	<u>Contentions of the Chartered Accountant</u>
	The Chartered Accountant contended that since the doctors did not provide any professional service to the hospital, the provisions of section 194J would not be attracted. He explained his contention that sometimes, due to unavoidable reasons/circumstances, the hospital collected the consultation fees on behalf of the doctors and the same is then paid/remitted to the doctors. Such payments were not expenses of the hospital and hence, the question of TDS does not arise. He also contended that as per the decision passed by the Special Bench of the Tribunal (Vishakapatnam) in case of <i>Merilyn Shipping and Transports v. ACIT</i>, section 40(a)(ia) is applicable only in respect of the amounts of expenditure which are payable as on 31st March of every year and it cannot be invoked to disallow the amounts which have been actually paid during the previous year, without deduction of tax at source. In this case, all payments were made to the respective doctors before 31st March. Therefore, according to him, the payment made to doctors by way of reimbursement of the fees collected from patients does not fall under the ambit of TDS and even if it does, the same would not be disallowed under section 40(a)(ia) due to the above decision. Note – <i>It may be noted that the Supreme Court, in Palam Gas Service v. CIT (2017) 394 ITR 300, observed that when the entire scheme of obligation to deduct the tax at source and paying it over to the Central Government is read holistically, it cannot be held that the word “payable” occurring in section 40(a)(ia) refers only to those cases where the amount is yet to be paid and does not cover the cases where the amount is actually paid. Once the section mandates a person to deduct tax at source not only on the amounts payable but also when the sums are actually paid to the contractor, any person who does not adhere to this statutory obligation has to suffer the consequences which are stipulated in the Act itself.</i> <i>Also, the CBDT has, vide Circular No.10/2013 dated 16.12.2013 that the provisions of section 40(a)(ia) are amply clear that the term “payable” would include the “amounts which are paid during the year”.</i> <i>The case in question relates to a period prior issuance of the Circular and the pronouncement of the Supreme Court ruling.</i>
V	<u>Basis for Conclusion</u>
(1)	As per the Guidance Note on Tax Audit issued by ICAI, the tax auditor is required to report as to whether tax is deductible under any section of Chapter XVII-B and any amount is inadmissible u/s 40(a)(ia) under clauses 34(a) and 21(b), respectively.

	(2)	If tax has not been deducted on the basis of Court judgement in a particular case, then, the tax auditor is required to disclose the same in his report so as to enable the Income-tax department to know the reason as to why tax was not deducted by the assessee.
	(3)	On perusal of the profit and loss account of the hospital <i>vis-à-vis</i> the working papers of the CA, it has been noted that consultancy charges were shown as expenses in the Profit and Loss account of the hospital. Thus, the contention that the hospital collected fees on behalf of doctors and payment of such fees is not expenditure for attracting TDS u/s 194J is not correct, since such expenditure has been debited to the profit and loss account
		In this case, the CA had ignored the reporting requirements in Form 3CD and had not exercised due diligence in carrying out his professional duties. Hence, he was held guilty of professional misconduct falling within the meaning of clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.
VI		<u>Key Takeaway</u>
		The tax auditor should exercise due diligence while reporting under various clauses of Form 3CD. In case he has taken a view that tax is not deductible by virtue of a Court judgement, like in this case, he should disclose the same in his report.

CASE STUDY 2

A Word about the Case Study		
This Case Study highlights the ethical aspects which have to be considered by a chartered accountant while issuing tax audit report. The issue involved in this Case Study relates to the responsibility of the chartered accountant in relation to reporting in clause 21(d) of Form 3CD of expenditure exceeding ₹ 10,000, for which payment is made otherwise than by way of account payee cheque/bank draft, ECS or other prescribed electronic modes. Such expenditure would attract disallowance under section 40A(3) of the Income-tax Act, 1961.		
I		<u>Relevant provisions of income-tax law</u>
	(1)	<u>Section 40A(3)</u>
		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.

		The provision applies to all categories of expenditure involving payments for goods or services which are deductible in computing the taxable income.				
	(2)	<u>Reporting requirement in Clause 21(d) of Form 3CD</u>				
		(A) On the basis of the examination of books of account and other relevant documents/evidence, whether the expenditure covered under section 40A(3) read with rule 6DD were made by account payee cheque drawn on a bank or account payee bank draft. If not, please furnish the details -				
		Serial No.	Date of payment	Nature of payment	Amount	Name and PAN/Aadhar No. of the payee, if available
II	<u>Relevant clauses of Part I of the Second Schedule to the Chartered Accountants Act, 1949</u>					
	As per clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949, a chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he does not exercise due diligence, or is grossly negligent in the conduct of his professional duties. As per clause (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949, a chartered accountant in practice shall be deemed to be guilty of professional misconduct, fails to obtain sufficient information which is necessary for expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion.					
III	<u>Facts of the case</u>					
	A search was conducted u/s 132 of the Income-tax Act, 1961 in the case of PQR Jewellers, a leading gold jewellery retail chain, on 30.1.2023. As part of the post search enquiries, data from the billing software was analysed. On analysis of this data, it was found that the concern was involved in violation of section 40A(3) in a major way to the tune of ₹ 30 crores in the purchase of old gold. The tax audit report of the concern for the P.Y. 2021-22 was issued by a chartered accountant u/s 44AB of the Income-tax Act, 1961. The audit report has a specific clause, namely, clause 21(d), concerning compliance of section 40A(3). However, the chartered accountant had not properly filled up this clause and had failed to highlight the extensive violation of section 40A(3).					
IV	<u>Contentions of the Chartered Accountant</u>					
	The chartered accountant submitted that he had done test checks and he did not come across any payment which warrants disclosure in Form 3CD. He also submitted that standing instructions were given by the management of the entity to the employees to make payments above ₹ 10,000 only through account payee cheques and/or bank drafts or other permissible electronic modes. Copy of these instructions were verified by him. He had also taken a representation from the Management that net payment in cash to any person in a day did not exceed ₹ 10,000.					

	Therefore, the tax auditor submitted that he had taken reasonable professional care and on the basis of test checks, nothing came to his attention to warrant a reporting of violation of section 40A(3).
V	<u>Contentions of the Director of Income-tax (Investigation)</u>
	The DIT (Investigation) made the following contentions -
(1)	As part of the post search enquiries, data from the billing software was analysed and violations u/s 40A(3) to the tune of ₹ 30 crores were noticed. In order to verify the findings culled from digital data, some of the customers whose whereabouts were available from computer records were contacted and their statements were recorded under oath. These customers admitted under oath that they had sold old gold and received the amounts (all exceeding ₹ 10,000) in cash. The fact which emerges from the enquiries is that PQR Jewellers purchase old gold and make payments for these purchases in cash, even if they exceed ₹ 10,000.
(2)	Though the audit report has a specific clause, namely, clause 21(d) concerning compliance of section 40A(3), it was not properly filled up and the auditor failed to highlight the extensive violation of section 40A(3). He drew reference to the Guidance Note on Tax Audit issued by ICAI which states that there may be practical difficulties in verifying whether each payment is made through account payee cheque or bank draft or ECS or other prescribed electronic modes. Where the reporting has been done on the basis of the certificate of the assessee, the fact has to be reported as an observation in para 3 of Form 3CA and para 5 of Form 3CB, as the case may be. The tax auditor, in his report, may comment on such violation as under:- “It is not possible for me/us to verify whether the payments in excess of ₹ 10,000 have been made otherwise than by account payee cheque or bank draft or prescribed electronic modes, as the necessary evidence is not in the possession of the assessee”. However, in this case, the tax auditor had mentioned “Yes” in response to the statement in sub-clause (A) of Clause 21(d) on whether the expenditure covered under section 40A(3) read with Rule 6DD were made by account payee cheque drawn on a bank or account payee bank draft.
(3)	As per the Guidance Note, for the purpose of furnishing the required particulars, the tax auditor should have obtained a list of all cash payments in respect of expenditure exceeding ₹ 10,000/- made by the assessee during the relevant year which should include the list of payments exempted in terms of Rule 6DD with reasons. This list should have been verified by the tax auditor with the books of accounts in order to ascertain whether the conditions for specific exemption granted under Rule 6DD are satisfied. Details of payments, which do not satisfy the above conditions, should have been stated under this clause. He should have made use of the audit tools which are available to find out such payments expeditiously and accurately where the data is voluminous.

	(4)	Reference was drawn to the CBDT Circular No. 387, dated 06.07.1984, which clarifies the purpose of tax audit. The relevant extract of the circular is given below:- <i>“A proper audit is for tax purposes would ensure that the books of accounts and other records are properly maintained, that they faithfully reflect the income of the tax payer and he correctly makes claims for deduction. Such audit would also help in preventing fraudulent practices. It can also facilitate the administration of tax laws by a proper presentation of the accounts before the tax authorities and considerably saving the time of the Assessing Officers in carrying out routine verifications like checking correctness of totals and verifying whether purchases and sales are properly vouched or not. The time of the Assessing Officers thus saved could be utilised for attending to more investigational aspects of the case”.</i>
	(5)	In this case, given the massive scale of violation of section 40A(3), the chartered accountant has not exercised reasonable diligence before offering the remarks; and the audit in this case was not carried out as per the Guidance Note of the ICAI and the CBDT Circular.
VI	<u>Basis for Conclusion</u>	
	(1)	In Form 3CD, particulars in respect of cash payments made in violation of Section 40A(3) are required to be reported, as such payments are inadmissible as deduction.
	(2)	The contention of the chartered accountant that the test checks conducted by him did not reveal the aforesaid violation was not tenable. Considering the nature of business of the assessee, namely, jewellery business, the onus was on the chartered accountant to verify the same before reporting in Form 3CD. Stating the fact that no such transaction was identified during test check is not acceptable because such payments can be identified independent of bank transaction provided the chartered accountant had extended the verification to cover the same. Mere reliance on certificate issued by the management is not acceptable.
	(3)	The chartered accountant was, thus, required to point out in tax audit report, the violation of the provisions of section 40A(3) thereof involving expenditure to a person in a day exceeding ₹ 10,000 otherwise than by way of account payee cheque/bank draft, ECS and other prescribed electronic modes. However, the chartered accountant has certified that there were no such instance, though such instances aggregate to a large quantum of ₹ 30 crores.
	Thus, in this case, the chartered accountant was held guilty of professional misconduct falling within the meaning of clauses (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.	
VII	<u>Key Takeaway</u>	
	The chartered accountant should consider the nature of business of the assessee and accordingly undertake necessary checks to verify whether there are violations in the provisions of the Act, like cash payments in violation of section 40A(3) made, as in this case, by the assessee engaged in jewellery business. He should make use of the audit tools which are available to find out such payments expeditiously and accurately where the data is voluminous.	

