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TAX LAW & PRACTICE

(ASSESSMENT YEAR 2020-21)

FOR JUNE & DECEMBER

2020

ATTEMPTS

[AS AMENDED BY FINANCE ACT 2019]

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With the blessings
of Maa Saraswati,
this book is dedicated
to my beloved
MOTHER, WIFE,
SON (“Shresth”) and
DAUGHTER (“Sara”)

Tax Law & Practice, Paper-4 (Module-I), is very vast but a dynamic subject. It includes, Income Tax, Goods and Services Tax (GST) and for New Syllabus Customs Act too.

All we know, taxation provisions amend frequently, thus, continuous study is vital for understanding and retaining this subject.

This subject is most scoring, as paper on it covers both theoretical and practical questions.

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After becoming Company Secretary, practice in the field of Direct Tax Law or Indirect Tax Law is also highly remunerating.

This book covers syllabus prescribed by ICSI in easy to understand and summarised way. Practice material provided in this book is based on old pattern (Multiple Choice Questions) and new pattern Subjective Questions as prescribed by ICSI. Other salient features of this book are :

♦ High Standard MCQs and Subjective Questions;

♦ Highly updated provisions;

♦ Simple language;

♦ Use of tables and charts to explain complex provisions;

♦ Very neat and clean presentation.

Acknowledgment: We have made our most sincere efforts to avoid any error or omission in writing this book. Despite this, if any imperfection is noticed, we welcome your feedback/suggestions at casandeepsahrawat@gmail.com

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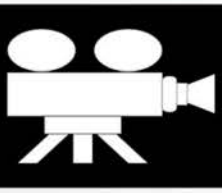
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CHAPTER 1

BASIC CONCEPTS
[Introduction of Income Tax]

1.1 Income Tax— An Introduction

1. Introduction: Income tax is a tax on incomes of the persons. It is a direct tax. The Central Government imposes such tax on *taxable income* of all *persons*. Income tax is levied separately on each of the persons. The levy is governed by the Income Tax Act, 1961. The Income Tax Department is governed by Central Board of Direct Taxes (CBDT) under Department of Revenue under the Ministry of Finance, Govt. of India. Income tax is a key source of funds that the government uses to fund its activities and serve the public.

The Central Government has been empowered by Entry 82 of the Union List (List-I) of Schedule VII of the Constitution of India to levy tax on all incomes other than agricultural income. The Income Tax Law comprises The Income Tax Act 1961, Income Tax Rules 1962, Notifications and Circulars issued by CBDT, Annual Finance Acts and Judicial pronouncements by Supreme Court and High Courts.

The Income Tax Department is the biggest revenue mobilizer for the Government. The estimated collection from income tax during financial year 2019-20 is Rs. 13,35,000 crores.

2. Extent of Income-tax Act: Income-tax Act, 1961 extends to the whole of India.

1.2 Sources of Income Tax Law

♦ **Income-tax Act, 1961:** As stated above, the levy of income tax in India is governed by Income-tax act, 1961. This act contains provisions relating to residential status, incidence of tax, determination of taxable income, determination of tax liability, assessment procedures, appeals, penalties and prosecutions. It also lays down the powers and duties of various Income-tax authorities.

♦ **Annual Finance Act (annual amendments):** Every year, along with the Budget, the Finance Minister presents a finance bill before the Parliament. This Bill contains :

→ various amendments which sought to be made in the areas of direct and indirect taxes and

→ rates of tax.

Once such Finance Bill is approved by both the Houses of Parliament and receives the assent of the President, it becomes the Finance Act. The provisions of such Finance Act are thereafter incorporated in the Income-tax Act.

♦ **Income-tax Rules, 1962:** For carrying out the purposes of the act, every act normally gives power to an authority (responsible for implementation of the act), to make rules. Income-tax Act has given such

power to the Central Board of Direct Taxes (CBDT). These rules are made applicable by giving notification in the Gazette of India.

♦ **Circulars and notifications:** In exercise of powers of section 119, circulars are issued by the CBDT from time to time. These are issued to clarify provisions or procedures of this act. Circulars have to be followed and applied by the Income-tax Authorities. These are binding upon all the Income-tax Authorities, except CIT(A). However, these are not binding on the assessee, ITAT and Courts, although the assessee can claim benefit of these circulars.

Notifications on other hand are issued by the Central Government to give effect to the provisions of this act. Notifications are binding on all Income tax authorities, assessees and all Courts.

♦ **Judicial decisions:** Any decision given by the Supreme Court becomes a law which will be binding on all the Courts, Appellate Tribunals, the Income-tax Authorities as well as on all the assessees.

Decisions given by a High Court, Income-tax Appellate Tribunal, etc. are binding on all the assessees as well as the Income-tax Authorities which fall under their jurisdiction, unless it is over-ruled by a higher authority. The decision of a High Court is binding on the Tribunal and the Income-tax Authorities situated in the area over which the High Court has jurisdiction.

1.3 Charge of income tax [*i.e.* Scheme of taxation] [Section 4]

Section 4 of this act, provides as under—

♦ Income tax is an annual tax on income;

♦ Income of the *previous year* is taxable in the *assessment year* [this rule, however, has certain exceptions mentioned under section 172, 174, 174A, 175 and 176];

♦ Tax rates are fixed by the annual Finance Act;

♦ Tax is charged on every *person*;

♦ Tax is charged on *total income* of the *assessee*;

1.4 How to compute 'taxable income' and 'tax' thereon

Total income of an assessee and tax payable by him is normally, computed by following the given steps:

Step—1	Find out his residential status as per section 6.
Step—2	Find out his gross income under various heads of income (like Salary, House property etc.). Out of such gross income, deduct the permissible deductions of these heads.
Step—3	Aggregate the incomes of these heads, which is called as 'gross total income' (GTI).
Step—4	From 'gross total income' deduct the deduction of Chapter-VIA (*i.e.* deductions of section 80C to 80U). The amount so calculated will be 'total income' it is also called as 'taxable income'
Step—5	Calculate the amount of tax on such 'total income' at the rates provided by the relevant Finance act (*i.e.* normal tax rates) and rates provided by various sections of Income tax act (*i.e.* special tax rates like tax on capital gain provided by section 112 and 111A).

1.5 Definitions [Section 2]

1. Assessee: Section 2(7): Assessee means a person by whom any tax or any other sum of money is payable under this Act, and includes—

(a) every person in respect of whom any *proceeding* has been taken *for the assessment* of :

(i) his income or income of any other person in respect of which he is assessable, or

(ii) loss sustained by him or by such other person, or

(iii) amount of refund due to him or to such other person.

(b) every person who is deemed to be an assessee under any provision of this Act. (*See* Note)

(c) every person who is deemed to be an assessee in default under any provision of this Act. A person is said to be an assessee in default if he fails to comply with the duties imposed upon him under the Income-tax Act. (*See* Note)

Notes—

a. As per section 160(2), the person referred to in section 160(1) being the representative assessees (*i.e.* Guardian or manager in case of minor, lunatic etc.; agent of non-resident; trustees in case of trust) are regarded as deemed assessees for the purpose of this Act.

b. *Instances of assessee in default are:* (*i*) Section 140A(3) *i.e.* failure to deposit self-assessment tax; (*ii*) Section 201(1) *i.e.* failure to deduct or pay TDS; (*iii*) Section 220(4) *i.e.* failure to pay the amount of demand notice.

2. Person: Section 2(31): Person includes—

(i) An Individual;

(ii) A Hindu Undivided Family (HUF);

(iii) A Company;

(iv) A Firm;

(v) An Association of Persons (AOP) or a Body of Individuals (BOI), incorporated or not;

(vi) A local authority;

(vii) Every artificial juridical person not falling within any of the preceding sub-clauses.

Association of persons: Association of persons means two or more *persons* who join for a common purpose with a view to earn an income. Therefore, if two or more persons join hands to carry on a business but do not constitute a partnership, they may be assessed as an Association of Persons (AOP).

Body of individuals (BOI): Body of individuals means a group of individuals who carry on some activity with the objective of earning some income. It would consist only of individuals. Entities like companies or firms cannot be members of a body of individuals.

A local authority: The expression local authority means, (*i*) Panchayat; or (*ii*) Municipality; or (*iii*) Cantonment Board.

Artificial juridical persons: This is residuary classification. These entities are not natural persons but are separate entities in the eyes of law. They can be sued through persons managing them. Bar Council, God, idols and deities are artificial persons.

3. Assessment year [Section 2(9)]: Assessment year means the period of 12 months commencing on the first day of April every year. It is, therefore, a period from 1st of April to 31st of March. It is the year immediately succeeding the previous year.

4. Previous year [Section 3]: Previous year means the financial year immediately preceding the assessment year.

Provided that in case of *newly set up business or profession or new source of income,* the previous year shall be the period beginning with the date of setting up of such business or profession or the date on which new source of income comes into existence.

In other words, the year in which income is earned is known as previous year and the next year in which this income is taxable is known as assessment year. Income tax is charged on the total income of the previous year at the rates prescribed by the relevant Finance Act for the assessment year.

Notes—

a. The financial year ending on 31st March will be the uniform previous year for all the assessees and for all sources of income. If for any reason, the assessee wants to close his books of account on any other date he can do so, but, he would be required to make up his accounts on 31st March also for the Income Tax purpose.

b. Each financial year is both, previous year as well as assessment year. It is the previous year for the income earned during that financial year and assessment year for the income earned during a preceding previous year. *e.g.* financial year 2019-20 is previous year for current income and assessment year for the income earned during the financial year 2018-19.

Problem 1.1 : *A new business is set up on 21.01.2020. For this business, commercial production was however, started on 20.2.2020. What will be the assessment year and what period will be treated as previous year?*

Solution: Assessment year: 2020-21

Previous year: Period starting from 21.01.2020 to 31.3.2020.

Problem 1.2 : *Ascertain the previous year in the following cases :*

(i) Dr. Sharma was appointed as professor in a College for the first time on probation basis 1.5.2019. He was confirmed on 11.7.2019.

(ii) Mr. Ram started a cement business on 17.2.2020.

(iii) Mr. Rakesh spent Rs. 1,90,000 on his son's marriage on 24.9.2019. He could only explain the source of Rs. 1,50,000 before the Income Tax Officer. Rs. 40,000 was deemed to be his income.

Solution:

(i) 1.5.2019 to 31.3.2020

(ii) 17.2.2020 to 31.3.2020

(iii) Previous year 2019-20

1.6 Taxation of previous year's income during the same year

In the following circumstances the income is taxed in the same year in which it is earned. Therefore, the assessment year and the previous year in these exceptional circumstances *infra,* will be the same.

1. Shipping business of non-residents: [Section 172]

In case of a non-resident who is carrying on a shipping business and earns income of fare/freight for carrying passengers, goods etc. from a port in India, the income tax is charged before the ship leaves the Indian port. Therefore, the master of the ship is under an obligation to pay the tax.

In this case 7.5% of the amount of fare/freight (including the amount of demurrage charge or handling charge or any other amount of similar nature), shall be deemed to be income of such assessee on which the income-tax will be charged.

2. Assessment of persons leaving India: [Section 174]

Where Assessing Officer is of the opinion that any individual may leave India during the current assessment year, with no intention of returning, he shall charge the tax on total income as under :

♦ *For the previous year(s) already completed*: tax will be calculated by using the tax rates applicable to their relevant A.Ys;

♦ *For the assessment year in which he departs:* tax will be calculated by using the rates of advance tax provided by that assessment year itself.

Problem 1.3 : On September 10, 2019, Mr. Ramesh is planning to leave India and migrate to Australia. His assessment for A.Y. 2019-20 is still pending. Discuss what steps the Assessing Officer will take?

Solution: In this case the Assessing Officer will make the following separate assessments of Mr. Ramesh:

1. Assessment of income of the previous year 2018-19 will be made by applying the tax rates applicable for the A.Y. 2019-20.
2. Assessment of income for the period commencing from 1.4.2019 till 10.9.2019 will be made by applying the rates of advance tax of Finance Act, 2019 *i.e.* tax rates for the A.Y. 2020-21.

3. Assessment of AOP or BOI or artificial juridical person formed for a particular event or purpose: [Section 174A]

Where it appears to the Assessing Officer that any association of persons or a body of individuals or an artificial juridical person formed for a particular event or purpose and is likely to be dissolved in the assessment year in which it is formed or immediately after such assessment year, the total income of such AOP/BOI, for the period from the expiry of the previous year for that assessment year up to the date of its dissolution (*i.e.* assessment year), shall be chargeable to tax in that assessment year itself.

4. Transfer of property to avoid tax: [Section 175]

If it appears to the Assessing Officer during any current assessment year, that any person is likely to charge, sell, transfer, dispose of or otherwise part with any of his assets with a view to avoiding any payment of his tax liability, then the total income of such person for the period from the expiry of the previous year for that assessment year (*i.e.* from 1st April of that assessment year) till the date when the assessing officer commences proceedings, shall be chargeable to tax in the same assessment year.

5. Discontinued business: [Section 176]

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

Any person discontinuing any business or profession shall give to Assessing Officer (AO) notice of such discontinuance within 15 days thereof.

Note : In the first four exceptions given above, it is mandatory for the AO to charge the tax in the same previous year. On the other hand, in the fifth exception given above the AO has the discretionary power and as such he may charge income tax in the same P.Y. or may wait till the A.Y.

1.7 Relevant previous years for undisclosed sources of income

In respect of certain undisclosed sources of income previous year will be as follows—

Section	Undisclosed sources	Corresponding P.Y. for that source
68	Unexplained Cash Credits	The year in which books of accounts are found credited
69	Unexplained investments	The year in which the investment made
69A	Unexplained money, bullion, jewellery or other valuables	The year in which it is found
69B	Undisclosed investments	The year in which the investment made
69C	Unexplained expenditure	The year in which it was incurred
69D	Amount borrowed/repaid on hundi in excess of Rs.20,000 other than by way of account payee cheque.	The year in which the amount was borrowed or repaid on *hundi*.



CHAPTER 2

BASIC CONCEPTS
[Rates of Income Tax]

2.1 Rates of income tax

Tax rates are following two types—

Normal Tax Rates	Special Tax Rates
Normal rates of income tax (these are specified by the relevant Finance Act): These are the rates which may vary from person to person. Normal income is always taxed by using normal rates of tax.	**Special rates of income tax (these are specified by the Income Tax Act):** These are the rates which do not vary from person to person, but are chargeable at the same rate irrespective of type of person. Special incomes (*e.g.* capital gains, lotteries etc.) are taxed by using special rates of tax.

NORMAL TAX RATES FOR ASSESSMENT YEAR 2020-21

A— In case of Individual, HUF, AOP, BOI etc.

1. Senior citizens: In the case of every individual, *being a resident in India, who is of the age of 60 years but not more than 80 years* on 31st march of the previous year—

Total income	Income tax	Surcharge	HEC
Up to Rs. 3,00,000	*Nil*	*Nil*	*Nil*
> Rs. 3,00,000 but up to Rs. 5,00,000	5% of (total income *less* Rs. 3,00,000)	*Nil*	4% of income tax
> Rs. 5,00,000 but up to Rs. 10,00,000	Rs. 10,000 + 20% of (total income *less* Rs. 5,00,000)	*Nil*	4% of income tax
> Rs. 10,00,000	Rs. 1,10,000 + 30% of (total income *less* Rs. 10,00,000)	♦ Total income up to Rs. 50 lakh : *Nil* ♦ Total income > Rs. 50 lakh but up to Rs. 1 Crore : *10% of income tax.* ♦ Total income > Rs. 1 Crore but up to Rs. 2 Crore : *15% of income tax.* ♦ Total income > Rs. 2 Crore but up to Rs. 5 Crore : *25% of income tax.* ♦ Total income > Rs. 5 Crore : *37 % of income tax.*	4% of (Income tax *plus* Surcharge *minus* Marginal relief)

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2. Very senior citizens: In the case of every individual, *being a resident in India, who is of the age of 80 years or more* on 31st march of the previous year,—

Total income	Income tax	Surcharge	HEC
Up to Rs. 5,00,000	*Nil*	*Nil*	*Nil*
> Rs. 5,00,000 but up to Rs. 10,00,000	20% of (total income *less* Rs. 5,00,000)	*Nil*	4% of income tax.
> Rs. 10,00,000	Rs. 1,00,000 + 30% of (total income *less* Rs. 10,00,000)	♦ Total income up to Rs. 50 lakh : *Nil* ♦ Total income > Rs. 50 lakh but up to Rs. 1 Crore : *10% of income tax.* ♦ Total income > Rs. 1 Crore but up to Rs. 2 Crore : *15% of income tax.* ♦ Total income > Rs. 2 Crore but up to Rs. 5 Crore : *25% of income tax.* ♦ Total income > Rs. 5 Crore : *37 % of income tax.*	4% of (Income tax *plus* Surcharge *minus* Marginal relief)

3. Other cases: In the case of every individual other than the individual referred to in items *1*and *2* above or HUF or AOP or BOI, or every artificial juridical person—

Total income	Income tax	Surcharge	HEC
Up to Rs. 2,50,000	*Nil*	*Nil*	*Nil*
> Rs. 2,50,000 but upto Rs. 5,00,000	5% of (total income *less* Rs. 2,50,000)	*Nil*	4% of income tax
> Rs. 5,00,000 but upto Rs. 10,00,000	Rs. 12,500 + 20% of (total income *less* Rs. 5,00,000)	*Nil*	4% of income tax
> Rs. 10,00,000	Rs. 1,12,500 + 30% of (total income *less* Rs. 10,00,000)	♦ Total income up to Rs. 50 lakh : *Nil* ♦ Total income > Rs. 50 lakh but up to Rs. 1 Crore : *10% of income tax.* ♦ Total income > Rs. 1 Crore but up to Rs. 2 Crore : *15% of income tax.* ♦ Total income > Rs. 2 Crore but up to Rs. 5 Crore : *25% of income tax.* ♦ Total income > Rs. 5 Crore : *37 % of income tax.*	4% of (Income tax *plus* Surcharge *minus* Marginal relief)

4. Rebate of up to Rs.12,500 for resident individuals having total income of up to Rs. 5,00,000 [Section 87A]

♦ *Rebate* : For providing tax relief to the individual tax payers who are in the 10% tax slab, section 87A has been inserted to provide a rebate from the tax payable by an assessee, being an individual resident in India, whose total income does not exceed **Rs. 5,00,000** (earlier, Rs. 3,50,000).

♦ *Amount of Rebate* : The rebate amount will be **Rs. 12,500** (earlier, Rs. 2,500) or amount of income-tax payable on the total income, whichever is less. [**Conclusion :** There will be no tax in case of those resident individuals whose taxable income doesn't exceed Rs.5,00,000]

♦ *No Rebate on LTCG of Section 112A* : As per section 112A(6), where the total income of an assessee includes any long-term capital gains referred to in section 112A(1), the rebate under this section shall be allowed from the income-tax on the total income as reduced by tax payable on such capital gains.

Problem 2.1 : *The gross total income of Mr. Ramesh (a resident, aged 30 years) for the P.Y.2019-20 is Rs.3,85,000 which includes salary of Rs.3,78,000 and interest on savings bank Rs.7,000. He paid premium of Rs. 32,000 for life insurance of himself. Compute his tax liability for the A.Y.2020-21.*

Solution:

Computation of total income tax of Mr. Ramesh for the A.Y. 2020-21

	(Rs.)
Income from 'salary'	3,78,000
Income from 'other sources'	7,000
Gross total income	3,85,000
Less: Deductions of Chapter VI-A:	
(i) Deduction of section 80C : For insurance premium [To be discussed later]	32,000
(ii) Deduction of section 80TTA: Interest on saving bank [To be discussed later]	7,000
Total income or taxable income	3,46,000
Tax on total income	4,800
Less: Relief under section 87A [*i.e. tax or Rs.12,500, whichever is lower*]	4,800
	0

B- In case of a co-operative society

Normal rates of tax rates are as under :

Total Income	Income tax
Up to Rs. 10,000	*10% of total income*
Exceeding Rs. 10,000 but up to Rs. 20,000	Rs. 1,000 + 20% of (total income *less* Rs. 10,000)
In excess of Rs. 20,000	Rs. 3,000 + 30% of (total income *less* Rs. 20,000)

Surcharge- If total income exceeds Rs. 1 crore, then surcharge will be levied @ **12%** of amount of tax.

HEC at the rate of 4% of (Income tax+ Surcharge—Marginal relief).

C- In case of a firm (including limited liability partnership)

Normal rates of tax 30%

Surcharge- If total income exceeds Rs. 1 crore, then surcharge will be levied @ **12%** of tax.

HEC at the rate of 4% of (Income tax+ Surcharge—Marginal relief).

D—In case of every local authority

Normal rates of tax 30%

Surcharge- If total income exceeds Rs. 1 crore, then surcharge will be levied @ **12%** of tax.

HEC at the rate of 4% of (Income tax+ Surcharge—Marginal relief).

E—In case of a domestic company

Normal rates of tax :

(*a*) If turnover or gross receipt during the P.Y. 2017-18 does not exceed Rs.400 crore 25%

(*b*) For any other domestic company 30%

Surcharge—

- If total income does not exceed Rs.1 crore Nil
- If total income exceed Rs.1 crore but does not exceed Rs. 10 crore 7% of Tax
- If total income exceed Rs.10 crore 12% of Tax

HEC at the rate of 4% of (Income tax+ Surcharge—Marginal relief).

F—In case of a foreign company

Normal rates of tax 40%

Surcharge—

- If total income does not exceed Rs.1 crore Nil
- If total income exceed Rs.1 crore but does not exceed Rs. 10 crore 2% of Tax
- If total income exceed Rs.10 crore 5% of Tax

HEC at the rate of 4% of (Income tax+ Surcharge—Marginal relief).

5. Rates of Surcharge - Summary : Rates of surcharge for A.Y. 2020-21 are as follows—

Total income	Individual, HUF, AOP, BOI and other artificial juridical person	Firm/LLP/Co-operative Society/Local authority	Domestic Company	Foreign Company
Up to Rs. 50 lakh	*Nil*	*Nil*	*Nil*	*Nil*
> Rs. 50 lakh to Rs. 1 crore	10% of tax	*Nil*	*Nil*	*Nil*
> Rs. 1 crore to Rs. 2 crore	15% of tax	12% of tax	7% of tax	2% of tax
> Rs. 2 crore to Rs. 5 crore	25% of tax	12% of tax	7% of tax	2% of tax
> Rs. 5 crore to Rs. 10 crore	37% of tax	12% of tax	7% of tax	2% of tax
> Rs. 10 crore	37% of tax	12% of tax	12% of tax	5% of tax

SPECIAL TAX RATES (*i.e.* RATES SPECIFIED BY THE INCOME-TAX ACT) FOR ASSESSMENT YEAR 2020-21- *Selected cases only*

1. Short term capital gain referred to in section 111A	*: 15%*
2. Long term capital gain referred to in section 112	*: 20%*
2A. Long term capital gain referred to in section 112A (if such LTCG exceeds Rs.1,00,000)	*: 10%*
3. Casual incomes (*e.g.* Lottery, horse winnings, other games etc.) referred to in section 115BB	*: 30 %*
4. MAT (Minimum Alternate Tax) [Section 115JB]	*: 18.5 %*
5. AMT (Alternate Minimum Tax) [Section 115JC]	*: 18.5 %*
6. Incomes referred to in section 68, 69, 69A, 69B, 69C and 69D [Section 115BBE]	*: 60 %*
7. Anonymous donations [Section 115BBC]	*: 30 %*

Note : Surcharge, if any, health and education cess (HEC) will be extra.

2.2 Marginal Relief

Marginal relief : To avoid hardship in case of taxpayer whose income is slightly higher than the amount on which surcharge is applicable, a provisions has been made to provide for relief in marginal cases.

Calculation of Marginal Relief : In case of an assessees having a total income exceeding Rs.50 lakh/Rs. 1 crore/Rs.2 crore/Rs.5 crore/Rs.10 crore, marginal relief is provided to ensure that the *additional* income-tax (*plus* surcharge) payable on the excess of income over such Rs.50 lakh/Rs. 1 crore/Rs.2 crore/Rs.5 crore/Rs.10 crore is limited to the excess of total income over Rs.50 lakh/Rs. 1 crore/Rs.2 crore/Rs.5 crore/Rs.10 crore.

For the **Assessment Year 2020-21** marginal relief will be allowed as under—

Situation	Amount of Marginal Relief
1. If 'Tax Difference' is MORE than 'Income Difference' Where— ♦ *'Tax Difference'* means, Tax (+Surcharge) on total income *minus* Tax on Rs.50 lakh/Rs.1 crore/Rs.2 crore/Rs.5 crore/Rs.10 crore ♦ *'Income Difference'* means, Total income minus Rs.50 lakh/Rs.1 crore/Rs.2 crore/Rs.5 crore/Rs.10 crore	Relief amount = *'Tax Difference' minus 'Income Difference'*
2. If *'Tax Difference'* is LESS than or equal to *'Income Difference'*	No marginal relief

E.g. [For company assessee, marginal relief calculation is as under]—

Total income	*Income tax + SC on actual total income @32.1%*	*Income tax on Rs.1 crore @30%*	*Excess of tax (+SC)on actual total income over tax on Rs.1 crore i.e. (B) – (C) [i.e. Tax difference]*	*Excess of total income over Rs. 1 crore [i.e. Income difference]*	*Amount of Marginal Relief (D)– (E)*	*Tax payable after marginal relief i.e. (B) – (F)*
(A)	*(B)*	*(C)*	*(D)*	*(E)*	*(F)*	*(G)*
1,01,00,000	32,42,100	30,00,000	2,42,100	1,00,000	1,42,100	31,00,000
1,03,00,000	33,06,300	30,00,000	3,06,300	3,00,000	6,300	33,00,000
1,04,00,000	33,38,400	30,00,000	3,38,400	4,00,000	*Nil*	33,38,400

Problem 2.2 : *During the previous year 2019-20, Mr. Ram has the following incomes :*

		Rs.
Income from salary	:	*16,00,000*
Income from house property	:	*2,00,000*
Bank interest (on fixed deposit)	:	*50,000*

Calculate his tax liability if :

***Case—1** : He is a resident and has completed the age of 26 years on 11th July of the P.Y.;*

***Case—2** : He is a resident and has completed the age of 60 years on 11th July of the P.Y.;*

***Case—3** : He is a resident and has completed the age of 80 years on 11th July of the P.Y.;*

***Case—4** : He is a non-resident and has completed the age of 85 years on 11th July of the P.Y.*

Solution:

Computation of tax liability of Mr. Ram

(Rs.)

	Tax Rate	Case—1	Case—2	Case—3	Case—4
(A) Income taxable at 'normal rates'		18,50,000	18,50,000	18,50,000	18,50,000
(B) Income taxable at 'special rates'		-	-	-	-
Income tax at normal rates *i.e.* slabs—					
Tax on first slab	*Nil*	*Nil*	*Nil*	*Nil*	*Nil*
Tax on next slab of 5%	5%	12,500	10,000	*Nil*	12,500
Tax on next slab of 20%	20%	1,00,000	1,00,000	1,00,000	1,00,000
Tax on next slab of 30%	30%	2,55,000	2,55,000	2,55,000	2,55,000
Total 'normal tax'		3,67,500	3,65,000	3,55,000	3,67,500
Add : Surcharge		Nil	Nil	Nil	Nil
Less : Marginal Relief		Nil	Nil	Nil	Nil
Less : Rebate of section 87A		Nil	Nil	Nil	Nil
Add : HEC @4% of [Tax +SC−MR−R]	4%	14,700	14,600	14,200	14,700
Tax liability		**3,82,200**	**3,79,600**	**3,69,200**	**3,82,200**

Problem 2.3 : *During the previous year 2019-20, Mr. Shyam has the following incomes :*

		Rs.
Income from salary	:	*16,00,000*
Long term capital gains on sale of listed equity shares (STT paid)	:	*50,000*
Short term capital gains on sale of listed equity shares (STT paid)	:	*30,000*
Winnings from lottery	:	*1,00,000*

Calculate his tax liability if :

Case—1 *: He is a resident and has completed the age of 26 years on 11th July of the P.Y.;*

Case—2 *: He is a resident and has completed the age of 60 years on 11th July of the P.Y.;*

Solution:

Computation of tax liability of Mr. Shyam

(Rs.)

	Tax Rate	Case—1	Case—2
(A) Income taxable at 'normal rates'	Normal	16,00,000	16,00,000
(B) Income taxable at 'special rates' (*i.e. STCG and lottery winning*)	Special	1,30,000	1,30,000
(C) Not taxable as per Section 112A	-	50,000	50,000
Income tax at normal rates i.e. slabs—			
Tax on first slab	Nil	Nil	Nil
Tax on next slab of 5%	5%	12,500	10,000
Tax on next slab of 20%	20%	1,00,000	1,00,000
Tax on next slab of 30%	30%	1,80,000	1,80,000
Total 'normal tax' [A]		**2,92,500**	**2,90,000**

Income tax at special tax rates—			
Tax on STCG on equity shares	15%	4,500	4,500
Tax on lottery winnings	30%	30,000	30,000
Total 'special tax' [B]		**34,500**	**34,500**
TOTAL TAX [A + B]		**3,27,000**	**3,24,500**
Add : Surcharge		Nil	Nil
Less : Marginal Relief		Nil	Nil
Less : Rebate of section 87A		Nil	Nil
Add : HEC @4% of [Total Tax +SC−MR−R]	4%	13,080	12,980
Tax liability		**3,40,080**	**3,37,480**

2.3 Definition of 'income' [Section 2(24)

Income includes :

a. profits and gains;

b. dividend;

c. voluntary contributions received by a trust created wholly or partly for charitable or religious purposes or by an institution established wholly or partly for such religious purposes or by an association or institution referred to in section 10(21), 10(23) or 10(23C)(*iv*), (*v*), (*vi*) and (*via*) or by an electoral trust;

d. the value of any perquisite or profit in lieu of salary taxable under section 17(2) and (3);

e. any special allowance or benefit, other than perquisite included under (*d*) above, specifically granted to the assessee to meet expenses wholly, necessarily and exclusively for the performance of the duties of an office or employment of profit;

f. any allowance granted to the assessee either to meet the personal expenses at the place where the duties of his office or employment of profit are ordinarily performed by him or at a place where he ordinarily resides or to compensate him for the increased cost of living;

g. the value of any benefit or perquisite, whether convertible into money or not, obtained from a company either by a director or by a person who has a substantial interest in the company, or by a relative of the director or such and any sum paid by any such company in respect of any obligation but for such payment, would have been payable by the director or other person aforesaid;

h. the value of any benefit or perquisite, whether convertible into money or not, obtained by any representative assessee mentioned in clause (*iii*) or clause (*iv*) of sub-section (1) of section 160 or by any person on whose behalf or for whose benefit any income is receivable by the representative assessee (such person being hereafter in this sub-clause referred to as the 'beneficiary') and any sum paid by the representative assessee in respect of any obligation which, but for such payment, would have been payable by the beneficiary;

i. any sum chargeable to Income-tax under section 28(*ii*), (*iii*), (*iiia*), (*iiib*) and (*iiic*) or Sec. 41 or Sec. 59;

j. the value of any benefit or perquisite taxable under section 28(*iv*);

k. any sum chargeable to Income-tax under section 28(*v*);

l. any capital gains chargeable under section 45;

m. the profits and gains of any business of insurance carried on by a mutual insurance company or by a co-operative society;

n. the profits and gains of any business of banking (including providing credit facilities) carried on by a co-operative society with its members;

o. any winnings from lotteries, crossword puzzles, races including horse races, card games and other games of any sort or from gambling or betting of any form or nature whatsoever;

p. any sum received by the assessee from his employees as contributions to any provident fund or superannuation fund or any fund set up under the provisions of the Employees' State Insurance Act, 1948 or any other fund for the welfare of such employee;

q. any sum received under a Key-man Insurance Policy including the sum allocated by way of bonus on such policy;

r. any sum referred to in section 28(*vi*);

s. the fair market value of inventory referred to in clause (*via*) of section 28

t. any sum referred to in section 56(2)(*vi*) and (*vii*), (*i.e.* gift exceeding Rs. 50,000).

u. any sum of money or value of property referred to in section 56(2)(*vii*).

v. any consideration received for issue of shares as exceeds the fair market value of the shares referred to in section 56(2)(*viib*).

w. any sum of money to in section 56(2)(*ix*) [*i.e.* advance money forfeited].

x. any compensation or other payment referred to in clause (*xi*) of sub-section (*2*) of section 56.

y. any assistance in the form of a subsidy or grant or cash incentive or duty drawback or waiver or concession or reimbursement, by whatever name called, by the Central Government or a State Government or any authority or body or agency in cash or kind to the assessee, other than

(i) the subsidy or grant or reimbursement which has been taken into account for determination of the actual cost of the asset in accordance with Explanation 10 to section 43(1), or

(ii) the subsidy or grant by the Central Government for the purpose of the corpus of a trust or institution established by the Central Government or a State Government, as the case may be.

Notes—

1. **Definition of income is inclusive :** In *CIT* v. *G. R. Karthikeyan (1993) 112 CTR (SC) 302*, the apex Court dealt with the meaning of word 'income'. It was observed that the expression 'income' as defined in the statute is inclusive and not exclusive. The Apex Court further held that "..... Even if a receipt does not fall within the ambit of any of the sub-clauses in section 2(24), it may still be income if it partakes of the nature of the income. The idea behind providing an inclusive definition in section 2(24) is not to limit its meaning but to widen its net.

2. **Capital receipts *viz-a-viz* revenue receipts :** One should carefully study the various items of receipts included in the above definition. Some of them like capital gains are not revenue receipts. However, since they have been included in the definition, they are chargeable as income under the Act. The concept of revenue and capital receipts is discussed hereunder –

- The Act contemplates a levy of tax on income and not on capital and hence it is very essential to distinguish between capital and revenue receipts. **Capital receipts cannot be taxed, unless they fall within the scope of the definition of "income" and so the distinction remains real and most material for tax purposes.**
- Certain capital receipts which have been specifically included in the definition of income are Compensation for modification or termination of services, income by way of capital gains etc. [*vide* sections 45, 28 and 17 of the Act].
- It is not possible to lay down any single test as infallible or any single criterion as decisive, final and universal in application to determine whether a particular receipt is capital or revenue in nature. Hence, the capital or revenue nature of the receipt must be determined with reference to the facts and circumstances of each case.

3. Distinction between Capital Receipt and Revenue Receipt:

- **Capital Receipt :** Receipts which are non-recurring (not received again and again) by nature and whose benefit is enjoyed over a long period are called 'Capital Receipts', *e.g.* money brought into the business by the owner (capital invested), loan from bank, sale proceeds of fixed assets etc. Capital receipt is shown on the liabilities side of the Balance Sheet.
- **Revenue Receipt :** Receipts which are recurring (received again and again) by nature and which are available for meeting all day to day expenses (revenue expenditure) of a business concern are known as "Revenue receipts", e.g. sale proceeds of goods, interest received, commission received, rent received, dividend received etc.