CASE STUDY 3

A Word about the Case Study	
This Case Study highlights the ethical aspects which have to be considered by a chartered accountant while issuing Form 10CCB. While issuing Form 10CCB, the chartered accountant has to ensure compliance with the conditions stipulated under the relevant section (in this case, section 80-IA) for claim of deduction. Since the profit-linked deductions are available for a specified period, ten years in case of deduction u/s 80-IA, the chartered accountant has to ensure that the ten year period has not already elapsed. In case he notices the error after issuing Form 10CCB, he should withdraw the report timely and inform the same to the assessee immediately.	
I	<u>Relevant provisions of income-tax law</u>
(1)	<u>Section 80-IA</u> Section 80-IA provides for deduction of 100% of the profits and gains derived from the business of, <i>inter alia</i>, developing or operating and maintaining or developing, operating and maintaining any infrastructure facility for 10 consecutive assessment years. Section 80-IA(7) requires audit of accounts and furnishing of audit report in the prescribed form on or before the specified date i.e., 30th September of the assessment year for claim of such deduction.
(2)	<u>Rule 18BBB and Form 10CCB</u> Rule 18BBB requires the audit report under section 80-IA(7) to be furnished in Form 10CCB along with the copy of the agreement of the enterprise with the Central Government or State Government or the local authority for carrying on the business of developing or operating and maintaining or developing, operating and maintaining the infrastructure facility. In Form 10CCB, the chartered accountant gives a declaration that in his opinion the enterprise satisfies the conditions stipulated in section 80-IA and the amount of deduction claimed thereunder is as per the provisions of the Income-tax Act, 1961 and meets the required conditions.
II	<u>Relevant clause of Part I of the Second Schedule to the Chartered Accountants Act, 1949</u>
	As per clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949, a chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he does not exercise due diligence, or is grossly negligent in the conduct of his professional duties
III	<u>Facts of the case</u>
	M/s. XYZ & Co. is a firm engaged in developing, operating and maintaining a highway project filed its return of income for A.Y.2016-17 on 30th September, 2016 claiming deduction under section 80-IA, on the basis of Form 10CCB issued by the chartered accountant. However, in August, 2017, it came to the notice of the chartered accountant that the ten year period for which the company had been eligible to claim deduction and had, in fact, claimed deduction had expired in A.Y.2015-16. The chartered accountant

	withdrew the audit report in Form 10CCB and advised the firm to file a revised return u/s 139(5). At that point of time, the time limit for filing a revised return was one year from the end of the relevant assessment year i.e., upto 31.3.2018. Accordingly, the firm filed a revised return u/s 139(5) for A.Y.2016-17 on September, 2017. The Assessing Officer completed the assessment on the basis of the revised return and issued the assessment order on 1.3.2019.
IV	<u>Contentions of the Chartered Accountant</u>
	The Chartered Accountant contended that as soon as he came to know about the error, he withdrew his report in Form 10CCB and informed the assessee accordingly. The assessee, accordingly, filed a revised return withdrawing the claim under section 80-IA. He informed the Commissioner of Income-tax about the same in March 2019 at the first available opportunity since he was neither the tax auditor of the company nor was he representing the assessee before the tax authorities. He added that the Assessing Officer had completed the assessment on the basis of the revised return. Further, according to him, his report in Form 10CCB was neither the subject matter at the time of assessment nor at the time of penalty proceedings.
V	<u>Basis for Conclusion</u>
(1)	The claim for deduction under section 80-IA was made by the assessee in the original return, supported by Form 10CCB issued by the chartered accountant. However, as soon as the chartered accountant came to know of the error, he withdrew his report and informed the assessee, who also filed a revised return withdrawing the claim under section 80-IA.
(2)	Therefore, the chartered accountant had withdrawn his audit report in Form 10CCB and informed the assessee, who also had filed a revised return immediately withdrawing the claim for deduction under section 80-IA.
	Accordingly, the chartered accountant was held “not guilty” of professional misconduct under clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.
VI	<u>Key Takeaway</u>
	The chartered accountant should exercise due care while issuing audit reports and ensure that all the conditions stipulated under the relevant provisions of the Income-tax Act, 1961, including the time period for claim of deduction, are satisfied. In case he notices an error subsequently, he should immediately withdraw his report, and communicate the same to the assessee immediately.

CASE STUDY 4

A Word about the Case Study
This Case Study highlights the ethical aspects which have to be considered by a chartered accountant while issuing audit report in Form 10CCB and conducting tax audit. The issue involved in this Case Study relates to the responsibility of the chartered accountant to ensure compliance with the stipulated conditions for claim of profit-linked deduction under Chapter VI-A while issuing

audit report. He has to ascertain whether a certain activity carried out by the assessee would constitute “manufacture” for claim of deduction under section 80-IE and whether the conditions for claim of deduction have been satisfied in a case where the assessee is a company which had taken over a sole proprietary concern.

The actual case on the basis of which this Case Study is developed was in relation to section 80-IB for the A.Y.2002-03 to A.Y.2008-09, prior to the insertion of definition of “manufacture” in the Income-tax Act, 1961 w.e.f. 1.4.2009. The Case was decided in the year 2014 and reference was invited to the definition of “manufacture” under the Income-tax Act, 1961 by the Assistant Commissioner of Income-tax (ACIT). However, in the final decision, the meaning assigned to “manufacture” under different laws were resorted to considering that there was no definition in the Act during the relevant period (i.e., A.Y.2002-03 to A.Y.2008-09).

In this Case Study, the dates have, therefore, been modified to a period post insertion of the definition and reference has been given to section 80-IE, since section 80-IB is no longer relevant for manufacture or production of article or thing.

I	<u>Relevant provisions of income-tax law</u>
(1)	<u>Section 80-IE</u>
	Section 80-IE applies to an undertaking which has begun to manufacture or produce any eligible article or thing on or before 1.4.2017. Deduction of 100% of profits and gains from such business would be available for ten consecutive assessment years from the year in which it begins to manufacture or produce eligible article or thing. The conditions to be satisfied for claim of deduction are that the undertaking should not be formed by - (i) splitting up or the reconstruction of a business already in existence and (ii) the transfer to a new business, of machinery or plant previously used for any purpose.
(2)	<u>Section 2(29BA)</u>
	“Manufacture” with its grammatical variations, means a change in a non-living physical object or article or thing – (a) resulting in transformation of the object or article or thing into a new and distinct object or article or thing having a different name, character and use; or (b) bringing into existence of a new and distinct object or article or thing with a different chemical composition or integral structure.
(3)	<u>Form 10CCB</u>
	This is the form for audit report, <i>inter alia</i>, u/s 80-IE. It requires a chartered accountant to give a declaration that the undertaking satisfies the conditions stipulated under section 80-IE and the amount of deduction claimed is as per the provisions of the Income-tax Act and meets the required conditions.

II	<u>Relevant clause of Part I of the Second Schedule to the Chartered Accountants Act, 1949</u>		
	As per clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949, a chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he does not exercise due diligence, or is grossly negligent in the conduct of his professional duties.		
III	<u>Facts of the case</u>		
	Alpha Packaging Services Ltd. located in Guwahati has been claiming deduction under section 80-IE of the Income-tax Act, 1961 since P.Y.2016-17 on the ground that it was engaged in manufacture or production of an eligible article or thing. A survey conducted on the company followed by a scrutiny of the case showed that the company was merely involved in packaging washing powder of a leading brand, Turf, obtained from Unilever Ltd. and giving the same back to them. The tax audit report as well as the report in Form 10CCB for claiming deduction under section 80-IE was issued by the same chartered accountant.		
	A show cause notice was issued by the ACIT to the chartered accountant stating the company got undue relief under section 80-IE for the last seven years on the basis of his report in Form 10CCB to the effect that the concern was involved in manufacturing/production of an eligible article or thing.		
IV	<u>Contentions of the ACIT</u>		
	The ACIT contended that the report in Form 10CCB issued by the chartered accountant is not correct since – - The company is not in any way involved in manufacturing or production of any article or thing. The company is merely involved in packaging of washing powder that was given by LMN Ltd. It was not involved in manufacturing of any pouch or cover or sachet which was independently saleable as a product in the market. - The company is not a new undertaking because it had taken over a proprietary concern and hired the plant and machinery of the said proprietary concern. Hence, it did not satisfy the condition for claim of deduction u/s 80-IE.		
V	<u>Submissions of the Chartered Accountant and the ACIT's counter contentions</u>		
		CA's Submission	ACIT's Contention
	1.	The report in Form 10CCB was only a declaration not a certificate	This contention is not acceptable as Form 10CCB is a declaration by the chartered accountant that the undertaking satisfies the stipulated conditions for claim of deduction and the amount claimed is as per the provisions of the Income-tax Act, 1961 and meets the required conditions.
	2.	Reliance on the Certificate of Directorate of Industry, Assam	The activity(s) which amount to manufacture or production is different under each Act. The