- **Distinction between Capital Receipt and Revenue Receipt :**

Revenue Receipt	Capital Receipt
1. It has short-term effect. The benefit is enjoyed within one accounting period.	1. It has long-term effect. The benefit is enjoyed for many years in future.
2. It occurs repeatedly. It is recurring and regular.	2. It does not occur again and again. It is nonrecurring and irregular.
3. It is shown in profit and loss account on the credit side.	3. It is shown in the Balance Sheet on the liability side.
4. It does not produce capital receipt.	4. Capital receipt, when invested, produces revenue receipt e.g. when capital is invested by the owner, business gets revenue receipt (i.e. sale proceeds of goods etc.).
5. This does not increase or decrease the value of asset or liability.	5. The capital receipt decreases the value of asset or increases the value of liability e.g. sale of a fixed asset, loan from bank etc.
6. Sometimes, expenses of capital nature are to be incurred for revenue receipt, e.g. purchase of shares of a company is capital expenditure but dividend received on shares is a revenue receipt.	6. Sometimes expenses of revenue nature are to be incurred for such receipt e.g. on obtaining loan (a capital receipt) interest is paid until its repayment.
7. It is always taxable unless an exemption is provided.	7. It is not taxable unless it is specifically included in the definition of 'income'.

Few cases—

1. *PROFIT FROM BUSINESS TRANSACTIONS :* Profits arising from transactions which are entered into in the course of the business regularly carried on by the assessee, or are incidental to the business of the assessee would be revenue receipts chargeable to tax. For example, a banker's or financier's dealings in foreign exchange or sale of shares and securities, a shipbroker's purchases of ship in his own name, a share broker's purchase of shares on his own account would constitute transactions entered and yielding income in the ordinary course, and thereby are taxable as revenue in nature.

2. *AWARDS OF SPORTSMAN :* Awards in the case of a sportsman, who is not a professional, will not be liable to tax in his hands as it would not be in the nature of income.

3. *LUMP SUM PAYMENTS :* A lump sum payment made gratuitously (*i.e.* gratuity, leave encashment) or by way of compensation or otherwise to the widow or other legal heirs of an employee, who dies while still in active service, is not taxable as income under the Act. A lump sum paid in commutation of salaries, pension, royalties or other periodic payments would be income taxable under the respective heads. Amount received

under a policy of insurance would be a capital or revenue receipt depending upon the fact whether the policy was held by the assessee as a capital asset or as a trading asset.

4. *GOVERNMENT GRANTS : W.e.f.* 1.4.2015 the Central Government has introduced Income Computations and Disclosure Standards (ICDS), which are made applicable to all assessees following mercantile system of accounting, for the purpose of computing their income under the head PGBP and Other Sources.

   As per ICDS-VII, if Government Grant relates to the acquisition of any asset, then it shall be reduced from the 'actual cost' of such asset (hence it is a receipt of capital nature). All other grants are recognised as 'income' (hence they are of 'revenue nature').

5. *RECEIPTS ON ACCOUNT OF INVESTMENTS :* Premium or discount received by a debenture holder, being a capital receipt, would not be chargeable to tax. Premium on issue of shares or debentures, profit on forfeiture of shares and the fee charged on fresh issue of shares are capital receipts not chargeable to tax. The amount received by a shareholder on the winding up is a capital receipt (except where the receipt is a dividend under section 2(22)). But in case of a partnership, the amount receivable by an outgoing partner in respect of his share of the firm's profit whether, before or after its dissolution would be a revenue receipt chargeable to tax. Compensation received by a partner for relinquishing all his interests in the firm and amounts received in settlement of claim to an interest in the capital of a firm are capital receipts.

It is necessary to note that the capital or revenue nature of a receipt would have to be determined on the basis of the particular facts and circumstances of each case and the question whether a certain item is capital or revenue would be a mixed question of law and fact.

MULTIPLE CHOICE QUESTIONS (MCQs)
(Chapter 1 & 2)

1 Income tax is—

A. A direct tax; B. An indirect tax;

2 Income tax is levied by Central Government—

A. By withdrawing powers of Entry No. 97 of Union List;

B. By withdrawing powers of Entry No. 92C of Union List;

C. By withdrawing powers of Entry No. 92C of State List;

D. By withdrawing powers of Entry No. 82 of Union List.

3 What is Finance Act—

A. It is an annual act containing amendments of income tax act, wealth tax act etc. and tax rates;

B. It is a white paper which was presented for introduction of Income tax act;

C. It is an act containing 'Notifications', 'Circulars' issued by CBDT;

D. None of the above.

4 Charge of income tax, *prima-facie,* depends upon—

A. Residential status of the assessee; B. Age or type of the assessee;

C. Type of income of the assessee; D. All of the above.

5 Surcharge is applicable to—

A. Every assessee (whether individual, company, firm etc.) if their total income exceeds Rs. 1 crore

B. Every company assessee if its total income exceeds Rs. 1 crore;

C. Only domestic company if its total income exceeds Rs. 1 crore;

D. Surcharge is not applicable under income tax.

6 Surcharge is calculated as a '%' of—

A. Total income; B. Gross total income; C. Tax; D. Total income + tax thereon.

7 Rates of Surcharge in case of foreign companies is—

A. 5% of tax if their total income exceeds Rs. 1 crore;

B. 5% of tax if their total income exceeds Rs. 1 crore and 2% if total income exceeds Rs. 10 crore;

C. 2% of tax if their total income exceeds Rs. 1 crore and 5% if total income exceeds Rs. 10 crore;

D. 2% of tax if their total income exceeds Rs. 1 crore.

8 W.e.f. A.Y. 2019-20, Education Cess (EC) @ 2% and Secondary Higher Education Cess (SHEC) @ 1% is levied on—

A. Income tax + Surcharge (−) Marginal Relief ;

B. Income tax + Surcharge ;

C. Income tax ;

D. Not levied.

9 Total income of a domestic company is Rs. 1,01,00,000. Tax liability thereof will be—

A. Rs. 31,93,000; B. Rs. 32,24,000; C. Rs. 33,39,363; D. Rs. 30,90,000.

10 Total income of a domestic company is Rs. 10,05,00,000. Tax liability thereof will be—

A. Rs. 3,47,81,040; B. Rs. 3,37,68,000; C. Rs. 3,35,78,000; D. Rs. 3,39,04,000.

11 Rates of 'normal' income tax—

A. Remains same for all types of persons; B. Vary from person to person;

12 'Special' income tax rates—

A. Remains same for all types of persons; B. Vary from person to person;

13 Every 'assessee' will be a 'person'—

A. True; B. False;

14 Every 'person' will be an 'assessee'—

A. True; B. False;

15 The term 'income' includes, the following types of income—

A. Legal; B. Illegal; C. Both;

16 Describe the status of the following person (i.e. individual, HUF, Firm, Company etc.)

(a) X and Y are legal heirs of Z. Z died in 2014 and X and Y carry on his business without entering into a partnership—

A. Firm; B. Body of Individual;

C. Company; D. Limited Liability Partnership.

(b) University of Delhi—

A. Firm; B. Body of Individual;

C. Company; D. Other Artificial Juridical Person.

(c) Municipal Corporation of Delhi (MCD)—

A. Local Authority; B. Body of Individual;

C. Company; D. Other Artificial Juridical Person.

(d) A joint family of Mr. Ashok, Mrs. Ashok and their son Tanishq and daughter Tanisha—

A. Firm; B. Body of Individual;

C. H.U. D. Other Artificial Juridical Person.

(e) A Hindu Undivided Family (HUF) includes—

A. Families of Jains, Sikhs, Buddhist; B. Families of Muslims, Christens;

C. Both of the above; D. None of the above.

17 Total income of Mr. Hari (resident) age 25 years, is Rs. 5,50,000. Total taxes payable will be—

A. Rs.23,180; B. Rs.23,400;

C. Rs.22,500; C. Rs.20,600.

18 Total income of Mr. Hariom (resident) age 85 years, is Rs. 5,50,000. Total taxes payable will be—

A. Rs.10,300; B. Rs.23,180;

C. Rs.10,000; D. Rs.10,400;

19 Total income of Mr. Harry (non-resident) age 85 years, is Rs. 5,50,000. Taxes payable will be—

A. Rs.23,180; B. Rs.23,400;

C. Rs.22,500; C. Rs.20,600.

20 Total income of X Ltd. (Domestic company) includes Rs. 2,00,000 from business and Rs. 1,00,000 from long term capital gains. Total taxes payable will be—

A. Rs.83,200; B. Rs.82,400;

C. Rs.90,000; D. Rs.92,700;

21 Total income of Mr. Hari (resident) age 45 years is Rs.20,000. He has earned this income from lottery winnings. He has no other income. Total taxes payable by him will be—

A. Nil, since income does not exceed Rs. 2,50,000; B. Rs.3,640;

C. Rs.1,030; D. Rs.3,090.

22 Assessment year can be of a period of :

A. Only more than 12 months; B. 12 months and less than 12 months;

C. Only 12 months; D. 12 months and more than 12 months.

23 Previous year can be of a period of :

A. Only more than 12 months; B. 12 months and less than 12 months;

C. Only 12 months; D. 12 months and more than 12 months.

24 Year in which income is taxable is known as_____and the year in which income is earned is known as_____.

A. Previous year, Assessment year; B. Assessment year, Previous year;

C. Assessment year, Assessment year; D. Previous year, Previous year.

25 All assessees are required to follow:

A. Uniform previous year which must be calendar year only;

B. Uniform previous year which must be financial year only;

C. Any period of 12 months;

D. Period starting from 1st July to 30th June only.

26 First previous year in case of a business/profession newly set up on 31.3.2016 would:

A. Start from 1st April, 2015 and end on 31st March, 2016

B. Start from 31.3.2016 and will end on 31.3.2016

C. Start from 1st January, 2016 and end on 31st December, 2016

D. Start from 1st January, 2016 and will end on 31st March, 2016.

27 A person follows calendar year for accounting. For taxation, he has to follow:

A. Calendar year only - 1st January to 31st December

B. Financial year only - 1st April to 31st March

C. Any of the Calendar or Financial year as per his choice

D. He will to follow extended year from 1st January to next 31st March (a period of 15 months).

28 In which of the following cases, income of previous year is assessable in the previous year itself:

A. Assessment of persons leaving India; B. A person in employment in India;

C. A person who is into illegal business; D. A person who is running a charitable institution.

29 In which of the following cases, Assessing Officer has the discretion to assess the income of previous year in previous year itself or in the subsequent assessment year:

A. Shipping business of non-residents;

B. Assessment of Association of Persons or Body of Individuals formed for a particular event or purpose;

C. Assessment of persons likely to transfer property to avoid tax;

D. Discontinued business.

30 In case of a female individual, who is of 59 years of age, what is the maximum exemption limit for A.Y. 2020-21 :

A. Rs.2,50,000; B. Rs. 3,00,000;

C. Rs.5,00,000; D. Nil.

31 In case of a female individual (who is a non-resident), whose age is 69 years, what is the maximum exemption limit for A.Y. 2020-21 :

A. Rs. 2,50,000; B. Rs. 3,00,000;

C. Rs.5,00,000; D. Nil.

32 For A.Y. 2020-21, calculate the amount of rebate available under section 87A in case of a resident individual (age 25 years) whose total income during the P.Y. 2019-20 is Rs. 5,00,000.

A. Nil; B. Rs. 5,000;

C. Rs. 2,000; D. Rs. 2,500.

33 Calculate the amount of tax for A.Y. 2020-21 in case of a resident individual (age 25 years) having total income of Rs. 5,00,000 :

A. Rs. 1,250 B. Rs. 1,300

C. Nil D. Rs. 1,040

34 Total income is to be rounded off to nearest multiple of_____ and tax is to be rounded off to nearest multiple of _____.

A. Rs.10, Rs.1 B. Rs.100, Rs.10

C. Rs.10, Rs.10 D. Rs.1, Rs.1

35 Rates of Surcharge in case of domestic companies is—

A. 12% of tax if their total income exceeds Rs. 1 crore;

B. 7% of tax if their total income exceeds Rs. 1 crore and 12% if total income exceeds Rs. 10 crore;

C. 12% of tax if their total income exceeds Rs. 1 crore and 7% if total income exceeds Rs. 10 crore;

D. 7% of tax if their total income exceeds Rs. 1 crore.

36 Which of the following is not an example of capital receipt —

A. Money received on issue of shares
B. Money received on sale of land
C. Money received on sale of house hold goods
D. None of the above

37 Income tax in India is charged at the rate prescribed by—

A. The Finance Act
B. The Income Tax Act
C. The Central Board of Direct Taxes
D. The Ministry of Finance

38 Under Income Tax Act, 1961, which of the following income is not included in the term 'income' —

A. Profits and gains
B. Profit in lieu of salary
C. Dividend
D. Reimbursement of travelling expenses.

39 Compensation received for the loss of a capital asset is a receipt of a _____ nature :

A. Revenue
B. Capital
C. Exempt
D. Taxable

40 _____ is levied on the total income of every person having income exceeding maximum amount not chargeable to tax :

A. Income tax
B. Surcharge
C. Education Cess
D. Secondary Higher Education Cess

41 Aggregate of incomes computed under 5 heads of income after applying clubbing provisions and making adjustments of set off and carry forward of losses is known as _____ :

A. Taxable income
B. Total Income
C. Gross Total Income
D. Net Income

42 _____ are binding on the department, not on the assessee but assessee can take benefit of them _____ :

A. Notifications
B. Trade Notices
C. Circulars
D. Press Releases.

43 Income of a business commenced on 1st March, 2017 will be assessed during the assessment year _____:

A. A.Y. 2016-17
B. A.Y. 2017-18

44 Which of the following is treated as an assessee:

(a) Mr. 'A' fails to deduct TDS
(b) Mr. 'B' is a trustee of a trust
(c) Mr. 'C' has a lottery income of Rs. 10,000 only
(d) All of the above

45 As per section 1 of Income tax Act, 1961, this Act applies to the whole of India. 'India' for this purpose means :

(a) Territory of India as per Article 1 of COI
(b) Territorial waters of India
(c) Both of the above
(d) None of the above

46 Which of the following is not treated as a 'person':

(a) University of Delhi

(b) Ram, Shyam joins hands for providing services. No 'Deed' is executed between them.

(c) Ramesh Suresh entered into an agreement for sharing a common premise for their residential purpose.

(d) Muslim Undivided Families

47 What tax rates are provided by Finance Act 2019 for an individual whose date of birth is 31.3.1960 :

(a)
Upto Rs.2.5 lakh	: NIL
> Rs.2.5 – Rs.5 lakh	: 5%
> Rs.5 – Rs.10 lakh	: 20%
> Rs.10 Lakh	: 30%

(b)
Upto Rs.3 lakh	: NIL
> Rs.3 – Rs.5 lakh	: 5%
> Rs.5 – Rs.10 lakh	: 20%
> Rs.10 Lakh	: 30%

(c)
Upto Rs.5 lakh	: NIL
> Rs.5 – Rs.10 lakh	: 20%
> Rs.10 Lakh	: 30%

48 What will be the amount of tax in case of Mr. Ram a resident of 65 years having income from salary of Rs.2,80,000 and LTCG of Rs.50,000 on sale of a plot of land. Assume P.Y. is 2019-20 :

(a) Rs.10,400

(b) Rs.4,120

(c) Rs.10,000

(d) Nil

49 What will be the amount of tax in case of Mr. Ram (age 65 years) having income from salary of Rs.2,80,000 and Lottery income of Rs.50,000. Assume incomes pertain to P.Y. 2019-20 :

(a) Rs.15,600

(b) Rs.15,000

(c) Nil

(d) Rs.4,120

50 What will be the amount of tax in case of Mr. John (age 65 years, a non-resident) having income from salary of Rs.2,80,000 and LTCG of Rs.50,000 on sale of a plot of land. Assume incomes pertain to P.Y. 2019-20 :

(a) Rs.7,725

(b) Rs.8,240

(c) Rs.11,845

(d) Rs.11,960

51 What will be the amount of tax in case of Mr. John (a non-resident of the age of 65 years) having income from salary of Rs.2,60,000 and LTCG of Rs.90,000 on sale of a plot of land. Assume incomes pertain to P.Y. 2019-20 :

(a) Rs.10,300

(b) Rs.18,540

(c) Rs.19,055

(d) Rs.19,240

52 Which of the following is binding on assessee:

(a) Circulars issued by CBDT

(b) Trade Notices issued by CBDT

(c) Notification issued by CBDT

(d) Clarifications issued by CBDT

53 What is the maximum amount not chargeable to tax in case of an individual who is a resident in India and is of the age of 82 years during P.Y. 2019-20 :

(a) Rs. 2,00,000
(b) Rs. 2,50,000
(c) Rs. 5,00,000
(d) NIL

54 What is the maximum amount not chargeable to tax in case of an individual who is a non-resident in India and is of the age of 82 years during P.Y. 2019-20 :

(a) Rs. 2,50,000
(b) Rs. 2,00,000
(c) Rs. 5,00,000
(d) NIL

55 Tax on agriculture income :

(a) Can be imposed by Central Govt.
(b) Can be imposed by State Govt.
(c) Cannot be imposed by any Govt.
(d) Can be imposed by both the Govts.

56 What is "Maximum Marginal Rate":

(a) The highest of tax rate applicable to a domestic company
(b) The highest of tax rate applicable to a foreign company
(c) The highest of slab applicable to an individual
(d) As may be decided by A.O

ANSWERS TO MCQs

Question	Answer	Question	Answer	Question	Answer	Question	Answer	Question	Answer
1	A	2	D	3	A	4	A	5	A
6	C	7	C	8	D	9	B	10	D
11	B	12	A	13	A	14	B	15	C
16(A)	B	16(B)	D	16(C)	A	16(D)	C	16(E)	A
17	B	18	D	19	B	20	A	21	B
22	C	23	B	24	B	25	B	26	B
27	B	28	A	29	D	30	A	31	A
32	D	33	C	34	C	35	B	36	C
37	A	38	D	39	B	40	A	41	C
42	C	43	B	44	D	45	C	46	C
47	B	48	D	49	C	50	D	51	D
52	C	53	C	54	A	55	B	56	C



CHAPTER 3
RESIDENTIAL STATUS

3.1 Tax liability depends upon residential status of the assessee [Section 5]

Residential status of the assessee is a vital factor in determining his total income and computing tax thereon. Total income of an assessee cannot be computed unless we know residential status of the assessee during the previous year. Scope of total income may vary depending upon the residential status of the assessee. According to section 6, assessee can either be:

(i) Resident in India; or

(ii) Non-resident in India

However, in case of individual and HUF, 'Resident in India', will be further categorised into:

(a) Resident and *ordinarily* resident in India; or

(b) Resident but *not ordinarily* resident in India.

3.2 Residential status of an 'Individual' [Section 6(1) and 6(6)]

1. When can an 'Individual' will be 'Resident' in India – [Section 6(1)]

An individual is said to be resident in India in any previous year, if he satisfies *at least one* of the following *Basic Conditions*—

(a) he is in India in that previous year for a period of 182 days or more; *OR*

(b) he is in India in that previous year for a period of 60 days or more *and* 365 days or more during the 4 years immediately preceding the previous year.

EXCEPTIONS TO THE ABOVE RULE : In the following cases, the period of "60 days" referred to in clause (b) above, has been extended to "182 days", therefore condition (b) of the basic conditions will become irrelevant:

(i) Employment outside or member of the crew : An individual who is a citizen of India and who leaves India in any previous year for the purpose of employment outside India *or* a member of the crew of an Indian ship being a citizen of India who leaves India in any previous year.

(ii) Person of Indian origin or citizen of India : In case of an individual being a citizen of India, or a person of Indian origin, who, being outside India, comes on a visit to India in any P.Y.

2. When can an 'Individual' will be 'Ordinary Resident' in India – [Section 6(6)(a)]

An individual is said to be an "ordinarily resident" in India in any previous year if such individual satisfies *both* the following *additional conditions*—

(a) has been a resident in India *at least 2 out of 10 previous years* immediately preceding the relevant previous year; *and*

(b) has been in India for a period of *730 days or more during 7 years* immediately preceding the relevant previous year.

Therefore—

Status of an Individual will be—	*Basic condition*	*Additional condition(s)*
Resident and ordinarily Resident	Satisfies (any one or both)	Satisfies both the conditions
Resident but not ordinarily Resident	Satisfies (any one or both)	May or may not satisfy any of the additional condition
Non Resident if	Fails to satisfy	Not required to check

3. Notes—

- If the individual satisfies both the conditions mentioned above, he is a resident and ordinarily resident but if only one or none of the conditions are satisfied, the individual is a resident but not ordinarily resident.
- A person is said to be of **Indian origin** if he or either of his parents or either of his grandparents were born in undivided India. Grandparent includes both maternal and paternal.
- The term **"stay in India"** includes stay in the territorial waters of India (*i.e.* 12 nautical miles into the sea from the Indian coastline). Even the stay in a ship or boat moored in the territorial waters of India would be sufficient to make the individual resident in India.
- It is not necessary that the period of stay must be continuous or at the same place.
- In computing the period of 182 days, the day he enters India and the day he leaves India should both be treated as stay in India. However, in borderline cases where stay in India is near about 182 days his stay in India has to be calculated on hourly basis and a total of 24 hours will be taken as one day. For example, if a person is in India for 82 days and 6 hours and then again he comes to India for 20 days and 20 hours, his stay in India will be taken as 103 days.
- *Meaning of 'employment outside India'-*

  Point-1: Where an *unemployed person* leaves India for the purpose of employment outside India, he can take benefit of the exception given as above.

  Point -2: An individual need not be an unemployed person who leaves India for employment outside India - *British Gas India (P.) Ltd.* (AAR - New Delhi). In other words, there may be two cases, where one can take benefit of this section, *i*) the unemployed person leaving India for taking employment outside India, *ii*) the person employed in India who leaves India for the purpose of such current employment.

  For example, Mr. Ram, an employees of a private company in Delhi, leave India for the purpose of executing some overseas projects of its employer company. So in the instant case, Mr. Ram can take benefit of the exception given as above.

  Point -3: Employment includes business or profession also, *i.e.* if any person leaves India for the purpose of setting up a business or profession outside India, he can enjoy the benefit of the above exception.

Problem 3.1 : *Mr. A returns to U.K. on 29.1.2016, after about 30 years of his stay in India. Later on, he returns to India in 10.6.2018 to join a UK company as its Overseas Branch Manager. Determine his residential status for the assessment year 2019-20.*

Solution : Checking the conditions of being resident : For the assessment year 2020-21, the previous year is 2019-20. During 2019-20, Mr. A is in India for 296 days (*i.e.* 21 + 31 + 31 + 30 + 31 + 30 + 31 + 31 + 29 + 31). As the basic condition for being resident is satisfied, he is, therefore, resident in India.

Checking the conditions of being ordinary resident : Further, he is resident in India for 2 years out of 10 years

immediately preceding the previous year 2019–20. Similarly, he has stayed for more than 730 days during the 7 years immediately preceding the previous year 2019–20. He is, therefore, Resident and Ordinarily Resident in India for the assessment year 2020-21.

Problem 3.2 : *Shane Warne, the Australian cricketer comes to India for 100 days every year. Find out his residential status for the A.Y. 2019-20.*

Solution : For the assessment year 2019-20, the relevant previous year is 2018-19. Therefore, residential status will be checked for previous year 2018-19.

Checking the conditions of being resident : The total stay of Shane Warne in the last 4 years preceding the previous year is 400 days and his stay in the previous year is 100 days. Therefore, since he has satisfied the condition (*b*) of section 6(1), he is a resident.

Checking the conditions of being ordinary resident: Since his total stay in India in the last 7 years preceding the previous year is 700 days, he does not satisfy the minimum requirement of 730 days in 7 years. Any one of the conditions referred in section 6(6) not being satisfied, the individual is resident but not ordinarily resident. Therefore, the residential status of Shane Warne for the assessment year 2019-20, is resident but not ordinarily resident.

Problem 3.3 : *Mr. Mickle Jackson comes to India for the first time during the P.Y.2014-15. During the financial years 2014-15, 2015-16, 2016-17, 2017-18 and 2018-19, he was in India for 155 days, 60 days, 90 days, 50 days and 70 days respectively. Determine his residential status for the assessment year 2019-20.*

Solution : For assessment year 2019-20, relevant previous year is 2018-19. During previous year 2018-19, Mr. Mickle Jackson was in India for 70 days and during the 4 years preceding the previous year 2018-19, he was in India for 355 days (*i.e.* 155+ 60+ 90+ 50 days).

Since, he does not satisfy the conditions of section 6(1), therefore, he is a non-resident for the previous year 2018-19.

Problem 3.4 : *Mr. Morimoto, a Japanese citizen left India after a stay of 10 years on 1.6.2016. During the financial year 2017-18, he comes to India for 46 days. Later, he returns to India for 1 year on 10.10.2018. Determine his residential status for the A.Y.2019-20.*

Solution : For assessment year 2019-20, relevant previous year is 2018-19. Stay during previous year 2018-19, is 173 days (*i.e.* 22+ 30+ 31+ 31+ 28+ 31 days). His stay in the last 4 years is:

P.Y. 2017-18	:	46 days
P.Y. 2016-17	:	62 days (i.e. 30+31+1)
P.Y. 2015-16	:	365 days(since he left India after 10 years)
P.Y. 2014-15	:	365 days(since he left India after 10 years)
Total		**838 days**

Mr. Morimoto is a resident since his stay in the previous year 2018-19 is 173 days and in the last 4 years is more than 365 days.

For the purpose of being ordinarily resident, it is evident from the above calculations, that-

(i) his stay in the last 7 years is more than 730 days and

(ii) since he was in India for 10 years prior to 1.6.2016, he was a resident in at least 2 out of the last 10 years preceding the relevant previous year.

Therefore, Mr. Morimoto is a resident and ordinarily resident for the A.Y.2019-20.

Problem 3.5 : *Mr. Dayal, an Indian citizen, leaves India on 22.9.2018 for the first time, to work as an officer of a company in Canada. Determine his residential status for the A.Y. 2019-20.*

Solution : For assessment year 2019-20, relevant previous year is 2018-19. During the previous year 2018-19, Mr. Dayal was in India for 175 days (*i.e.* 30+31+30+31+31+22 days). He does not satisfy the minimum criteria of 182 days. Also, since he is an Indian citizen leaving India for the purposes of employment, the second condition under section 6(1) is not applicable to him.

Therefore, Mr. Dayal is a non-resident for the A.Y.2019-20.

3.3 Residential status of HUF, Firm, AOP [Section 6(2)]

1. When can they will be 'Resident' [Section 6(2)]

A HUF, firm, or an association of persons would be resident in India in any previous year if the control and management of its affairs is situated *wholly or partly* in India during the relevant previous year, *i.e.*, if even part of their control and management is situated in India, they will be called resident in India.

2. When can a HUF will be 'Ordinary Resident' [Section 6(6)(*b*)]

A HUF is said to be an "ordinarily resident" in India in any previous year if the Karta thereof satisfies *both* the following *conditions*—

(a) he has been a resident in India *at least 2 out of 10 previous years* immediately preceding the relevant previous year*; and*

(b) he has been in India for a period of *730 days or more during 7 years* immediately preceding the relevant previous year.

Period of all Kartas will be aggregated to determine the period of stay of the Karta of the HUF, for determining the residential status of the Karta of the HUF- *Marimuthu Pillai* v. *CIT*

Note : Firm and Association of persons (AOP) cannot be 'not ordinarily resident'.

3. When can they will be 'Non-resident'

If the control and management of the affairs of the HUF, firm or AOP is situated *wholly* outside India, they will be regarded as non-resident.

'Control and management' refers to the central control and management and not to the carrying on of day-to-day business by servants, employees or agents. The business may be done from outside India and yet its control and management may be wholly within India. *Therefore, control and management of a business is said to be situated at a place where the head and brain of the adventure is situated.*

Problem 3.6 : *The business of a HUF is transacted from America and all the policy decisions are taken there. Mr. Ram, the karta of the HUF, who was born in Kolkata, visits India during the P.Y. 2018-19 after 15 years. He comes to India on 1.4.2018 and leaves for America on 1.12.2018. Determine the residential status of Mr. Ram and the HUF for A.Y. 2019-20.*

Solution : Residential status of Mr. Ram : During the P.Y.2018-19, Mr. Ram has stayed in India for 245 days (*i.e.* 30+31+30+31+31+ 30+31+30+1 days). Therefore, he is resident. However, since he has come to India after 15 years, he cannot satisfy any of the conditions for being ordinarily resident. Therefore, the residential status of Mr. Ram for the P.Y. 2018-19 is resident but not ordinarily resident.

Residential status of HUF : Since the business of the HUF is transacted from America and nothing is mentioned regarding its control and management, it is assumed that the control and management is also wholly outside India. Therefore, the HUF is a non-resident for the P.Y. 2018-19.

3.4 Residential status of 'Companies' [Section 6(3)]

Residential status of a company will be determined as under :

Indian Company	An Indian company (*i.e.* a company which is formed and registered in India) will always be resident in India, ♦ EVEN IF it is controlled from a place outside India, or ♦ EVEN IF its 51% or more shareholders are non-residents.

Foreign Company	(a) *If during the previous year its turnover or gross receipts does not exceed Rs.50 Crore* : It will always be a non-resident in India. [*Vide* **Circular No 08 of 2017** dated 23rd February, 2017, CBDT has clarified that the POEM provisions will not apply to a company having turnover or gross receipts of Rs.50 crore or less in a financial year] (b) *If during the previous year its turnover or gross receipts exceed Rs.50 Crore* : It will be a resident in India if during the previous year, the Place Of Effective Management (POEM) thereof is in India.

Meaning of POEM (Explanation) : "Place of effective management" means a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole are, in substance made.

Thus, every Indian company will be a resident in India irrespective of the fact whether its POEM is in India or outside. But a foreign company, will become resident in India only if its POEM is in India.

Guiding principles for determination of POEM of a foreign company [Circular No 6/2017]

Place of Effective management (POEM) is an internationally recognised test for determination of residence of a foreign company. The guiding principles to be followed for determination of POEM are enumerated as follows :

Step 1 : Decide if the foreign company is engaged in "active business outside India" or not.

Step 2 : If the foreign company is engaged in "active business outside India" then the place where POEM is situated will be determined as under :

If the BOD exercises its power of management	The POEM shall be presumed to be outside India if the majority of the meetings of the board of directors (BOD) are held outside India. But if majority of these board meetings are held in India, then its POEM will be deemed to be situated in India.
If the BOD does not exercise its power of management	If the BOD does not exercise its power of management but such powers are being exercised by either the holding company or any other person(s) resident in India, then the POEM shall be considered to be in India.

Step 3 : If the foreign company is NOT engaged in "active business outside India" then the place where POEM is situated will be determined as under :

- Identification or ascertaining the person or persons who actually make the key management and commercial decision for conduct of the company business as a whole
- Determination of place where these decisions are in fact being made.

Notes :

1. The place where these management decisions are taken would be more important than the place where such decisions are implemented. For the purpose of determination of POEM it is the substance which would be conclusive rather than the form.

2. The use of modern technology impacts the POEM in many ways. It is no longer necessary for the persons taking decision to be physically present at a particular location. Therefore physical location of board meeting or executive committee meeting or meeting of senior management may not be where the key decisions are in substance being made. In such cases the place where the directors or the persons taking the decisions or majority of them usually reside may also be a relevant factor.

3. A company will be said to be engaged in "active business outside India" if ALL the following conditions are satisfied :

Condition 1	Its passive income is not more than 50% of its total income. *Where* : *Passive Income* means the income from the transactions where both the purchase and sale of goods is from/to its associated enterprises and it includes income by way of royalty, dividend, capital

	gains, interest or rental income. Income shall be computed as per tax laws of the country of incorporation.
Condition 2	Value of its assets situated in India < 50% of the total value of its assets. *Where* : *Value of Assets* means : ♦ In case of individual depreciable asset : Average of its value for tax purposes in the country of foreign company at the beginning and at end of the P.Y; ♦ In case of block of depreciable asset : Average of the value of the block for tax purposes in the country of foreign company at the beginning and at end of the previous year; ♦ In case of any other asset : Its value as per books of account
Condition 3	Its total numbers of employees located in India or who are resident in India < 50% of its total number of employees. *Where* : *Number of employees* shall be the average of the number of employees as at the beginning and at the end of the P.Y. and includes contractual employees.
Condition 4	The payroll expenses of such employees < 50% of its total payroll expenditure. *Where* : *Payroll* shall include salaries, wages, bonus and all other employee compensation including related pension and social costs borne by the employer.

Problem 3.7 : *Company A Co. is a sourcing entity, for an Indian multinational group, incorporated in country X and is 100% subsidiary of Indian company (B Co.). The warehouses and stock in them are the only assets of the company and are located in country X. All the employees of the company are also in country X. The average income wise breakup of the company's total income for three years is, :*

(a) 30% of income is from transaction where purchases are made from parties which are non-associated enterprises and sold to associated enterprises;

(b) 30% of income is from transaction where purchases are made from associated enterprises and sold to associated enterprises;

(c) 30% of income is from transaction where purchases are made from associated enterprises and sold to non-associated enterprises; and

(d) 10% of the income is by way of interest.

Solution : In this case passive income is 40% of the total income of the company. The passive income consists of:

(a) 30% income from the transaction where both purchase and sale is from/to associated enterprises; and

(b) 10% income from interest.

The A Co. satisfies the first requirement of the test of active business outside India. Since no assets or employees of A Co. are in India the other requirements of the test is also satisfied. Therefore company is engaged in active business outside India.

Problem 3.8 : *The other facts remain same as that in* ***Problem*** **2.7** *with the variation that A Co. has a total of 50 employees. 47 employees, managing the warehouse, storekeeping and accounts of the company, are located in country X. The Managing Director (MD), Chief Executive Officer (CEO) and sales head are resident in India. The total annual payroll expenditure on these 50 employees is of Rs. 5 crore. The annual payroll expenditure in respect of MD, CEO and sales head is of Rs. 3 crore.*

Solution : Although the first limb of active business test is satisfied by A Co. as only 40% of its total income is passive in nature. Further, more than 50% of the employees are also situated outside India. All the assets are situated outside India. However, the payroll expenditure in respect of the MD, the CEO and the sales head being employees resident in India exceeds 50% of the total payroll expenditure. Therefore, A Co. is not engaged in active business outside India.

Problem 3.9 : *The basic facts are same as in Problem 2.7. Further facts are that all the directors of the A Co. are Indian residents. During the relevant previous year 5 meetings of the Board of Directors is held of which two were held in India and 3 outside India with two in country X and one in country Y.*

Solution : The A Co. is engaged in active business outside India as the facts indicated in Example 1 establish. The majority of board meetings have been held outside India. Therefore, the POEM of A Co. shall be presumed to be outside India.

3.5 Residential status of 'Other person' [Section 6(4)]

Every other person (Local authorities, artificial juridical persons etc.) would be resident in India if the control and management of its affairs is situated wholly or partly in India. Where the control and management of the affairs is situated wholly outside India, they would become non-residents.