			chartered accountant issuing Form 10CCB has to ensure that the same amounts to “manufacture” as per the definition given in section 2(29BA) of the Income-tax Act, 1961.
	3.	Reference to Supreme Court ruling in <i>ITO v. Arihant tiles and Marbles Pvt. Ltd.</i> wherein it was held that only when the marble blocks are cut into slabs and there is an activity of polishing and ultimate conversion of block into polished tiles, such slabs and tiles ultimately produced are held to be manufacturing activity because a new product has emerged.	Even according to the Supreme Court ruling, the condition to be fulfilled is that there should be emergence of a new and distinct commodity. In the case of the assessee, the washing powder remains a washing powder. The original product and the end product remained the same. No new and distinct commodity emerges as a result of packaging. Further, the end product is patented by Unilever and it cannot undergo change in any manner.
	4.	The proprietary business was taken over by the company with all assets and liabilities except plant and machinery pertaining to the old units. The plant and machinery was not transferred to the company but given on hire to it and for using the machines, payment of hire charges was made and shown in the statement of profit and loss. Hence, the company has not violated any condition.	The assessee did not own plant and machinery, and such assets hired by the assessee amounted to transfer and thus, the company was not entitled to deduction u/s 80-IE.
VI <u>Basis for Conclusion in the original case</u>			
	(1)	The definition of manufacture was inserted with effect from 1.4.2009. Since the case in question actually related to a period prior to insertion of definition of “manufacture” in the Income-tax Act, 1961, it was decided that though packaging or repackaging of a product is not manufacturing activity, the further activity of removing dust, grinding can be treated as manufacturing activity because the said activity changes the quality of the product and makes the product commercially marketable in different form. This conclusion emerged on the basis of Court ruling in relation to Excise law and other case laws holding that provisions of a taxing statute granting incentive for promoting growth should be construed liberally.	
	(2)	Certain Tribunal and High Court rulings have held that in order to constitute an industrial undertaking (which was a requirement under section 80-IB), the industrial unit need not necessarily own its plant and machinery and hiring of plant and machinery would not inhibit the ability of industrial unit or company to claim deduction.	

	(3)	Considering the rationale emerging from the Court decisions as regards whether the activity of packaging constituted manufacture/production and whether hiring of plant and machinery from the sole proprietary concern which was taken over by the company would be in violation of the stipulated condition, the benefit of doubt was extended to the chartered accountant and he was held “not guilty of professional misconduct”.
VII	<u>Key Takeaways in the context of the current provisions of Income-tax law</u>	
	(1)	In the current context, however, the definition of “manufacture” as per section 2(29BA) of the Income-tax Act, 1961 would be relevant. Therefore, the chartered accountant giving a declaration in Form 10CCB has to ensure that the activity carried on by the assessee amounts to “manufacture” as per the said definition. He may rely on judicial rulings based on the definition of manufacture u/s 2(29BA) or a similar definition under any other law for this purpose. It may be noted that “making the product commercially marketable”, which was one of the bases for conclusion in the actual case is not included in the definition of manufacture under section 2(29BA).
	(2)	With the introduction of several anti-avoidance provisions in the Income-tax Act, 1961, in the last decade, the action of taking over all assets and liabilities of the sole proprietary concern except plant and machinery and subsequently hiring the plant and machinery from the said concern itself in order to claim deduction under section 80-IE may be viewed as a tax avoidance measure. This may be viewed as an arrangement entered into solely or primarily for the purpose of obtaining a tax advantage and even GAAR provisions may be attracted if the tax benefit is more than ₹ 3 crores. Therefore, the chartered accountant must ensure satisfaction of conditions for claiming deduction under section 80-IE before issuing the audit report under Form 10CCB.

CASE STUDY 5

A Word about the Case Study	
This Case Study highlights the ethical aspects which have to be considered by a chartered accountant while issuing certificate in Form 15CB. The issue involved in this Case Study relates to the responsibility of the chartered accountant to examine the agreement between the remitter and the beneficiary as well as the relevant documents and books of account to ascertain the nature of remittance and determine the rate of deduction of tax at source.	
I	<u>Relevant provision of income-tax law</u>
	<u>Section 195(6) and Rule 37BB</u>
	The person responsible for paying to a non-corporate non-resident or a foreign company, any sum, whether or not chargeable under the provisions of the Income-tax Act, 1961, has

	to furnish information relating to payment of such sum in the prescribed form and manner. Rule 37BB(1) provides that the person responsible for paying to a non-corporate non-resident or a foreign company, any sum chargeable under the provisions of the Income-tax Act, 1961, has to furnish the information in Part C of Form No.15CA, if the amount of payment or the aggregate of such payments, as the case may be, during the financial year exceeds ₹ 5 lakh, after obtaining a certificate in Form No.15CB from a chartered accountant.	
II	<u>Relevant clauses of Part I of the Second Schedule to the Chartered Accountants Act, 1949</u>	
	As per clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949, a chartered accountant in practice shall be deemed to be guilty of professional misconduct, if he does not exercise due diligence, or is grossly negligent in the conduct of his professional duties. As per clause (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949, a chartered accountant in practice shall be deemed to be guilty of professional misconduct, fails to obtain sufficient information which is necessary for expression of an opinion or its exceptions are sufficiently material to negate the expression of an opinion.	
III	<u>Facts of the case</u>	
	The Income-tax department collected documents from X Bank which revealed that M/s. Y Travels and Consultancy Services (Y Travels) had remitted substantial amounts abroad. The documents collected include Form 15CB issued by the chartered accountant, list of passengers, copy of their passports, date of travel and invoice raised by the foreign party. On enquiring from the passengers and verifying their passports, it is found that they did not travel abroad during the dates mentioned in the documents. Further, the passengers denied any sort of transactions with Y Travels. The department, therefore, concluded that the amounts were remitted abroad on the basis of false invoices and for wrong reasons, leading to FEMA violations and that the Form 15CB issued by the chartered accountant facilitated such violations. During the six-month period in question, the chartered accountant had issued 80 certificates in Form 15CB approximately involving remittances of ₹ 25 crores in favour of Y Travels.	
IV	<u>Submissions of the Chartered Accountant</u>	
	The chartered accountant submitted that he had issued Form 15CB based on invoices produced by the company and verifying the KYC documents of the signatory to the invoices. He submitted that since he was not the statutory auditor of the company, he did not examine the books of account before issue of Form 15CB or conduct due diligence of its business activities. He had charged ₹ 2,000 per certificate. Mostly, the fees was collected in cash. Some part of the fee was credited to his bank account.	
V	<u>Basis for Conclusion</u>	
	(1)	Form 3CB is a certificate of an accountant wherein he certifies that he has examined

		the agreement between the remitter and the beneficiary requiring such remittance as well as the relevant documents and books of account required for ascertaining the nature of remittance and for determining the rate of deduction of tax at source.
	(2)	The CA certifying the form undertakes to have verified the agreement between the remitter and the beneficiary as well as the relevant documents and books of account to ascertain the nature of remittance and determine the rate of TDS.
	(3)	In this case, however, the CA mentioned that he had only verified KYC of signatory to invoice and the invoices thereof. He had not only failed to justify as to how verification of invoices was considered as sufficient compliance for certifying the forms but also failed to bring on record the said invoices. Thus, he failed to provide any basis on which he relied for issuing Form 15CB certificates to the company.
	(4)	The CA issuing certificate in Form 15CB is, therefore, required to examine the agreement between the remitter and the beneficiary along with the relevant documents as well as books of account of the company – (i) for arriving at a conclusion as to the nature of remittance and rate of TDS; and (ii) for ensuring that the particulars mentioned in the certificate were true and correct.
		In this case, since he has failed to do so, he is held guilty of professional misconduct as per clauses (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 for failure to obtain sufficient information and failure to exercise due diligence in discharging his professional responsibilities.
VI	<u>Key takeaway</u>	
	As elucidated in the Guidance Note, while issuing certificates, absolute level of assurance is expected to be provided by the practitioner on the subject matter. Therefore, a CA has to exercise due diligence and discharge the duties expected of him as a professional while issuance of such certificates. Accordingly, in this case, before issuing certificate in Form 15CB, the CA should verify the agreement between the remitter and the beneficiary, along with the relevant documents and books of account of the company for arriving at a conclusion as to the nature of remittance and rate of TDS. Only after ensuring that the particulars mentioned in the certificate were true and correct, should he issue such certificate. In case after issuing the certificate in Form 15CB, he comes to know that the remittance was not genuine, he has to withdraw the same within 7 days.	

TEST YOUR KNOWLEDGE

Questions

1. Sunlight & Co., a partnership firm engaged in trading of electronic goods, has a turnover of ₹ 265 lakhs for the F.Y. 2023-24. Examine whether Sunlight & Co. is required to get its books of account audited mandatorily as per section 44AB from the information given below –

	Particulars	₹
(i)	Total turnover of F.Y.2023-24	2,65,00,000
(ii)	Aggregate of all receipts during the year (including amount received for turnover mentioned in (i) above)	3,25,00,000
(iii)	Cash receipts out of (i) above	14,00,000
(iv)	Cash receipts out of (ii) above (This is inclusive of the figure mentioned in (iii) above)	16,00,000
(v)	Aggregate of all payments during the year	1,35,00,000
(vi)	Cash payments out of (v) above	6,95,000

Would your answer change if the cash receipts indicated in (iii) is ₹ 13 lakh instead of ₹ 14 lakh?