CHAPTER 4
INCIDENCE OF TAX

4.1 Incidence of tax in case of INDIVIDUAL and HUF [Section 5]

Nature of Incomes	*Taxable or not*		
	If such person is OR	*If such person is NOR*	*If such person is NR*
1. Income received in India whether accrued or arisen in India or outside India. ***e.g.—*** *Mr. X has a house property in California (USA), rent from such property has been received in India. In this case income is received in India but it is accrued outside India i.e. in California.*	Taxable	Taxable	Taxable
2. Income deemed to be received in India whether accrued or arisen in India or outside India. (*vide* section 7) ***e.g.—*** *Mr. X won a lottery of Rs. 5,00,000. After making TDS of Rs. 1,50,000, net payment of Rs. 3,50,000 has been made to him. Now, Rs.1,50,000 is an 'income deemed to have been received in India'.*	Taxable	Taxable	Taxable
3. Income accruing or arising in India whether received in India or outside India. ***e.g.—*** *On 30th December of the previous year, Mr. X has purchased debentures of ABC Ltd. of Rs. 1,00,000 having bearing interest rate of 9% per annum. Such interest becomes due on 30th June and 31st December every year. So now, interest of Rs.4,500 (i.e. Rs. 9,000 × 50%) is an income which is accruing or arising in India.*	Taxable	Taxable	Taxable
4. Income deemed to accruing or arising in India whether received in India or outside India. (*vide* section 9) ***e.g.—*** *Mr. X sells his house property of Delhi to his friend Mr. Y. Such transaction has taken place in USA and the consideration for sale is also paid there. In this case, income (i.e. capital gains) is accruing outside India but as per section 9, it is an income which is deemed to have been accrued in India as the 'capital assets' is situated in India.*	Taxable	Taxable	Taxable
5. Incomes received and accrued or arisen outside India from : ♦ a **business** *controlled* from India, or ♦ **profession** *set-up* in India. ***e.g.—*** *Mr. X is an agent of ABC Ltd. an Indian company. He accepts orders for ABC Ltd and receives his commission in London. In this case, income of Mr. X is accrued and received outside India but from a business controlled from India i.e.*	Taxable	Taxable	Not Taxable

ABC Ltd. So now taxability of such income depends upon the residential status of Mr. X.			
6. Incomes received and accrued or arisen outside India from ♦ a **business** *controlled* from outside India, or ♦ **profession** *set-up* in outside India. ***e.g.***— *Mr. X makes a capital contribution to a partnership firm (a business firm engaged in manufacturing) located and controlled from London. He receives profit share and interest on capital from such firm outside India. In this case the profit share and interest so received by Mr. X is an income which is accruing and is being received outside India from a business controlled from outside India. So now taxability of these incomes depends upon the residential status of Mr. X.*	Taxable	Not Taxable	Not Taxable
7. Incomes received and accrued or arisen outside India from any other source. ***e.g.***— *Mr. X has rented a property in California (USA) at a rent of $1,000 pm to a tenant of California. Such rent is received by Mr. X in California itself. In this case income (i.e. rent) is received and accrued outside India from any other source i.e. 'income from house property' and its taxability depends upon the residential status of Mr. X.*	Taxable	Not Taxable	Not Taxable
8. Incomes received and accrued or arisen outside India in earlier years but later on remitted to India during the previous year.	Not Taxable	Not Taxable	Not Taxable

Where—

OR : Ordinarily Resident
NOR : Not Ordinarily Resident
NR : Non-Resident

4.2 Summary of tax incidence in case of COMPANY, FIRM, AOP/BOI etc.

Nature of Incomes	*Taxable or not*	
	If such person is R	*If such person is NR*
1. *Indian income i.e.* Income received or deemed to received in India whether accrued or arisen in India or outside India.	Taxable	Taxable
2. *Indian income i.e.* Income accruing or arising or deemed to be accrued or arisen in India whether received in India or outside India.	Taxable	Taxable
3. *Foreign income i.e.* Incomes which— ♦ is NOT received or deemed to be received in India AND ♦ is NOT accrued/arisen or deemed to be accrued/arisen in India.	Taxable	Not Taxable
4. Incomes received and accrued or arisen outside India in earlier years but later on remitted to India during the previous year.	Not Taxable	Not Taxable

4.3 'Received in India' – Meaning

For the purpose of above section 'received' means the receipt of income on the first occasion. The place of its receipt shall be the place where it is received for the first time and not the place of receipt on subsequent remittance. Thus, foreign income of a non-resident is not taxable, even if, it is remitted to India unless it is received or deemed to be received in India

4.4 'Income deemed to be received in India' – Meaning [Section 7]

Income 'deemed to be received' means, the income which has not actually been received, but it is deemed to be received under this Act. The following incomes shall be deemed to be received in the previous year:

(i) the annual accretion to the account of employee participating in a recognised provident fund, *i.e.*
   → employer's contribution in excess of 12% of the salary of the employee;
   → interest credited at the rate in excess of 9.5% p.a.
(ii) taxable portion of transferred balance of unrecognised provident fund;
(iii) employer's contribution to the account of employee under a notified pension scheme referred to in section 80CCD;
(iv) Tax deducted at source is deemed to be received in the hands of the payee (Section 198);
(v) Deemed profit referred to in section 41.

4.5 'Accrue or arise' – Meaning

'Accrue' refers to the right to receive income, whereas 'due' refers to the right to enforce payment of the accrued income. Therefore, income can be said to be accrue when it becomes due. For example salary for work done in December will accrue throughout the month, day to day, but will become due on the salary bill being passed on 31st December or 1st January. Similarly, on Government securities, interest payable on specified dates arise during the period of holding, day to day, but will become due for payment on the specified dates.

Accrual of business or profession income depends upon the method of accounting employed by the assessee during the previous year- *CIT* v. *Ashokbhai Chimanbhai* [1965] (SC).

It must be noted that income which has been taxed on accrual basis cannot be assessed again on receipt basis, as it will amount to double taxation.

4.6 'Income deemed to have been accrued or arisen in India' [Section 9]

Certain types of income are deemed to accrue or arise in India even though they may actually accrue or arise outside India. The categories of income which are deemed to accrue or arise in India are:

(i) Income accruing or arising to an assessee at any place outside India, (directly or indirectly),:
   - through or from any **business connection** in India,
   - through or from any **property** in India,
   - through or from any **asset or source** of income in India,
   - through the transfer of a **capital asset** situated in India.

(ii) Income falling under the head **'Salaries'** is deemed to accrue or arise in India if it is earned in India *i.e.* if services are rendered in India. Further, salary payable for rest period or leave period (which may be preceded and succeeded by services rendered in India) shall also be regarded as salary earned in India and thus income deemed to accrue or arise in India.

(iii) Income from 'Salaries' which is payable by the Government to a citizen of India for services rendered outside India is deemed to accrue or arise in India. (However, allowances and perquisites paid outside India by the Government are exempt).

(iv) **Dividend** paid by an Indian company outside India.

(v) **Interest –**Section 9(1)(*v*).

(vi) **Royalty –**Section 9(1)(*vi*).

(vii) Fees for **technical services –** Section 9(1)(*vii*).

(viii) Income of the nature referred to in section 2(24)(xviia) [*i.e.* Gifts], arising from
   ✓ any sum of money paid, or any property situate in India transferred,

- ✓ on or after the 5th July, 2019
- ✓ BY a person resident in India TO a person outside India.

Above clause (viii) inserted by Finance Act, 2019 w.e.f. A.Y. 2020-21. This clause will apply is ALL the following conditions are satisfied :

Condition 1	Payer/transferor is a resident in India (OR/NOR)
Condition 2	Payee/transferee is a person outside India (*i.e.* a non-resident or a foreign company)
Condition 3	Income is on or after 5.7.2019 by way of any sum of money paid, or any property situate in India transferred (*i.e.* gift)
Condition 4	Income arises outside India and it does not fall in any of the exceptions of section 56(2)(x)

Explanation 4 to section 9(*1*)(*i*) : For the removal of doubts, it is hereby clarified that the expression "through" shall mean and include "by means of", "in consequence of" or "by reason of".

Explanation 5 to section 9(*1*)(*i*) : For the removal of doubts, it is hereby clarified that an asset or a capital asset being any share or interest in a company or entity registered or incorporated outside India shall be deemed to be situated in India, if the share or interest derives, directly or indirectly, its value substantially from the assets located in India.

Explanation 5A to section 9(1)(*i*).—For the removal of doubts, it is hereby clarified that nothing contained in Explanation 5 shall apply to an asset or capital asset mentioned therein, which is held by a non-resident by way of investment, directly or indirectly, in :

- ♦ a FII as referred to in clause (a) of the Explanation to section 115AD;
- ♦ Category-I or Category-II foreign portfolio investor under the SEBI (Foreign Portfolio Investors) Regulations, 2014.

4.7 'Income from business connection'

For the purpose of section 9, if any income, which is *actually* accruing outside India, will be *deemed* to be accruing in India if such income is on account of any **'Business connection'** in India. Therefore, there are following two conditions, on fulfillment thereof, any income which is accrued outside India will be deemed to be accrued in India—

Condition 1	Assessee has a 'business connection' in India.
Condition 2	By virtue of such 'business connection' in India, income actually arises outside India.

It includes a professional connection also. It includes a person acting on behalf of a non-resident and who performs any one or more of the following –

Activity 1 : He exercises in India an *authority to conclude contracts* on behalf of non-resident (It however, does not cover the activity of only purchase of goods in India for the purpose of export to such non-resident).

E.g.—1 *Mr. Morimoto, a non-resident, is carrying on a business of readymade garments in Tokyo, Japan. He has an arrangement with a commission agent Mr. Ram of Delhi to purchase readymade garments on his behalf and export to him. In this case Mr. Morimoto is not liable to be taxed in India for these activities, since business connection is only for purchase. However, if Mr. Ram is also selling readymade garments of Mr. Morimoto, then income of Mr. Morimoto from Indian connection will be deemed to be accruing in India.*

Activity 2 : He has no such authority but habitually *maintains in India a stock* of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the non-resident.

E.g.—2 *In the above example assume Mr. Morimoto had an arrangement with Mr. Shyam of Delhi to keep and maintain stock of the said garments (purchase by Mr. Ram on behalf of Mr. Morimoto) on his behalf and export to him. In this case Mr. Morimoto is said to have a business connection in India.*

Activity 3 : He habitually *secures order* in India (mainly or wholly) for the non-resident or for non-residents under the same management.

Activity 4 : He habitually plays the principal role leading to conclusion of contracts by the non-resident and the contracts are :

(i) in the name of the non-resident, or

(ii) for the transfer of ownership of or for granting of the right to use property owned by the non-resident (or he has right to use it), or

(iii) for provision of services by the non-resident.

Income deemed to be accrue arise will be only in respect of operation in India : Where such business is carried out in India through a person (*i.e.* agent) referred to in Activity 1, 2, 3 or 4 only so much of income as is attributable to the operations carried out in India shall be deemed to accrue or arise in India.

Explanation 2A.—For the removal of doubts, it is hereby clarified that the significant economic presence of a non-resident in India shall constitute "business connection" in India and "significant economic presence" for this purpose, shall mean—

(a) Transaction in respect of any goods, services or property	✓ Transaction in respect of any goods, services or property ✓ carried out by a non-resident in India ✓ including provision of download of data or software in India, ✓ if the aggregate of payments arising from such transaction(s) during the previous year exceeds such amount as may be prescribed
(b) Soliciting business activities or interaction with users	systematic and continuous soliciting of business activities or engaging in interaction with such number of users as may be prescribed, in India through digital means

Provided that the transactions or activities shall constitute significant economic presence in India, whether or not,—

(*i*) the agreement for such transactions or activities is entered in India; (*ii*) the non-resident has a residence or place of business in India; or (*iii*) the non-resident renders services in India:

Provided further that only so much of income as is attributable to the transactions or activities referred to in clause (*a*) or clause (*b*) shall be deemed to accrue or arise in India.'.

EXCEPTIONS to business connection

1. 'Business connection', however, shall not be held to be established if the non-resident carries on business through a broker, general commission agent or other agent of an *independent status.*
2. In case of a non-resident who is engaged in the business of running a news agency or of publishing newspapers, magazines or journals, no income shall be deemed to accrue or arise in India from activities which are confined to the *collection of news and views* in India for transmission out of India;
3. In the case of a non-resident, being—
   a. an *individual* who is *not a citizen* of India; or
   b. a *firm not having any partner* who is a *citizen of India* or who is resident in India; or
   c. a *company not having any shareholder who is a citizen* of India or who is resident in India,

   no income shall be deemed to accrue or arise in India to such individual, firm or company through or from *shooting of any cinematograph film* in India.

4.8 'Income from property, asset or source of income'

Any income which arises from any property (movable, immovable, tangible and intangible property) would be deemed to accrue or arise in India *e.g.* hire charges or rent paid outside India for the use of the machinery or buildings situated in India.

E.g.— *Mr. John a non-resident owned a house property in Delhi. Such property is let out for a rent of Rs. 10,000 per month. Rent from such property is deemed to be an income which is earned in India. This rule will apply even if such rent is received outside India.*

4.9 'Income from the transfer of a capital asset'

Capital gains arising from the transfer of a capital asset (movable, immovable, tangible and intangible) situated in India would be deemed to accrue or arise in India.

4.10 'Income from dividends'

All dividends paid by an Indian company shall be deemed to accrue or arise in India. Under section 10(34), income from dividends referred to in section 115-O are exempt from tax in the hands of the shareholder. However, deemed dividend referred to in Sec. 2(22)(*e*) is not covered by section 115-O

4.11 'Income from interest' [Section 9(1)(v)]

Interest is deemed to accrue or arise in India if it is payable—

(a) by the Government;

(b) by a person resident in India. **Except the following—**

- where it is payable on the money borrowed for the purposes of a business or profession carried on by him outside India,
- for the purposes earning any income from any source outside India.

This clause includes the payment of interest made by an Indian Permanent Establishment (PE) of a non-resident payee to such non-resident. Thus, for the purpose of this clause a PE shall be treated as a separate and distinct entity. (Inserted by Finance Act, 2015 *w.e.f.* A.Y. 2016-17)

(c) by a non-resident, **but only if—**

- the money is borrowed for the purpose of a business or profession carried on in India by him.

4.12 'Income from Royalty' [Section 9(1)(vi)]

Royalty will be deemed to accrue or arise in India when it is payable—

(a) by the Government;

(b) by a person who is a resident in India. **Except the following—**

- where it is payable in respect of any right/property/information used for the purposes of a business or profession carried on by such person outside India,
- for the purposes of earning any income from any source outside India.

(c) by a non-resident, **but only if—**

- the royalty is payable in respect of any right/information/property used for purposes of a business or profession carried on in India, or
- for the purposes of making or earning any income from any source in India.

Exception :

a. Lump sum royalty payments made by a resident, under any approved scheme,

b. For the transfer of rights in respect of computer software supplied by a non-resident manufacturer along with computer hardware.

4.13 'Income from Fee for technical services' [Section 9(1)(vii)]

Any fees for technical services will be deemed to accrue or arise in India if they are payable by—

(a) the *Government.*

(b) a person who is *resident* in India. **Except the following-**
- where the fees are payable in respect of technical services utilised in a business or profession carried on by such person outside India;
- for the purpose of making or earning any income from any source outside India.

(c) a *non-resident*, **only if-**
- the fees are payable in respect of services utilised in a business or profession carried on by the non-resident in India;
- such services are utilised for the purpose of making or earning any income from any source in India.

Income deemed to accrue or arise in India to a non-resident by way of interest, royalty and fee for technical services to be taxed irrespective of territorial nexus-*Explanation to section 9*

For the purposes of this section, income of a non-resident shall be deemed to accrue or arise in India under clause (*v*) or clause (*vi*) or clause (*vii*) of sub-section (1) and shall be included in the total income of the non-resident, whether or not,—

(*i*) the non-resident has a residence or place of business or business connection in India; or

(*ii*) the non-resident has rendered services in India.

Problem 4.1 : *Ramesh discloses following particulars of his receipts during the P.Y. 2019-20 :*

		(Amount in Rs.)
(a)	*Salary income earned in Delhi but received in Nepal.*	*2,50,000*
(b)	*Profits earned from a business in China which is controlled in India, half of the profits being received in India.*	*2,20,000*
(c)	*Income from property, situated in Dubai and received there*	*75,000*
(d)	*Income from agriculture in Bangladesh and brought (i.e. remittance) to India*	*68,000*
(e)	*Dividend-paid by an Indian company but received in London on 15 May 2019.*	*22,000*
(f)	*Interest on USA Development Bonds and one half of which was received in India*	*44,000*
(g)	*Past foreign untaxed income brought (i.e. remittance) to India*	*2,10,000*
(h)	*Gift of $1000 from father, settled in USA, received in India*	*80,000*
(i)	*Land sold in Delhi, consideration received in Canada, resulting into capital gain*	*2,50,000*
(j)	*Income from structure-designing consultancy service, set up in Germany, controlled from India, profits being received outside India*	*4,00,000*
(k)	*Loss from foreign business, controlled from India, sales being received in India*	*(-) 2,00,000*

Determine his taxable income for the previous year 2019-20 if
(i) he is resident and ordinarily resident,
(ii) he is resident but not ordinarily resident,
(iii) he is non-resident.

Solution :

Particulars of income	*Resident and ordinarily resident (OR)*	*Resident but not ordinarily resident (NOR)*	*Non-resident (NR)*
a. Salary earned in Delhi but received in Nepal: Salary is deemed to accrue or arise at a place where services are rendered, place of receipt being immaterial [Sec. 9(1)(ii)].Hence, it is taxable in all cases	2,50,000	2,50,000	2,50,000
b. Profits earned from a business in China, controlled in India:			
(*i*) One half of profits are taxable on receipt basis	1,10,000	1,10,000	1,10,000
(*ii*) Other half profits—from foreign business controlled in India	1,10,000	1,10,000	-
c. Income from property in Dubai and received there: Income accruing or arising outside India	75,000	-	-
d. Income from agriculture in Bangladesh and brought to India: It is not			

	income received in India as receipt means first receipt. Hence, it is not taxable in case of "not ordinarily resident" and "non-resident". In case of "ordinarily resident", it is income accruing or arising outside India. Hence, it is taxable. It should be noted that it is not agricultural income/as it is not derived from land, situated in India, and hence not exempt u/s 10(1).	68,000	-	-
e.	*Dividend paid by an Indian company but received in London:* Dividend paid by an Indian company is deemed to accrue or arise in India. However, any dividend paid, declared or distributed by a domestic company is exempt from tax under Sec. 10(34). Therefore, such dividend is not taxable.	-	-	-
f.	*Interest on USA Development Bonds:* (a) One half is taxable on receipt basis	22,000	22,000	22,000
	(b) Other half is taxable only in case of "ordinarily resident" as it is foreign income accruing or arising outside India	22,000	-	-
g.	*Past untaxed foreign income brought to India.* It is not income received in India. Furthermore, it is not the income of the previous year 2019-2020. Hence, it is not taxable in any case.	-	-	-
h.	Gift from a relative is not taxable as per proviso to section 56(2).	-	-	-
i.	Capital gain is deemed to accrue or arise in India [Sec. 9(1)(i)]	2,50,000	2,50,000	2,50,000
j.	Income from consultancy profession, set up outside India, profits being received outside India: Taxable in case of "ordinarily resident", as income accruing arising outside India and received outside India [Sec. 5(1)(c)] In case of "not-ordinarily resident", as it is not income from profession set up in India, control and management applies to business and not to professions. Hence, it is not taxable.	4,00,000	-	-
k.	Income includes loss also. Profits are imbedded in sales. As sales were received in India, the place of control and management is not relevant. Business loss can be set off against business profits and thereafter against the income of any other head except income from salary and winnings etc.	(2,00,000)	(2,00,000)	(2,00,000)

Problem 4.2 : *From the following details of Mr. A, find out his residential status for the A.Y. 2020-21 and calculate his taxable income in India :*

Date of departure from India	*Date of arrival in India*
1.5.2015	*1.2.2016*
1.6.2016	*11.12.2017*
1.2.2018	*1.3.2018*
1.8.2018	*20.3.2019*
1.6.2019	*2.3.2020*

During P.Y. 2019-20, for the part of year he was working as a project manager of a company and for the remaining part of the year he has been running his own business. He discloses the following particulars of his incomes he has earned during the P.Y. 2019-20 :

		Rs.
(a)	*Salary income in respect of services rendered outside (2/3rd of which is received in India)*	*6,00,000*
(b)	*Profits accrued and received in USA from a business there which is controlled from India.*	*2,20,000*
(c)	*Profits accrued and received in UK from a business there which is controlled from UK itself.*	*75,000*
(d)	*Untaxed income of P.Y. 2018-19 is brought (remitted) to India during 2019-20*	*1,00,000*
(e)	*Already taxed income of P.Y. 2018-19 is brought (remitted) to India during 2019-20*	*1,60,000*

Your answer should be based on the following assumptions :

Case -1 : Assume he came to India for the first time on 1.4.2014

Case -2 : Assume he came to India for the first time on 1.5.2014

Solution :

For assessment year 2020-21, relevant previous year is 2019-20. Stay during various previous years is as under :

P.Y. 2019-20	:	30+31+1+30 = 92 days
P.Y. 2018-19	:	30+31+30+31+1+11 = 134 days
P.Y. 2017-18	:	21+31+31 = 83 days
P.Y. 2016-17	:	30+31+1= 62 days
P.Y. 2015-16	:	30+1+29+31 = 91 days
P.Y. 2014-15 (*Case -1*)	:	Full year *i.e.* 365 days
P.Y. 2014-15 (*Case -2*)	:	Full year *i.e.* 335 days

Residential status of Mr. A is as under :

		Case -1	*Case -1*
Basic Condition (a)	:	Not satisfied	Not satisfied
Basic Condition (b)	:	Satisfied	Satisfied
Additional Condition (a)	:	Satisfied	Satisfied
Additional Condition (b)	:	Satisfied	Not satisfied
Thus, his residential status	:	OR	NOR

Taxability of income will be as under :

	OR (Rs.)	*NOR (Rs.)*
(a) Salary income :		
♦ *2/3rd of which is received in India (vide Point No 1 of Section 5)*	4,00,000	4,00,000
♦ *1/3 not received in India (vide Point No 7 of Section 5)*	2,00,000	Not taxable
(b) Profits accrued and received in USA from a business there which is controlled from India. (vide Point No 5 of Section 5)	2,20,000	2,20,000
(c) Profits accrued and received in UK from a business there which is controlled from UK itself (vide Point No 6 of Section 5)	75,000	Not taxable
(d) Untaxed income of P.Y. 2018-19 is brought (remitted) to India during 2019-20 (vide Point No 8 of Section 5)	Not taxable	Not taxable
(e) Already taxed income of P.Y. 2018-19 is brought (remitted) to India during 2019-20 (vide Point No 8 of Section 5)	Not taxable	Not taxable
Total	**8,95,000**	**6,20,000**

MULTIPLE CHOICE QUESTIONS (MCQs)
(Chapter 3 & 4)

1 : Tax liability of a person depends upon :

(a) His Residential Status;
(b) His Citizenship;
(c) His Domicile
(d) His Origin.

2 : Residential status is determined for :

(a) Financial year;
(b) Assessment year;
(c) Accounting year
(d) Previous year.

3 : An individual will be Resident and Ordinary Resident in India if :

(a) He satisfies both the basic conditions and any one of the additional conditions;
(b) He satisfies any one of basic conditions and both of the additional conditions;
(c) He satisfies both the basic conditions and both of the additional conditions;
(d) He satisfies any one of the basic conditions and any one of the additional conditions.

4 : In case of a person leaving India for employment outside India :

(a) First basic condition will not apply;
(b) First additional condition will not apply;
(c) Second basic condition will not apply;
(d) Second additional condition will not apply.

5 : An income which is accrued outside India but it is received in India, that income will be taxable in case of :

(a) Ordinary Residents (OR);
(b) Not Ordinary Residents (NOR);
(c) Non Residents (NR)
(d) All of the above.

6 : An income (from house property) which is received and accrued outside India but during the same year it is remitted to India, this income will be taxable :

(a) Ordinary Residents (OR);
(b) Not Ordinary Residents (NOR);
(c) Non Residents (NR)
(d) All of the above.

7 : An income (from house property) which is accrued and received outside India during Financial Year 2010-11 but during the Previous Year it is remitted to India, this income will be taxable :

(a) Ordinary Residents (OR);
(b) Not Ordinary Residents (NOR);
(c) Non Residents (NR)
(d) None of the above.

8 : There is an income of Rs. 5,00,000 from a business in USA. This business is, however, controlled from India. This income is neither received in India nor it is accrued in India. This income will be taxable in India in case of :

(a) Ordinary Residents (OR);
(b) Not Ordinary Residents (NOR);
(c) Both of the above;
(d) None of the above.

9 : There is an income of Rs. 5,00,000 from a business in USA which is controlled from there only. This income is neither received in India nor it is accrued in India. This income will be taxable in India in case of :

(a) Ordinary Residents (OR);
(b) Not Ordinary Residents (NOR);
(c) Both of the above;
(d) None of the above.

10 : There is an income of Rs. 5,00,000 from a profession which is set-up in USA but is controlled from India. This income is neither received in India nor it is accrued in India. This income will be taxable in India in case of :

(a) Ordinary Residents (OR);
(b) Not Ordinary Residents (NOR);
(c) Both of the above;
(d) None of the above.

11 : There is an income of Rs. 5,00,000 from a profession which is set-up in India but is controlled from USA. This income is neither received in India nor it is accrued in India. This income will be taxable in India in case of :

(a) Ordinary Residents (OR);
(b) Not Ordinary Residents (NOR);
(c) Both of the above;
(d) None of the above.

12 : There is an income of Rs. 5,00,000 from a profession which is set-up in India but is PARTLY controlled from USA and PARTLY controlled from India. This income is neither received in India nor it is accrued in India. This income will be taxable in India in case of :

(a) Ordinary Residents (OR);
(b) Not Ordinary Residents (NOR);
(c) Both of the above;
(d) None of the above.

13 : Shane Warne, the Australian cricketer comes to India for 100 days *every year*. His residential status for the A.Y. 2020-21 will be :

(a) Ordinary Residents (OR);
(b) Not Ordinary Residents (NOR);
(c) Non-Resident;

14 : Shane Warne, the Australian cricketer comes to India for 110 days *every year*. His residential status for the A.Y. 2020-21 will be :

(a) Ordinary Residents (OR);
(b) Not Ordinary Residents (NOR);
(c) Non-Resident;

15 : Shane Warne, the Australian cricketer comes to India for 90 days *every year*. His residential status for the A.Y. 2020-21 will be :

(a) Ordinary Residents (OR);
(b) Not Ordinary Residents (NOR);
(c) Non-Resident;

16 : Mr. A returns to U.K. on 29.1.2017, after about 30 years of his stay in India. Later on, he returns to India in 10.6.2019 to join a UK company as its Overseas Branch Manager. His residential status for the assessment year 2020-21 will be :

(a) Ordinary Residents (OR);
(b) Not Ordinary Residents (NOR);
(c) Non-Resident;

17 : Mr. Morimoto, a Japanese citizen left India after a stay of 10 years on 1.6.2017. During the financial year 2018-19, he comes to India for 46 days. Later, he returns to India for 1 year on 10.10.2019. His residential status for the assessment year 2020-21 will be :

(a) Ordinary Residents (OR);
(b) Not Ordinary Residents (NOR);
(c) Non-Resident;

18 : Mr. Dayal, an Indian citizen, leaves India on 22.9.2019 for the first time, to work as an officer of a company in Canada. His residential status for the assessment year 2020-21 will be :

(a) Ordinary Residents (OR);
(b) Not Ordinary Residents (NOR);
(c) Non-Resident;

19 : A company is incorporated in India but its POEM is outside India. Its residential status will be :

(a) Residents (R);
(b) Ordinary Residents (OR);
(c) Not Ordinary Resident (NOR);
(d) Non-Resident (NR);

20 : A company is incorporated in USA but it POEM is in India. Its residential status will be :

(a) Residents (R);
(b) Ordinary Residents (OR);
(c) Not Ordinary Resident (NOR);
(d) Non-Resident (NR);

21 : A company is incorporated in USA but its key management and commercial decisions that are necessary for the conduct of the business are made in India. Its residential status will be :

(a) Residents (R);
(b) Ordinary Residents (OR);
(c) Not Ordinary Resident (NOR);
(d) Non-Resident (NR);

22 : An Indian company would :

(a) be resident in India if its control and management is wholly situated in India;
(b) be resident in India if its control and management is wholly or partly situated in India;
(c) be resident in India if its control and management is wholly situated outside India;
(d) be always resident in India irrespective of control and management;

23 : Determine the residential status of a HUF if HUF's control and management is wholly situated in India and Karta of HUF is a Non-resident during 9 years immediately preceding the previous year :

(a) Ordinary Resident (OR);
(b) Resident but Not Ordinary Resident (NOR);
(c) OR or NOR;
(d) Non-Resident (NR).

24 : Profits of Rs. 1,00,000 for the year 2017-18 of a business in Germany remitted to India during the previous year 2019-20 (not taxed earlier) would be :

(a) Taxable in India for OR only;
(b) Not taxable in for all (OR, NOR and NR);
(c) Taxable in India for all (OR, NOR and NR);
(d) Taxable only for NOR and NR.

25 : Profits of Rs. 2,00,000 is earned from a business in USA which is controlled in India, half of the profits being received in India. How much amount is taxable in India for a Non-Resident individual :

(a) Rs. 2,00,000;
(b) Nil;
(c) Rs. 1,00,000;
(d) Rs. 3,00,000.

26 : Profits of Rs. 2,00,000 is earned from a business in USA which is controlled in India, half of the profits being received in India. How much amount is taxable in India for a Not Ordinary Resident individual :

(a) Rs. 2,00,000;
(b) Nil;
(c) Rs. 1,00,000;
(d) Rs. 3,00,000.

27 : Dividend from a USA based company of Rs. 2,00,000 received in California will be taxable in case of :

(a) OR only;
(b) NOR only;
(c) NR only;
(d) All of the above.

28 : Income accruing in India in previous year is taxable for :

(a) OR only
(b) NOR only
(c) Non-resident
(d) All of the above.

29 : Income accruing from agriculture in a foreign country is taxable in the case of an assessee who is :

(a) OR only
(b) NOR only
(c) NR only
(d) None of the above.

30 : Every year, the residential status of an assessee :

(a) May change
(b) Will certainly change
(c) Will not change
(d) None of the above.

31 : If control and management of the affairs of a HUF is situated wholly outside India it would become a_____:

(a) OR
(b) NOR
(c) NR

ANSWERS TO MCQs

Question	Answer	Question	Answer	Question	Answer	Question	Answer	Question	Answer
1	A	2	D	3	B	4	C	5	D
6	A	7	D	8	C	9	A	10	A
11	C	12	C	13	B	14	A	15	C
16	A	17	A	18	C	19	A	20	A
21	A	22	D	23	B	24	B	25	C
26	A	27	A	28	D	29	A	30	A
31	C								



CHAPTER 5

EXEMPT INCOMES

5.1 Incomes which do not form part of total income— an introduction

Chapter III of Income-tax act contains certain incomes which do not form part of total income of any person. These incomes herein after called as 'exempt incomes'. The burden of proving that a particular item of income falls within this section is on the assessee. Exempt incomes fall under section 10, 10A, 10AA, 10B, 10BA, 10BB, 10C, 11, 12, 13A and 13B.