2. Mr. Abhinav Ahuja runs a travel agency business since the year 2010. His total commission receipts for the F.Y. 2023-24 is ₹ 287 lakhs. The details of receipts and payments made by him during the year 2023-24 are as follows:

Particulars	Amount (₹)	Mode of receipt/payment
Date of Receipt		
15.4.2023	15,65,000	BHIM UPI
27.4.2023	13,80,000	A/c payee cheque
7.5.2023	13,35,000	Bearer cheque
6.6.2023	18,21,000	A/c payee cheque
15.8.2023	15,25,000	NEFT
19.9.2023	16,72,000	NEFT
18.10.2023	15,35,600	UPI
15.2.2024	16,25,350	UPI
17.3.2024	18,19,450	NEFT

Other aggregate receipts not exceeding ₹ 2,000 per person on certain occasions from various customers. Out of this, receipts of ₹ 52,500 are received in cash.	1,44,21,600	A/c payee cheques, NEFT and UPI
Payments		
Aggregate all payments made during the P.Y. 2023-24	2,58,00,000	
Amount incurred for expenditure in cash (not exceeding ₹ 10,000 per person in each case)	20,58,000	

Mr. Abhinav contended that he is not required to get his accounts audited since his turnover does not exceed ₹ 3 crores and he is eligible to declare his income as per presumptive provisions of section 44AD. Examine the contention of Mr. Abhinav Ahuja.

3. *X Ltd., an Indian company, paid interest of ₹ 95 lakhs to X Inc., a non-resident associated enterprise in the P.Y.2023-24 on loan borrowed from it. X Ltd. also obtained loan of ₹ 5 crore@10% p.a. on 1.4.2023 from Y Inc., a foreign company in which it holds 20% voting power. X Inc. deposits ₹ 2 crore with Y Inc. X Ltd. contends that the provisions of section 94B are not attracted in its case, since the interest paid to non-resident associated enterprise does not exceed ₹ 1 crore in the P.Y.2023-24. The tax auditor is, however, of the opinion that the interest of ₹ 20 lakh (i.e., 10% of ₹ 2 crore) also has to be considered for the purpose of section 94B. X Ltd. contends that X Inc. has not deposited a corresponding and matching amount of ₹ 5 crore with Y Inc, and hence, the provisions of section 94B will **not** be attracted in this case. Examine the reporting requirement, if any, of the tax auditor in this case.*
4. *ABC Ltd. is engaged in transportation of building material and transportation of goods to contractors. It made payment for hiring dumpers for this purpose. The company has not deducted tax at source on the ground that since the payment was for transportation of goods and not renting out machinery and equipment, such payments could not be termed as rent paid for use of machinery under section 194-I and hence, no tax was deductible at source.*

The tax auditor is, however, of the view that the transactions being in the nature of contracts for shifting of goods from one place to another would be covered under works contracts, thereby attracting the provisions of section 194C. He relied upon the Gujarat High Court ruling in CIT (TDS) v. Shree Mahalaxmi Transport Co. (2011) 339 ITR 484.

What is the reporting responsibility of the tax auditor in such a case and the consequent ethical implications? Examine.

5. A search was conducted u/s 132 of the Income-tax Act, 1961 in the case of LMN Jewellers (P) Ltd., a gold jewellery retail chain, on 28.2.2023. As part of the post search enquiries, data from the billing software was analysed. On analysis of this data, it was found that the company was involved in violation of section 40A(3) in a major way to the tune of ₹ 20 crores in the purchase of old gold.

In order to verify the findings culled from digital data, some of the customers whose whereabouts were available from computer records were contacted and their statements were recorded under oath. These customers admitted under oath that they had sold old gold and received the amounts (all exceeding ₹ 10,000) in cash. The fact which emerged from the enquiries is that LMN Jewellers (P) Ltd. purchase old gold and make payments for these purchases in cash, even if they exceed ₹ 10,000.

However, the tax auditor had mentioned “Yes” in response to the statement in sub-clause (A) of Clause 21(d) on whether the expenditure covered under section 40A(3) read with Rule 6DD were made by account payee cheque drawn on a bank or account payee bank draft. The tax auditor submitted that standing instructions were given by the management of the entity to the employees to make payments above ₹ 10,000 only through account payee cheques and/or bank drafts or other permissible electronic modes; and copy of these instructions were verified by him. He further submitted that he had also taken a representation from the Management that net payment in cash to any person in a day did not exceed ₹ 10,000. Also, he mentioned that the test checks conducted by him did not reveal any violation.

Examine the ethical implications in this case and the consequences thereof.

6. XYZ & Co, a firm engaged in interior decoration business, employed 20 new employees on 1.4.2022 on a monthly salary of ₹ 25,000 to be paid by account payee cheque. In addition, each employee was entitled to 10% employer contribution to recognised provident fund. The employees were also entitled to transport allowance of ₹ 3,000 p.m. paid in cash. The gross total income of XYZ & Co. included profits and gains from business of ₹ 62 lakh.

The firm claimed deduction under section 80JJAA of ₹ 18 lakh, being 30% of 60 lakh (20 new employees x ₹ 25,000 p.m. x 12) on the basis of the report of the chartered accountant issued in Form 10DA. The same chartered accountant was also the tax auditor of the firm. The chartered accountant contended that “emoluments” do not include employer contribution to PF. Also, cash payments were not to be considered as “additional employee cost” for the purpose of section 80JJAA. Hence, only ₹ 25,000 p.m. per employee paid by account payee cheque has to be treated as additional employee cost. Since the same does not exceed the

limit of ₹ 25,000 p.m. and the employees have been employed for more than 240 days in the P.Y.2022-23, the employees would qualify as “additional employees” for the purpose of deduction under section 80JJAA for A.Y.2023-24.

Is his contention correct? Examine the ethical implications in this case.

7. The Income-tax department collected documents from ABC Bank which revealed that M/s. Alpha Travels and Consultancy Services (Alpha Travels) had remitted substantial amounts abroad. The documents collected include Form 15CB issued by the chartered accountant, list of passengers, copy of their passports, date of travel and invoice raised by the foreign party. On enquiring from the passengers and verifying their passports, it is found that they did not travel abroad during the dates mentioned in the documents. Further, the passengers denied any sort of transactions with Alpha Travels. The department, therefore, concluded that the amounts were remitted abroad on the basis of false invoices and for wrong reasons, leading to FEMA violations and that the Form 15CB issued by the chartered accountant facilitated such violations. During the nine-month period in question, the chartered accountant had issued 120 certificates in Form 15CB approximately involving remittances of ₹ 30 crores in favour of Alpha Travels.

The chartered accountant submitted that he had issued Form 15CB based on invoices produced by the company and verifying the KYC documents of the signatory to the invoices. He however, failed to bring on record the invoices. He further submitted that since he was not the statutory auditor of the company, he did not examine the books of account before issue of Form 15CB or conduct due diligence of its business activities. He had charged ₹ 3,000 per certificate. Mostly, the fees was collected in cash. Some part of the fee was credited to his bank account.

Examine the ethical implications in this case.

Answers

1. As per section 44AB, every person carrying on business or profession is required to get his accounts audited before the “specified date” by a Chartered Accountant, if the total sales, turnover or gross receipts in business exceeds ₹ 1 crore in any previous year.

However, tax audit is not required in case of such person carrying on business whose total sales, turnover or gross receipts in business $\leq$ ₹ 10 crore in the relevant previous year (P.Y.), if:-

- aggregate cash receipts including amount received for sales, turnover, gross receipts in the relevant previous year $\leq 5\%$ of such receipts; **and**
- aggregate cash payments including amount incurred for expenditure in the relevant P.Y. $\leq 5\%$ of such payments or

In this case, the turnover of Sunlight & Co. exceeds ₹ 1 crore but does not exceed ₹ 10 crore. Accordingly, it has to be seen whether cash receipts exceed 5% of aggregate receipts and cash payments exceed 5% of aggregate payments, to determine whether tax audit is compulsory.

In this case, the percentage of cash receipts of ₹ 16 lakhs to aggregate receipts of ₹ 325 lakhs is 4.92% and the percentage of cash payments to aggregate payments is 5.14%.

Since the cash payments made during the year exceed 5% of aggregate payments, the firm is required to get its accounts audited under section 44AB and furnish audit report before the specified date, irrespective of the fact that its turnover does not exceed ₹ 10 crores and its cash receipts do not exceed 5% of total receipts.

It may be noted that, in this case, Sunshine & Co. cannot declare profits as per the presumptive provisions of section 44AD, since the percentage of turnover receipts in cash of ₹ 14 lakhs to the total turnover of ₹ 265 lakhs is 5.28%.

If the cash receipts indicated in (iii) is ₹ 13 lakhs instead of ₹ 14 lakhs, the percentage of turnover receipts in cash of ₹ 13 lakhs to the total turnover of ₹ 265 lakhs would be 4.91%. In such a case, Sunshine & Co. can declare profits as per the presumptive provisions of section 44AD, in which case, it need not get its books of account audited under section 44AB.

2. As per section 44AB, every person *inter alia* carrying on business or profession is required to get his accounts audited before the “specified date” by an accountant, if total sales, turnover or gross receipts in business exceeds ₹ 1 crore in any previous year.

However, tax audit is not required in case of such person carrying on business whose total sales, turnover or gross receipts in business $\leq ₹ 10$ crore in the relevant previous year (P.Y.), if -

- aggregate cash receipts including amount received for sales, turnover, gross receipts in the relevant previous year $\leq 5\%$ of such receipts; **and**
- aggregate cash payments including amount incurred for expenditure in the relevant P.Y. $\leq 5\%$ of such payments or

As per section 44AD, a 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” whose total turnover/ gross receipts in the P.Y. $\leq$ ₹ 200 lakhs (where cash receipts do not exceed 5% of total turnover, higher threshold limit of ₹ 300 lakhs applicable) can declare 8%/6%, as the case may be, of total turnover/ sales/gross receipts or a sum higher than the aforesaid sum claimed to have been earned by the assessee. However, a person *inter alia* carrying on any agency business are not eligible for presumptive provisions of section 44AD.