5.2 Incomes which do not form part of total income [Section 10]

Exempt incomes given under section 10 are summarised as under :

Section	Nature of exemption	Provision in brief
10(1)	**Agricultural income**	♦ Agriculture income referred to in section 2(1A), is fully exempt. Any income derived from saplings or seedlings grown in nursery shall be deemed to be agricultural income. ♦ In some cases, however, agricultural income is taken into consideration to find out tax on non-agricultural income. [*i.e.* partial integration]
10(2)	**Receipts of member of HUF from such family**	♦ Any sum received by an individual as a member of a HUF out of income of the family is exempt from tax. ♦ Such receipts are not chargeable to tax in the hands of an individual member even if tax is not paid by the family on its total income.
10(2A)	**Profit share from firm**	♦ Any share of profit received by a partner from his firm is exempt in the hands of such partner. ♦ However, any sum received in form of remuneration, interest, commission etc. are dealt under the head PGBP.
10(4)	**Interest on Non Resident (External) Account [NREA]**	Any interest credited to Non Resident (External) Account of an individual who is resident outside India, is exempt from tax.
10(4C)	**Interest income of non-residents on rupee denominated bonds**	This clause provides the exemption of the following income : ✓ any income by way of interest payable ✓ TO a non-resident/foreign company ✓ BY any Indian company or business trust ✓ in respect of monies borrowed from a source outside India by way of issue of rupee denominated bond [referred to in section 194LC(2)(ia)] between 17.9.2018 to 31.3.2019. **[Inserted by Finance Act, 2019 w.e.f. A.Y. 2020-21]**
10(4D)	**Interest income of non-residents on**	This clause provides the exemption of the following income : ✓ any income accrued or arisen to, or received by a specified fund ✓ as a result of transfer of capital asset referred to in section 47(*viiab*),

Section	Nature of exemption	Provision in brief
	rupee denominated bonds	✓ on a recognised stock exchange located in any International Financial Services Centre ✓ and where the consideration for such transaction is paid or payable in convertible foreign exchange, ✓ to the extent such income accrued or arisen to, or is received in respect of units held by a non-resident. **Explanation.**—For the purposes of this clause, the expression— "specified fund" means a fund established or incorporated in India in the form of a trust or a company or a LLP or a body corporate,— (i) which has been granted a certificate of registration as a Category III Alternative Investment Fund and is regulated under the SEBI (Alternative Investment Fund) Regulations, 2012; (ii) which is located in any International Financial Services Centre; (iii) of which all the units are held by non-residents other than units held by a sponsor or manager.
10(5)	**Leave Travel Concession (LTC)**	Discussed under the head 'salaries' [Chapter 4]
10(6)	**Remuneration received by Foreign Diplomats**	This section exempt the following incomes— ♦ Embassy employee ♦ Employee of non-profit enterprise ♦ Employee of foreign ship ♦ Employee of foreign govt. during his training in India.
10(6D)	**Royalty/technical fees received by non-resident from NTRO**	Any income arising to a non-resident/a foreign company, by way of royalty from, or fees for technical services rendered in or outside India to, the National Technical Research Organisation (NTRO).
10(7)	**Allowance or perquisites outside India**	Any allowance or perquisite paid or allowed outside India by the Government of India to a citizen of India for rendering services outside India, are exempt.
10(10)	**Gratuity**	Discussed under the head 'salaries' [Chapter 3]
10(10A)	**Commuted pension**	Discussed under the head 'salaries' [Chapter 3]
10(10AA)	**Leave encashment**	Discussed under the head 'salaries' [Chapter 3]
10(10B)	**Retrenchment compensation**	Discussed under the head 'salaries' [Chapter 3]
10(10BB)	**Compensation to Bhopal Gas Leak Disaster**	Any amount received as compensation under Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985, is fully exempt.
10(10BC)	**Disaster compensation**	Any amount received by an individual or his legal heirs by way of compensation on account of disaster is exempt from tax provided such amount is received from Central/State Government or local authority.
10(10C)	**Amount received under voluntary retirement**	Discussed under the head 'salaries' [Chapter 3]
10(10CC)	**Tax paid by the employer on non-monetary perquisites**	Any tax on non-monetary perquisites (which are provided to the employees) paid by the employer will NOT be treated as 'a perquisite' and therefore, will be exempt in the hands of such employee.
10(10D)	**Any sum received under a life insurance policy**	Any sum received under a life insurance policy (including bonus) is fully exempt from tax. However, the following sums are NOT exempt : ♦ Sum received from a policy referred to in section 80DD or 80DDA; or ♦ Sum received under 'key man insurance policy'; or

<table>
<tr><th>Section</th><th>Nature of exemption</th><th>Provision in brief</th></tr>
<tr><td></td><td></td><td>♦ Sum received under an insurance policy, the premium of which exceeded the following limits :
<table>
<tr><th rowspan="2">Date of issuance of policy</th><th colspan="2">Limit</th></tr>
<tr><th>Policy taken on the life of disabled persons</th><th>Policy on the life any other person</th></tr>
<tr><td>❒ On or after 1.4.2013</td><td>15% of sum assured</td><td>10% of sum assured</td></tr>
</table>
Keyman insurance policy which has been assigned to any person during its term, with or without consideration, shall continue to be treated as a 'keyman insurance policy'. [w.e.f. A.Y. 2014-15]</td></tr>
<tr><td>10(11)</td><td>Receipt of Statutory Provided Fund (SPF)</td><td>Discussed under the head 'salaries' [Chapter 3]</td></tr>
<tr><td>10(12)</td><td>Receipt of Recognised Provided Fund (RPF)</td><td>Discussed under the head 'salaries' [Chapter 3]</td></tr>
<tr><td>10(12A)</td><td>Closure or opting out of NPS exempt up to 60%</td><td>Any payment from National Pension System Trust to an assessee on closure of his account or on his opting out of the pension scheme referred to in section 80CCD, to the extent it does not exceed 60% of the amount payable to him at the time such closure or opting out of the scheme.
[Limit of exemption increased from 40% to 60% by Finance Act, 2019]</td></tr>
<tr><td>10(12B)</td><td>Partial withdrawal of NPS exempt up to 25%</td><td>Any payment from National Pension System Trust to an employee under the pension scheme referred to in section 80CCD on partial withdrawal made out of his account in accordance with the terms and conditions specified under Pension Fund Regulator and Development Act, 2013 and the regulations made thereunder to the extent it does not exceed 25% of the amount of contribution made by him.</td></tr>
<tr><td>10(13)</td><td>Receipt of Approved Superannuation Fund</td><td>Discussed under the head 'salaries' [Chapter 3]</td></tr>
<tr><td>10(13A)</td><td>House Rent Allowance</td><td>Discussed under the head 'salaries' [Chapter 3]</td></tr>
<tr><td>10(14)</td><td>Notified Special Allowances</td><td>Discussed under the head 'salaries' [Chapter 3]</td></tr>
<tr><td>10(15)</td><td>Interest, premium, bonus etc. on specified investments</td><td>This section gives exemption to the following incomes :
♦ Interest, premium, bonus etc. on specified securities or certificates issued by the Central Government. [see Chapter 'Income from other sources']; or
♦ Interest on gold deposit issued under Gold Deposit Scheme, 1999; or
♦ Interest payable to European Investment Bank on its loan granted under an agreement with the Central Government.
♦ any income by way of interest payable to a non-resident by a unit located in an International Financial Services Centre in respect of monies borrowed by it on or after 1.9.2019.
Explanation.—For the purposes of this sub-clause,
(a) "International Financial Services Centre" shall have the meaning assigned to it in clause (q) of section 2 of the SEZ Act, 2005;
(b) "unit" shall have the meaning assigned to it in clause (zc) of section 2 of the SEZ Act, 2005.
[Inserted by Finance Act, 2019]</td></tr>
<tr><td>10(15A)</td><td>Lease rent for leasing of an aircraft</td><td>Amount of lease rent paid by an Indian company in respect of aircrafts taken on lease by it from the Government of foreign country or foreign enterprise subject to fulfilment of certain conditions.</td></tr>
</table>

Section	Nature of exemption	Provision in brief
10(16)	**Scholarship granted to meet the cost of education**	Any amount received as 'scholarship' is exempt from tax. 'Scholarship' constitutes a payment granted with the objective to meet the cost of education.
10(17)	**Daily and constituency allowance received by MPs and MLAs.**	♦ *DAILY ALLOWANCE :* Fully exempt in the hands of MPs and MLAs. ♦ *CONSTITUENCY ALLOWANCE :* Fully exempt in the hands of MPs and MLAs.
10(17A)	**Awards for Literary, Scientific and Artistic works**	Any award or reward instituted in the public interest by the Central/State Government or any body approved in this behalf are exempt from tax. ***e.g.*** Gallantry awards like Ashok Chakra, Kirti Chakra;
10(18)	**Pension received by Gallantry awardees or their family**	♦ *EXEMPTION TO AWARDEE :* Any income by way of pension received by an individual who has been awarded "Param Vir Chakra" or "Maha Vir Chakra" or "Vir Chakra" or such other notified gallantry award. ♦ *EXEMPTION TO FAMILY OF AWARDEE :* In case of the death of the awardee, any income by way of family pension received by any member of the family of the individual shall also be exempt. For this purpose, "family" shall have the same meaning as is given under section 10(5).
10(19)	**Family pension received by family of the employees of armed forces who died during 'war' etc.**	Exemption is available in respect of family pension received by the widow or children or nominated heirs, of a member of the armed forces of the Union, where the death of such member has occurred in the course of operational duties (like 'war', rescue operations etc.).
10(19A)	**Annual value of one Palace of Ex-Rular**	The annual value of any one Palace in the occupation of former Rulers is exempt from tax.
10(20)	**Income of local authority**	Following incomes of a local authority are exempt from tax— (i) Income under the head 'house property'; (ii) Income from 'capital gains'; (iii) Income under the head 'other sources'; (iv) Income from trade or business (carried on by it), from the supply of : ♦ Water or electricity WITHIN OR OUTSIDE its jurisdiction; ♦ Any commodity or services WITHIN its jurisdiction.
10(21)	**Income of Approved Scientific Research Associations**	Any income of any scientific research association which is approved under section 35(1)(*ii*)/(*iii*) will be exempt if it has fulfilled certain conditions.
10(22B)	**Income of News Agency**	*EXEMPTION :* Any income of any notified news agency which is set up in India solely for collection and distribution of news will be exempt provided that it shall not distribute its income in any manner to its members.
10(23A)	**Income of Professional Association/Institution**	Certain incomes of any association or institution which is approved by the Government will be exempt if the following conditions are satisfied— (*a*) Such association or institution is established in India with the object of control, supervision, regulation etc. of profession of Law, Medicine, Accountancy, Engineering, Architecture etc.; (*b*) It should apply its income solely for its purposes;
10(23AA)	**Income of institutions established by armed forces**	Any income received by any person on behalf of any Regimental Fund or non-public fund established by the armed forces of the Union for the welfare of the past and present members of such forces or their dependents is exempt from tax.
10(23AAA)	**Income of funds established for the benefit of employees**	Income of any fund which has been established by the employer for the welfare of its employees or their dependents, will be exempt if few conditions are satisfied.

Section	Nature of exemption	Provision in brief
10(23AAB)	**Income of pension funds set up by LIC**	Any income of a fund set up by the LIC of India or any other insurer under a pension scheme if such scheme is approved by the Controller of Insurance or the IRDA.
10(23B)/ 10(23BB)	**Income of institution established for development of 'Khadi and Village' industries**	Any income of an institution which is constituted as a public charitable trust or registered as a society for development of khadi and village industries, will be exempt from tax if few conditions are satisfied.
10(23BBA)	**Income of authorities set-up to administer religious or charitable trusts**	Income of bodies or authorities established for the administration of public, religious or charitable trust (including maths, temples, gurudwaras, wakfs, churches or other places of public religious worship) or societies for religious or charitable purpose is exempt from tax.
10(23BBB)	**Income of EEC**	Income of the European Economic Communication (EEC) by way of interest, dividends or capital gains will be exempt in certain cases.
10(23BBC)	**Income of SAARC**	Any income derived by the SAARC Fund for Regional Projects which was set up by Colombo Declaration is exempt.
10(23BBE)	**Income of IRDA**	Any income of Insurance Regulatory Development Authority (IRDA).
10(23BBG)	**Income of CERC**	Any income of Central Electricity Regulatory Commission is exempt.
10(23BBH)	**Income of Prasar Bharti**	Any income of Prasar Bharti (Broadcasting Corporation of India).
10(23C)	**Income of certain Funds and Institutions**	Exemption is available in respect of any income received by any person on behalf of the following entities: (*i*) the Prime Minister's National Relief Fund; (*ii*) the Chief Minister's Relief Fund or the Lieutenant Governor's Relief Fund in respect of any State or Union territory; (*iii*) the Prime Minister's Fund (Promotion of Folk Art); (*iv*) the Prime Minister's Aid to Students Fund; (*v*) the National Foundation for Communal Harmony; (*vi*) CHARITABLE funds or institutions (*vii*) Any university or other educational institution which is financed by the Government with annual receipts *not exceeding Rs.1 crore.* (*viii*) Any hospital or institution which is financed by the Government with annual receipts *not exceeding Rs.1 crore.* *Notes—* ▪ Exemption under clause (*vi*), (*vii*) and (*viii*) is subject to few other conditions. ▪ For determining the application of income under this sub-section, the provisions of- → section 40(*a*)(*ia*) [*i.e.* payments to resident payees after applicable TDS] and → section 40A(*3*) [*i.e.* payments exceeding Rs.10,000/35,000 to be made by account payee cheque, DD, net-banking etc.] shall, *mutatis-mutandis,* apply as they apply in computing income under the head PGBP.
10(23D)	**Income of Mutual Funds**	Subject to provisions of Chapter XIIE (*i.e.* sections 115R to 115T), any income of the following mutual funds is exempt— (i) a mutual fund registered under SEBI; (ii) other notified mutual funds set up by a public sector bank or public financial institutions or authorised by RBI.

Section	Nature of exemption	Provision in brief
10(23DA)	**Income of 'Securitisation Trust'**	In order to facilitate the securitisation process, exemption has been granted to the incomes of Securitization trusts.
10(23EA)	**Income of Investor Protection Fund**	This clause exempts any income of Notified Investors Protection Fund which is received by such fund by way of contributions from recognized stock exchanges and the members thereof.
10(23EC)	**Income of Investor Protection Fund set-up by Commodity Exchanges**	This clause exempts any income of Notified Investors Protection Fund which is received by such fund by way of contributions from commodity exchanges and the members thereof.
10(23ED)	**Income of Investor Protection Fund of Depositories**	This clause exempts any income of Notified Investors Protection Fund which is received by such fund by way of contributions from Depositories.
10(23FB)	**Alternative Investment Funds (AIFs) recognised by SEBI to enjoy 'pass through' status**	Any income of Alternative Investment Funds (AIFs) from its investments made in a Venture Capital Undertaking (VCU) is exempt from taxation subject to fulfilment of certain conditions.
10(24)	**Income of Trade Unions**	Any income under the heads "income from house property" and "income from other sources" of a registered trade union under Trade Unions Act, 1926, will be exempt.
10(25)	**Income of Provident Funds, Superannuation Funds, Gratuity Funds**	Income of a Recognized Provident Fund (RPF) and of an approved superannuation fund or gratuity fund is exempt from tax and the trustees of these funds would not be liable to tax thereon.
10(25A)	**Income of Employees State Insurance (ESI) Fund**	Income of Employees State Insurance Fund [it is called as 'fund'] of ESI Corporation which is set up under the provisions of the Employees State Insurance Act, 1948 is exempt from tax.
10(26)	**Income of member of Schedule Tribes**	A member of Schedule Tribes is entitled to exemption if the following conditions are satisfied— ♦ *PLACE OF RESIDENCE* : He is residing in Manipur, Tripura, Arunachal Pradesh, Mizoram and Nagaland, Ladakh region of Jammu and Kashmir; ♦ *NATURE OF INCOME* : Income is by way of dividend or interest on securities or from any source located in the above places.
10(26AAA)	**Income of Sikkimee Individuals**	*EXEMPTION* : Exemption is available to the Sikkimee individuals in respect of his income by way of dividend or interest on securities or from any source located in the State of Sikkim. *NO EXEMPTION* : Exemption shall not be available to a Sikkimese woman who marries a non-Sikkimese individual.
10(26AAB)	**Income of Agriculture Produce Market Committee or Board**	Any income of an Agricultural Produce Market Committee or Board constituted under any law for the time being in force for the purpose of regulating the marketing of agricultural produce, is exempt.
10(26B)	**Income of a corporation or institute etc. created for promoting interest of member of Schedule Cast/Tribes**	Any income of a corporation (established by a Central, State or Provincial Act) or institution or association (wholly financed by Government) formed for promotion of scheduled castes or tribes or backward classes is exempt from tax.

Section	Nature of exemption	Provision in brief
10(26BB)	**Income of a corporation created for promoting minority community**	Any income of a corporation (established by a Central, State or Provincial Act) formed for promoting interests of the members of minority community is exempt from tax.
10(29A)	**Income of certain Boards or Bodies**	Exemption is available to the income of certain boards, namely, Coffee Boards, Tea Boards, Rubber Boards, Tobacco Boards, Marine Products Export Development Authority, Agriculture and Processed Food Products Export Development Authority, Spices Board, Coir Board.
10(30) & 10(31)	**Subsidy received from various Boards**	The amount of any subsidy received by any assessee who is engaged in the business of growing and manufacturing tea, rubber, coffee, cardamom, or other specified commodity in India through or from their governing Boards will be wholly exempt from tax subject to fulfilment of certain conditions.
10(32)	**Clubbed income of minor**	Discussed under 'clubbing of income' [Chapter 8]
10(33)	**Capital gain on transfer of US-64**	Discussed under 'capital gains' [Chapter 6]
10(34)	**Dividend from domestic company**	Discussed under 'Income from Other Sources' [Chapter 6]
10(34A)	**Consideration received by an investor under buy-back of shares**	Income arising to a shareholder in respect of buy-back of ~~unlisted~~ shares (whether listed or unlisted) by the company is exempt from tax if additional income-tax is payable on distributed income under section 115QA by the company opting for buy-back of such shares. **[Amended by Finance Act, 2019]**
10(35)	**Income on unit of mutual funds**	This clause provides exemption to the income received (in respect of units) from the Administrator of the specified undertaking/company or Mutual Fund specified under clause (23D). However, this exemption shall not apply to any income arising from transfer of such units.
10(37)	**Capital gain on compulsory acquisition of certain urban land**	Discussed under 'capital gains' [Chapter 7]
10(37A)	**Capital gain on transfer of capital asset or LPOCs or reconstituted plot or land under Land Pooling Scheme**	Capital gains arising from following transfer shall not be chargeable to tax under the Act: (i) Transfer of capital asset being land or building or both, under land pooling scheme. (ii) Sale of LPOCs by the said persons received in lieu of land transferred under the scheme. (iii) Sale of reconstituted plot or land by said persons within 2 years from the end of the financial year in which the possession of such plot or land was handed over to the said persons.
10(38)	**Long term capital gain on listed equity shares**	Discussed under 'capital gains' [Chapter 7]
10(39)	**Income from specified sporting event in India**	This clause exempts income of the nature and to the extent, arising from any international sporting event in India, to the person or persons notified by the Central Government in the Official Gazette. Exemption is subject to fulfilment of certain conditions.
10(40)	**Grants received by subsidiary company from its holding company**	This clause exempts income of any subsidiary company by way of grant or otherwise received from an Indian company, being its holding company engaged in the business of generation or transmission or distribution of power.

Section	Nature of exemption	Provision in brief
10(41)	**Income from transfer of an asset of an undertaking engaged in power business.**	This clause exempts income arising from transfer of a capital asset, being an asset of an undertaking engaged in the business of generation or transmission or distribution of power.
10(42)	**Income of authority created under treaty**	This clause exempts income of a body or authority, notified by the Central Government, which is constituted under a treaty or an agreement entered into by the Central Government with two or more countries. It should not be formed for the purposes of profit.
10(43)	**Income from 'reverse mortgage'**	Any amount [lump-sum or in instalment] received by an individual in a transaction of 'reverse mortgage' is exempt in his hands.
10(44)	**Income of NPS Trust**	Any income received by any person for, or on behalf of, New Pension System Trust is exempt from tax.
10(45)	**Allowance and perquisites of Chairman of UPSC**	This clause exempts specified allowances and perquisites received by Chairman or any other member, including retired Chairman/member, of the Union Public Service Commission (UPSC).
10(46)	**Income of specified notified entity**	This clause exempts certain incomes of any notified Body or Authority or Board etc. which are set up with the object of regulating or administering an activity for the benefit of the general public and which are not engaged in any commercial activity. Central Government has notified National Skill Development Corporation (NSDC) and Competition Commission of India (CCI) for this purpose.
10(47)	**Income of notified infrastructure debts funds**	For encouraging inflow of long-term foreign funds in infrastructure sector, the Central Government to notify infrastructure debt funds to be set up in accordance with the prescribed guidelines, the income of which would be exempt from tax.
10(48)	**Income of foreign companies for sale of crude oil etc.**	This clause exempts income of certain notified foreign companies from sale of crude oil, or any other notified goods or from rendering notified services in India, subject to fulfilment of certain conditions.
10(48A)	**Income of foreign companies on account of storage of crude oil in a facility in India**	On fulfilment of certain conditions, this clause exempts incomes of foreign national oil companies and multinational companies on account of storage of crude oil in a facility in India and sale of crude oil therefrom to any person resident in India.
10(48B)	**Income of foreign companies on account of sale of leftover stock of crude oil**	Any income accruing or arising to a foreign company on account of sale of leftover stock of crude oil, if any, from the facility in India : ✓ after the expiry of the agreement or the arrangement referred to in clause (48A) or ✓ on termination of the said agreement or the arrangement, in accordance with the terms mentioned therein, as the case may be subject to such conditions as may be notified by the Central Government in this behalf.
10(49)	**Exemption of SUUTI to continue in the hands of NFHCL**	The exemption of Specified Undertaking of Unit Trust of India (SUUTI) to be continued in the hands of its 'successor' *i.e.* National Financial Holdings Company Limited (NFHCL) till A.Y. 2014-15.
10(50)	**Exemption of income subject to equalisation levy**	Exemption is provided to any income arising from provision of specified services which are subject to equalisation levy under Chapter VIII of Finance Act, 2016.

5.3 Exemption in case of newly established undertakings in free trade zone etc. [Section 10A]

This deduction is allowed to an undertaking which is engaged in export of articles or things or computer software. Provision of this section are as under :

1. Conditions to be satisfied for this deduction : Following conditions need to be satisfied

(a) Manufacture or production in FTZ, EHTP and SEZ	It has begun or begins manufacture or production of articles or things or computer software during the following years : (a) *Free Trade Zone (FTZ)* : During the previous year relevant to the assessment year 1981-82 or any subsequent year (b) *Electronic Hardware and Technology Park (EHTP)* : During the previous year relevant to the assessment year 1994-95 or any subsequent year (c) *Special Economic Zone (SEZ)* : During the previous year relevant to the assessment year 2001-02 to the assessment year 2005-06 (*Note* : If an undertaking begins manufacturing or producing articles or things or computer software after 31.3.2005, then this deduction will not be allowed but it can claim deduction under section 10AA)
(b) It should not be formed by splitting or reconstruction of existing business	Such undertaking is not formed by splitting up, or the reconstruction, of a business already in existence. **Provided that** this condition shall not apply in respect of an undertaking which is formed as a result of the re-establishment, reconstruction or revival by the assessee of the business of any such undertaking as is referred to in section 33B, in the circumstances and within the period specified in that section.
(c) It should not be formed by transfer of old machinery	It is not formed by the transfer to a new business of machinery or plant previously used for any purpose. **Provided that** any machinery or plant which was used outside India by any person other than the assessee shall not be regarded as machinery or plant previously u sed for any purpose, if the following conditions are fulfilled: ▪ such machinery or plant was not previously used in India; ▪ such machinery or plant is imported into India from any country outside India; ▪ no deduction on account of depreciation in respect of such machinery or plant has been allowed or is allowable under the provisions of this Act. Further, deduction under this section will not be denied where in the case of an undertaking, any machinery or plant or any part thereof previously used for any purpose is transferred to a new business and the total value thereof does not exceed 20% of the total value of the machinery or plant used in the business.
(d) Receipt of sale proceeds in India	This section applies to the undertaking, if the sale proceeds of articles or things or computer software exported out of India are received in, or brought into, India by the assessee in convertible foreign exchange, within a period of **6 months** from the end of the previous year or, within such further period as the RBI or competent authority may allow in this behalf.
(e) Audit	Deduction under this section shall not be admissible unless the accounts of the undertaking for the previous year relevant to the assessment year for which the deduction is claimed have been audited by a Chartered Accountant and the assessee furnishes, along with his return of income, the report of such audit in **Form 56F** duly signed and verified by such CA.
(f) Deduction in ITR	Deduction under this section shall not be admissible unless assessee claims it in his return of income.

2. Amount of deduction : On fulfillment of above conditions, deduction will be allowed as under :

(a) Amount of deduction – Generally	For an undertaking other than the undertaking covered by (b) below, deduction is allowed for **10 consecutive assessment years** beginning with the assessment year relevant to the previous year in which the undertaking begins to manufacture or produce articles or things or computer software as under : $\text{Profit of the business of the undertaking} \times \frac{\text{Export turnover}}{\text{Total turnover of the business carried on by the undertaking}}$ **Note :** This deduction will be allowed only up to the A.Y. 2011-12
(b) Amount of deduction – Special provision	In case an undertaking begins to manufacture or produce articles or things or computer software during 1.4.2002 to 31.3.2005 in any SEZ, deduction shall be as follows :

	For first 5 years : 100% of profit and gains of such business *For next 2 years* : 50% of profit and gains of such business *For next 3 years* : 50% of profit and gains of such business provided that : (i) an equal amount is credited to Special Economic Zone Re-investment Allowance Reserve Account (SEZRARA); (ii) It should be used for acquiring new plant and machinery; (iii) Such plant and machinery should be put to use within 3 years from the end of the F.Y. in which SEZRARA was created; (iv) If the amount of SEZRARA is misutilised, then deduction would be taken back. Further, if the amount of SEZRARA is not utilized within said 3 years, then the deduction would be taken back in the 4th year. **Note :** Deduction under the special provisions can be allowed even beyond A.Y. 2011-12.

Notes—

1. Export Turnover means : The consideration in respect of export by the undertaking of articles or things or computer software received in, or brought into, India by the assessee in convertible foreign exchange, but does not include—

(a) freight,

(b) telecommunication charges or

(c) insurance attributable to the delivery of the articles or things or computer software outside India or

(d) expenses, if any, incurred in foreign exchange in providing the technical services outside India

2. Site development of computer software : Profit and gains derived from on site development of computer software (including services for development of software) outside India shall be deemed to be profit and gains derived from the export of computer software outside India.

3. For the purposes of this section, "manufacture or produce" shall include the cutting and polishing of precious and semi-precious stones.

4.The sale proceeds referred to in this sub-section shall be deemed to have been received in India where such sale proceeds are credited to a separate account maintained for the purpose by the assessee with any bank outside India with the approval of the Reserve Bank of India.

5.4 Special provisions in respect of newly established units in SEZ [Section 10AA]

This deduction is allowed to newly established units in SEZ Provision of this section are as under :

1. Conditions to be satisfied for this deduction : Following conditions need to be satisfied

(a) Assessee holds letter of approval	Assessee being an entrepreneur holds a letter of approval from Development Commissioner to set up a unit in SEZ
(b) Assessee manufactures or produces articles or things	Assessee begins to manufacture or produce articles or things or provide any services on or after 1.4.2005 but before 1.4.2020. 'Manufacture' means to make, produce, fabricate, assemble, process or bring into existence, by hand or by machine, a new product having a distinctive name, character or use and shall include processes such as refrigeration, cutting, polishing, blending, repair, remaking, re-engineering and includes agriculture, aquaculture, animal husbandry, floriculture, horticulture, pisciculture, poultry, sericulture, viticulture and mining.
(c) It should not be formed by splitting or reconstruction of existing business	Same as in case of Section 10A. The transfer oe redevelopment of technical manpower from the existing unit(s) to a new unit located in SEZ, in the first year of commencement of business, shall not be construed as splitting up on reconstruction of an existing business, provided the assessee satisfies any of the following two tests given below : *Test 1* : The number of technical manpower so transferred as at the end of the first financial year does not exceed 50% of the total technical manpower actually engaged in

	development of software or IT enabled product in the new unit. *Test 2* : The net addition of the new technical manpower in all units of the assessee (enterprise) is at least equal to the number that represent 50% of the total technical manpower of the new SEZ unit during such previous year.
(d) It should not be formed by transfer of old machinery	Same as in case of Section 10A.
(e) Export from SEZ	Assessee has income from exported goods/services from such unit.
(f) Audit	Same as in case of Section 10A.
(g) Claiming of deduction in ITR	Same as in case of Section 10A.

2. Amount of deduction : On fulfillment of above conditions, deduction will be allowed as under :

Amount of deduction	$$\text{Profit of the business of the undertaking} \times \frac{\text{Export turnover}}{\text{Total turnover of the business carried on by the undertaking}}$$ **Note : Amount of deduction shall be allowed from total income of the assessee calculated in accordance with the provisions of this act (but before giving effect to the provisions of section 10AA) and the deduction under section 10AA CANNOT exceed such total income. [Inserted by Finance Act, 2017 *w.e.f.* A.Y. 2018-19]** *For first 5 years* : 100% of profit and gains derived from such export *For next 5 years* : 50% of profit and gains derived from such export *For next 5 years* : 50% of profit and gains derived from such export provided that : (i) An equal amount is credited to Special Economic Zone Re-investment Allowance Reserve Account (SEZRARA); (ii) Amount of this reserve should be used for acquiring new plant and machinery; (iii) Such plant and machinery should be put to use within 3 years from the end of the financial year in which SEZRARA was created; (iv) If the amount of SEZRARA is misutilised, then deduction would be taken back. Further, if the amount of SEZRARA is not utilized within said 3 years, then the deduction would be taken back in the 4th year.

Notes—

1. Export Turnover means : The consideration in respect of export by the undertaking of articles or things or computer software received in, or brought into, India by the assessee in convertible foreign exchange, but does not include—

(a) freight,

(b) telecommunication charges or

(c) insurance attributable to the delivery of the articles or things or computer software outside India or

(d) expenses, if any, incurred in foreign exchange in providing the technical services outside India

2. Site development of computer software : Profit and gains derived from on site development of computer software (including services for development of software) outside India shall be deemed to be profit and gains derived from the export of computer software outside India.

3. Consequences of amalgamation or demerger : Where any undertaking being the Unit which is entitled to the deduction under this section is transferred, before the expiry of the period specified in this section, to another undertaking, being the Unit in a scheme of amalgamation or demerger,—

(a) no deduction shall be admissible under this section to the amalgamating or the demerged Unit, being the company for the previous year in which the amalgamation or the demerger takes place; and

(b) the provisions of this section shall, as they would have applied to the amalgamating or the demerged Unit being the company as if the amalgamation or demerger had not taken place.

4. Loss of such business ia allowed to carried forward or set off : Loss referred to in sub-section (1) of section 72 or sub-section (1) or sub-section (3) of section 74, in so far as such loss relates to the business of the undertaking, being the Unit shall be allowed to be carried forward or set off.

5. Double deduction is not allowed : Where a deduction under this section is claimed and allowed in respect of profits of any of the specified business, referred to in section 35AD, for any assessment year, no deduction shall be allowed under the provisions of section 35AD in relation to such specified business for the same or any other assessment year.



CHAPTER 6

EXEMPT INCOMES OF TRUST

6.1 Income of Charitable and Religious Trusts [Section 11]

1. Meaning of 'Charitable Purpose' : Charitable purpose includes :

(a) relief of the poor,
(b) education,
(bb) yoga,
(c) medical relief,
(d) preservation of environment (including watersheds, forests and wildlife) and preservation of monuments or places or objects of artistic or historic interest and
(e) the advancement of any other object of general public utility.

Provided that advancement of any other object of general public utility (clause 'e') shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of trade, commerce etc. for consideration, irrespective of the nature of use or application of such income, unless,-

(i) such activity is undertaken in the course of actual carrying out of such advancement of any other object of general public utility; and

(ii) the aggregate receipts from such activity or activities, during the previous year, does not exceed 20% of the total receipts, of the trust or institution undertaking such activity or activities, for the previous year.

Meaning of certain terms

Trust: A trust is an obligation annexed to the ownership of property, and arising out of confidence reposed in and accepted, for the benefit of the beneficiaries. In the case of a trust, the property is transferred by a person to another for the benefit of certain specified persons.

Author of the trust: The person who reposes or declares the confidence is called the "author of the trust".
Trustee: The person who accepts the confidence is called the "trustee".

Beneficiaries: The person for whose benefits the confidence is accepted is called the "beneficiary".

Trust property: The subject matter of the trust is called "trust property" or "trust money".

2. Conditions for grant of exemption : Exemption under section 11 will be available to a charitable or religious trust on fulfilment of certain condition—

- Such trust must be registered for charitable and religious purpose in India;

- No part of its income should be applied for the benefit of 'specified persons';
- It should NOT be created for the benefit of a particular religious community;
- If it is a trust due to its object being "advancement of any other object of general public utility" falling under clause (e) of section 2(15), its aggregate value of fees or other consideration during the P.Y should NOT exceed 20% of its total receipts;
- Its books of accounts must be audited.

3. Exemption : Exemption will be as under—

(A) PROPERTY INCOME

Income from property held under trust and donations received without any direction towards 'corpus', will be exempt as under :

- *15% of such income* : Fully exempt without any condition.
- *85% of such income* : Exempt upto the amount *applied* (*i.e. spent*) for trust purposes OR *accumulated* as per section 11(2) for use in future years.

Notes—

(a) Deemed application and exemption : In the following cases the income although not applied up to 85% of the income derived during the year, shall, if the assessee gives a notice to the A.O. on or before the date of ROI, be deemed to be applied (hence exempt) for such purposes during the previous year in which the income was derived—

Reason for non-application	*Income 'deemed to have applied' in the year of its accrual*	*Year in which actual application should be made*
(1)	*(2)*	*(3)*
(a) Income has not been received during the year of its accrual	As *entire* such income is deemed to have applied in the year it is derived and therefore exempt from tax provided that it is actually applied for trust purposes in the year given in column (3).	During the previous year in which such income is *received* or during the previous year *immediately following* that year.
(b) Any other reason. (for example income is received on last day of the year of its accrual)	Same as above	During the previous year *immediately following* the previous year in which such income was *derived.*

(b) Consequences if after exemption, income is not applied : If after taking the exemption as per Note 1 *above,* income is not actually applied within the time limits given in Column (3), then so much of the income will be deemed to be income of the following year :

Case (a) : The previous year *immediately following* the year in which it is *received.*

Case (b) : The previous year *immediately following* the year in which it is derived (accrued)

(c) Accumulating the income to be used in future [Section 11(2)] : Where 85% of the income, referred to in section 11(1)(*a*) or 11(1)(*b*), is not applied to charitable or religious purposes in India during the previous year, the deduction for such income shall not be denied if the following conditions are satisfied—

1	*NOTICE TO AO :* Such person specifies, by notice in writing given to the AO in the prescribed manner (*i.e.* Form 10), ♦ the *purpose* for which the income is being accumulated or set apart *and* ♦ the *period* for which the income is to be accumulated or set apart, not exceeding 5 years.
2	*INVESTMENT:* the money so accumulated or set apart is invested or deposited in the forms or modes specified in section 11(5).

(B) CORPUS DONATIONS

Donations received with the direction that they shall form part of 'corpus' will be fully exempt without any condition (even if they are not spent).

However any amount credited or paid by a trust or institution out of its income to another trust or institution, being contributions with specific direction that they shall form part of the corpus of the donee trust or institution, shall NOT be treated as application of income of the donor trust or institution. [w.e.f. A.Y. 2018-19]

Why this Explanation : Donation given by one trust to another trust, with specific direction that it shall form part of corpus, is though considered application of income in the hands of donor trust but is not considered as income of the recipient trust (as corpus donations are exempt from taxation). So trusts were able to convert normal donations (for which exemption is allowed only if they are spent) into donation for corpus (exemption is allowed even without spending it) by donating it to each other.

To plough this loophole, a new proviso (12th) in clause (23C) of section 10 and an Explanation to section 11 is inserted to provide that any amount credited or paid out of its income, being contributions with specific direction that they shall form part of the corpus of the donee trust or institution, shall NOT be treated as application of income of the donor trust or institution.

Problem—6.1 : *Following are the details of Ganga Charitable Trust for the previous year 2018-19:*

	(Rs.)
Income from property held under trust for religious /charitable purpose	*20,00,000*
Voluntary contribution received	*4,00,000*
Voluntary contribution received with direction that they shall form part of trust corpus	*6,00,000*
Expenditure on activities of religious or charitable nature (i.e. application)	*8,00,000*

Compute the total income of Ganga Charitable Trust in the following situation:

Situation 1 : *Entire amount of income from property held trust is received during the P.Y. 2018-19.*

Situation 2 : *Rs.10,00,000 is received during 2018-19 and balance Rs.10,00,000 is received on 01.5.2021.*

Situation 3 : *Rs. 10,00,000 is received well before 31.3.2019 and balance 10,00,000 is received on 31.3.2019.*

Solution :

Situation 1: Income of the trust will be calculated as under—

	(Rs.)
Gross receipts from property held under trust	20,00,000
Add: Voluntary contribution	4,00,000
	24,00,000
Less: 15% accumulation (*ad-hoc exemption)**	(3,60,000)
Less: Expenditure on activities of religious or charitable nature	(8,00,000)
Add: Voluntary contribution with specific direction [Exempt u/s 11(1)(d)]	*Nil*
Total income	**12,40,000**

*15% of the total income from such property and not of the income remaining after expending money on charitable/religious purpose—*CIT* v. *Programme for Community Organisation* [2001] (SC), *e.g.* (Example given by Apex Court), Where the assessee-trust received donations in the aggregate sum of Rs. 2,57,376, out of which it applied to its charitable purposes the aggregate sum of Rs. 1,70,369 leaving a balance of Rs. 87,010, it was entitled to accumulate prescribed percentage of Rs. 2,57,376, and not prescribed percentage of Rs. 87,010.

Situation 2 : Reason for non-application is non-receipt of income during the current previous year, therefore, this is a case as is referred in sub-clause (i) of clause (2) of the Explanation to section 11(1). Income of the trust will be calculated as under—

	(Rs.)
Gross receipts from property held under trust	20,00,000
Add: Voluntary contribution	4,00,000
	24,00,000
Less: 15% accumulation *(ad-hoc exemption)*	(3,60,000)
Less: Expenditure on activities of religious or charitable nature	(8,00,000)
Add: Voluntary contribution with specific direction [Exempt under section 11(1)(d)]	*Nil*
Less: Income *deemed to be applied* for charitable/religious purpose as per **sub-clause (i) of clause (2) of the Explanation to section 11(1) [See Note]**	(10,00,000)
Total income	**2,40,000**

Note: It is assumed that the assessee exercises the option in writing before the expiry of the time allowed under section 139(*1*), to apply such income in the previous year of receipt or previous year immediately following that year. Therefore, this amount can be utilised latest by 31.3.2022 or 31.3.2023. If this amount or any part thereof, which is not applied till 31.3.2023, such unutilised part will be treated as income of the trust for the assessment year 2023-24 (*i.e.* previous year 2022-23).

Situation 3 : Reason for non-application is other reason, therefore this is a case as referred **in sub-clause (ii) of clause (2) of the Explanation to section 11(1).** Income of the trust will be calculated as under—

	(Rs.)
Gross receipts from property held under trust	20,00,000
Add: Voluntary contribution	4,00,000
	24,00,000
Less: 15% accumulation *(ad-hoc exemption)*	(3,60,000)
Less: Expenditure on activities of religious or charitable nature	(8,00,000)
Add: Voluntary contribution with specific direction [Exempt under section 11(1)(d)]	*Nil*
Less: Income deemed to be applied for charitable/religious purpose as per **sub-clause (ii) of clause (2) of the Explanation to section 11(1)***	(10,00,000)
Total income	**2,40,000**

*It is assumed that the assessee exercises the option in writing before the expiry of the time allowed under section 139(*1*), to apply such income in the previous year immediately following the current previous year. Therefore, this amount can be utilised latest by 31.3.2020. If this amount or any part thereof, which is not applied till 31.3.2020, such unutilised part will be treated as income of the trust for the assessment year 2020-21 (*i.e.* previous year 2019-20).

(C) BUSINESS INCOMES [Section 11(4)]

Business income will be treated as 'income from property held under trust' IF

(i) such business is incidental to the attainment of the objective of the trust and

(ii) separate books are maintained for such business.

(D) CAPITAL GAIN [Section 11(1A)]

Capital gain arising on transfer of a trust property being a property held under trust WHOLLY for

charitable or religious purpose, will be exempt IF 'net consideration' is utilised in acquiring new asset for trust purpose. Exemption will be allowed as under :

Situation	*Amount deemed to have been applied*
▪ Where the **whole** net consideration is utilised in acquiring the new capital asset	The whole amount of such capital gain
▪ Where **only a part** of the net consideration is utilised in acquiring the new capital asset	So much of such capital gain as is equal to the amount, if any, by which the amount so utilised exceeds the cost of the transferred asset

Problem 6.2 : *A trust holds a capital asset, which is fully utilised for charitable purpose. Details are as under:*

Date of acquisition of capital asset	:	*April 1, 2000*
Cost of acquisition	:	*Rs. 1,20,000*
Fair Market Value on April 1, 2001	:	*Rs. 4,50,000*
Date of transfer	:	*January 11, 2017*
Sale consideration	:	*Rs. 15,00,000*
Expenses on transfer	:	*Rs. 1,65,000*
Amount utilised in acquiring the new capital asset:		
Case 1	:	*Rs. 13,35,000*
Case 2	:	*Rs. 12,00,000*
Case 3	:	*Rs. 11,88,380*
Case 4	:	*Rs. 5,00,000*

Calculate the amount of capital gain deemed to have been applied for charitable or religious purposes.

Solution :

Capital gain is calculated as under:	Rs.
Sale consideration	15,00,000
Less : Expenses on transfer	(1,65,000)
Less : Indexed cost of acquisition (4,50,000 × 264) ÷ 100	(11,88,000)
Long term capital gain	1,47,000

Net consideration is calculated as under:	
Sale consideration	15,00,000
Less: Expenses on transfer	(1,65,000)
Amount of net consideration	13,35,000

Capital gain deemed to have been applied for charitable or religious purposes, is as under:

Amount in Rs.

Case	*Amount of investment in new capital asset*	*Cost of acquisition*	*Excess of investment over cost of acquisition (B)- (C)*	*Amount of capital gain*	*Capital gain exempt under section 11(1A) [i.e. (D) or (E), whichever is lower]*
(A)	*(B)*	*(C)*	*(D)*	*(E)*	*(F)*
Case 1	13,35,000	11,88,000	1,47,000	1,47,000	1,47,000
Case 2	12,00,000	11,88,000	12,000	1,47,000	12,000
Case 3	11,88,380	11,88,000	*Nil*	1,47,000	*Nil*
Case 4	5,00,000	11,88,000	*Nil*	1,47,000	*Nil*

Notes—

1. Donations to other institutions out of accumulated income NOT to be treated as application of income for charitable or religious purpose [Expl. to section 11(2)]

Where out of income referred to in section 11(*1*)(*a*) which is not applied but is accumulated or set apart, any amount credited or paid, to:

- any trust or institution registered under section 12AA; or
- any fund or institution or trust. referred to in section 10(23C)(*iv*) or (*v*) or (*vi*) or (*via*),

the amount so paid or credited, shall not be treated as application of income for charitable or religious purposes and therefore, exemption cannot be allowed in respect thereof.

2. Depreciation is NOT allowed as deduction [Section 11(6)]

Income of trust or institution shall be determined without any deduction or allowance by way of depreciation or otherwise in respect of any asset, acquisition of which has been claimed as an application of income under this section in the same or any other previous year.

3. Conditions for applicability of section 11 and 12 [Section 12A read with Section 13]

For claiming exemption under section 11 and 12, the trust or institution has to fulfil the following conditions—

Condition—1	Trust must be registered under section 12AA. Application is filed in Form No 10A.
Condition—2	Where the total income of the trust or institution as computed *without giving effect to the provisions of section 11 and section 12* exceeds the maximum amount which is not chargeable to income-tax in any previous year, the accounts of the trust or institution should be audited by a chartered accountant and the audit report in Form 10B should be furnished along with the return of income of such trust or institution.
Condition—3	Income and property of the trust enures for public benefit and not (whether directly or indirectly) for any private religious purposes. Therefore, if any part of the income of the trust which does not enure for the benefit of the public, that part of the income will not be eligible for exemption under section 11 and 12.
Condition—4	Trust should not be created for the benefit of any particular religious community or caste. Therefore, if it created for the benefit of any particular religious community or caste, the *entire* income of the trust will not be eligible for the exemption under section 11 and 12. It should (however) be noted that a trust created for the benefit of Scheduled Castes, backward classes, Scheduled Tribes or women and children is not treated as created for the benefit of a religious community or caste.
Condition—5	No part of income or property should be applied or used (directly or indirectly) for the benefit of any person referred to in section 13(3). Therefore, if any part of its income enures for the benefit of any person referred to in section 13(3), the entire income of the trust will not be eligible for exemption under section 11 and 12.
Condition—6	If income of the trust is accumulated under section 11(2), its funds should be invested/deposited in the modes specified under section 11(5).
Condition—7	For determining the application of income under this sub-section, the provisions of- → section 40(*a*)(*ia*) [*i.e.* payments to resident payees after applicable TDS] and → section 40A(*3*) [*i.e.* payments exceeding Rs.10,000/35,000 to be made by account payee cheque, DD, net-banking etc.] shall, *mutatis-mutandis,* apply as they apply in computing income under the head PGBP.

Levy of tax at maximum marginal rate : Above said incomes shall be chargeable to tax at the maximum marginal rate. **"Maximum marginal rate"** means the rate of income-tax (including surcharge on income-tax, if any) applicable in relation to the highest slab of income in the case of an individual as specified in the Finance Act of the relevant year. **For A.Y. 2020-21, the MMR is 42.744%** (*i.e.* 30 + 37% of 30 *i.e.* 11.1 + 4% of 41.1)

4. Meaning of 'specified persons'- [Section 13(3)]: For the purpose of section 13, the following are specified persons—

(*a*) the author of the trust or the founder of the institution ;

(*b*) any person whose total contribution up to the end of the relevant previous year exceeds Rs. 50,000;

(*c*) where such author, founder or person is a HUF, a member of the family;

(*cc*) any trustee of the trust or manager (by whatever name called) of the institution;

(*d*) any relative of any such author, founder, person, member, trustee or manager;

(*e*) any concern in which any of the persons referred to in above clauses has a substantial interest.

5. 'Relative' in relation to an individual, means—

(*i*) spouse of the individual;

(*ii*) brother or sister of the individual;

(*iii*) brother or sister of the spouse of the individual;

(*iv*) any lineal ascendant or descendant of the individual;

(*v*) any lineal ascendant or descendant of the spouse of the individual;

(*vi*) spouse of a person referred to in sub-clause (*ii*), sub-clause (*iii*), sub-clause (*iv*) or sub-clause (*v*);

(*vii*) any lineal descendant of a brother or sister of either the individual or of the spouse of the individual.

6. 'Substantial interest': a person shall be deemed to have a substantial interest in a concern,—

(*i*) **in a case where the concern is a company**, if its shares (being equity shares) carrying not less than *20% of the voting power* are, at any time during the previous year, owned beneficially by such person or partly by such person and partly by one or more of the other 'specified persons' referred to in sub-section (3);

(*ii*) **in the case of any other concern**, if such person (along with the 'specified person') is entitled, at any time during the previous year, to not less than *20% of the profits* of such concern.

7. Exemption cannot be denied if an educational/hospital trust providing services to specified person of section 13(3) [Section 12(2) read with Section 13(6)]

Income of a trust or an institution will not be exempt if any part of its income or property of such trust is used or applied directly or indirectly for the benefits of any person such as author or trustees etc. Section 13(6), provides that a charitable or religious trust running an educational institution or a medical institution or a hospital shall not be denied the benefit of exemption under section 11 or 12 only by reason that such trust has provided educational or medical facilities to these interested persons.

Section 12(2) provides that the value of any medical or educational service which are made available by a charitable or religious trust or institution to any of the interested person shall deemed to be the income of such trust or institution during the previous year in which these services are provided to them.

8. Once registered under section 12AA, exemption of section 10 cannot be claimed [Section 11(7)]

Where a trust or an institution has been granted registration under section 12AA and the said registration is in force for any previous year, then, nothing contained in section 10 [other than clause (1) and clause (23C) thereof] shall operate to exclude any income derived from the property held under trust from the total income of the person in receipt thereof for that previous year.

(E) ANONYMOUS DONATIONS [Section 115BBC]

Taxability of anonymous donation in the hands of institutions or trusts registered under section 10(23C) or section 11 is as under :

♦ *Anonymous donation upto HIGHER of the following amounts :* (i) *5% of the total donation (except corpus donations) received, or* (ii) *Rs. 1,00,000*	Normal tax rate
♦ *Balance of anonymous donations*	Flat rate of 30%

"Anonymous donation" means any voluntary contribution referred to in section 2(24)(*iia*), where the person receiving such contribution does not maintain a record of the identity indicating the name and address of the person making such contribution and such other particulars as may be prescribed.

Non-applicability of this section to 'anonymous donations' [Section 115BBC]

The provisions of section 115BBC(1) shall not apply to any anonymous donation received by—

Trust or institution receiving anonymous donations	*Applicability of section 115BBC*
▪ any trust or institution created *wholly for religious purposes*	Not applicable
▪ any trust or institution *wholly for charitable purposes*	Applicable
▪ any trust or institution created *wholly for religious and charitable purposes,* *a.* if donation is made *with a specific direction* that such donation is for any university or other educational institution or any hospital or other medical institution run by such trust or institution; *b.* if donation is *made without the said direction.*	 Applicable Not applicable

Problem—6.3 : *Following are the details of Ganga Charitable Trust for the previous year 2019-20 :*

	(Rs.)
Income from property held under trust for religious /charitable purpose	*20,00,000*
Voluntary contribution received [Donor details available]	*4,00,000*
Voluntary contribution received for corpus [Donor details available]	*6,00,000*
Voluntary contribution received [Donor details NOT available]	*7,00,000*
Expenditure on trust purpose (of which Rs.1,00,000 is paid in cash mode in a day to a contractor for carrying out repair of the building and Rs.80,000 being professional fees, paid without TDS)	*8,00,000*
Expenditure on other purpose	*1,50,000*

Compute the total income of Ganga Charitable Trust by assuming that entire amount of income from property held trust is received during the P.Y. 2019-20.

Solution : Income of the trust will be calculated as under—

		(Rs.)
Gross receipts from property held under trust		20,00,000
Add : Voluntary contribution [Other than anonymous donations]		4,00,000
Add : Voluntary contribution for corpus		Exempt
Add : Voluntary contribution [*i.e.* anonymous donations]		7,00,000
	Gross income	31,00,000
Less : *Ad-hoc* Exemption @ 15% (of 20,00,000 + 4,00,000 + 1,00,000*)		(3,75,000)
Less : Expenditure on activities of religious or charitable nature (*see* Note)		(6,76,000)
	Net income	20,49,000
Tax at special rate of 30% under section 115BBC on Rs.7,00,000 – 1,00,000 (**i.e.* higher of Rs.1,00,000 or 5% of total donations of Rs. 11,00,000 *i.e.* 55,000) = 6,00,000 × 30%		1,80,000
Tax at normal rates [on 20,49,000 – 6,00,000 (i.e. anonymous donation taxed @30%)]		2,47,200
HEC @4% of (1,80,000 + 210,000)		17,088
	Total Tax	**4,44,288**



CHAPTER 7

INCOME FROM AGRICULTURE INCOME OF POLITICAL PARTY INCOME OF ELECTORAL TRUST (EXEMPT FROM TAXATION)

7.1 Agriculture income and its tax treatment [Section 10(1)]

As per section 10(1), agriculture income is exempt from taxation. Constitution of India gives exclusive power to the State Govt to levy tax on agriculture income. Central Government therefore, cannot levy tax on agriculture income. However, in certain cases (*i.e.* partial integration cases), agriculture income is taken into consideration while calculating tax on non-agriculture income. Provisions relating to agriculture income are given below.

1. Meaning of agriculture income : Section 2(1A) defines the term 'agriculture income' as under :

(a)	(b)	(c)
Rent or revenue : Any rent or revenue derived from land which is situated in India and is used for agricultural purposes.	*Agricultural operations* : Any income derived from such land by agricultural operations or any process by cultivator or receiver of rent-in-kind, which render the produce fit for the market or the sale of such produce.	*Farm house* : Any income from a farm house subject fulfilment of certain conditions (given below)

Note: Capital Gain arising from transfer of agricultural land shall not be treated as agricultural income.

2. Conditions to be satisfied for treating an income as agriculture income : The above incomes shall be treated as agriculture income if the following conditions are satisfied—

Condition 1	*Land should be situated in India:* The land must be situated in India. If the land is situated outside India, the income from such land will not be treated as agricultural income.
Condition 2	*Land should be used for agriculture purpose:* Land must be used for agricultural purposes. It means, tilling of the land, watering it, sowing of the seeds, planting and similar operations on the land must be carried.
Condition 3	*Agriculture income includes direct incomes only:* The direct income from agriculture is treated as agricultural income. An indirect income from agriculture is not agricultural income. For example, salary of a farm manager or dividend from a company engaged in agricultural activities is not agricultural income.

3. Types of agriculture income

(1) *Rent or revenue derived from land :* When one person grants to another a right to use his land for agricultural purposes, the former receives from the latter rent or revenue in consideration of such user. Such rent

or revenue is treated as agricultural income.

(2) *Income from agricultural operations :* It means cultivation of a field, tilling of the land, watering it, sowing of the seeds, planting and similar operations on the land. Products which grow wild on the land or are of spontaneous growth not involving any human labour or skill upon the land are not products of agriculture. The income derived therefrom is not agricultural income.

(3) *Income from making produce fit for market :* If there is no market of the produce of the field and the cultivator or receiver of rent-in-kind performs any activity to make the produce fit for market, any income from such activity is also agricultural income. The process employed in curing of coffee, flue curing of tobacco, ginning of cotton, etc., is such process. [*Note*: These activities must be carried on the agriculture produce which is produced by the cultivator or receiver of rent-in-kind himself]

(4) *Income from sale of produce :* Income derived by a cultivator or receiver or rent-in-kind from the sale of produce raised or received by him is treated as agricultural income, even if he keeps a shop for the sale of such produce.

(5) *Income from a farm house :* The income from a farm house is treated as agricultural income if the following conditions are satisfied:

(a) the building is owned and occupied by the cultivator or receiver of the rent or revenue of any such land;

(b) it is situated on or in the immediate vicinity of the agricultural land;

(c) the building is, by reason of his connection with the land, used as dwelling house or a store-house or an out-house by the cultivator or receiver of rent-in-kind;

(d) the land is either assessed to land revenue in India or is subject to a local rate assessed and collected by the officers of the Government.

If however, the land revenue or local tax is not payable on such land, the land is situated in a 'rural area'. Where, 'rural area' means any area which is outside the jurisdiction of a municipality or cantonment board having a population of 10,000 or more and ALSO it does not fall within the following distance (measured aerially) :

2 kms	From the local limits of a municipality or cantonment board having a population of >10,000 but ≤ 1,00,000
6 kms	From the local limits of a municipality or cantonment board having a population of >1,00,000 but ≤ 10,00,000
8 kms	From the local limits of a municipality or cantonment board having a population of >10,00,000

(6) *Income from saplings or seedlings:* The income derived from saplings or seedlings grown in a nursery shall be deemed to be agricultural income. *Explanation 3 to section 2(1A)*

Note: Various Courts has held that agriculture must be carried on *land* and since in nursery these activities are carried out in flower pots, therefore, incomes of nurseries were taxable. This explanation was inserted to supersede these judgements and to exempt income of nurseries as well]

4. Partly agriculture incomes

Sometimes there is composite income, which is partially agricultural and partially non-agricultural. For determining the non-agricultural income chargeable to tax, the market value of any agricultural produce which has been raised by the assessee and which has been utilised as a raw material in such business, shall be deducted. No further deduction shall be made in respect of cost of cultivation incurred by the assessee as a cultivator. For this purpose, market value shall be deemed to be:

(a) where the agricultural produce is ordinarily sold in the market, the value calculated according to the average price at which it has been so sold, during the relevant P.Y. ; or

(b) where the agricultural produce is not ordinarily sold in the market the *aggregate* of the following shall be its market value:

i. the expenses of cultivation;

ii. the land revenue or rent paid for the land on which it was grown; and

iii. the profit which in the opinion of the Assessing Officer is reasonable.

5. Examples of partly agriculture income

(1) *Income from growing and manufacturing of Tea* [Rule 8] : 60% of the income derived from the sale of tea grown and manufactured by the seller in India is deemed to be agricultural income and the remaining 40% is taken as business income.

(2) *Income from growing and manufacturing of centrifuged latex or cenex* [Rule 7A] : 65% of the income derived from the sale of centrifuged latex or cenex manufactured or processed by him from rubber grown by him in India is deemed to be agricultural income and the remaining 35% is taken as business income.

(3) *Income from growing and manufacturing of Coffee* :

- 75% of the income derived from the sale of coffee *grown and cured* by the seller in India is deemed to be agricultural income and 25% is taken as business income [Rule 7B(1)].
- 60% of the income derived from the sale of coffee *grown, cured, roasted and grounded* by the seller in India, with or without mixing of chicory or other flavouring ingredients is deemed to be agricultural income and the remaining 40% is taken as business income [Rule 7B(1A)].

(4) *Any other case e.g. Profits of Sugar Factories* [Rule 7] : Profits of sugar factories attributable to the cane grown on their own farms are treated as agricultural income. Sugarcane is generally sold in the market. Hence, in order to separate the agricultural income from the business income, the average market price of sugarcane during the relevant previous year shall be charged as expenditure and no note will be taken of the expenses of cultivating the sugarcane. The income thus determined will be the business income.

6. Non-agriculture incomes from land

The following incomes, are not derived from land used for agricultural purposes, hence they are non-agricultural incomes:

(*i*) Income from markets;

(*ii*) Income from stone quarries;

(*iii*) Income from mining royalties;

(*iv*) Income from land used for storing agricultural produce;

(*v*) Income from supply of water for irrigation purposes (e.g., income from supply of water for irrigation from a tube-well or well, as it does not involve any agricultural operation);

(*vi*) Income from self-grown grass, trees or bamboos;

(*vii*) Income from fisheries;

(*viii*) Income from the sale of earth for brick-making;

(*ix*) Remuneration received as manager of an agricultural farm;

(*x*) Dividend from a company engaged in agriculture;

(*xi*) Income of the buyer of a ripe crop;

(*xii*) Income from dairy farm, poultry farming, etc.; and

(*xiii*) Income from interest on arrears of rent of agricultural land.

7. Computation of agriculture income

(a) Agricultural Income by way of rent or revenue derived from land which is situated in India and is used for agricultural purpose is computed *as if* it were income chargeable to income tax under the head *'Income from Other Sources'*.

(b) Agricultural Income from Agricultural building is computed as if it were income chargeable to income tax under the head 'Income from House Property'.

(c) Any other agricultural income is computed as if it were income chargeable to income tax under the head 'Profits and Gains of Business or Profession'.

(d) Any sum payable by the assessee on account of any tax levied by the State Government on the agricultural income shall be deducted in computing the agricultural income.

(e) Where in respect of any source of agricultural income there is a loss, such loss shall be set-off against any other source of agricultural income.

(f) Where the assessee is a member of an association of persons or body of individuals and his share in the agricultural income of the association or body is a loss, such loss shall not be set-off against any other agricultural income of the assessee.

(g) If there is loss from agriculture, it can be carried forward and set-off against agricultural income in the following eight years provided the return of income has been filed and such loss has been determined by the Assessing Officer.

(h) Where the net result of the computation made in accordance with these rules is a loss, the loss so computed is ignored and the net agricultural income is deemed to be nil.

(i) The net agricultural income is rounded-off to the nearest multiple of rupees ten.

How to determine written down value (WDV) of the assets in case assessee is having agriculture income as well

Explanation 7 to Section 43(6) —For the purposes of this clause, where the income of an assessee is derived, in part from agriculture and in part from business, for computing the written down value of assets acquired before the previous year, the total amount of depreciation shall be computed as if the entire income is derived from the business of the assessee under the head "PGBP" and the depreciation so computed shall be deemed to be the depreciation actually allowed under this Act.

8. Partial integration of agriculture income

Agricultural income is totally exempt from liability to income tax. However, agricultural income is a factor in determining the tax on the non-agricultural income of an Individual, HUF, AOP, BOI or artificial juridical person whose total income (excluding agricultural income) exceeds the minimum taxable limit AND the agricultural income exceeds Rs. 5,000. So tax in this case will be calculated as under :

Step–1 : Calculate tax* on entire income [i.e. tax on 'net' agriculture income + non-agriculture income]. (*before 'rebate' and 'HEC').

Step–2 : Calculate tax* on net agriculture income including therein the minimum applicable slab limit [*i.e.* tax* on, 'net' agriculture income +minimum applicable slab] (*before 'rebate' and 'HEC').

Step–3 : Tax in *Step–1* (–) Tax in *Step–2*.

Step–4 : Tax in *Step–3* (–) Rebate under section 87A in case of resident individuals if such 'other income' is upto Rs.3,50,000 (+) HEC.

Note : Concept of partial integration, however, is not applicable in case of company, firm, societies etc.

Problem—7.1 : *Following are the information of Mr. Ram for the previous year 2019-20:*

		Rs.
Income from business	:	*4,00,000*
Agricultural income	:	*1,50,000*
Agriculture expenses	:	*30,000*

Compute the amount of tax payable by him.

Solution :

	Rs.
Business income	4,00,000
Agricultural income [Rs.1,50,000—30,000]	1,20,000
Aggregate Income	5,20,000
Tax on Rs. 5,20,000	16,500
Less : Tax on agricultural income :	
i.e. Tax on (Minimum Slab + Agricultural income)	
Rs. 2,50,000 + 1,20,000 = Rs. 3,70,000	6,000
Tax on Total income	10,500
Less: Rebate under section 87A	*Nil*
Add : Health and education cess @ 4%	420
Tax Payable	10,920

7.2 Income of a Political Party [Section 13A]

1. Exemption : Following incomes of a registered political party will be exempt—

- Income from *house property*;
- Income from *other source*;
- Income from *capital gains*;
- Income in form of 'voluntary contribution'. If such contribution exceeds Rs.20,000, the details of such donor will be maintained;

2. Conditions : Following conditions have to be satisfied—

- Political party must be registered;
- It must maintain proper book of accounts;
- Book of accounts must be audited;
- No donation exceeding Rs.2,000 is received by such political party otherwise than by an account payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account or through electoral bond.
- It furnishes a return of income for the previous year in accordance with the provisions of section 139(4B) on or before the due date under that section.

7.3 Income of an Electoral Trust [Section 13B]

1. Exemption : Donations received by an Electoral Trust is treated as its income under section 2(24)(*iia*). Electoral Trust will be allowed exemption as under—

- 5% of such donations, fully exempt.
- Balance 95% will be exempt only to the extend it is distributed to the political parties;

2. Conditions : Following conditions have to be satisfied—

- Electoral Trust is approved by the CBDT in accordance with the scheme of Central Government;
- It must function in accordance with the rules made by the Central Government.

MULTIPLE CHOICE QUESTIONS (MCQs)
(Chapter 5, 6 & 7)

3.1 Concept of 'partial integration' in relation to agriculture income applies :

(a) In case of all individual/HUF/AOP/BOI

(b) In case of individual/HUF/AOP/BOI having agriculture income exceeding 'slab limit' AND other income exceeding Rs.5,00,000.

(c) In case of individual/HUF/AOP/BOI having agriculture income exceeding Rs.5,000 AND other income exceeding 'slab limit'

(d) In case of individual/HUF/AOP/BOI having agriculture income exceeding Rs.5,000 AND other income NOT exceeding 'slab limit'

3.2 Which of the following income will qualify as 'agriculture income' :

(a) Rental income received by the owner of farms from the cultivator who is doing agriculture on that land.

(b) Income from a farm house assessed to land revenue situated in the vicinity of agriculture land.

(c) Income from sapling and seedling in the nursery.

(d) All of the above.

3.3 Which of the following income will qualify as 'agriculture income' :

(a) Income from poultry farming.

(b) Income of a buyer of a ripe crop.

(c) Income from sale of self-grown trees.

(d) None of the above.

3.4 What will be the tax liability in case of an individual (resident, of 25 years) having agriculture income of Rs. 1,00,000, expenses relating to agriculture are Rs. 20,000 and income from salary is Rs.3,50,000 :

(a) Rs. 9,270

(b) Rs. 5,150

(c) Rs. 2,575

(d) Rs. 2,600

3.5 What will be the tax liability in case of a company having agriculture income of Rs. 1,00,000, expenses relating to agriculture are Rs. 20,000 and income from business is Rs.3,00,000 :

(a) Rs. 93,600

(b) Rs. 1,23,600

(c) Rs. 1,17,420

(d) Rs. 92,700

3.6 What will be the tax liability in case of an individual (resident, of 25 years) having agriculture income of Rs. 4,00,000, expenses relating to agriculture are Rs.1,20,000 and income from business is Rs.3,50,000 :

(a) Rs. 17,500

(b) Rs. 20,600

(c) Rs. 18,200

(d) Rs. 18,025

3.7 Which of the following is CORRECT :

(a) In case of business of growing tea, 40% of total income is treated as 'business income' and 60% is treated as 'agriculture income'

(b) In case of business of growing rubber, 35% of total income is treated as 'business income' and 65% is treated as 'agriculture income'

(c) In case of business of growing and curing of coffee, 25% of total income is treated as 'business income' and 75% is treated as 'agriculture income'

(d) all of the above are correct.

3.8 Interest from post office saving bank account is:

(a) Fully exempt

(b) Exempt to the maximum extent of Rs.3,500

(c) Exempt to the maximum extent of Rs.3,500 in case of an individual account, and Rs.7,000 in case of joint account

(d) Exempt upto Rs. 10,000.

3.9 Income which accrues or arises to a sikkimese individual is exempt :

(a) in all cases

(b) to the extent such income is derived from any source in the State of Sikkim

(c) to the extent such income is derived from any source in the State of Sikkim and income by way of dividend or interest on securities

(d) None of the above.

3.10 Income of a foreign company received in India in Indian currency on account of sale of crude oil or any other notified goods or rendering notified services to any person in India shall be:

(a) Exempt

(b) Taxable

(c) exempt if certain conditions as mentioned in section 10(48) are satisfied

(d) exempt upto 50% of profits of such business.

3.11 Any sum received by an individual as a member of HUF from the income of HUF shall be :

(a) Fully taxable

(b) Fully exempt

(c) included in the total income of the member for rate purpose

(d) None of the above.

3.12 Casual income received by the assessee is :

(a) Fully exempt

(b) Exempt upto Rs.5,000

(c) Fully taxable

(d) Exempt upto Rs.10,000

3.13 Mr. A traced a missing person and was awarded a sum of Rs.1,00,000 although there was no stipulation to that effect. Such receipt shall be :

(a) casual income and fully taxable

(b) casual income and exempt upto Rs.5,000

(c) Fully exempt

(d) None of the above.

3.14 An award of Rs.1,00,000 was announced for tracing a missing person. Mr. A traced the person and received the award amount. Such receipt shall be:

(a) casual income
(b) Fully taxable
(c) Fully exempt
(d) None of the above

3.15 Scholarship received by a student to meet the cost of education is:

(a) casual income
(b) Fully taxable
(c) Fully exempt
(d) exempt upto Rs. 5,000 p.m.

3.16 Scholarship received by a student was Rs.1,000 p.m. He spends Rs.8,000 for meeting the cost of education. The balance Rs.4,000 is:

(a) Taxable
(b) A casual income
(c) Exempt
(d) None of the above.

3.17 The daily allowance received by a Member of Parliament is :

(a) Exempt
(b) Taxable
(c) included in total income for rate purposes
(d) exempt upto Rs. 5,000 p.m.

3.18 The daily allowance received by an MLA is :

(a) Exempt
(b) Taxable
(c) included in total income for rate purposes
(d) exempt upto Rs.2,000 p.m.

3.19 The constituency allowance received is :

(a) fully exempt in the hands of MLAs only
(b) fully exempt in the hands of both MLAs and MLCs
(c) exempt upto Rs.2,000 p.m. in the hands of MLAs and MLCs
(d) fully taxable

3.20 Tax paid by the employer on non-monetary perquisites provided to employee shall be:

(a) exempt
(b) taxable
(c) exempt upto Rs. 2,000 for the year
(d) exempt upto Rs. 2,000 p.m.

3.21 Any sum received under a Life Insurance Policy including bonus shall be exempt :

(a) in all kinds of policies
(b) in all kinds of policies except when received under Keyman Insurance Policy
(c) in all kinds of policies except when received under Keyman Policy or under a policy covered u/s 80DD(3)
(d) in all kinds of policies except when received under Keyman Insurance Policy or such policy as is covered u/s 80DD(3) or policy issued, if the premium paid for any year exceeds 10%/15% as the case may be, of actual capital sum assured, except on death.

3.22 Any pension received by an individual or family pension received by any member of his family where such individual is in the service of Central or State Government and was awarded Parmvir Chakra, Mahavir Chakra or Vir Chakra or any other notified gallantry award shall be :

(a) exempt
(b) taxable
(c) exempt upto Rs. 5,0,000.
(d) exempt upto Rs. 50,000.

3.23 Where the income of an individual includes the income of minor child, such individual shall be entitled to an exemption of:

(a) Rs.1,500
(b) Rs.1,500 per minor child
(c) Rs.1,500 per minor child or to extent of income of the minor child included in the total income of the assessee whichever is less
(d) Rs.1,500 per month per minor

3.24 Family pension received by the legal heir of a army personnel who died during operational duties shall be:

(a) Fully exempt
(b) Taxable
(c) exempt upto Rs. 15,000 or 1/3rd of such amount whichever is LOWER.
(d) exempt upto Rs. 50,000 or 1/3rd of such amount whichever is LOWER.

3.25 Capital Gain arising from compulsory acquisition of urban agricultural land shall be:

(a) Taxable
(b) Exempt
(c) Exempt u/s 10(37) if certain conditions are satisfied
(d) Exempt upto Rs. 5,00,000

3.26 Under section 10(4), in case of an individual, any income by way of interest on any money standing to his credit in a Non-Resident (External) Account in any bank in India shall be:

(a) Fully exempt
(b) Fully taxable
(c) Exempt upto Rs.13,000
(d) Exempt upto Rs.10,000

3.27 Under section 10(45), notified allowance or perquisites paid to Chairman or retired Chairman or any member or retired member of the Union Public Service Commission shall be:

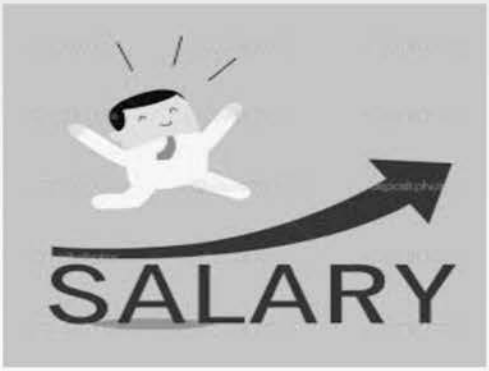
(a) Fully exempt
(b) Fully taxable
(c) Exempt upto Rs.50,000
(d) Exempt upto Rs.60,000

3.28 Which of the following income is an agriculture income :

(a) Income from brick making
(b) income from agriculture land situated in Pakistan
(c) Prize from government on account of higher crop yield
(d) Compensation received from insurance company on account of loss of crop.

ANSWERS TO MCQs

Question	Answer	Question	Answer	Question	Answer	Question	Answer	Question	Answer
3.1	C	3.2	D	3.3	D	3.4	D	3.5	A
3.6	C	3.7	D	3.8	C	3.9	C	3.10	C
3.11	B	3.12	C	3.13	A	3.14	C	3.15	C
3.16	C	3.17	A	3.18	A	3.19	B	3.20	A
3.21	D	3.22	A	3.23	C	3.24	A	3.25	C
3.26	A	3.27	A	3.28	D				



CHAPTER 8

INCOME FROM SALARIES [Introduction]

8.1 Salary income – an introduction

'Salary' is the payment an employee receives from his employer on account of services rendered by him to his employer. The term 'salary' is wide enough. It includes not only monetary payments but also non-monetary benefits flowing from employer to its employees. Before going into detailed provisions, one should understand the following terms:

1. Relationship between employer and employee : For an income to be charged under this head, there must exist a relationship of employer and employee between payer and payee. Whether there is relationship of employer and employee is a question of fact.

♦ *Company director is not a servant* - A director of a company is not a servant but an agent as the company cannot act in its own person but has only to act through directors. *Ram Prashad* v. *CIT*

♦ *Managing director can be a servant* - Whether or not a managing director is a servant of the company apart from his being a director can only be determined by the articles of association and the terms of his employment. If the company is itself carrying on the business and the managing director is employed to manage its affairs in terms of its articles and under the agreement, he could be dismissed or his employment could be terminated by the company if his work is not satisfactory, it could hardly be said that he is not a servant of the company - *Ram Prashad* v. *CIT*

2. Foregoing of salary : As per section 15*(a),* any salary due from an employer or a former employer to an assessee in the previous year, whether paid or not, will be taxable in his hands. If therefore, an employee foregoes his salary, it does not mean that such salary is not taxable. Such voluntary waiver or foregoing by an employee of salary due to him is merely an application of income and is chargeable to tax.

3. Surrender of salary : Where an employee opts to surrender his salary (including allowances) to the Central Government under Voluntary Surrender of Salaries (Exemption from Taxation) Act, 1961, the salary so surrendered would not be taxable in his hands and will be excluded from his taxable income.

4. Place of accrual : As per section 9(1)(*ii*), salary income shall be deemed to accrue or arise in India if such salary is earned in India for services rendered in India. In other words, salary income is deemed to accrue or arise at the place where the services (in respect of which it accrues) are rendered. If services are rendered in India and salary on account of such services is received outside India, it will be treated as an income which is deemed to accrue or arise in India. Therefore, if a person, who after rendering services in India, retires and settles outside India, receives any pension on account of such services, such pension shall be an income which is deemed to accrue or arise in India.

Exception to this Rule: As per section 9(1)(*iii*),

- in case of Government employee

- who is a citizen of India, and
- renders services outside India,
- any salary received on account of these services would be treated as income deemed to accrue or arise in India.

However, as per section 10(7), any *perquisites or allowances* paid to above employee will be exempt from tax. Therefore, provisions of section 9(1)(*iii*) are applicable only in respect of salary and not in respect of perquisites or allowances.

5. Tax free salary : Where the employee receives tax free salary from his employer, his salary income will include not only the amount of salary but also the amount of tax paid by his employer on his behalf. However, any tax on perquisites referred to in section 10(10CC) is exempt in the hands of the employee.

6. Salary of M.L.A./M.P : Any remuneration received by a Member of Parliament (M.P.) or Member of Legislative Assembly (M.L.A.) is taxable as "Income from other sources". However, pay and allowance received by the Minister of State/Central Government shall be charged to tax under the head "Income from Salaries".