In the present case, since Mr. Abhinav Ahuja is carrying on travel agency business, he is not eligible for presumptive provisions of section 44AD, though his turnover does not exceed ₹ 3 crores.

In this case, the turnover of Mr. Abhinav Ahuja exceeds ₹ 1 crore but does not exceed ₹ 10 crore. Accordingly, it has to be seen whether cash receipts exceed 5% of aggregate receipts and cash payments exceed 5% of aggregate payments, to determine whether tax audit is compulsory. During the P.Y. 2023-24, his cash receipts are ₹ 13,35,000 plus ₹ 52,500 totalling to ₹ 13,87,500, which is 4.83% of total receipts of ₹ 2,87,00,000. Cash payments made during the P.Y. 2023-24 are ₹ 20,58,000 which is 7.98% of aggregate payments of ₹ 2,58,00,000. Since his cash payments during the P.Y. 2023-24, exceed 5% of aggregate payments made during the year, he is required to get the accounts audited under section 44AB and furnish tax audit report on or before the specified date i.e., one month prior to the due date of filing return of income under section 139(1).

3. **Relevant provision of law** - Section 94B provides that where the debt is issued by a lender which is not associated but an associated enterprise either provides an implicit or explicit guarantee to such lender or deposits a corresponding and matching amount of funds with the lender, such debt shall be deemed to have been issued by an associated enterprise.

In this case, the debt issued by Y Inc. is ₹ 5 crore and the deposit made by the associated enterprise, X Inc. with Y Inc. is ₹ 2 crore. Since the deposit is not of a matching amount, the X Ltd. contends that provisions of section 94B will not be attracted in respect of interest payable by it to Y Inc. The tax auditor is of the opinion that interest on ₹ 2 crore amounting to ₹ 20 lakhs will have to be considered for the purpose of section 94B. Accordingly, the interest payable/paid by X Ltd. to non-resident associated enterprises during the year would be ₹ 115 lakhs and hence, the provisions of section 94B would be attracted, since the same exceeds the threshold of ₹ 1 crore. This appears to be the legislative intent, since otherwise

it is possible to escape the application of this provision by even by depositing a marginally lower amount than the loan taken.

Relevant clause of Form 3CD - Clause 30B(a) of Form 3CD requires the tax auditor to state whether the assessee has incurred expenditure during the previous year by way of interest or of similar nature exceeding one crore rupees as referred to in sub-section (1) of section 94B.

Relevant paras of the Guidance Note on Tax Audit - As per para 18.6 of the Guidance Note on Tax Audit, the tax auditor may have a difference of opinion with regard to the particulars furnished by the assessee. These differences are to be reported in para 3 of Form No. 3CA or para 5 of Form 3CB. As per para 19.3, if there is any difference in the opinion of the tax auditor and that of the assessee in respect of any information furnished in Form No. 3CD by the assessee, the tax auditor may consider stating both the view points and also the relevant information related to matter in order to enable the tax authority to take a decision in the matter.

Therefore, the tax auditor has to report the difference of opinion appropriately as an observation in para 3 of Form No. 3CA or para 5 of Form No. 3CB as the case may be.

Accordingly, in this case, the tax auditor may state both the view points in Clause 30B as well as report the difference of opinion appropriately as an observation in para 3 of Form 3CA to enable the tax authority to take a decision in the matter.

4. In clause 34(a) of Form 3CD, the tax auditor is required to report whether the assessee is required to deduct or collect tax as per the provisions of Chapter XVII-B or Chapter XVII-BB, and if yes, to furnish the details mentioned thereunder. While answering the issue of applicability of the provisions of Chapter XVII-B and/or XVII-BB, a number of debatable issues may arise before the assessee as well as the tax auditor. The tax auditor may have a difference of opinion with regard to the applicability of the provisions of TDS/TCS on a particular payment. In such a case, the tax auditor has to report the difference of opinion appropriately as an observation in para 3 of Form 3CA. This requirement is contained in the Guidance Note on Tax Audit.

Also, in clause 21(b)(ii) of Form 3CD, the amount inadmissible under section 40(a)(ia) has to be mentioned.

In case the tax auditor does not comply with the reporting requirements under these clauses and fails to mention the difference of opinion appropriately as an observation in para 3 of

Form 3CA, clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 for not exercising due diligence may be invoked.

5. As per 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.

Clause 21(d) of Form 3CD requires the tax auditor to report, on the basis of the examination of books of account and other relevant documents/evidence, whether the expenditure covered under section 40A(3) read with rule 6DD were made by account payee cheque drawn on a bank or account payee bank draft; and if not, to furnish details mentioned thereunder, namely, date of payment, nature of payment, amount etc.

The Guidance Note on Tax Audit issued by ICAI states that there may be practical difficulties in verifying whether each payment is made through account payee cheque or bank draft or ECS or other prescribed electronic modes. Where the reporting has been done on the basis of the certificate of the assessee, the fact has to be reported as an observation in para 3 of Form 3CA.

The tax auditor is required to point out in tax audit report, the violation of the provisions of section 40A(3) thereof involving expenditure to a person in a day exceeding ₹ 10,000 otherwise than by way of account payee cheque/bank draft, ECS and other prescribed electronic modes. However, in this case, the tax auditor has certified that there was no such instance, though such instances aggregate to a large quantum of ₹ 20 crores.

The tax auditor should have considered the nature of business i.e., jewellery business of the assessee and accordingly undertaken necessary checks to verify whether there are cash payments in violation of section 40A(3). He should have made use of the audit tools which are available to find out such payments expeditiously and accurately where the data is voluminous.

In this case, considering the nature of business of the assessee, namely, jewellery business, the onus was on the tax auditor to verify the same before reporting in Form 3CD. Mere reliance on certificate issued by the management is not acceptable in such a case. Also, even in a case where the reporting has been done on the basis of the certificate of the assessee, the fact has to be reported as an observation in para 3 of Form 3CA, which he had failed to do.

Thus, in the case, the tax auditor had failed to exercise due diligence in the conduct of his professional duties. He had also failed to obtain sufficient information which is necessary for expression of opinion. On account of such failure, clauses (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 may be invoked.

6. Deduction under section 80JJAA is allowable to an assessee to whom section 44AB applies and whose gross total income includes any profits and gains derived from business, in respect of employment of new employees. The amount of deduction is 30% of additional employee cost incurred in the course of such business in the previous year, for three assessment years including the assessment year relevant to the previous year in which such employment is provided.

“Additional employee cost” means the total emoluments paid or payable to additional employees employed during the previous year. However, in the case of an existing business, the additional employee cost shall be nil, if emoluments are paid otherwise than by an account payee cheque or account payee bank draft or use of ECS through bank account or other prescribed electronic mode.

“Emoluments” means any sum paid or payable to an employee in lieu of his employment by whatever name called but does not include, *inter alia*, contribution by employer to provident fund.

“Additional employee” means an employee who has been employed during the previous year and whose employment has the effect of increasing the total number of employees employed by the employer as on the last day of the preceding year, but does not include, *inter alia*, an employee whose total emoluments are more than ₹ 25,000 p.m.

In this case, the contention of the chartered accountant that the emoluments do not include employer contribution to PF is correct. However, emoluments include ₹ 3,000 paid in cash by way of transport allowance to the employee. Hence, the total emoluments per employee is ₹ 28,000 p.m. Due to this reason, the 20 employees employed on 1.4.2022 will not qualify as “additional employees” for the purpose of deduction under section 80JJAA, since their total emoluments are more than ₹ 25,000 p.m. Hence, XYZ & Co. is not eligible for any deduction under section 80JJAA due to failure to fulfil the condition for being treated as an “additional employee”. In this case, the chartered accountant has failed to ensure compliance with the condition stipulated for claim of deduction under section 80JJAA and has wrongly issued the report in Form 10DA certifying the deduction claimed by the assessee under section 80JJAA.

Also, clause 33 of Form 3CD requires section-wise details of deductions, if any, admissible under Chapter VIA. Here again, the tax auditor has to ensure that the assessee fulfils all the conditions specified in the section under which the deduction is claimed. However, in this case, the tax auditor has failed to do so.

On account of such failure, clause (7) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 may be invoked.

7. Form 15CB is a certificate of an accountant wherein he certifies that he has examined the agreement between the remitter and the beneficiary requiring such remittance as well as the relevant documents and books of account required for ascertaining the nature of remittance and for determining the rate of deduction of tax at source. The chartered accountant certifying the form undertakes to have verified the agreement between the remitter and the beneficiary as well as the relevant documents and books of account to ascertain the nature of remittance and determine the rate of TDS. In this case, however, the chartered accountant mentioned that he had only verified KYC of signatory to invoice and the invoices thereof. He had not only failed to justify as to how verification of invoices was considered as sufficient compliance for certifying the forms but also failed to bring on record the said invoices. Thus, he failed to provide any basis on which he relied for issuing Form 15CB certificates to the company.

On account of such failure, clauses (7) and (8) of Part I of the Second Schedule to the Chartered Accountants Act, 1949 for failure to exercise due diligence in discharging his professional responsibilities and failure to obtain sufficient information may be invoked.