8.2 Basis of charge [Section 15]

1. The following income shall be chargeable to income-tax under the head "Salaries":

(a) any **salary due** from an employer/a former employer to an assessee in the previous year;

(b) any **salary paid** or allowed to him in the previous year by an employer or a former employer;

(c) any **arrears of salary** paid or allowed to him in the previous year by an employer or a former employer, if not charged to income-tax for any earlier previous year.

2. Salary is taxable on "due" or "receipt", whichever is earlier [Explanation 1]: Where any salary paid in advance is included in the total income of any person for any previous year it shall not be included again in the total income of the person when the salary becomes due. It is therefore, clear from this explanation read with clause *(a) and (b),* above, that salary is taxable on "due" or "receipt" basis whichever is earlier.

3. Remuneration of partner is not regarded as "salary" [Explanation 2]: Any salary, bonus, commission or remuneration, by whatever name called, due to, or received by, a partner of a firm from the firm shall not be regarded as "salary" for the purposes of this section.

4. Arrears of salary: Arrears of salary are exception to Explanation 1: Arrears of salary are covered under clause *(c)* of section 15. Arrears of salary are taxable on receipt basis. Taxability of arrears of salary is an exception to the rule that salary is taxable on the basis of "due" or "receipt", whichever is earlier. For arrears of salary, assessee can claim relief of section 89.

5. Method of accounting: Provisions of section 145 (*i.e.* taxability under cash or mercantile system of accounting) are not applicable in case of salary income, as the basis of charge are fixed by section 15.

6. Loans are not 'salary': Loan from employer is not salary. Advance salary is taxable, while advance against salary is not taxable.

Problem 8.1 (*Taxable event*) : *Mr. Ram is employed in A Ltd. on a fixed salary of Rs. 25,000 pm, which becomes 'due' on the first day of the next month. On July 1, 2019 he joined B Ltd. at a salary of Rs. 30,000 pm, which becomes due on last day of each month. However, he is paid on 7th of the next months. Further, Mr. Ram has obtained the salary of April, 2020 and May, 2020 in advance in the month of March, 2020. Compute his taxable salary for the assessment year 2020-21.*

Solution : Computation of taxable salary of Mr. Ram for the assessment year 2020-21

As per section 15 read with Explanation 1 to this section, salary is taxable on 'due' or 'receipt', whichever is earlier. Therefore taxability in case of Mr. Ram is as under-

Salary from A Ltd.:	Rs.
March, 2019	25,000
April, 2019	25,000
May, 2019	25,000
June, 2019	25,000
Salary from B Ltd.:	
July, 2019	30,000
August, 2019	30,000
September, 2019	30,000
October, 2019	30,000
November, 2019	30,000
December, 2019	30,000
January, 2020	30,000
February, 2020	30,000
March, 2020	30,000
April, 2020 (*i.e.* Advance salary)	30,000
May, 2020 (*i.e.* Advance salary)	30,000
Total taxable salary	**4,30,000**

8.3 Deductions from salaries [Section 16]

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

(a) Standard Deduction [Section 16(ia)] : A deduction of Rs.40,000 or the amount of the salary, whichever is less.

(b) Deduction of entertainment allowance in case of Government employees [Section 16(ii)]: In case of the Government employees, least of the following shall be allowed as deduction:

(i) 20% of his salary (Only Basic salary), or

(ii) Rs. 5,000, or

(iii) Actual amount of entertainment allowance granted during the previous year.

(c) Deduction of employment tax PAID [Section 16(iii)]: A deduction of any sum *paid* by the assessee on account of a tax on employment referred to in article 276(*2*) of the Constitution, leviable by or under any law (maximum of Rs. 2,500 per annum). Where however, such tax is *paid* by the employer on behalf of the employee then, first such tax will be included in the salary of the employees and thereafter its deduction will be allowed to him.

Problem 8.2 (*Deduction from salary*) : *Following are the particulars of Mr. Shyam for the previous year 2019-20:*

Basic Salary (Rs.)	*40,000 p.m*
Entertainment allowance (Rs.)	*3,000 p.m.*

Find out his salary if:

Case 1: He pays professional tax of Rs. 1,000.

Case 2: His employer pays professional tax of Rs. 1,000 on his behalf.

Solution

Computation of taxable salary of Mr. Shyam for the assessment year 2020-21

As per section 16(*iii*), a deduction is allowed to the assessee of any sum *paid by him* on account of any tax on employment. Where however, such tax is ***paid*** by the employer on behalf of the employee then, first such tax will be included in the salary of the employees and thereafter its deduction will be allowed to him. Therefore, taxable salary of Mr. Shyam is calculated as under—

***Case 1:* He pays professional tax of Rs. 1,000-**

		Rs.
Basic salary (40,000 × 12)		4,80,000
Entertainment allowance (3,000 × 12)		36,000
	Gross salary	5,16,000
Less: Deductions-		
♦ Standard Deduction : Section 16(*ia*)		40,000
♦ Entertainment All. : Section 16(*ii*), not allowed as he is not a Govt. Employee		*nil*
♦ Professional tax paid : Section 16(*iii*)		1,000
	Net taxable salary	4,75,000

***Case 1:* His employer pays professional tax of Rs. 1,000 on his behalf-**

		Rs.
Basic salary (40,000 × 12)		4,80,000
Entertainment allowance (3,000 × 12)		36,000
Professional tax paid by employer in his behalf		1,000
	Gross salary	5,17,000
Less: Deductions-		
♦ Standard Deduction : Section 16(*ia*)		40,000
♦ Entertainment All. : Section 16(*ii*), not allowed as he is not a Govt. Employee		*nil*
♦ Professional tax paid : Section 16(*iii*)		1,000
	Net taxable salary	4,76,000

8.4 Meaning of 'salary' [Section 17(1)]

"Salary" includes—

(i) wages;

(ii) any annuity or pension;

(iii) any gratuity;

(iv) any fees, commissions, perquisites or profits in lieu of or in addition to any salary or wages;

(v) any advance of salary;

(*va*) *Leave encashment i.e.* any payment received by an employee in respect of any period of leave not availed of by him;

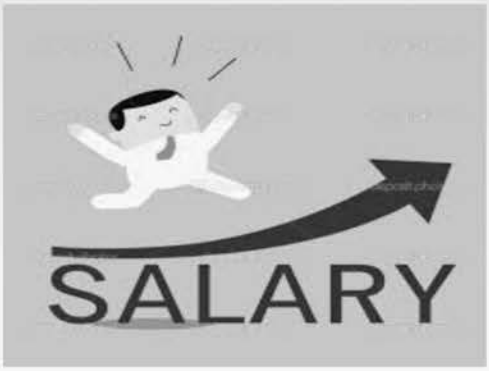
(vi) the annual accretion to the balance at the credit of an employee participating in a recognised provident fund, to the extent to which it is chargeable to tax;

(vii) the aggregate of all sums that are comprised in the transferred balance of an employee participating in a recognised provident fund, to the extent to which it is chargeable to tax;

(viii) the contribution made by the Central Government or any other employer in the previous year, to the account of an employee under a pension scheme referred to in section 80CCD.

8.5 Tax treatment of various components of salary

1. **Wages:** Conceptually there is no difference between salaries and wages, both are compensation for work done or services rendered.
2. **Annuity:** Dictionary meaning of 'annuity' is a fixed amount of money paid to someone every year, usually until their death. Annuity is paid by the employer voluntarily or on account of a contractual agreement, and when paid by the *present* employer is taxable under the head salaries. If it received from *former* employer then it is taxable as profit in lieu of salary under section 17(1)(*iv*).
3. **Bonus:** Bonus is taxable on receipt basis. Contractual bonus is taxable as salary whereas gratuitous bonus is taxable as perquisites. If arrears of bonus are received by the assessee, he can claim relief under section 89.
4. **Notice pay *i.e.* salary in lieu of notice period:** It is taxable under section 15 in the previous year of receipt.
5. **Salary of the partner of a firm:** Since there is no employer-employee relationship in case of a partner with his firm, therefore, any salary, paid to him by such firm is not taxable under section 15. The salary so paid is taxable under the head PGBP as an apportionment of the profits of such firm. Similarly, any interest, bonus, commission received from a firm are not taxable under section 15.
6. **Fees and commission:** Any amount of fees or commission *received or receivable from the employer* is taxable under section 15. It may a fix amount or any percentage of turnover or profits etc.



CHAPTER 9

INCOME FROM SALARIES [Retirement benefits and their taxability]

RETIREMENT BENEFITS AND THEIR TAX TREATMENT

9.1 Gratuity [Section 10(10)]

Gratuity is paid by the employer to his employee(s) in appreciation of services rendered by him. With the applicability of Payment of Gratuity Act, 1972, gratuity payment has become compulsory in most of the cases. Where, however, Payment of Gratuity Act, 1972, is not applicable, gratuity is claimed under the terms of employment. Gratuity can either be received by:

(a) the employee himself at the time of his retirement, or

(b) the legal heir on the event of the death of the employee.

If it is received by the employee on his retirement, it is taxable under the head "salaries", where however, it is received by the legal heir of the deceased employee, it will taxable under the head "income from other sources". ***In both the cases*** gratuity is exempt up to a certain limit given as under:

Tax treatment
1. Government employees (Central or State) or employees of local authority [10(10)(*i*)] Any *death cum retirement gratuity* is ***fully exempt*** from tax under such category of employees.
2. Employees covered under Payment of Gratuity Act, 1972 [10(10)(*ii*)] Exemption under this section will be the amount as is calculated in accordance with the provision of section 4(2) and (3) of Payment of Gratuity Act, 1972. **Exemption will be the least of the following amount:** *(a)* Actual amount of gratuity received *(b)* Rs. 20,00,000 *(c)* 15 days' salary (7 days' in case of employees of seasonal establishments) **for each complete year of service**. Salary is based on the last drawn salary of the employee. *Notes—* *a.* As per section 4(1) of the Payment of Gratuity Act, 1972 gratuity shall be payable to an employee *only after he has rendered continuous service for not less than 5 years.* *b.* **Salary'** for this purpose to include **basic salary and dearness allowance** (DA) but does not include any bonus, commission, house rent allowance, any overtime wages and any other allowance. *c.* **How to compute 15 days' salary:** In calculating 15 days salary, the number of days in a month will be

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taken as 26 working days. Therefore, the monthly salary will be divided by 26 and multiplied by 15.

However, in case of piece rated employees, 15 days salary would be computed on the basis of average of total wages (excluding overtime wages) received for a period of 3 months immediately preceding the termination of his employment.

d. **Complete year of service:** For calculating complete year of service any period of ***more*** than 6 month shall be taken to be full year.

3. Other employees not covered above [section 10(10)(*iii*)]

Any ***other*** gratuity received by an employee, or by his legal heirs, will be **exempt up to the least of the following amounts:**

(a) Actual amount of gratuity received

(b) Rs. 20,00,000

(c) Half month's **average salary** for each complete year of service.

Notes—

a. Any amount in excess of aforesaid limit will be taxable under the head 'salaries' if it is received by the employee, or under 'income from other sources' if such amount is received by the legal heirs of the assessee.

b. **'Salary'** for this purpose includes DA (if terms of employment so provided) and commission (on fixed percentage of turnovers).

c. **How to compute 'Average salary'**

'Average salary' is calculated on the basis of average salary of 10 months **immediately preceding the month** in which such employee retires.

d. **Complete year of service**

For calculating complete year of service *any fraction of year* will be ignored, therefore, only complete only complete year of service is to be taken into account.

e. **Where gratuity is received from more than one employer**

Where any gratuity is received by an employee from more than one employer in the same previous year, the aggregate amount exempt shall not exceed the limit so specified *i.e.* Rs. 20,00,000.

f. **Where gratuity is received in any one or more earlier previous years also**

Where any such gratuity was received in any one or more earlier previous years also, the limit so specified *i.e.* Rs. 20,00,000 shall be reduced by the amount not included in the total income of any such previous year or years.

g. 'termination of employment' includes resignation also.

Other notes—

1. **Completed years of service' means total service including that under former employers:** The words 'each year of completed service' used in section 10(*10*) have to be interpreted to mean an employee's total service under different employers including employers other than one from whose service he has retired, for purpose of calculation of period of years of his completed service, provided that he was not paid gratuity by former employer - *CIT* v. *P.M. Mehra (Bom.)*
2. **Gratuity received while in service**: Any gratuity paid to an employee while he continues to remain in service is not exempt from tax. However, relief under section 89 can be claimed for such amount.
3. **Differences in gratuity calculation if employee is covered and not covered—**

Basis of difference	*Employees covered*	*Employees not covered*
No. of days in a month	26 days	30 days
Complete year of service	Period of more than 6 month will	Any part of the year will be ignored.

	be considered as full year.	
Meaning of salary	Basic + DA	Basic +DA (if) + Commission
Basis of salary	Last drawn salary	Average salary of last 10 months **preceding the month of retirement.**

Problem 9.1 (*Gratuity*) : *Shri Rajesh was employed since 1.1.1988 in a commercial establishment. His salary was fixed at Rs.14,800 in the grade of Rs. 14,000-400-22,000 w.e.f. 1.7.2017. He got 15% of salary as D.A. which is treated as salary for computation of retirement benefits. He retired from service on 1.2.2020. He received Rs. 3,40,000 as gratuity from his employer. Calculate his gross income under the head "salary" for the A.Y. 2020-21, if:*

(i) Payment of gratuity Act, 1972 applies,

(ii) Payment of gratuity Act, 1972 does not apply.

Solution :

Computation of taxable salary of Mr. Rajesh for the assessment year 2020-21

		Covered	*Not covered*
		Rs.	Rs.
Basic salary : Rs. 15,200 × 3	45,600		
: Rs. 15,600 × 7	1,09,200	1,54,800	1,54,800
D.A. [15% basic salary]		23,220	23,220
Gratuity (*see* working note)		8,800	55,168
Gross Salary		1,86,820	2,33,188
Less : Deduction under section 16(*ia*)		40,000	40,000
Taxable Salary		**1,46,820**	**1,93,188**

Working Note: Calculation of taxable gratuity

	Covered	*Not covered*
Lower of the following amount is exempt under section 10(10):	(Rs.)	(Rs.)
(a) Actual amount of gratuity received	3,40,000	3,40,000
(b) 15 days' salary **for each complete year of service**	3,31,200 [15÷26 × 32 × (15,600 +2340)]	2,84,832 [15÷30 × 32 × (1,78,020÷10)]
(c) Maximum limit	20,00,000	20,00,000
Exempt amount (*i.e.* lower of the above)	3,31,200	2,84,832
Taxable amount (received *less* exempt)	8,800	55,168

Important points to be noted:

	Employees covered	**Employees not covered**
1. No. of days in a month	26 days	30 days
2. Meaning of Complete year of service	Period of more than 6 month will be considered as full year.	Any part of the year will be ignored.

3. Meaning of salary	Basic + DA	Basic +DA (if) + Commission
4. Basis of salary	Last drawn salary	Average salary of last 10 months **preceding the month of retirement.**

9.2 Leave salary (*i.e.* leave encashment) [Section 10(10AA)]

Employees are entitled to various types of leave while they are in service. The leave may either be availed by them or in case these are not availed of, these may either lapse or these are allowed to be encashed every year or these are accumulated and encashed after retirement or death. Taxability of leave encashment depends upon the type of employee. For each category of employee, tax treatment of leave salary is as under:

Tax treatment

1. Government employees [section 10(10AA)(i)]

Any payment received by an employee of the Central Government or a State Government at the time of his retirement whether on superannuation or otherwise, is ***fully exempt*** from tax.

2. Other employees [section 10(10AA)(ii)]

Any payment received by an employee other than the employees of Central Government or a State Government, is **exempt to the extent of least of the following amount:**

(a) Actual **amount** of leave encashment **received**;

(b) 10 Month's salary, calculated on the basis of 'average salary';

(c) **[{total entitlement** (subject to maximum 30 days in a year) - **leave taken} /30]** × **'average salary**

i.e. Cash equivalent of unavailed leave calculated on the basis of maximum 30 days' leave for every year of actual service **(part of the year is to be ignored)**. Such cash equivalent is to be calculated on the basis of the 'average salary';

(d) Amount specified by the Government *i.e.* Rs. 3,00,000.

Notes—

a. **Meaning of salary:** Salary for this purpose, means **basic salary** and includes **dearness allowance** if terms of employment so provided. It also includes **commission** based on fixed percentage of turnover achieved by the employee.

b. **Meaning of 'average salary':** Average salary is to be calculated on the basis of average salary drawn during the period of 10 months immediately preceding the *date of retirement.*

c. **Where earned leave salary is received from more than one employer in**, the aggregate amount exempt under this section shall not exceed Rs. 3,00,000.

d. **Where earned leave salary is received in any one or more earlier previous year(s) also,** the amount exempt under this section will be maximum upto Rs. 3,00,000, as reduced by the amount exempted under section 10(10AA)(*ii*) in any *such previous year* or years.

e. For the purpose of this section 'retirement' includes resignation

3. Other important notes

a. **Leave salary during service is taxable:** Leave encashment during continuity of service is chargeable to tax. However, relief under section 89 can be claimed for such amount.

b. **Leave salary to legal heirs is not taxable:** Salary paid to the legal heirs of the deceased employee in respect of leave standing to the credit of such employee at the time of his/her death is not taxable as salary- *Circular No. F.35/1/65-IT(B), dated 05/11/1965.*

Problem 9.2 (*Leave encashment*) : *X was employed by PQR Ltd. upto March 15, 1998. at the time of leaving PQR Ltd. he was paid Rs. 3,50,000 as leave salary out of which Rs. 57,000 was exempt from tax under section 10(10AA)(ii).*

Thereafter he joined ABC Ltd. and received Rs. 4,14,000 as leave salary at the time of his retirement on December 31, 2019. Determine the amount of taxable leave salary from the following information:

Salary at the time of retirement	*Rs.23,000 pm*
Avg. salary received during the last 10 months ending on December 31, 2019	
♦ *From March 1, 2019 to July 31, 2019*	*Rs.22600 pm*
♦ *From August 1, 2019 to December 31, 2019*	*Rs.22900 pm*
Duration of service	*14 ¾ years*
Leave entitlement for every year of service	*45 days*
Leave availed while in service	*90 days*
Leave to the credit of the employee at the time of retirement [(14 × 45 — 90)/30]	*18 months*
Leave salary paid at the time of retirement (i.e. Rs. 23,000 × 18)	*Rs.4,14,000*

Solution :

Computation of taxable salary of Mr. X for the assessment year 2020-21

As per section 10(10AA), any payment received by an employee (other than the employees of Central Government or a State Government) towards encashment of leaves, is exempt to the extent of LEAST of the following amount:

(a) Actual **amount** of leave encashment **received**;

(b) 10 Month's salary, calculated on the basis of 'average salary';

(c) **[(Total entitlement** (subject to maximum 30 days in a year) — **leave taken) ÷30] × average salary**

(d) Amount specified by the Government *i.e.* Rs. 3,00,000.

Therefore, exemption of section 10(10AA) will be lower of the following—

(a)	Actual amount received	Rs.4,14,000
(b)	10 Month's salary [*i.e.* (22,600 × 5)+(22,900 × 5)]	Rs.2,27,500
(c)	[(14 × 30—90) ÷30] × average salary *i.e.* Rs.22,750 (2,27,500 ÷10)	Rs.2,50,250
(d)	Amount specified by the Government (3,00,000 – 57,000)	Rs.2,43,000

Exempt amount is Rs. 2,27,500

Taxable amount is (Rs.4,14,000–Rs. 2,27,500) = Rs.1,86,500

Notes—

1. While computing completed year of service, any fraction of year shall be ignored.
2. Relief under section 89 can be claimed in respect of Rs. 1,86,000.

9.3 Retrenchment compensation [Section 10(10B)]

Any compensation received by a workman under the Industrial Disputes Act, 1947, or under any other Act or Rules, at the time of his retrenchment, **is exempt from tax to the extent of lower of the following:**

(a) Actual amount received; or

(b) Amount calculated in accordance with the provisions of section 25F(*b*) of the Industrial Disputes

Act, 1947 (*i.e.* 15 days average pay for every completed year of continuous service or any part thereof in excess of 6 months); or

(c) Amount as specified by the Central Government, *i.e.* Rs. 5,00,000.

Any compensation in excess of above limit will be taxable as salary. However, such taxable amount is eligible for relief under section 89 read with rule 21A.

Notes—

1. Provision of this section shall not apply in respect of any compensation received by a workman in accordance with any scheme approved by the Central Government for extending special protection to the workmen in the undertaking to which such scheme applies.

2. Any compensation received by a workman at the time of the closing down of the undertaking in which he is employed shall be deemed to be compensation received at the time of his retrenchment- *Explanation (a) to section 10(10B).*

3. Salary includes all but does not include bonus and employer's contribution to PF. *Average salary will be calculated as under:*

In case of monthly salary	Average salary will be based on last 3 months salary
In case of weekly salary	Average salary will be based on last 4 weeks salary
In case of daily wages	Average salary will be based on last 12 days pay

Problem 9.3 (*Retrenchment compensation*) : *Mr. Hari was working in PQR Ltd. He was retrenched from his services after 15 years and 6 months of his service and was paid Rs. 1,80,000 towards retrenchment compensation. Other details are as under:*

	Amount in Rs.
Basic salary (p.m.)	*15,000*
D.A. (p.m.)	*4,000*
Tiffin allowance (p.m.)	*2,000*
Commission	*1,500*
Bonus	*800*

Calculate the amount of exemption under section 10(10B).

Solution : As per section 10(10B), any payment received by an employee towards retrenchment compensation is exempt to the extent of least of the following amounts:

(a) Actual **amount** of compensation **received**;

(b) Amount calculated according to section 25F(*b*) of the Industrial Disputes Act, 1947 [*i.e.* Average salary × (15÷30) × Complete years of service or any part thereof in excess of 6 months]

(c) Amount specified by the Government *i.e.* Rs. 5,00,000.

Therefore, exemption of section 10(10B) will be lower of the following-

(a)	Actual amount received	Rs.1,80,000
(b)	(15,000+4,000+2,000+1,500) × (15÷30) × 15	Rs.1,68,750
(c)	Amount specified by the Government	Rs.5,00,000

Exempt amount is Rs. 1,68,750

Taxable amount is (Rs.1,80,000- Rs. 1,68,750) = Rs. 11,250.

9.4 Compensation of voluntary retirement *i.e.* GOLDEN HANDSHAKE [Section 10(10C)]

Exemption under this section is available where such amount is received by the assessee being the employee of the *eligible undertaking(s),* on his voluntary retirement or termination of his service, in accordance with any scheme or schemes of voluntary retirement or voluntary separation.

Lower of the following amount will be the amount of deduction under this section:

(i) Amount of compensation received;

(ii) 3 months salary for each complete year of service;

(iii) salary of the *balance months of service* left before the date of his normal retirement;

(iv) Rs. 5,00,000.

Deduction under this section is available only once: Where exemption has been allowed to an employee under this clause for any assessment year, no exemption thereunder shall be allowed to him in relation to any other assessment year.

Meaning of salary: Salary for the aforesaid purpose means **basic salary** and includes **dearness allowance** if terms of employment so provided and **commission**, but excludes all other allowances and perquisites.

Eligible undertaking means public sector company, other company, statutory authority, local authority, co-operative society, university, IIT, any Centre/State government and any other notified institutions.

9.5 Pension [Section 10(10A)]

Pension is a payment made by the employer after the retirement/death of the employee as a reward of past services. Pension is normally paid as a periodical payment on monthly basis but in certain cases employees are allowed to forgo a portion of pension and to receive a lump sum amount for such surrender. It is called as commutation of pension. Pension may be commuted fully or partly. Tax treatment of pension is as under:

Type of pension	*Category of employees*	*Tax treatment*
UNCOMMUTED *(i.e. periodical payment of pension)*	*Government/ non-Government employees*	It is **fully taxable** in the hands of all employees, whether Government or non-Government.
COMMUTED *(i.e. lump sum payment in lieu of periodical payment)*	*Government employees (Whether gratuity is received or not)*	Commuted pension received by Government employees or employees of local authority or statutory corporation under Civil Pensions Rules or any similar scheme is exempt from tax under **section 10(10A)(*i*)**.
	*Non-Government employees who have **received** Gratuity amount also.*	The commuted value of **one-third** of the pension which he is normally entitled to receive will be exempt from tax under **Section 10(10A)(*ii*)**
	*Non-Government employees who have **not received** any gratuity amount.*	The commuted value of **one-half** of the pension which he is normally entitled to receive will be exempt from tax under **Section 10(10A)(*ii*).**

Notes—

1. **Family pension received by the family member of armed forces (after the death of the employee) [Section 10(19)]:** Family pension received by the widow or children or nominated heirs, of a member of the armed forces of the Union, ***is exempt from tax***, where the death of such member has occurred *in the course of operational duties*, in such circumstances and subject to such conditions, as may be prescribed.
2. **Family pension received by the family member of other employee (after the death of the employee) [Section 57(*iia*)]:** This section is discussed in detailed under the chapter 'Income from other sources'.
3. **Notified pension scheme:** In case of an individual (employed by the Central Government or any other employer on or after January 1, 2004) who, during the previous year, has paid or deposited any amount in his account under a pension scheme notified by the Central Government, following provision will apply:

(a) Contribution of employer (Central Government or any other employer) will first be included in his salary;

(b) Such contribution is deductible (to the extent of 10% of salary) under section 80CCD. Employee's contribution to such fund is also deductible (to the extent of 10% of salary) under section 80CCD

(c) Where deduction has been claimed under section 80CCD, deduction under section 80C cannot be claimed in respect of payment made towards such annuity plan.

(d) For this purposes, "salary" includes dearness allowance, if the terms of employment so provide, but excludes all other allowances and perquisites.

(e) The aggregate amount of deduction under section 80C, 80CCC, 80CCD(1) cannot exceed Rs. 1,50,000.

Problem 9.4 (*Pension*) : *Mr. A joined a service in the grade of Rs.10,400-400-16,000-500-20,000 on 1.7.2003 and resigned from the service on 15.9.2019. He was entitled to D.A. of 50% of basic salary which forms parts of salary for retirement benefits. On retirement, he received a gratuity of Rs. 2,40,000. He was entitled to a pension of Rs. 8,000 per month w.e.f. 16.9.2019. He got 75% of his pension commuted w.e.f. 1.1.2020 and received a sum of Rs. 6,00,000 as commuted pension. Compute his taxable salary for the A.Y.2020-21.*

Solution :

Computation of taxable salary of Mr. A for the assessment year 2020-21

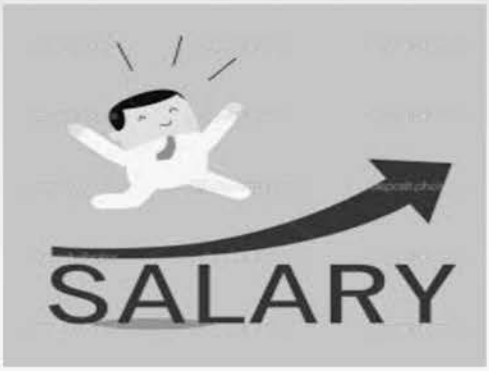
		Rs.
Basic salary : Rs. 16,500 × 3	49,500	
: Rs. 17,000 × 2.5	42,500	92,000
D.A. [50% basic salary]		46,000
Gratuity (*see* Note-1)		40,800
Pension (4,000+8,000+8,000+8,000+2,000+2,000+2,000)		34,000
Pension-Commuted [6,00,000- (⅓ × 8,00,000)] (*see* Note-2)		3,33,333
Gross Salary		5,46,133
Less : Deduction under section 16(*ia*) [*i.e.* Rs.40,000 or salary, whichever is lower]		40,000
Taxable Salary		**5,06,133**

Note 1: Calculation of taxable gratuity

	Payment of gratuity Act, 1972 does not apply
Lower of the following will be exempt u/s 10(10):	(Rs.)
(a) Actual amount of gratuity received	2,40,000
(b) 15 days' salary **for each complete year of service**	1,99,200
	(15÷30) × 16 × [(24,750 × 8)+(25,500 × 2)÷10)]
(c) Maximum limit	10,00,000
Exempt amount (*i.e.* lower of the above)	1,99,200
Taxable amount (received *minus* exempt)	**40,800**

Note 2: Calculation of total amount of pension:

$$\text{Total amount of pension} = \frac{6,00,000}{75\%} \times 100 = \text{Rs. } 8,00,000$$



CHAPTER 10
INCOME FROM SALARIES [Allowances and their taxability]

ALLOWANCES AND THEIR TAXABILITY

Allowance is a fixed monetary amount paid by the employer to the employee for meeting some particular requirement connected with the service rendered by the employee. Allowances are generally taxable and are to be included in the gross salary unless a specific exemption has been provided in respect of any such allowance. **From income tax point of view, allowances can be categorised as under:**

1. *Taxable allowances,*
2. *Allowances exempt upto specified limit,*
3. *Fully exempt allowances.*

SUMMARY OF ALLOWANCES

Fully taxable allowances	Allowances exempt up to specified limit	Fully exempt allowances
a. Dearness allowance *b.* Tiffin allowance *c.* Fixed Medical allowances (But it is not fully taxable in certain cases) *d.* Servant allowance *e.* Overtime allowance *f.* Warden allowance *g.* Non-practice allowance *h.* Family allowance *i.* Deputation allowance *j.* City compensatory allowance	*1.* House rent allowance *2.* Entertainment allowance *3.* Specified notified allowance-**Sec. 10(14)(*i*)** (a) Travelling allowance (b) Daily allowance (c) Conveyance allowance (d) Helper allowance (e) Academic allowance (f) Uniform allowance *4.* Specified exempted allowances-**Sec. 10(14)(*ii*)** *(i)* Special Compensatory /Hilly Areas allowance *(ii)* Border area allowance *(iii)* Tribal areas/schedule areas allowance *(iv)* Allowance for transport employees *(v)* Children education allowance *(vi)* Hostel expenditure allowance *(vii)* Compensatory modified field area allowance *(viii)* Counter-insurgency allowance	*a.* Foreign allowance in case of Government employees being citizens of India **[Section 10(7)]** *b.* Sumptuary allowance to Judges *c.* Allowance paid by UNO to its employees *d.* Compensatory allowance received by a Judges *e.* Allowance and perquisites paid to chairman of UPSC

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	(ix) Transport allowance *(x)* Underground allowance *(xi)* High altitude allowance *(xii)* Highly active field area allowance *(xiii)*Island (duty) allowance	

10.1 House Rent Allowance i.e. HRA [Section 10(13A) read with rule 2A]

Any special allowance specifically granted to an assessee by his employer to meet expenditure actually incurred on payment of rent (by whatever name called) in respect of residential accommodation occupied by the assessee, to the extent as prescribed under rule 2A, having regard to the area or place in which such accommodation is situate and other relevant considerations.

Amount of exemption: As per Rule 2A, LOWER of the following will be exempt :

(i) Actual amount of *allowance received* during the relevant period,

(ii) Rent paid in excess of 10% of salary of the relevant period,

(iii) 50% of salary in respect of the relevant period, if such accommodation is situated in Mumbai, Calcutta, Delhi or Chennai (40% of salary if it is situated at any other place)

1. Meaning of 'Salary': For this purpose salary includes **basic salary** as well as **dearness allowance if** the terms of employment so provide. It also includes **commission** based on a fixed percentage of turnover achieved by an employee as per terms of contract of employment but excludes all other allowances and perquisites.

2. Salary is to be taken on due basis: As per Explanation (ii) to rule 2A**,** basic pay, dearness allowance and commission are determined on 'due' basis in respect of the period during which rental accommodation is occupied by the employee in the previous year. Thus, emoluments of a period other than previous year are not to be considered, even though such amount is received (as well as taxed) during the previous year.

2. 'Relevant period' means, the period during which the said accommodation was occupied by the assessee during the previous year.

3. Important note: Wherever there is a change in any of the following factors during the previous year, HRA should be calculated separately till the next change:

a. Amount of *salary*,

b. Amount of *rent* paid by the assessee,

c. Amount of *HRA*,

d. *Place* where accommodation is situated.

Exemption of HRA not available in certain circumstances: As per *Explanation to section 10(13A),* deduction under this section is not available in the following cases—

1.	Where the residential accommodation occupied by the assessee is **owned by him**; or
2.	Where the assessee has **not actually incurred expenditure on payment of rent** in respect of the residential accommodation occupied by him.

10.2 City compensatory allowance

City compensatory allowance is normally given to the employees to compensate the higher cost of living in cities. It is taxable irrespective of the fact whether it is given as compensation for performing his duties in a particular place or under special circumstances.

Even if this allowance is paid to meet additional expenditure, it is additional salary and consequently, chargeable to tax- *Karamchari Union* v *Union of India* [2000] (SC).

Problem 10.1 (H.R.A) **:** *Mr. A is employed in ABC Ltd. at Gurgaon on a basic salary of Rs. 30,000 p.m. He is also entitled to D.A. @20% of basic salary (70% of which is for retirement benefits). Company gives him House Rent Allowance (H.R.A.) of Rs. 15,000 p.m.*

Other details are as under:

1. w.e.f. 1.1.2020 he received an increment of Rs. 5,000 in his basic.

2. During this year he received Rs. 40,000 as arrears of salary pertaining to earlier years.

3. A was staying with his parents till 31.10.2019. From 1.11.2019, he takes an accommodation on rent at Gurgaon @12,500 p.m.

You are required to calculate his gross salary for the assessment year 2020-21.

Solution :

Computation of gross salary of Mr. A for the assessment year 2020-21

		Rs.
Basic salary : Rs. 30,000 × 9	2,70,000	
: Rs. 35,000 × 3	1,05,000	3,75,000
D.A. [20% basic salary]		75,000
H.R.A [1,05,000+11,840+19470] (*see* Note-1)		1,36,310
Arrears of salary		40,000
Gross Salary		6,26,310

Note 1: Calculation of taxable amount of H.R.A.

	Period 1 (1.4.19 - 31.10.19) 7 months (Rs.)	*Period 2 (1.11.19-31.12.19) 2 months (Rs.)*	*Period 3 (1.1.20-31.3.20) 3 months (Rs.)*
Lower of the following amount is exempt :			
(a) Actual amount of H.R.A. received	1,05,000	30,000	45,000
(b) Rent paid in excess of 10% of salary	*Nil*	18,160	25,530
(c) 40% of salary	95,760	27,360	47,880
Exempt amount (*i.e.* lower of the above)	*Nil*	18,160	25,530
Taxable amount (i.e. Received – Exempt)	**1,05,000**	**11,840**	**19,470**

Note 2: Salary means, basic *plus* D.A. if terms of employment so provided. Therefore, salary for calculating H.R.A. is calculated as under :

Period 1 and 2 : Rs. 30,000 + Rs. 4,200 (*i.e.* 30,000 × 20% × 70%) = Rs. 34,200 per month.

Period 3 : Rs. 35,000 + Rs. 4,900 (*i.e.* 35,000 × 20% × 70%) = Rs. 39,900 per month.

10.3 Special allowances to meet official expenditures [Section 10(14)(i)]

Any special allowance or benefit, specifically granted to meet expenses incurred wholly and exclusively in *performance of the duties of an office or employment.* These are exempt from tax to the extent of LOWER of the following amounts—

- the amount of the allowance; or
- the amount of expense actually incurred for that purpose.

Allowances falling under this category are as under: [*Rule* 2BB(1)]

Name of allowance	*Nature of allowance*
1. *Travelling allowance*	Any allowance granted to meet the cost of travel on tour or on transfer of duty. It includes any sum paid in connection with transfer, packing and transportation.
2. *Daily allowance*	Any allowance, whether granted on tour or for the period of journey in connection with transfer, to meet the ordinary daily charges.
3. *Conveyance allowance*	Any allowance granted to meet the expenditure incurred on conveyance in performance of duties of an office or employment of profit.
4. *Helper allowance*	Any allowance, by whatever name called, granted to meet the expenditure incurred on a helper engaged for the performance of the duties of an office.
5. *Academic allowance*	Any allowance, by whatever name called, granted for encouraging academic, research and training pursuit in educational and research institutions.
6. *Uniform allowance*	Any allowance, by whatever name called, granted to meet the expenditure incurred on the purchase or maintenance of uniform for wear during the performance of duties of an office or employment of profit.

10.4 Special allowances to meet personal expenditures or to increase cost of living [Section 10(14)(*ii*)]

These allowances are granted to the assessee either to meet his personal expenses at the place where the duties of his office or employment of profit are ordinarily performed by him or at the place where he ordinarily resides, or to compensate him for the increased cost of living. These allowances are exempt from tax to the extent of LOWER of the following amount:

a. the amount of the allowance; or

b. the amount specified in Rule 2BB(2).

As per Rule 2BB(2), the prescribed allowances and the extent thereof is as under:

Name of allowance	*Nature of allowance*	*Exemption*
▪ *Allowance for transport employees*	Any allowance granted to an employee working in any transport system to meet his personal expenditure during his duty performed in the course of running of such transport from one place to another place, **provided** that such employee is not in receipt of daily allowance.	*Exemption will be of LOWER of the following amount—* (i) **70%** of allowance; or (ii) **Rs. 10,000** per month
▪ *Children education allowance*	Any allowance given for children education of employee.	**Rs. 100 pm per child**, *maximum up to 2 children.*
▪ *Hostel expenditure allowance*	Any allowance given for meeting hostel expenditure of child/children of employee.	**Rs. 300 pm per child**, *maximum up to 2 children.*
▪ *Transport allowance*	Transport allowance granted to an employee, other than the employee working in any transport system, *to meet his expenditure for the purpose of commuting between the place of his residence and the place of his duty.*	In case employee is blind or handicapped, **Rs. 3,200 pm**.
▪ *Underground allowance*	Underground allowance is granted to an employee who is working in unnatural climate in underground.	**Rs. 800 pm.**
▪ *High altitude allowance*	This allowance granted to the member of the armed forces operating in high altitude areas.	Exemption is as under— *(a)* for altitude of 9,000 to 15,000 feet, Rs. 1,060 pm.

		(b) for altitude above 15,000 feet, Rs. 1,600 pm.
▪ *Island (duty) allowance*	This allowance granted to the members of the armed forces and deduction is available only if it is granted *in Andaman & Nicobar and Lakshadweep* Group of Islands.	Amount of exemption is limited to Rs. **3,250 pm.**

10.5 Fully exempt allowances

a. *FOREIGN ALLOWANCE* : Any allowances or perquisites paid or *allowed* as such outside India *by the Government* to a citizen of India for rendering service *outside India*, is wholly exempt from tax. **[Section 10(*7*)]**

b. *ALLOWANCE TO JUDGES* : *Allowances to High Court Judges* under section 22A(2) of High Court Judges (Conditions of Services) Act, 1954, is wholly exempt from tax. Further, any *sumptuary allowance* given to Judges of High Court or Supreme Court *is also wholly exempt* from tax.

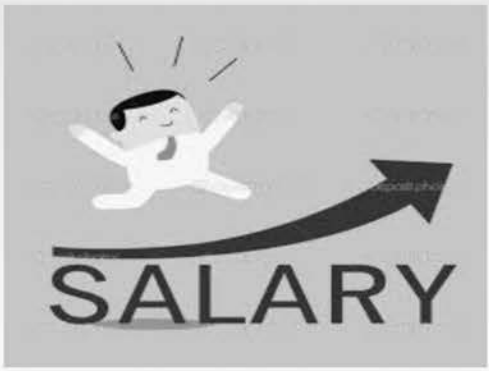
c. *ALLOWANCE OF UNO EMPLOYEES* : *Allowance paid by UNO* to its employees is wholly exempt from tax. *[Circular No. 293, 1981]*

d. *ALLOWANCE TO JUDGES* : *Compensatory allowance* received by a Judge under article 222(2) of the Constitution is exempt from tax.

e. *ALLOWANCE AND PERQUISITES PAID TO CHAIRMAN OF UPSC* : Certain allowances and perquisites paid to the chairman/retired chairman or any member/retired member of the Union Public Service Commission shall be exempt from taxation. **[Section 10(45)]**

10.6 Fully taxable allowances

1. *DEARNESS ALLOWANCE* : Normally, dearness allowance (DA) is calculated as a % of basic salary. It is given to mitigate the impact of inflation.
2. *TIFFIN ALLOWANCE* : For the purpose of offering lunch, tiffin allowance is given to the employees.
3. *MEDICAL ALLOWANCES:* (Other than medical facility): Medical allowance is given for enabling the employee to meet expenditure of medical treatment of employee or family.
4. *SERVANT ALLOWANCE* : This allowance is given to enable an employee to keep and maintain servant or other domestic help at his home.
5. *OVERTIME ALLOWANCE* : If an employee works for extra hours over and above his normal hours of duty, he is given overtime allowance as extra wages.
6. *WARDEN ALLOWANCE* : Normally, warden allowance is given in educational institutions to the employee who is working as a Warden of the hostel.
7. *NON-PRACTICE ALLOWANCE* : This is normally given to those professionals (like teachers, doctors etc.) who are in government service and are banned from doing private practice.
8. *FAMILY ALLOWANCE* : This allowance is given to the employees to meet various family expenditures.
9. *DEPUTATION ALLOWANCE* : This allowance is given during the period of deputation *i.e.* a period when an employee is sent from his permanent place of service to some place.



CHAPTER 11
INCOME FROM SALARIES [Perquisites and their taxability]

PERQUISITES AND THEIR TAXABILITY

1. Meaning of perquisites: The term 'perquisites' means any benefit, attached to an office or position in addition to salary or wages. Perquisite denotes a personal advantage. It may be given in cash or in kind. If it is given in kind it should be capable of being measured in terms of money. For income tax purposes we limit the scope of perquisites to the benefits received in kind and which are convertible in terms of money. Perquisites received in cash are termed as allowances for income tax purposes.

2. Definition of perquisites: As per Section 17(*2*) "perquisite" includes—

(i) the value of rent-free accommodation *provided* to the assessee by his employer;

(ii) the value of any concession in the matter of rent respecting any accommodation *provided* to the assessee by his employer;

(iii) the value of any benefit or amenity *granted or provided* free of cost or at concessional rate in any of the following cases—

  (a) by a company to an employee who is a director thereof;

  (b) by a company to an employee being a person who has a substantial interest in the company;

  (c) by any employer (including a company) to an employee to whom the provisions of (*a*) and (*b*) above do not apply and whose income under the head "Salaries" (whether due from, or paid or allowed by, one or more employers), exclusive of the value of all benefits or amenities not provided for by way of monetary payment, exceeds Rs. 50,000.

(iv) any sum *paid* by the employer in respect of any *obligation* which, but for such payment, would have been payable by the assessee;

(v) any sum *payable* by the employer, whether directly or through a fund, other than a recognised provident fund or an approved superannuation fund or a Deposit-linked Insurance Fund, to effect an assurance on the life of the assessee or to effect a contract for an annuity;

(vi) the value of any specified security or sweat equity shares allotted or transferred, directly or indirectly, by the employer, or former employer, free of cost or at concessional rate to the assessee. *[vide rule 3(8)]*

(vii) the amount of any contribution to an approved superannuation fund by the employer in respect of the assessee, to the extent it exceeds Rs.1,50,000;

(viii) the value of any other fringe benefit or amenity as may be prescribed.

3. Difference between clause *(iii)* and *(iv)*

'Obligation of employee' *met by the employer referred to in clause (iv)* - All monetary obligations of the employee discharged by the employer are perquisites which are taxable in the hands of all employee. If an obligation of the employee is met by the employer, the perquisite is always chargeable to tax. For example if club bills/electricity bills/telephone bills are in the name of the employee (it is in the nature of 'obligation of the employee') but are paid by the employer. Moreover, watchman, sweeper etc. are engaged by the employee (It is also in the nature of 'obligation of the employee') but their wages etc. are paid by the employer.

'*Benefit or amenity granted* *or provided' referred to in clause (iii)* - If however, the above mentioned facilities are provided by the employer (e.g. bills of electricity etc. are in the name of the employer, or watchman etc. are engaged by the employer), then since it not the obligation of the employee, will be taxable in case of specified employee as mentioned in *clause (iii)* above.

4. Taxability of perquisites: Taxability of perquisites depends upon factors like type of perquisite, category of employee. Therefore, for income tax purposes, perquisites may be divided into following categories:

1. Perquisites which are taxable in the hands of all categories of employees

The perquisites falling under this category are summarised as under—

a. Rent-free accommodation- *section 17(2)(i)*

b. Any concession in the matter of rent- *section 17(2)(ii)*

c. Any sum *paid* by the employer in respect of any '**obligation'** of the employee- *section 17(2)(iv).*

e.g.—

- If gas bills/electricity bills/water bills/telephone bills are in the name of the employee (being 'obligation of the employee') but are paid by the employer.
- Watchman/sweeper/gardener/personal attendant etc. are engaged by the employee (being 'obligation of the employee') but their wages etc. are paid by the employer.

d. Any sum *payable* by the employer, to effect an assurance on the life of the assessee or to effect a contract for an annuity- *section 17(2)(v)*

e. The value of any other fringe benefit or amenity as may be prescribed- *section 17(2)(vi),*

e.g.—

- Interest-free or concessional loan
- Use of movable assets
- Transfer of movable assets

2. Perquisites which are taxable only when employee belongs to a specified group [Sec. 17(2)(iii)]

As mentioned earlier, '*Benefit or amenity granted or provided*' by the employer is taxable in case of *specified employees.* Sometimes instead of discharging monetary obligations of the employee, employer provides the perquisites in form of facilities or amenities, and these are taxable only in case of *specified employees only.*

a. Provision of watchman, sweeper, gardener etc., if these are engaged by the employer.
b. Supply of gas, electricity, water, if their connection is in the name of the employer.
c. Provision of free or concessional educational facilities.
d. Provision of other facilities like use of motor car etc.

Meaning of 'specified employee': Following employees are known as specified employees:

(a) a **director** who is an employee of the company. It is immaterial whether the employee is a full time director or part-time director.

(b) a person who has, at any time during the previous year, a **substantial interest** in the company, *i.e.* a *beneficial owner* (registered ownership is not necessary) of shares not being shares entitled to fixed rate of dividend, carrying not less than 20 % of the voting power.

(c) an employee to whom the provisions of (*a*) and (*b*) above do not apply and whose income under the head **"Salaries"** (from one or more employers), exclusive of the value of all benefits or amenities not provided for by way of monetary payment, **exceeds Rs. 50,000.** Therefore, following deduction will be made from his salary:

(i) non-monetary benefits;

(ii) non-taxable monetary benefits [*e.g.* HRA exempt under section 10(13A)];

(iii) deduction on account of entertainment allowance and professional tax. (Sec. 16)

VALUATION OF PERQUISITES (RULE 3)

For the purpose of computing the income chargeable under the head "Salaries", the value of perquisites provided by the employer directly or indirectly to the employee(s) or to any member of his household by reason of his employment shall be determined in accordance with the following sub-rules, namely:

11.1 Valuation of Residential Accommodation [Rule 3(1)]

1. Valuation for unfurnished accommodation provided by the employer: Valuation is as under—

Circumstance	Valuation
(a) Where accommodation is provided by Union or State Government to their employees	**Licence fee** determined by the Central Government or any State Government in respect of accommodation as reduced by the rent actually paid by the employee.
(b) Where accommodation is provided by other employer and such accommodation is **owned** by him.	Population of the city (as per 2001 census) where accommodation is provided, → **exceeds 25 Lakhs, 15% of salary ; or** → **exceeds 10 Lakhs but does not exceed 25 Lakhs, 10% of salary; or** → **in any other case, 7.5% of salary,** in respect of the period during which the said accommodation was occupied by the employee during the previous year. **Deduction for any amount paid by the employee:** The amount so calculated shall be reduced by the rent, if any, actually paid by the employee. **Salary for such period only**: salary for this purpose should be taken only for the period during which the accommodation is occupied by the employee.
(c) Where accommodation is provided by other employer and such accommodation is **taken on lease or rent** by him.	Actual amount of lease rentals paid or payable by the employer for such accommodation or 15% of salary, **whichever is lower.** **Deduction for any amount paid by the employee:** The amount so calculated shall be reduced by the rent, if any, actually paid by the employee. **Salary for such period only**: salary for this purpose should be taken only for the period during which the accommodation is occupied by the employee.

2. Valuation for furnished accommodation provided by the employer: The valuation for furnished accommodation will be done on the following basis—

First	Calculate the value of accommodation AS IF it is an unfurnished accommodation (as calculated in table above).

Then	The value of perquisite so determined shall be adjusted as under : ♦ **ADD :** 10% per annum of the cost of furniture (including television sets, other household appliances) provided and owned by the employer or if such furniture is hired from a third party, the actual hire charges payable for the same. ♦ **LESS :** Any amount paid or payable for the same by the employee during the previous year.

3. Valuation for accommodation provide by any employer in a hotel : Where the accommodation is provided by the employer (Government or other employer) in a hotel (including motel, service apartment or guest house), its valuation will be equal to LOWER of the following amount:

(i) 24% of salary paid or payable for the previous year; or

(ii) the actual charges paid or payable to such hotel

♦ *DEDUCTION FOR AMOUNT CHARGED:* the amount so arrived at will be **reduced** by any charges paid or payable for the same by the employee during the previous year.

♦ *EXCEPTION TO THE ABOVE RULE:* Nothing shall be chargeable to tax where the employee is provided such accommodation for a period not exceeding in aggregate 15 days on his transfer from one place to another. However, if such stay exceeds the said 15 days, the perquisite will be taxable for such excess period.

4. Situations where although accommodation is provide but are exempt: In the following cases, an accommodation provided by the employer is not taxable—

Accommodation at a mining site etc.	Any accommodation provided to an employee working at a mining site/oil exploration site/dam site/power generation site/off-shore site which,— *a.* being temporary in nature and having plinth area not exceeding 800 square feet and is located at least 8 kilometers away from the local limits of any municipality or a cantonment board; or *b.* is located in a remote area. (*i.e.* an area which is located at least 40 km away from a town having a population not exceeding 20,000 as per last census)
Accommodation provided at new place of transfer while retaining accommodation at other place also	Where on account of transfer, the employee is provided with accommodation at the new place of posting while retaining the accommodation at the other place, the value of perquisite shall be— *a. of only one* such accommodation which has the *lower value* [calculated as above] for a period not exceeding *90 days,* *b.* and thereafter the value of perquisite shall be charged for both such accommodations in accordance with the Table. **(*i.e.* for the period in excess of 90 days)**

Notes—

1. For the purposes of rent free accommodation, **"salary"** includes the pay, allowances, bonus or commission payable monthly or otherwise or any monetary payment, by whatever name called from one or more employers, as the case may be, but does not include the following, namely:
   (a) dearness allowance or dearness pay unless it enters into the computation of superannuation or retirement benefits of the employee concerned;
   (b) employer's contribution to the provident fund account of the employee;
   (c) allowances which are exempted from payment of tax;
   (d) the value of perquisites specified in section 17(2) of the Income-tax Act;
   (e) any payment or expenditure specifically excluded under proviso to sub-clause (iii) of clause (2) [*i.e.* relating to stock option plan or scheme] or proviso to clause (2) of section 17 [*i.e.* relating to medical facility or re-imbursement of medical expenses];

(f) lump-sum payments received at the time of termination of service or superannuation or voluntary retirement, like gratuity, leave encashment, voluntary retrenchment benefits, commutation of pension and similar payments;

2. "Accommodation" includes a house, flat, farm house, hotel accommodation, motel, service apartment guest house, a caravan, mobile home, ship etc.

3. **Salary for such period only :** salary for the purpose of rent free accommodation should be taken only for the period during which the accommodation is provide to the employee.

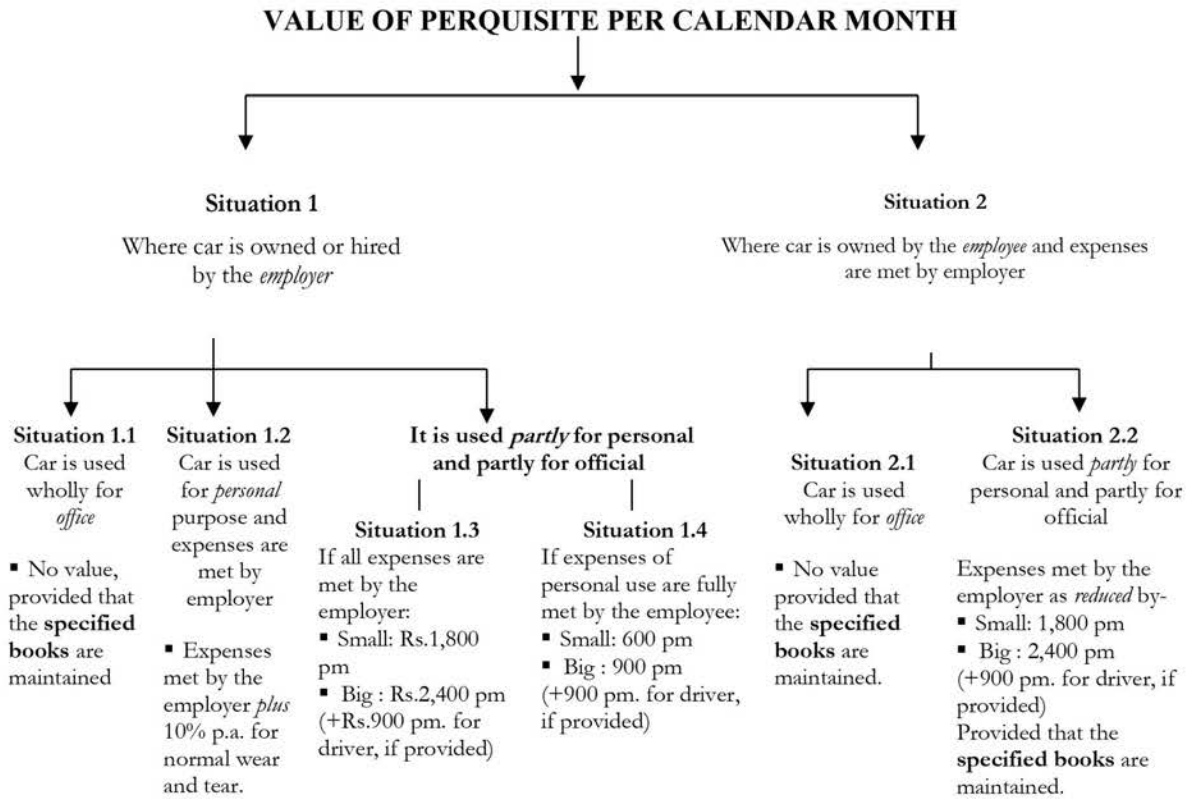
4. **Salary from more than one employer is to be aggregated :** where employee receives salary from more than one employer, the aggregate of salary from both the employers is to be taken into account.

5. The value of any concession in the matter of rent respecting any accommodation provided to the assessee by his employer [Expl. 1 to section 17(2)(*ii*)]: Any concession in the matter of rent shall be deemed to have been provided where valuation of accommodation (computed in the manner given above) exceeds the amount recoverable from the employee for such accommodation.

Valuation of concession in the matter of rent: Valuation of such accommodation in accordance with the provisions given as above *as reduced by* the amount recoverable from the employee.

11.2 Valuation of motor car or other vehicle [Rule 3(2)]

1. Valuation of motor car : As mentioned above, where motor car or other vehicle is *provide by the employer* then, it a perquisite in the nature of section 17(*2*)(*iii*). Where however, car is owned by the employee and its expenses of running and maintenance are met by the employer, it is a perquisite in the nature of section 17(*2*)(*iv*), being the obligation of the employee met by the employer.



SMALL CAR : Where cubic capacity (CC) of engine does not exceed 1.6 litres (*i.e.* upto 1600 cc cars)

BIG CAR : Where cubic capacity (CC) of engine exceeds 1.6 litres (*i.e.* more than 1600 cc cars)

2. Valuation of any other vehicle: Where the employee owns **any other** vehicle but expenses are met or reimbursed by the employer **and**

(i) the vehicle is wholly and exclusively used for official purposes,	No value, provided that the 'specified documents' are maintained by the employer.
(ii) the vehicle is used partly for official and partly for personal purposes of the employee.	Actual payment of expenditure incurred by the employer as reduced by **Rs. 900 pm., Provided** that 'specified documents', are maintained

3. Valuation where more than one car is provided: where one or more motor-cars are owned or hired by the employer and the employee is allowed the use of such motor-car or all or any of such motor-cars (otherwise than wholly and exclusively in the performance of his duties), the value of perquisite shall be:

♦ *IN RESPECT OF ONE CAR :* Valuation will be made by assuming that this car is meant partly for official and partly for personal purposes—

→ Valuation of Small Car : **1,800 p.m. (+900 pm.** if chauffeur is also provided)

→ Valuation of Big Car : **2,400 p.m.** (**+900 pm.** if chauffeur is also provided)

♦ *IN RESPECT OF OTHER CAR(S) :* Valuation will be made by assuming that this car is meant for personal purposes only—

→ Valuation will be expenses incurred by the employer + 10% of cost of car.

4. Specified books shall be maintained if car is used wholly for official purposes: specified books are said to be maintained where—

a. the employer has maintained complete **details of journey** undertaken for official purpose which may include date of journey, destination, mileage, and the amount of expenditure incurred thereon; and

b. the employer gives a **certificate** to the effect that the expenditure was incurred wholly and exclusively for the performance of official duties.

5. Cab facility is not taxable : As per Explanation to section 17(2)(*iii*), any vehicle provided by a company or an employer for journey by the assessee from his residence to his office or other place of work, or back to his residence, shall not be regarded as a benefit or amenity granted or provided to him free of cost or at concessional rate.

11.3 Provision by the employer of services of sweeper, gardener etc. [Rule 3(3)]

Provision by the employer of a sweeper, a gardener, a watchman or a personal attendant to the employee or any member of his household will be valued as under:

Valuation: *Actual cost to the employer i.e.* total amount of salary paid or payable by the employer for such services *as reduced* by any amount paid by the employee for such services.

Notes—

1. If the above servants are engaged by the employee, the perquisite will be taxable in the hands of all employee (specified or non-specified) being 'obligation of the employee'. Where however, these servants are engaged by the employer, it will be a perquisite taxable in the hands of the specified employees only.
2. If an employer provides a rent-free house (owned by the employer) to his employee, expenses including salary of a gardener incurred by the employer on maintenance of garden and ground attached to the house, are not taxable separately. *[Circular No. 122/1973]*
3. For the purpose of rule 3 **"member of household"** shall include - (*a*) spouse(s); (*b*) children and their spouses; (*c*)parents; (*d*) servants and dependents;

11.4 Supply of gas, electric energy or water [Rule 3(4)]

Any benefit provided to the employee resulting from the supply of gas, electric energy or water for his household consumption will be valued as under—

Circumstances	*Valuation*
Situation 1: Where such supply is **made** from resources owned by the employer;	The manufacturing cost per unit incurred by the employer.
Situation 2: In any other case.	Amount paid by the employer to such agency.
Note: If connection(s) is in the name of the employee, it will be a perquisite taxable in the hands of all employees; otherwise, it will be taxable in the hands of the specified employees only.	**Note:** any amount paid by the employee shall be deducted from the value so arrived at.

11.5 Provision of educational facility [Rule 3(5)]

Valuation for free or concessional educational facilities, will be as under—

Circumstances	*Valuation*
Situation 1: where such educational institution is owned by the employer ***OR*** where employer has arrangement (*tie-ups*) with such educational institute for provision of such education;	♦ If educational facilities are provided to the **children** of the employee : Cost of such education in a similar institution × × *Less*[3] : Rs.1,000 pm per child (for any number of children) × × ♦ If educational facilities are provided to any other family member of the employee : Cost of such education in a similar institution × ×
Situation 2: Any other case (*i.e.* if such educational facility is not owned/arranged by the employer). This includes re-imbursement of educational expenses.	Amount incurred by the employer.

Notes—

1. Any amount paid by the employee shall be deducted from the value so arrived at.

2. Expenditure relating to providing training to employees is not taxable.

3. The plain reading of this rule suggests that where the cost of such education in similar school exceeds Rs.1,000 p.m. then only excess amount should be taxable. This is confirmed in *ITO* v. *Bal Bharti Public School [2007] (Tribunal Delhi).* Valuation rule 3(7)(*iii*) which deals with valuation of free food and non-alcoholic beverages, uses the same language as this rule does. CBDT *vide* Circular No 29/2017 clarifies that only excess amount will be taxable (*i.e.* if value of meal exceeds Rs.50 per meal, then only excess amount will be taxable)

In *CIT* v. *Director of Delhi Public School*, [2011] Punjab and Haryana HC, the Court (however) has taken a contrary view. The Court has held that if the cost of such education in similar school exceeds Rs.1,000 pm then full amount will be taxable. (Questions relating to this rule in this book have been solved with the first view).

Problem 11.1 : *Determine the value of education facility in the following cases :*

(1) Three children of D, an employee of S Ltd., are studying in a school, run by S Ltd. School fees is 2,500 pm and hostel fees is 2,000 pm. But the employer recovers only 600 pm and 500 pm respectively. However, a similar school or a hostel around the locality charges 1,800 pm and 1,200 pm respectively.

(2) The employer has also reimbursed the school fees of 1,200 pm of his nephew, fully dependent on him after the death of his brother.

Solution :

Computation of taxable value of education facility [As per Rule 3(5)]

Particulars	*Taxable value of perquisite*
1. (*a*) School fees of his children, studying in a school run by employer :	
(1,800 × 3 × 12) – (1,000 × 3 × 12) – (600 × 3 × 12)	Rs.7,200
(*b*) Hostel fees: (2,000 × 3 × 12) – (500 × 3 × 12)	Rs.54,000
2. School fee of nephew (1,200 × 12)	Rs.14,400
Total value of taxable perquisite	**Rs.75,600**

Problem 11.2 : *Mr. A is the manager of F Ltd. His son B is a student of Amity International School. School fees of 4,000 pm and hostel fees of 3,000 pm., are directly paid by F Ltd. to the school but it recovers from Mr. A only 30%. Mr. A also joins an advanced course of Marketing Management for 4 months at IIM-Ah, fees of the course 2,50,000 is paid by F Ltd. Determine the perquisite value of the education facility.*

Solution:

Computation of taxable value of education facility [As per Rule 3(5)]

Particulars	*Taxable value of perquisite*
(1) (a) School fees of his children (4,000 × 12) – (1,200 × 12)	33,600
(b) Hostel fees: (3,000 × 12) – (900 × 12)	25,200
(2) Fees paid for Marketing Management course for Mr. A (Exempt)	*Nil*
Total value of taxable perquisite	**58,800**

11.6 Transport facility provided by the employer [Rule 3(6)]

Provision of personal journey free of cost or at concessional fare to any employee or member of his household by an employer who is engaged in the carriage of passengers or goods will be valued as under—

Circumstances	*Valuation*
Situation 1: If employer is operating airline or the railway;	- *Nil*
Situation 2: In any other case.	- The value at which such benefit is offered by such employer to the public as reduced by the amount, if any, paid by employee for such benefit or amenity.

11.7 Other benefits provided by the employer [Rule 3(7)]

In terms of provisions contained in section 17(2)(*viii*), the following other fringe benefits or amenities are hereby prescribed and the value thereof shall be determined as under:

(*i*) Interest free or concessional loan: Valuation in respect of provision of interest-free or concessional loan for any purpose to the employee or any member of his household during the relevant previous year by the employer or any person on his behalf, will be made as under—

Valuation
Amount shall be computed as under:
Step-1: Find out the interest rate charged per annum by the State Bank of India, as on the 1st day of the relevant previous year in respect of loans for the same purpose advanced by it.
Step-2: Find out the Maximum Outstanding Monthly Balance (*i.e.* the aggregate outstanding balance for each loan as on the last day of each month).

Step-3: Compute the amount of interest by using information of *Step-1 and Step-2.*
Deduction: The amount of interest under *Step-3* is to be reduced by the amount actually paid by the employee.

Exceptions: Following are the exceptions to the above rule:

1. *LOAN FOR SPECIFIED DISEASES* : Where such loans are made available for medical treatment in respect of diseases specified in rule 3A. However, the exemption so provided shall not apply to so much of the loan as has been reimbursed to the employee under any medical insurance scheme.
2. *PETTY LOANS* : Where the amount of loans are petty not exceeding in the aggregate Rs. 20,000. (if such loan amount exceeds Rs. 20,000, the entire amount would be treated as loan)

Problem 11.3 : *Mr. Raj takes interest-free loan of 2,50,000 on 1.11.2019 from his employer to construct his house. The loan is repayable in 50 monthly instalments from January 2020. Compute the value of interest free loan. SBI Lending rate is 8.5% p.a. (for housing loans of 5 years).*

Solution :

Computation of taxable value of Loan provided by employer [As per Rule 3(7)(i)]

Time period during which loan remains outstanding	*Balance on the last day of the month (Rs.)*
November, 2019	2,50,000
December, 2019	2,50,000
January, 2020	2,45,000
February, 2020	2,40,000
March, 2020	2,35,000
Sum total	**12,20,000**
Perquisite value of interest on loan : 12,20,000 × 8.5% × 1/12 = Rs. 8,642	

(*ii*) Free food and non-alcoholic beverages: Valuation is as under—

Circumstances	*Valuation*
Situation 1: Where **free food and non-alcoholic beverages** provided by such employer :	- Amount incurred by the employer *LESS* Rs. 50 per meal.
♦ during working hours at office or business premises or through paid vouchers which are not transferable and usable only at eating joints;	
♦ during working hours provided in a remote area or an off-shore installation;	- *Nil*
Situation 2 : **Tea and snacks** provided during working hours;	- *Nil*
Note: Any amount paid by the employee shall be deducted from the value so arrived at.	

(*iii*) Travelling, touring, accommodation for holiday(s): Travelling, touring, accommodation and any other expenses for any holiday paid for or borne by the employer, for any holiday availed of by the employee or any member of his household, **other than concession or assistance referred to in section 10(5)** read with rule 2B, will be valued as under—

Circumstances	*Valuation*
Situation 1 : Where such facility is NOT maintained by the employer;	- the amount so incurred by the employer;
Situation 2 : Where such facility is maintained by the employer but it is NOT available uniformly to all employees;	- the amount at which such facility is offered by other agencies to the public;

Situation 3 : Where the expenses are incurred in respect of any member of family accompanying the employees who is on official tour;	- the amount of expenditure so incurred;
Situation 4: Where any official tour is extended as a vacation.	- the value shall be limited to the expenses incurred in relation to such extended period of stay or vacation.
Note: Any amount paid by the employee shall be deducted from the value so arrived at.	

(*iv*) Valuation of any gift, or voucher, or token: Any gift, or voucher, or token in lieu of which such gift may be received by the employee or by member of his household on ceremonial occasions or otherwise from the employer will be valued as under—

Circumstances	*Valuation*
Situation 1: If such gift etc. is in KIND and its value is upto Rs. 5,000 in the aggregate during the previous year; or;	- *Nil*
Situation 2: Where such gift etc. is in KIND but its value **exceeds** Rs. 5,000 during the previous year; or;	- Such excess amount will be taxable
Situation 3: Where such gift etc. is in MONEY (like cash, cheque etc.)	- ENTIRE amount

(*v*) Valuation of credit card facility: The amount of expenses including membership fees and annual fees incurred by the employee or any member of his household, which is charged to a credit card, provided by the employer or otherwise reimbursed by such employer, is taxable as under—

Circumstances	*Valuation*
Situation 1: Where the expenses are incurred wholly and exclusively for *OFFICIAL PURPOSES* **if few conditions are satisfied.** *CONDITIONS—* ▫ *complete details* of such expenditure are maintained by the employer **and,** ▫ the employer gives *a certificate* that it was incurred wholly for official duties.	- *Nil*
Situation 2: In any other case;	- Amount of such expenditure.

(*vi*) Valuation of club facility: Payment or reimbursement by the employer, of any expenditure incurred (including the amount of annual or periodical fee) in a club by him or by any member of his household, will be taxed as under—

Circumstances	*Valuation*
Situation 1: Where the expenses are incurred wholly and exclusively for *OFFICIAL PURPOSES* **if few conditions are satisfied.** *CONDITIONS—* ▫ *complete details* of such expenditure are maintained by the employer **and,** ▫ the employer gives *a certificate* that it was incurred wholly for official duties.	- *Nil*

Situation 2: Where the employer has obtained *corporate membership* of the club and the facility is enjoyed by the employee or any member of his household;	- Total amount of expenditure incurred or reimbursed by such employer on that account *LESS* the amount of initial fee paid for acquiring such corporate membership.
Situation 3: Payment or reimbursement by the employer is on account of use of *health club, sports and similar facilities*, available uniformly to all employees;	- *Nil*
Situation 4: In any other case	- Cost to the employer.

(*vii*) Valuation of benefit resulting from USE OF MOVABLE ASSETS: Any benefit to the employee resulting from the use by the employee or any member of his household of any movable asset (other than laptops, computers, and car), will be valued as under—

Circumstances	*Valuation*
Situation 1: Where such asset is OWNED by the employer;	- 10% *p.a.* of the actual cost of such asset.
Situation 2: Where such assets if HIRED by the employer.	- Hire charges thereof.
Note: The amount so determined shall be reduced by the amount, if any, paid or recovered from the employee for such benefit or amenity.	

(*viii*) Benefit resulting from the TRANSFER OF MOVABLE ASSETS by employer to its employees: Any transfer of any movable asset belonging to the employer to the employee or any member of his household, will be valued as under—

What to do	*Particulars*	*(Rs.)*
Take	Actual cost of such asset to the employer	××
Less	Cost of normal wear and tear (*i.e.* depreciation) FOR EACH COMPLETED YEAR during which such asset was put to use by the employer. Rates of depreciation are as under— ♦ 50% in case of COMPUTER AND ELECTRONIC ITEMS by WDV method; ♦ 20% in case of MOTOR CARS by WDV method; ♦ 10% in case of OTHER ASSETS by SLM method;	××
Less	Any amount paid by the employee (if any).	××
	Amount of perquisite	××

(*ix*) Valuation of other benefit or amenities: The value of any other benefit or amenity, service, right or privilege provided by the employer shall be determined on the basis of cost to the employer under an arm's length transaction as reduced by the employee's contribution, if any.

However expenses on telephones (including a mobile phone) incurred by the employer on behalf of the employee, will be exempt from tax in the hands of the employee.

11.8 Valuation of any specified security or sweat equity [Rule 3(8)]

As per section 17(2)(*vi*), Perquisite includes, the value of any specified security or sweat equity shares allotted or transferred, directly or indirectly, by the employer, or former employer, free of cost or at concessional rate to the assessee.