QUESTIONS BASED ON SIGNIFICANT SELECT CASES

You are required to answer the following questions on the basis of decided case laws, bringing out the following -

- (a) Issue involved
- (b) Relevant provisions of law
- (c) Analysis and Conclusion

1. ABC Construction Pvt. Ltd. is engaged in the construction of bridges and flyovers. During the previous year 2023-24, it made payment to various parties and deducted tax amounting to ₹ 22 lakhs. However, the company failed to deposit the said amount with the income-tax department within the time prescribed under the Act. The company submitted that it is facing financial hardship since a large sum of money has been stuck-up with its debtors and also with the income-tax department in the form of tax refunds. It is further submitted that inspite of financial crisis, the company has *suo-moto* deposited the TDS amount along-with interest u/s 201(1A), before receiving any notice from the income-tax department in this regard. However, prosecution proceedings were initiated under section 276B against the company and its directors. The company has approached you to advise in the matter.
2. XYZ Limited entered into a contract for purchase of patented process with M/s. Delta Inc, a non-resident company based in Country X. It filed an application u/s 195(2) before the Assessing Officer to make payment to the non-resident company for purchase of patented process without deducting tax at source.

The assessee, XYZ Limited, contended that said non-resident company had no Permanent Establishment in India and in terms of the DTAA between India and Country X, no tax was to be deducted in India on same. The Assessing Officer rejected the assessee's application on grounds that consideration for patented process constituted royalty u/s 9(1)(vi) and was liable to be taxed in India and, accordingly, assessee was directed to deduct tax at source at rate of 10% on said royalty payment.

On Appeal, the Commissioner (Appeals) passed an order in favour of the assessee. On further appeal, the Tribunal upheld the order passed by the Assessing Officer on grounds that payments made for purchase of patented processes were in the nature of royalty and tax at source to be deducted on such payment.

The assessee company filed a miscellaneous application for rectification under section 254(2) before the Tribunal. The assessee had also filed an appeal before the High Court.

The Tribunal allowed said application in exercise of his powers under section 254(2) and reheard entire appeal on merits and recalled its original order and passed an order in favour the assessee. Thereafter, the writ petition filed by the assessee with High Court was also withdrawn. Is Tribunal justified in recalling its original order?

3. The assessee, being an Indian branch of US Company, LMN Inc, was engaged in contract research activities and cultivation of parent seeds in India. It had been claiming exemption by treating its entire income as agricultural income.

On scrutiny assessment for the period from year 2012 to 2018, the Assessing Officer treated entire income of the assessee as business income and attributed deemed income from research activity holding the assessee to the Permanent Establishment (PE) of LMN Inc. However, the assessee company disputed the matter for resolution under Mutual Agreement Procedure (MAP) under the DTAA agreement between India and USA. The MAP was culminated in the year 2022. The assessment was finalized and taxes alongwith interest were paid by the assessee u/s 220(2).

However, the assessee disputed the amount of interest u/s 220(2) for the period from 2018 to 2022.

Thereafter, the assessee filed an application before Jurisdictional Commissioner of Income-tax under section 220(2A) for waiver of interest levied u/s 220(2). The Commissioner dismissed application of the assessee.

The assessee is a part of LMN Inc, a global conglomerate which had in 2022 ₹ 86,000 crores in net sales and ₹ 15,000 crores as operating profit. The amount paid by it towards interest u/s 220(2) of the Act was ₹ 1.75 crores.

Discuss whether the Commissioner of Income-tax is justified in rejecting the claim of assessee or not.

4. During the scrutiny assessment of Refresh Me Ltd., a company engaged in manufacture and distribution of packaged juices, the Assessing Officer increased the income passed an order of demand. Aggrieved by the order, the assessee filed an appeal to CIT(A), who confirmed the order of Assessing Officer. The assessee further appealed to Appellate Tribunal requesting for the stay of collection of tax, which the Tribunal provided initially for 180 days on deposit of 20% of the amount of tax by Refresh Me Ltd. Thereafter, the Bench was functioning intermittently and therefore, the disputed matter could not be disposed off. The

company applied for extension of stay and was granted extension upto 365 days. The Appellate Tribunal did not dispose off the appeal before the time extended for collection of tax. The revenue served an order of demand citing the reason that the order of stay automatically gets vacated post the expiry of 365 days. The assessee seeks your opinion as to whether the contention of the revenue is justified.

5. On 31.12.2023, a search under section 132 was conducted in the business and residential premises of Mr. Y and some gold bars were seized from the locker. Mr. Y voluntarily disclosed ₹ 12.50 crores of income during the course of search. Later on, he filed an application for sale of the gold bars weighing 5 kgs for adjustment towards the tax liability, even before the completion of the assessment by the Assessing Officer. However, the Assessing Officer rejected the application and observed that such action can be taken only after the assessment is completed and a demand has been quantified. Is the Assessing Officer justified in rejecting the application? Examine.
6. Mr. X filed his return of income for A.Y. 2023-24 by declaring a total income of ₹ 10 lakhs. His case was selected for scrutiny assessment and an addition of ₹ 4 lakhs was made by the Assessing Officer on account of disallowances of certain expenses. During the course of the assessment proceedings, Mr. X found that he erroneously failed to claim the set-off of brought forward losses under section 72 amounting to ₹ 3 lakhs, which he was otherwise entitled to. By the time the error was discovered by Mr. X, the time-limit for filing revised return had also expired. Hence, during the course of the proceedings, Mr. X approached the Assessing Officer to allow the set-off of the brought forward losses which was erroneously not claimed in the return of income filed under section 139(1). Whether the Assessing Officer is bound to accept the request of Mr. X? Examine.
7. M/s LMN Travels is a Travel Agent engaged in sale of air tickets of AirGo and AirJet Airlines. It earns standard commission@5% as well as supplementary commission. AirGo and AirJet have deducted tax at source under section 194H on the standard commission, which is a fixed percentage designated by the International Air Transport Association (IATA). However, they have not deducted tax on the supplementary commission, which is the additional amount LMN Travels charges over and above the net fare quoted by AirGo and AirJet and retained by LMN Travels as its own income.

The details of the amounts at which the tickets were sold are transmitted by LMN Travels to an organization known as the Billing and Settlement Plan ("BSP") which functions under the aegis of the IATA. This auxiliary amount charged on top of the net fare was portrayed on the BSP as a "supplementary commission" in the hands of LMN Travels. The contract between

LMN Travels and the airlines stated that “all monies” received by LMN Travels were held as the property of the air carrier until they were recorded on the billing and settlement plan and properly gauged.

AirGo and AirJet contended that tax is not deductible on supplementary commission which LMN Travels retains out of the sale proceeds of the air tickets, since there is no agency relationship between the airlines and LMN Travels and that the supplementary commission is not within the control of the airlines. Discuss the correctness of the above contention.

8. “The arm’s length price (ALP) determined by the Tribunal, which is the final fact-finding authority, is final and cannot be the subject matter of scrutiny by the High Court as it does not give rise to a substantial question of law; accordingly, in an appeal u/s 260A, the High Court is precluded from examining the correctness of determination of the ALP” – Examine the correctness of this statement with reference to a recent Supreme Court ruling.
9. In the case of M/s HKHR Ltd., the Income-tax Appellate Tribunal decided against the assessee and issued order under section 254. The assessee filed an appeal to the jurisdictional High Court by framing the substantial question of law under section 260A(2)(c). The High Court, without framing the substantial question of law u/s 260A(3) at the time of admission of appeal, issued notices, heard both the parties and decided the appeal affirming the order of the Tribunal on the questions raised by the assessee appellant. Discuss whether the High Court was justified in not formulating the substantial question of law as required under section 260A(3) and adjudicating merely on the questions put forth by the appellant under section 260A(2)(c).
10. The assessment of Mr. Arora was completed u/s 143(3) of the Income-tax Act 1961 with an addition of income of ₹ 9 lakh to the returned income. Mr. Arora contends that the order of assessment is bad in law as no notice was issued u/s 143(2) even though he had participated in the assessment proceedings. The Assessing Officer, relying on section 292BB, contends that since Mr. Arora has participated in assessment proceedings, he cannot raise such objection.

Examine the validity of the contentions of both Mr. Arora as well as the Assessing Officer.

ANSWERS – SIGNIFICANT SELECT CASES

1. **Issue Involved:** The issue under consideration is whether prosecution proceedings can be initiated where tax deducted has been deposited by the assessee *suo moto*, after the time prescribed under the Act but before receiving notice from the income-tax department, along with interest under section 201(1A) and the assessee has shown reasonable cause for such delay.

Relevant provisions of law: Prosecution proceedings are attracted under section 276B, if a person fails to pay to the credit of the Central Government, the tax deducted at source by him as required under the provisions of the Act. The punishment is rigorous imprisonment for not less than 3 months but which may extend to 7 years and with fine.

Section 278AA, however, provides that no person would be punishable for such failure if he proves that there was reasonable cause for the same.

Analysis & Conclusion: The CBDT has, *vide Circular No. 24/2019 dated 9.9.2019*, in exercise of the powers under section 119, listed out the offences covered under Chapter XXII of the Income-tax Act, 1961 in respect of which prosecution proceedings shall be launched by Approving Authority being the Sanctioning Authority where the quantum of offences exceed the prescribed monetary threshold. Accordingly, in case of failure to pay TDS under section 276B or failure to pay TCS u/s 276BB, no prosecution will be processed if the TDS/TCS amount does not exceed ₹ 25 lakhs and delay in deposit is less than 60 days.

In this case, the company has reasonable and sufficient cause since it was facing financial hardship on account of large sum of money stuck up with the debtors and also with the income-tax department on account of refunds. In spite of the financial crisis, the company has *suo moto* deposited the TDS along with interest under section 201(1A) of the Act, before receiving any notice from the income-tax department in this regard.

Since it has deposited the TDS along with interest *suo moto* before receiving any notice from the department and it has also shown reasonable cause for such delay in deposit, the company cannot be punishable for the delay in deposit of TDS. The initiation of prosecution proceedings under section 276B against the company and the directors is, therefore, **not** correct.

Note - The facts given in the question are similar to the facts in *ACIT v. AT-Dev Prabha (JV) and others* (2023) 454 ITR 59, wherein the above issue came up before the Supreme Court.

The above answer is based on the rationale of the Supreme Court in the said case read along with the CBDT Circular.

2. **Issue Involved:** The issue under consideration is whether the powers under section 254(2) can be exercised by the Tribunal to recall an order and rehear the entire appeal on merits.

Relevant provision of law: Section 254(1) empowers the Appellate Tribunal to pass such order thereon as it thinks fit, after giving both the parties to the appeal an opportunity of being heard.

Under section 254(2), the Appellate Tribunal, may amend an order passed by it u/s 254(1) with a view to rectifying any mistake apparent from the record.

Analysis & Conclusion: The power u/s 254(2) is limited to rectification of a mistake apparent on record and therefore, the Tribunal must restrict itself within those parameters.

A detailed order was passed by the Tribunal upholding the order passed by the Assessing Officer. While allowing the application u/s 254(2) and recalling its earlier order, the Tribunal had reheard the entire appeal on the merits as if the Tribunal was deciding the appeal against the order passed by the Commissioner (Appeals). The subsequent order passed by the Tribunal recalling its earlier order was beyond the scope and ambit of the powers u/s 254(2) and is not tenable in law.

Note – *The facts given in the question are similar to the facts in Reliance Telecom Ltd./Reliance Communications Ltd. (2022) 440 ITR 1 wherein the issue came up before the Supreme Court. The above answer is based on the rationale of the Supreme Court in the said case.*

3. **Issue Involved:** The issue under consideration is whether pendency of dispute resolution under MAP is a valid ground for waiver of interest under section 220(2A).

Relevant provision of law: Section 220(2) provides for levy of simple interest for delay in paying the sum specified in the notice of demand within the period specified thereunder.

Section 220(2A) provides for reduction or waiver of interest payable under section 220(2) if, *inter alia*, the Commissioner is satisfied that payment of such amount has caused or would cause genuine hardship to the assessee.

Analysis & Conclusion: Merely raising the dispute before any authority cannot be a ground for waiver of interest under section 220(2A). Otherwise, each and every assessee may raise a dispute and thereafter, may contend that since the litigation was *bona fide*, no interest is leviable.

Further, in this case, the assessee is a part of a global conglomerate which had in the 2022 ₹ 86,000 crores in net sales and ₹ 15,000 crores as operating profit. In comparison to the profitability over the years, the amount paid by it towards interest under section 220(2) was merely ₹ 1.75 crores. This fact is relevant in concluding that no 'genuine hardship' can be said to have been caused to the assessee on account of payment of interest.

The Commissioner of Income-tax is, therefore, justified in rejecting the claim of assessee.

Note – *The facts given in the question are similar to the facts in Pioneer Overseas Corporation USA (India Branch) v. CIT (International Taxation) (2022) 449 ITR 186, wherein the issue came up before the Supreme Court. The above answer is based on the rationale of the Supreme Court in the said case.*

4. **Issue Involved:** The issue under consideration is whether the stay order can be automatically vacated upon expiry of extended period of stay of 365 days, where the delay in disposing of the appeal is not attributable to the assessee.

Relevant provision of law: The third proviso to section 254(2A) provides that where the appeal filed before the Appellate Tribunal is not disposed of within the period of stay or extended period of stay granted by the Tribunal, the order of stay shall stand vacated after the expiry of 365 days, even if the delay in disposing of the appeal is not attributable to the assessee.

Analysis & Conclusion: This provision would result in the automatic vacation of a stay upon the expiry of 365 days, even if the Appellate Tribunal could not take up the appeal in time for no fault of the assessee. Thus, the vacation of stay in favour of the Department would ensue even if the Department is itself responsible for the delay in hearing the appeal. This will cause undue hardship to the assessee, even where he is not at fault. In this sense, the provision is arbitrary and disproportionate so far as the assessee is concerned.

The contention of the revenue is **not** justified. Any order of stay shall stand vacated after the expiry of the period or periods mentioned in the section, only if the delay in disposing of the appeal is attributable to the assessee.

Note – *The facts given in the question are similar to the facts in DCIT v. Pepsi Foods Ltd (2021) 433 ITR 295, wherein the above issue came up before the Supreme Court. The above answer is based on the rationale of the Supreme Court ruling in that case.*

5. **Issue Involved:** The issue involved in this case is whether Mr. Y's application, for adjustment of tax liability on income surrendered during search by sale of seized gold bars, can be entertained where assessment has not been completed.

Relevant provision of law: The provision contained in section 132B(1) lays down the manner in which the assets seized under section 132 may be dealt with. An assessee is entitled to make an application to the Assessing Officer for adjustment of seized assets towards existing tax liability.

Analysis & Conclusion: Here, the application by the assessee is not for adjustment of any existing liability, but towards the tax liability. In the said provision, the expression used is “the amount of the liability determined”. “A liability is determined” only on completion of the assessment. Until the assessment is complete, it cannot be postulated that a liability has been crystallized.

Accordingly, the action of the Assessing Officer rejecting the application on the ground that such action can be taken only after the assessment is completed and a demand has been quantified, is justified.

Note - The facts given in the question are similar to the facts in Hemant Kumar Sindhi & Another v. CIT (2014) 364 ITR 555 wherein the issue came up before the Allahabad High Court. The above answer is based on the rationale of the Allahabad High Court in the said case.

6. **Issue Involved:** The issue under consideration is whether the Assessing Officer is bound to allow the set-off of brought forward losses under section 72 even if the assessee, Mr. X, in this case, has not claimed the same in the return filed by him and the time limit for filing revised return has expired.

Relevant provision of law: Under section 72, business losses shall be carried forward and shall be set-off against the profits and gains of any business in the next assessment year. It is assumed that the assessee has filed the return of income within the time stipulated u/s 139(1) and hence is eligible for set off of the unabsorbed loss in the subsequent year.

The wording used in section 72 is “shall”, indicating that the provisions relating to set off of brought forward business loss are mandatory provided the loss was determined in pursuance of a return filed under section 139(3) in any earlier previous year.

Analysis & Conclusion: As per *CBDT Circular No.14 (XL-35) of 1955 dated 11.04.1955*, it is the duty of the Assessing Officer to assist a taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs and in this regard, they should take the initiative in guiding a taxpayer where proceedings or other particulars before them indicate that some refund or relief is due to him.

Thus, it is the duty of the Assessing Officer to apply the relevant provisions of the Act for the purpose of determining the true figure of Mr. X's total income and consequential tax liability. Merely because Mr. X has not claimed the set-off of brought forward losses of ₹ 3 lakh in the original return filed and the time limit for filing revised return has expired, it cannot relieve the Assessing Officer of his duty to apply section 72 in the appropriate case.

The Assessing Officer is bound to accept the request of Mr. X and allow the set-off of brought forward losses of ₹ 3 lakh under section 72, even if Mr. X has not claimed the same in the return filed, and the time limit for filing the revised return has expired.

Note – *The facts given in the question are similar to the facts in CIT v. Mahalakshmi Sugar Mills Co. Ltd. (1986) 160 ITR 920, wherein the above issue came up before the Supreme Court. The above answer is based on the rationale of the Supreme Court ruling in that case, taking note of the CBDT Circular No.14 (XL-35) of 1955 dated 11.04.1955.*

7. **Issue Involved:** The issue under consideration in this case is whether TDS under section 194H is attracted in respect of both standard and supplementary commission paid by AirGo and AirJet Airlines to LMN Travels.

Relevant provision of law: TDS@5% is attracted on income by way of commission or brokerage payable to a resident, where the amount or aggregate amount credited or paid to a person during the financial year exceeds ₹ 15,000.

Analysis & Conclusion: Section 194H does not distinguish between direct and indirect payments. Both standard commission and supplementary commission fall within the meaning of “commission” under clause (i) of the *Explanation* thereto.

Section 194H is to be read with section 182 of the Contract Act, 1872. If a relationship between two parties as culled out from their intentions as manifested in the terms of the contract between them indicates the existence of a principal-agent relationship as defined under section 182 of the Contract Act, the definition of “commission” under section 194H stands attracted and the requirement to deduct tax at source arises.

There was no transfer in terms of the title in the tickets and they remained the property of the airline company throughout the transaction. Every action taken by the travel agents is on behalf of the air carriers and the services they provide is with express prior authorization. Accordingly, the contract is one of agency that does not distinguish in terms of stages of the transaction involved in selling flight tickets. The accretion of the supplementary commission to the travel agents was an accessory to the actual principal-agent relationship. Notwithstanding the lack of control over the actual fare, the contract definitively stated that

“all monies” received by the agent were held as the property of the air carrier until they were recorded on the billing and settlement plan and properly gauged. The billing and settlement plan also demarcated “supplementary commission” under a separate heading.

Hence, once the IATA made the payment of the accumulated amounts shown on the billing and settlement plan, it would be feasible for the assessee, being the airlines to deduct tax at source on this additional income earned by the agent.

The contention of AirGo and AirJet is **not** correct and they are required to deduct tax at source under section 194H on both the standard commission and supplementary commission paid to LMN Travels.

Note – *The facts given in the question are similar to the facts in Singapore Airlines Ltd / KLM Royal Dutch Airlines v. CIT / British Airways Plc v. CIT (TDS) (2022) 49 ITR 203, wherein the above issue came up before the Supreme Court. The above answer is based on the rationale of the Supreme Court ruling in that case.*

8. **Issue Involved:** The issue under consideration is whether the arm’s length price (ALP) determined by the Tribunal, which is the final fact-finding authority, is final and cannot be the subject matter of scrutiny by the High Court as it does not give rise to a substantial question of law.

Relevant provision of law: As per section 260A(1), an appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal, if the High Court is satisfied that the case involves a substantial question of law.

Analysis & Conclusion: The Apex Court, in *SAP Labs India Pvt. Ltd. v. ITO [2023] 454 ITR 121*, laid down the following with respect to the powers of High Court to consider the substantial question of law involving determination of arm’s length price (ALP):

- While determining the ALP, the Tribunal has to follow the guidelines stipulated under Chapter X of the Income-tax Act, 1961, namely, sections 92 to 92F of the Act and Rules 10A to 10E of the Income-tax Rules, 1962. Any determination of the ALP under Chapter X not in accordance with the relevant provisions of the Income-tax Act, 1961 and Rules can be considered as perverse and it may be considered as a substantial question of law as perversity itself can be said to be a substantial question of law. Therefore, there cannot be any absolute proposition of law that in all cases where the Tribunal has determined the ALP, the same is final and cannot be the subject matter of scrutiny by the High Court in an appeal under section 260A.

When the determination of the ALP is challenged before the High Court, it is always open for the High Court to consider and examine whether the ALP has been determined while taking into consideration the relevant guidelines under the Act and the Rules.

- The High Court can examine the question of comparability of two companies or selection of filters and examine whether the same is done judiciously and on the basis of the relevant material/evidence on record. The High Court can also examine whether the comparable transactions have been taken into consideration properly or not, i.e., to the extent as to whether non-comparable transactions are considered as comparable transactions or not.

Therefore, in an appeal challenging the determination of the arm's length price, it is always open for the High Court to examine in each case, within the parameters of section 260A, whether while determining the ALP, the guidelines laid down under the Income-tax Act, 1961 and the Income-tax Rules, 1962 are followed or not and whether the determination of the ALP and the findings recorded by the Tribunal while determining the ALP are perverse or not.

The statement is, therefore, **not** correct.

9. **Issue Involved:** The issue under consideration is whether the High Court is justified in not framing any substantial question of law itself and adjudicating merely on the questions put forth by the appellant.

Relevant provision of law: Section 260A(1) provides that an appeal shall lie to the High Court from every order passed in appeal by the Appellate Tribunal, if the High Court is satisfied that the case involves a substantial question of law. As per section 260A(3) and 260A(4), if the High Court is so satisfied, it shall formulate that question and the appeal shall be heard only on the question so formulated.

Analysis & Conclusion: There lies a distinction between the questions proposed by the appellant for admission of the appeal to the High Court and the questions framed by the High Court. The questions, which are proposed by the appellant, fall under section 260A(2)(c) whereas the questions framed by the High Court fall under section 260A(3). Section 260A(4) provides that the appeal is to be heard on merits only on the questions formulated by the High Court under section 260A(3) and not on the questions proposed by the appellant.

In case the High Court is of the view that the appeal did not involve any substantial question of law, it should have recorded a categorical finding to that effect that the questions proposed by the appellant either do not arise in the case or/and are not substantial questions of law so

as to attract the rigour of section 260A for its admission and accordingly, should have dismissed the appeal at the preliminary stage itself. However, this was not done in this case. Instead, the appeal was heard only on the questions urged by the appellant u/s 260A(2)(c).

The High Court was, therefore, not justified since it did not decide the appeal in conformity with the mandatory procedure prescribed in section 260A.

Note – *The facts given in the question are similar to the facts in CIT v. A.A. Estate Pvt. Ltd. [2019] 413 ITR 438, wherein the issue came up before the Supreme Court. The above answer is based on the rationale of the Supreme Court in the said case.*

10. **Issue Involved:** The issue under consideration is whether the participation by the assessee in assessment proceedings would make the omission to issue notice under section 143(2) a curable defect on account of the deeming provision under section 292BB.

Relevant provision of law: As per section 292BB, any notice which is required to be served upon an assessee shall be deemed to have been duly served and the assessee would be precluded from taking any objection that the notice was -

- (a) not served upon him; or
- (b) not served upon him in time; or
- (c) served upon him in an improper manner,

if he had appeared in any proceedings or co-operated in any enquiry relating to assessment or re-assessment.

Analysis & Conclusion: Issue of notice under section 143(2) is mandatory for making a regular assessment under section 143(3). Section 292BB is a deeming provision that seeks to cure defects in any notice issued under any provision of the Income-tax Act, 1961, if the assessee has participated in the proceedings.

For section 292BB to apply, the notice must have emanated from the Department. It is only the infirmities in the manner of service of notice that the section seeks to cure. The section is not intended to cure the complete absence of notice itself.

Accordingly, non-issuance of notice under section 143(2) is not a curable defect under section 292BB in spite of participation by the assessee in assessment proceedings.

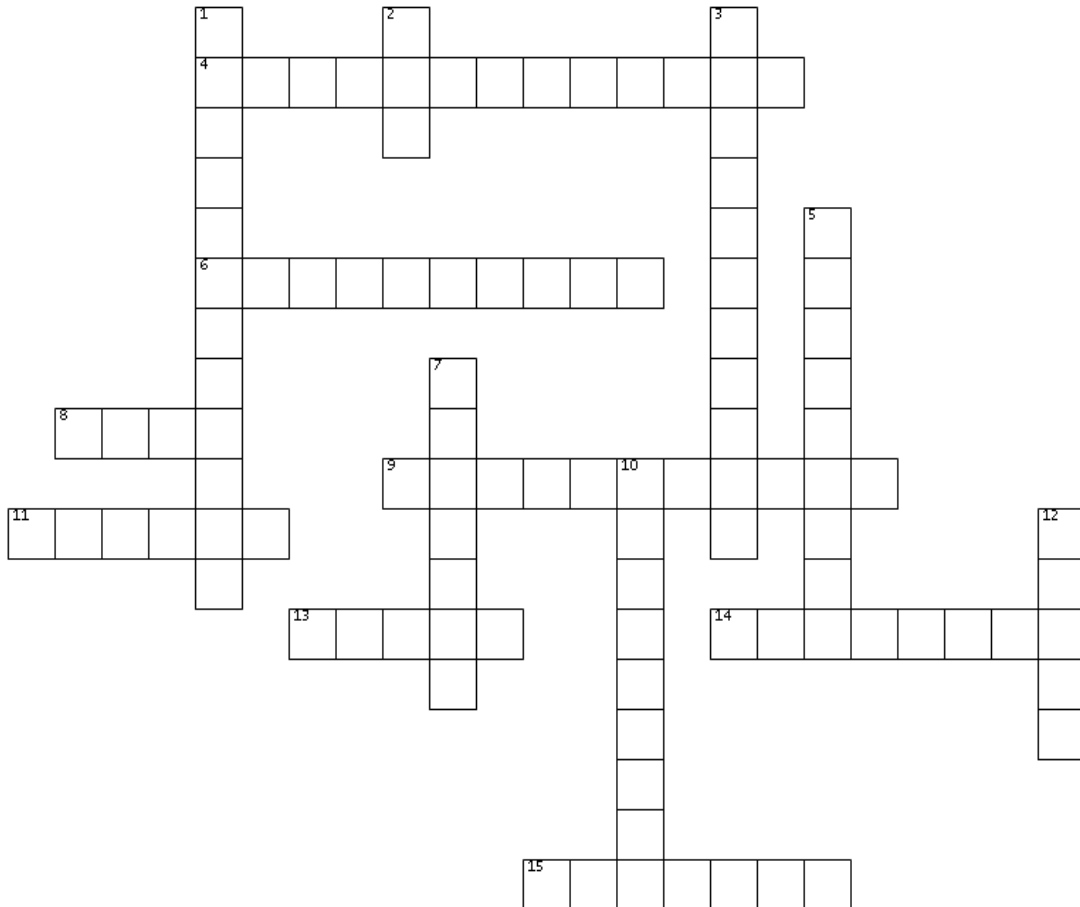
In the present case, since the assessment of Mr. Arora was completed u/s 143(3) without issuing notice u/s 143(2), the assessment is bad in law and not a curable defect u/s 292BB.

Therefore, the contention of Mr. Arora is valid and the contention of the Assessing Officer is invalid in spite of the fact that Mr. Arora participated in the assessment proceedings.

Note – *The facts given in the question are similar to the facts in CIT v. Laxman Das Khandelwal (2019) 417 ITR 325, wherein the issue came up before the Supreme Court. The above answer is based on the rationale of the Supreme Court in the said case.*



CROSSWORD PUZZLE



ACROSS

4. The provisions of section 194Q will not apply to a buyer in the year of.....
6. Under section 194R, TDS is attracted on benefit or.....in respect of business or profession.
8. Payment made for use of passive infrastructure facility like mobile towers would be treated as..... for the purpose of TDS.

9. attachment under section 281B would be initially valid for a period of 6 months from the date of the order.
11. Under section 194BA, tax is deductible in respect of winnings from any game.
13. TCS@1% is attracted on, *inter alia*, sale of
14. Prosecution u/s 278 is attracted for of false return etc.
15. Section 139(8A) provides for furnishing of an return of income

DOWN

1. Section 270A(9) enlists the cases of of income.
2. The Central Government shall constitute a(acronym) for every region of Principal Chief Commissioner of income-tax, and its members will also be appointed by the Central Government for a period of three years.
3. The service of, *inter alia*, a are notified by the CBDT as professional services in relation to the sports activities for the purpose of TDS u/s 194J.
5. TDS u/s 194-IA is attracted on transfer of certain.....properly.
7. The doctrine of merger would apply in case of rectification under section 154 and revision under section 263.
10. The meaning of authority for the purposes of section 148 and 148A is defined in section 151
12. The doctrine of merger would apply in case of revision under section 264



CROSSWORD PUZZLE