Explanation — For the purposes of section 17(2)(vi),—

(a) **"specified security"** means the securities as defined in section 2(h) of the Securities Contracts (Regulation) Act, 1956 and, where employees' stock option has been granted under any plan or

scheme therefor, includes the securities offered under such plan or scheme;

(b) **"sweat equity shares"** means equity shares issued by a company to its employees or directors at a discount or for consideration other than cash for providing know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called;

(c) **the value** of any specified security or sweat equity shares shall be the fair market value of the specified security or sweat equity shares, as the case may be, on the date on which the option is exercised by the assessee as reduced by the amount actually paid by, or recovered from, the assessee in respect of such security or shares;

(d) **"fair market value"** means the value determined in accordance with the method as may be prescribed;

(e) **"option"** means a right but not an obligation granted to an employee to apply for the specified security or sweat equity shares at a predetermined price;

Valuation as per rule 3(8): For the purposes of section 17(2)(vi), the fair market value of any specified security or sweat equity share, being an equity share in a company, **on the date on which the option is exercised** by the employee, shall be determined in accordance with the following situations—

♦ *WHERE SHARES ARE LISTED:* In a case where, on the date of the exercising of the option, the share in the company is listed on a recognised stock exchange, the fair market value shall be the average of the opening price and closing price of the share on that date on the said stock exchange.

Note: Where the stock exchange quotes both "buy" and "sell" prices, the opening/closing price shall be the "sell" price of the first/last settlement.

Problem 11.4 : *X Ltd. has granted option to its employees to buy its share at a nominal value of Rs. 1 per share. This option can be exercised on 31.1.2020. Other details are as under:*

Name of stock exchange where shares of X Ltd. are listed	*Opening (sell) Price on 31.1.2020*	*Closing (sell) Price on 31.1.2020*
Bombay Stock Exchange	*Rs. 550*	*Rs. 558*

Average Price = (550+558) / 2 = Rs. 554

Provided that where, on the date of exercising of the option, the share is listed on more than one recognized stock exchanges, the fair market value shall be the *average of opening price and closing price* of the share on the recognised *stock exchange which records the* ***highest volume*** (*i.e.* the number of shares transacted every day) of trading in the share.

Problem 11.5 : *X Ltd. has granted option to its employees to buy its share at a nominal value of Rs. 1 per share. This option can be exercised on 31.1.2020. Other details are as under:*

Name of stock exchange where shares of X Ltd. are listed	*Volume of transactions per day*	*Opening (sell) Price on 31.1.2020*	*Closing (sell) Price on 31.1.2020*
Bombay Stock Exchange	*10,000 Shares*	*Rs. 550*	*Rs. 558*
National Stock Exchange	*12,000 Shares*	*Rs. 400*	*Rs. 412*

Average Price (National Stock Exchange) = (400+412) / 2 = Rs. 406

Provided further that where, on the date of exercising of the option, *there is no trading* in the share on any recognized stock exchange, the fair market value shall be—

(a) the closing price of the share on any recognised stock exchange on a date closest to the date of exercising of the option and immediately preceding such date; or

(b) the closing price of the share on a recognised stock exchange, which records the highest volume of trading in such share, if the closing price, as on the date closest to the date of exercising of the option and immediately preceding such date, is recorded on more than one recognized stock exchange.

♦ *WHERE SHARES ARE NOT LISTED:* In a case where, on the date of exercising of the option, the share in the company is not listed on a recognised stock exchange, the fair market value shall be such value of the share in the company as determined by a merchant banker on the specified date.

Note: For the purposes of section 17(2)(vi), the fair market value of any specified security, not being an equity share in a company, on the date on which the option is exercised by the employee, shall be such value as determined by a merchant banker.

11.9 Medical facility provided by the employer [Proviso to section 17(2)]

The perquisite in respect of medical facility is generally taxable only in case of 'specified employees'. Where however, bills are issued in the name of the employee and the employer makes payment thereof, then it is a perquisite taxable in the hands of all employees.

Proviso to section 17(2): In the following cases, medical facilities/reimbursement of medical expense are treated as tax free (fully or partially)—

Nature of facilities provided	*Amount to be treated as perquisite*
❒ **Medical facilities provided in India:**	
(i) Any medical treatment provided to an **employee or any member** of his family in any hospital maintained by the employer;	*Nil*
(ii) Any sum paid by the employer in respect of any expenditure actually incurred by the employee **on his medical treatment or treatment of any member** of his family— *(a)* in any approved hospital or hospital maintained by the Government; *(b)* in respect of prescribed diseases or ailments, in any hospital approved by the Chief Commissioner.	*Nil*
(iii) Any portion of the ***premium*** paid by an employer to the employee to keep in force an insurance on the health of such *employee* under any approved scheme.;	*Nil*
❒ **Medical facilities provided outside India:** Any expenditure incurred by the *employer*, on— *1.* **Medical treatment** and **stay** expenditure: *1.1* Expenditure on *medical treatment* of the employee, or any member of his family (*i.e.* 'patient') outside India; *1.2* Expenditure on *stay abroad* of the employee or any member of his family (*i.e.* 'patient') and expenditure on stay abroad of one attendant who accompanies the patient in connection with such treatment.	Aggregate amount of expenditure mentioned in *para 1.1* and *1.2* will be exempt up to the limits specified by the RBI, any excess amount, if any, will be taxable.
2. **Expenditure on travelling** abroad of the employee or any member of the his family (*i.e.* 'patient') and travelling expenditures of one such attendant;	Expenditure mentioned in *para 2* will be fully exempt in case of employee whose gross total income does not exceed Rs. 2,00,000 (before including the reimbursement of travelling expenditure). Otherwise, the entire reimbursement will be taxable.

For the purpose of this section—

1. **"Hospital"** includes a dispensary or a clinic or a nursing home.

2. **"family",** in relation to an individual, means,
   (*i*) the spouse and children of the individual (whether dependent or not) and
   (*ii*) the parents, brothers and sisters of the individual, wholly or mainly dependent on the individual.

11.10 Leave travel concession or assistance [Section 10(5)]

1. Who can claim this exemption: Exemption under this section is available to an individual.

2. Amount of exemption: Exemption under this section will be LOWER of the following—

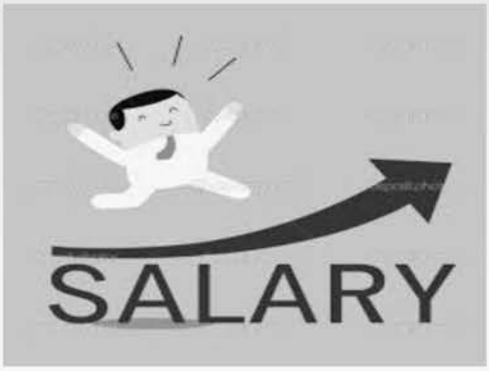
1.	The amount of travel concession or assistance received by, or due to, him from his employer (or former employer) for himself and his family, in connection with his *proceeding on leave* to any place IN INDIA;
2.	Amount actually expended for the purpose of said travel;
3.	Maximum exemption limit fixed by rule 2B.

3. Maximum exemption limit: As per rule 2B, maximum exemption limit is as under—

Different situations	*Maximum exemption amount*
(i) If journey is **performed by air**	- The **air economy fare** of the national carrier by the shortest route to the place of destination;
(ii) If journey is performed by any mode of transport **other than by air and destination is connected by rail.**	- The **air-conditioned first class rail fare** by the shortest route to the place of destination
(iii) where the places of origin of journey and destination or part thereof are **not connected by rail** and where :	
❒ a recognised public transport system exists	- an amount not exceeding the 1st class or deluxe class fare on such transport by the shortest route
❒ if it does not exist	- an amount equivalent to the air-conditioned first class rail fare, for the distance of the journey *by* the shortest route, **as if the journey had been performed by rail.**

Note—

1. The exemption is available only in respect of rail/air/bus *fare.* Any other expenditure like taxi charges, loading and boarding etc. are not eligible for exemption under this section.
2. The exemption referred to in this rule shall be available to an individual in respect of *two journeys* performed in a block of *four calendar years commencing from the calendar year 1986.*
3. **Carry forward of exemption:** where assessee could not availed exemption of two travel concession during block of 4 calendar years, he can carry forward *one* exemption and this exemption can be availed during *first calendar year* of the immediately succeeding block of 4 calendar years.
4. Where **children** born after October 1, 1998, exemption under this rule shall not be available to more than two children. Multiple birth after first child would be considered as one for this purpose.
5. **Encashment of LTC:** where amount of LTC is encashed without performing the journey, the entire amount received by the employee would be **taxable**.
6. **"family",** in relation to an individual, means,
   (*i*) the spouse and children of the individual (whether dependent or not) and
   (*ii*) the parents, brothers and sisters of the individual, who are wholly or mainly dependent on the individual.



CHAPTER 12
INCOME FROM SALARIES
[Provident Funds]

12.1 Provident funds and their taxability

1. Meaning and purpose of provident fund scheme : The provident fund scheme is a welfare and retirement benefit scheme. Under this scheme, both employer and employee contribute a certain sum (usually equal amounts) towards a fund. The fund amount is invested in income generating source. On retirement/termination etc. of employee, the fund amount along with interest thereon, is generally given to the employee or legal hires of the diseased employee.

2. Types of provident funds: Following are the types of provident funds**:**

(a) Statutory provident fund (SPF) : Statutory provident fund is set up under the Provident Funds Act, 1925. This fund is maintained by Government and semi-Government organization.

(b) Recongnised provident fund (RPF) : Recognised provident fund scheme is a scheme to which the Employee's Provident Fund and Miscellaneous Provisions Act, 1952 applies. According to this Act, any person who employs 20 or more employees, is under an obligation to register himself under this Act and start a provident fund scheme. The establishment has a following two options :

(i) to join the Government scheme set up by the PF Commissioner under the Provident Fund Act,

(ii) to start a PF scheme in their own organisation and get approval of the PF Commissioner.

The first scheme is already recognised by the Provident fund Commissioner, and hence no need to get approval for such scheme and its status under Income tax act is recognised provident fund. But in case of second scheme, employer and employees has to create a trust for running such scheme. Funds shall be invested in accordance with the rules given under Provident Fund Act, 1952. If the scheme satisfies certain rules given under Provident Fund Act, 1952 it will get the approval of the Provident fund Commissioner. Further, if it is also recognised by the Commissioner of Income tax (CIT), it becomes recognised provident fund.

(a) Unrecognised provident fund (URPF) : If a provident fund is not recognised by the CIT, it is known as unrecognised provident fund.

(b) Public provident fund (PPF): The Central Government has established the Public Provident Fund for the benefit of general public to mobilize personal savings. Any member of the public whether a salaried employee or a self employed person, can participate in the fund by opening a provident fund account at any branch of SBI or its subsidiaries or a few nationalised bank. A salaried employee can simultaneously become a member of employee's provident fund.

3. Tax treatment of contribution, interest and withdrawal under various funds :

Particulars	*SPF*	*RPF*	*URPF*	*PPF*
Employee's contribution	Deduction of 80C is available	Deduction of 80C is available.	No deduction of 80C is available	Deduction of 80C is available.
Employer's contribution	Exempt from tax	→ Exempt up to 12% of salary; → Any excess over 12% of salary is taxable.	Not to be treated as income of the year in which contribution is made.	- (No employer in this case)
Interest on provident fund	Exempt from tax	Exempt from tax if its rate does not exceed 9.5% p.a.; excess, if any, will be included in the salary.	Not to be treated as income of the year in which interest is created.	Exempt from tax
Re-payment of lump-sum at the time of retirement etc.	Exempt from tax	**Exempt** from tax subject to fulfillment of certain conditions (See note given below). But if those conditions are not fulfilled, then tax treatment will be made as if it was an unrecognised provident fund from the beginning.	Tax treatment is as under— ▫ Employee's own contribution, is **exempt.** ▫ Interest on employee's contribution, is taxable under **"other sources".** ▫ Any other receipts will be taxable under **"salaries".**	Exempt from tax

Notes—

1. **"Salary"** for this purpose means **basic** salary + **dearness allowance** (under the terms of employment) + **commission** based on fixed percentage of turnover.
2. The accumulated balance due and becoming payable to an employee participating in a recognised provident fund is excluded from his total income in the following situations:
   (a) If he has rendered continuous service with his employer for a period of 5 years or more..
   (b) If he has not rendered such continuous service, the service has been terminated by reason of the employee's ill-health or discontinuance of employer's business or other similar reasons.
   (c) If the accumulated balance is transferred to his account in any RPF maintained by such other employer.
3. Where accumulated balance become taxable due to non-fulfillment of conditions mentioned above, the total income of the employee will be recomputed by the Assessing Officer, as if the fund was not recognised from the beginning.
4. Payment received in respect of employee's own contribution is exempt from tax; interest on employee's contribution is taxable under the head "income from other sources".
5. **Conversion of unrecognised provident fund into recognised provident fund:** The part of the accumulated balance which is not transferred and which relates to the employer's contribution and interest thereon is taxable as profit in lieu of salary. The part of sum transferred from URPF to RPF will be taxable as under:
   (a) It will be assumed, as if, such URPF was recognised right from the beginning;
   (b) Employer's contribution in excess of 'notified rate' will be aggregated till the date of such conversion and will be included in gross salary **of the previous year in which such conversion took place**. The interest on employees contribution included in such accumulated balance will be taxable under the head "income from other sources".

12.2 Approved Superannuation Fund and its taxability

Tax treatment of contribution to and payment from the fund is as under:

Employee's contribution	Employee's contribution is eligible for deduction under section 80C
Employer's contribution	Employer's contribution in excess of Rs. 1,50,000 per annum is taxable
Interest on fund balance	It is exempt from tax
Payment from such fund	Section 10(*13*) grants exemption in respect of payment from the fund, accordingly any payment from such fund shall be exempt if it is made:

	(i) on the death of a beneficiary ; or (ii) to an employee in lieu of or in commutation of an annuity on his retirement at or after a specified age or on his becoming incapacitated prior to such retirement; (iii) by way of refund of contributions on the death of a beneficiary ; or

12.3 Relief of tax [Section 89 read with rule 21A]

Where an assessee receives the following amounts in a financial year:

(i) arrears of salary; or

(ii) advance salary; or

(iii) salary of more than twelve months; or

(iv) profit in lieu of salary; or

(v) arrears of family pension

and thereby his income is taxed at a higher rate than that at which it would have or otherwise been taxed.

In such a case, the Assessing Officer shall on an application received from the assessee, grant such relief as prescribed by Rule 21A.

COMPUTATION OF RELIEF

Relief in respect of salary paid in arrears is to be computed in the following manner:

(i) Find out the tax on the total income (including arrears) of the previous year,

(ii) Find out the tax on the total income as reduced by the arrears,

(iii) From the amount arrived at in *(i)* deduct the amount arrived at in *(ii)*.

(iv) The resultant figure arrived at in *(iii)* is the tax on arrears.

(v) Ascertain the previous years to which the arrears relate and add the respective amount of arrears in respective previous years.

(vi) Find out the tax on the total income as arrived at in *(v)* in respect of each of such previous years,

(vii) Find out the tax on the total income (without adding the arrears) of each of the said previous years,

(viii) From the amount arrived at in *(vi)*, deduct the amount arrived at in *(vii)*.

(ix) The resultant figure arrived at in *(viii)* is the tax on arrears.

(x) Find out the difference between *(iv)* and *(ix)*. This will be the relief under section 89.

Problem 12.1 (*Relief*) : *Mr. Sudhir is a lecturer in university of Delhi. Details regarding his salary (before increment) for the previous year 2012-13 are as under:*

Basic salary (p.m.)	*20,000*
D.A. (p.m.)	*10,000*

He got an increment of 50% of his basic salary and D.A. w.e.f. 1.04.2010 and received the increment amount i.e. Rs. 3,60,000 during the previous year 2012-13. Compute the amount of relief under section 89(1). Income tax rates are as under:

Tax rates	*Income Slabs*		
	Previous year 2010-11	*Previous year 2011-12*	*Previous year 2012-13*
	(1)	(2)	(3)
Nil	Up to Rs. 1,60,000	Up to Rs. 1,80,000	Up to Rs. 2,00,000

10%	Rs. 1,60,001 to Rs. 5,00,000	Rs. 1,80,001 to Rs. 5,00,000	Rs. 2,00,001 to Rs. 5,00,000
20%	Rs. 5,00,001 to Rs. 8,00,000	Rs. 5,00,001 to Rs. 8,00,000	Rs. 5,00,001 to Rs. 10,00,000
30%	Rs. 8,00,001 and above	Rs. 8,00,001 and above	Rs. 10,00,001 and above

Solution: Relief will be computed as under—

Previous year 2010-11			*Previous year 2011-12*			*Previous year 2012-13*		
Tax on total income ***Excluding*** *arrears of salary*	*Tax on total income* ***Including*** *arrears of salary*	*Difference (A)*	*Tax on total income* ***Excluding*** *arrears of salary*	*Tax on total income* ***Including*** *arrears of salary*	*Difference (B)*	*Tax on total income* ***Excluding*** *arrears of salary*	*Tax on total income* ***Including*** *arrears of salary*	*Difference (C)*
Rs.20,600 (*i.e.* tax on Rs.3,60,000)	Rs.43,260 (*i.e.* tax on Rs.5,40,000)	Rs.22,660	Rs.18,540 (*i.e.* tax on Rs.3,60,000)	Rs.41,200 (*i.e.* tax on Rs.5,40,000)	Rs.22,660	Rs.39,140 (*i.e.* tax on Rs.5,40,000)	Rs.1,13,300 (*i.e.* tax on Rs.9,00,000)	Rs.74,160

Amount of relief = Rs. 74,160 — (Rs.22,660 + Rs.22,660) = Rs. 28,840

12.4 Meaning of 'salary' for different purposes

For calculation of Entertainment Allowance	*For calculation of gratuity (covered)*	*For calculation of —* *(i) Gratuity (not covered)* *(ii) Leave encashment* *(iii) HRA* *(iv) RPF* *(v) New Pension Scheme*	*For calculation of Rent Free or Concessional House (i.e. RFA)*
♦ Basic salary	♦ Basic salary + ♦ D.A. (whether it is given under the terms of employment or not)	♦ Basic salary + ♦ D.A. (if it is given under the terms of employment) + ♦ Commission (if it is given as a fixed percentage (%) of turnover)	♦ Basic salary + ♦ D.A. (if it is given under the terms of employment) + ♦ Commission (any) + ♦ Bonus + All monetary allowances (taxable portion only) + ♦ Pension *Note* : 'Salary' does not include any perquisites, exempt allowances, employer's contribution towards PF and retirement benefits.

12.5 'Government Employees' and 'Non-Government employees

Category of employee	*Exemption of Leave Encashment and RFA*	*Exemption of gratuity*	*Exemption of commuted pension*
	For the purpose given above, employee is treated as :		
♦ ***Employees of Central/State Government*** *[e.g. employees of Ministries, IAS, IRS etc.]*	Government employees	Government employees	Government employees
♦ ***Employees of local authorities*** *[e.g. MCD, DDA]*	Other employees	Government employees	Government employees

♦ ***Employees of statutory corporations*** *[e.g. NHAI, Airport Authority of India, Food Corporation of India etc.]*	Other employees	Other employees	Government employees
♦ ***Other employees***	Other employees	Other employees	Other employees

PRACTICAL QUESTIONS (on all chapters of Salary)

P1 (*Loan*) : *Mr. Sunil borrowed Rs. 1,00,000 on 1.5.2019 from his employer to purchase a car. He started repayment of loan w.e.f. 1.6.2019 @ Rs. 1,000 p.m. In the following circumstances determine the taxable amount of interest for A.Y. 2020-21 in the following circumstances:*

a. *The employer does not charge any interest on loan; Rate of interest on car loan charged by the State Bank of India is 10% p.a.*

b. *The employer charges interest @ 5% on maximum outstanding monthly balance. Rate of interest on car loan charged by the State Bank of India is 10% p.a.*

Solution :

Computation of interest chargeable to tax

Date	Balance (Rs.)
31.05.2019	1,00,000
30.06.2019	99,000
31.07.2019	98,000
31.08.2019	97,000
30.09.2019	96,000
31.10.2019	95,000
30.11.2019	94,000
31.12.2019	93,000
31.01.2020	92,000
28.02.2020	91,000
31.03.2020	90,000
	10,45,000

(*i*) Interest on Rs. 10,45,000 @ 10% for one month	**Rs. 8,708**
(*ii*) Interest as calculated in (*i*)	Rs. 8,708
Less: Interest charged from Ram @ 5% *i.e.*, half of Rs. 8,708	Rs. 4,354
Chargeable Interest	**Rs. 4,354**

P2 (*Value of Rent-free House*) : *Mr. Ravi Shankar, an Assistant Commissioner in the Ministry of Finance (Govt. of India). During the previous year, he was given a rent free furnished house at New Delhi. Licence fee of such accommodation (as is determined by Central Government) is Rs. 5,000 per annum. Fair market rent of this house is not less than Rs. 20,000 per annum.*

You are required to determine the value of perquisite in respect of rent-free house so given on assumption that his salary is (a) Rs. 5,00,000 per annum, (b) Rs. 7,00,000 per annum.

Solution: Since Mr. Ravi Shankar is a Government employee, therefore, value of perquisite in his hand would be the licence fee determined as per the Government's Rules *i.e.* Rs. 5,000 per annum. Salary of Mr. Ravi Shankar and fair value of rent are irrelevant for this purpose.

P3 *(Value of Rent-free House) : Mr. A, a bank Manager, gets Rs. 18,000 per month as salary and dearness allowance at 10% of the salary. He is getting entertainment allowance of Rs. 8,000 p.a. During the previous year, he received a bonus of three months' salary. He is also provided with a rent-free house (unfurnished) in a town (whose population is less than 10 lakh) whose fair rent is Rs. 5,000 per month. Find out his income under the head 'Salaries'.*

Solution:

Computation of Income from Salary

	Rs.
Salary	2,16,000
Dearness Allowance	21,600
Bonus	54,000
Entertainment Allowance	8,000
Value of Rent-free house (7.5 % of Salary+ Bonus+ Entertainment All.)	20,850
Gross Income from Salary	3,20,450
Less : Deduction under section 16(*ia*) [*i.e.* Rs.40,000 or salary, whichever is lower]	40,000
Salary Income	2,80,450

Note: Deduction for entertainment is available to Government employees.

P4 *(Provident Fund) : An individual is in receipt of a salary of Rs. 12,000 per month, 15% of which he contributes to a provident fund to which his employer contributes 14%. He is provided with a rent-free house by the employer in Mumbai. He also received from his employer Rs. 16,000 as bonus. The amount of interest credited to his provident fund (at 10% per annum) is Rs. 1,200 per month. Ascertain his taxable salary if the provident fund in question is:*

(a) a provident fund to which the Provident Fund Act, 1925 applies,

(b) a recognised provident fund.

Solution:

Computation of Taxable Salary

(a) Provident Fund to which the P.F. Act, 1925 applies:

		Rs.
Salary		1,44,000
Bonus		16,000
Value of rent-free house (15% of salary *i.e.* 1,44,000+16,000)		24,000
	Gross Salary	1,84,000
Less : Deduction under section 16(*ia*)		40,000
	Taxable Salary	1,44,000

(b) Recognised Provident Fund :

Salary	1,44,000
Bonus	16,000
Employer's contribution in excess of 12% of salary	2,880
Interest on R.P.F. [*i.e.* in excess of 9.5% for 12 months]	720
Value of rent-free house 15% of salary	24,000

Gross Salary	1,87,600
Less : Deduction under section 16(*ia*)	40,000
Taxable Salary	1,47,600

Note: Excess interest = [(1,200÷10) × (10 - 9.5)] for 12 months *i.e.* Rs.720

P5 : *Mrs. X, a salaried employee in A Co. Ltd., and an Indian citizen, gets a salary of Rs. 8,000 per month. She is given a small car which she uses for her official work as well as for her personal matters. The provident fund is also maintained by his employer which is recognised and for the previous year, the employer's contribution and the employee's contribution amounted to Rs. 13,920 each and interest is credited @ 8.5% p.a. to Mrs. X's provident fund account.*

In terms of service Mrs. X is required to entertain the clients of A Co. Ltd. and she gets an allowance of Rs. 3,000 p.m. for this purpose. The company provides her with a rent-free unfurnished accommodation in Mumbai and pays a rent of Rs. 3,500 p.m. to the owner of such accommodation.

Compute her taxable salary.

Solution

Computation of Taxable Salary of Mrs. X

	Rs.
Salary @ Rs. 8,000 p.m.	96,000
Employer's contribution to R.P.F. in excess of 12%	2,400
Interest on P.F. in excess of 9.5%	*Nil*
Entertainment allowance	36,000
Value of rent-free house:	
(15% of salary *i.e.* Rs.1,32,000 and rent paid by A Ltd, whichever is lower)	19,800
Valuation of car (Rs. 1,800 × 12)	21,600
Gross Salary	1,75,800
Less : Deduction under section 16(*ia*)	40,000
Taxable Salary	1,35,800

Note : Value of rent-free house has been calculated @ 15% on salary of Rs. 96,000 + entertainment allowance Rs. 36,000, *i.e.*, 15% of Rs. 1,32,000, as Rs. 19,800.

P6 : *Sri Chowdhary is a Purchase Officer in a company in Kota (population exceeding 25 lakh). He furnished the following particulars regarding his income for previous year :*

(a) Net basic Salary Rs. 1,20,000 which is after deducting Rs. 2,000 for income tax, Rs. 10,000 as contribution to recognised provident fund and rent of the bungalow Rs. 3,600.

(b) Bonus Rs. 1,800.

(c) Travelling allowance for official duty travelling Rs. 25,000.

(d) Reimbursement of medical bills Rs. 15,000 (treatment was done in a government hospital in India),

(e) He lived in a bungalow belonging to the company. The company has provided on this bungalow the facility of a gardener and a cook each of whom is being paid a salary of Rs. 250 per month and Rs. 800 per month respectively. The company paid in respect of this bungalow Rs. 4,800 for electric bill and Rs. 1,200 for water bill,

(f) He has been provided with a BMW car for official and personal use. The maintenance and running expenses of the car (including driver) are borne by the company,

(g) The following amounts were deposited in his provident fund account:

(i) own contribution Rs. 10,000,

(ii) company's contribution Rs. 10,000, and

(iii) interest @ 9.5% p.a. Rs. 9,075.

Compute his taxable income from salary.

Solution :

Computation of Taxable Income from Salary

	Rs.	Rs.
Salary	1,20,000	
Income tax deducted	2,000	
Contribution to Provident Fund	10,000	
Rent deducted	3,600	1,35,600
Bonus		1,800
Travelling Allowance [Exempt u/s 10(14)(*i*)]		*Nil*
Electric Bill paid by employer		4,800
Water Bill paid by employer		1,200
Value of rent-free house being 15% of (1,35,600 + 1,800) – 3,600		17,010
Gardener		3,000
Cook		9,600
Car (2,400pm + 900pm)		*39,600*
Excess of employer's contribution to R.P.F. over 12% of salary		*Nil*
Excess of interest over 9.5%		*Nil*
Gross Salary		2,12,610
Less : Deduction under section 16(*ia*)		40,000
Taxable Salary		1,72,610

P7: *Following are the particulars of income of Mr. X, who is employed in a textile mill company at Jaipur, for the previous year ended 31st March, 2020:*

Salary Rs. 96,000; his own and employer's contribution to recognised provident fund @ 14.5% Rs. 13,920 each; interest on provident fund account balance @ 8.5% p.a. Rs. 5,000. He is getting entertainment allowance @ Rs. 3,000 p.m. He is also provided with a house of the fair rental value of Rs. 1,500 per month at Rs. 500 per month as rent. He is provided with the facility of free use of light and water for which the employer paid Rs. 7,000 during the previous year. He was given by his employer cloth cost Rs. 2,000 at concessional price of Rs. 1,000. He was also given an old scooter on 10.8.2019 of the company for Rs. 1,000. The Company purchased it on 15.7.2015 for Rs. 30,000. The employer provided him travel concession of Rs. 4,000 on June, 2019 for his travel to Srinagar (Kashmir) during leave. Before this he had been allowed travel concession during 2017. Compute the taxable salary of Mr. X for the Assessment Year 2020-21.

Solution :

Computation of Taxable Salary for the A.Y. 2020-21

	Rs.
Salary	96,000
Entertainment Allowance	36,000
Employer's contribution to R.P.F. in excess of 12%	2,400
Concession in Rent	13,800
Light and Water	7,000
Scooter at concessional price	17,000
Leave Travel Concession	*Nil*
Cloth at concessional price	1,000
Gross Salary	1,73,200
Less : Deduction under section 16(*ia*)	40,000
Taxable Salary	1,33,200

Notes—

1. Leave Travel Concession is fully exempt as it is being availed by him during the last block of four calendar years for the first time. It is assumed that it has been paid to him as per prescribed rules.
2. *Concession in rent has been calculated as under:*

		Rs.
Salary for this purpose = Rs. 96,000 + 36,000 = Rs. 1,32,000 × 15%		19,800
Less : Rent paid by the employee		6,000
Concession		13,800

3. *The concession on scooter is computed as under:*

Cost of scooter		30,000
Less : Depreciation for 4 completed years @ 10%	12,000	
Amount received from employee	1,000	13,000
Concession		17,000

P8 : *Mr. Bhasker retired on 1st August, 2018. He took up an administrative job in a limited company in Delhi on 1st December, 2018, on a fixed pay of Rs. 8,000 p.m. The particulars of his income for the financial year ended 31st March, 2020 are as under:*

(a) Pension @ Rs. 5,000 p.m. from the Government.
(b) During the previous year he remained out of India for four months to secure orders for the company and during this period his pay was remitted to him abroad.
(c) He received bonus of two months' pay.
(d) Two children of Mr. Bhasker were studying in a hostel for which he was getting Hostel Allowance @ Rs. 800 p.m. for both children.
(e) The Company also paid him Servant's Allowance of Rs. 200 p.m. and Entertainment Allowance of Rs. 800 p.m.
(f) The Company provided him the facility of a rent-free house owned by the company and whose fair rental value is Rs. 30,000.
(g) The Company gave him free of charge the services of a sweeper (150 p.m.), a gardener (Rs. 350 p.m.) and a chowkidar (Rs. 250 p.m.) and incurred expenses on the maintenance of the garden Rs. 5,000.
(h) The Company paid his membership subscription and other bills of the club amounting in all to Rs. 12,000.
(i) The Company installed a telephone at his residence and also paid its bills amounting to Rs. 10,000.

Compute his taxable income under the head 'Salaries' for the Assessment Year 2020-21.

Solution

Computation of Taxable Income under the head 'Salaries' for the A.Y. 2020-21

		Rs.
Basic Pay		96,000
Pension		60,000
Bonus		16,000
Hostel Allowance in excess of Rs. 600 p.m.		2,400
Servant's Allowance		2,400
Entertainment Allowance		9,600
Rent-free House		27,960
Sweeper		1,800
Chowkidar		3,000
Club Fees and Bills		12,000
Gardener (*Not taxable separately as per CBDT Circular No.122/1973*)		*Nil*
Maintenance of garden (*Not taxable separately as per CBDT Circular No.122/1973*)		*Nil*
	Gross Salary	2,31,160
Less : Deduction under section 16(*ia*)		40,000
	Taxable Salary	2,31,160

Notes–

1. Salary for purposes of rent-free house = Salary Rs. 96,000 + Pension Rs. 60,000 + Bonus Rs. 16,000 + Hostel Allowance (Taxable) Rs. 2,400 + Servant's Allowance Rs. 2,400 + Entertainment Allowance Rs. 9,600 = Rs. 1,86,400.

   15% of Salary *i.e.* Rs. 1,86,400 = Rs. 27,960

2. Payment of Telephone Bills is exempt.

P9 : *Mr. Shyam, an Indian citizen, is employed in the Foreign Ministry of the Government of India. On 1st August, 2019 he was transferred to the Indian Embassy in USA. On 1st October, 2019 he was called back to India for an urgent official work. On 1st January, 2020 he was again sent back to USA. The particulars of his income for the year ended 31st March, 2020 are as under:*

a. Salary at Rs. 25,000 p.m.

b. Dearness Allowance @ 20% of salary of Mr. Shyam paid in India.

c. Rent-free house in Delhi while in India and in Washington while in U.S.A. was provided to him. The rent of the house in Delhi was Rs. 500 p.m. as per government rules and the rent of the house in Washington was Rs. 3,000 p.m. The house in Delhi was unfurnished; but furniture costing Rs. 20,000 was provided in the house at Washington.

d. He has been provided with a small car both in Delhi and in Washington, which is being used for personal as well as official purposes. The car is driven by Mr. Shyam himself;

e. He got entertainment allowance in Italy at Rs. 2,000 p.m.

f. He was getting overseas allowance @ Rs. 5,000 per month.

g. The Government of India reimbursed Rs. 15,000 medical expenses incurred on the treatment of himself and his family in a Govt hospital.

Find out the taxable income under the head Salaries for the Assessment Year 2020-21. Salary is due on the last day of the month.

Solution

Computation of Taxable Income under the head 'Salaries' for the A.Y. 2020-21

		Rs.
Salary for full year		3,00,000
Dearness allowance (for 7 months while he was in India)		35,000
Rent-free House in Delhi		3,500
Car provided in Delhi (for 7 months @ Rs. 1,800 p.m.)		12,600
	Gross Salary	3,51,100
Less : Deduction under section 16(*ia*)		40,000
	Taxable Salary	3,11,100

Notes—

1. All allowances or perquisites given to a Government employee in foreign country are exempt from tax.
2. Salary is taxable for full year as it is deemed to accrue or arise in India even if it has become due and paid in foreign country.
3. As per government rules rent at Rs. 500 p.m. for 7 months will be Rs. 3,500.

P10 : *Smt. Raj Kumari is principal in a private college at Indore. She is in the grade of Rs. 8,000-400-12,000 since 1st Jan., 2016. Compute the taxable salary for the assessment year 2020-21, on the basis of the following details:*

1. *Net basic salary after deduction of the contribution to recognised provident fund Rs. 1,02,400.*
2. *Employer's contribution to recognised provident fund is the same as her contribution.*
3. *Dearness allowance under terms of employment is Rs. 24,000 p.a.*
4. *Education allowance for three children Rs. 5,700.*

5. *Medical allowance Rs. 8,200, actual expenditure Rs. 2,000.*
6. *Servant, Sweeper and Watchman at a salary of Rs. 250 p.m. These servants have been appointed by Smt. Kumari but their salary is paid by the college.*
7. *Telephone bills Rs. 5,000 for the telephone facility at the residence of Smt. Kumari paid by employer.*
8. *She received Rs. 4,000 in December, 2019 for surrendering her one month's earned leave.*
9. *Life insurance premium paid by employer Rs. 5,000 on her life insurance policy.*
10. *She paid profession tax Rs. 1,000.*
11. *She has been provided a rent-free house by the college, whose fair rent is Rs. 3,000 p.m. She has also been provided the furniture facility of Rs. 20,000 (written-down value Rs. 16,000) by the employer.*
12. *Her insurance premium amounting Rs. 1,440 is also paid by the college.*

Also calculate the amount which qualifies for deduction under section 80C.

Solution

Computation of Taxable Salary for the Assessment Year 2020-21

		Rs.	Rs.
Salary : Rs. 9,600 × 9		86,400	
Rs.10,000 × 3		30,000	
		1,16,400	1,16,400
Less: Net basic Salary		1,02,400	
Contribution to RPF		14,000	
Employer's contribution to RPF not exceeding 12% (of pay and D.A. as per terms of employment)		14,000	-
D.A. as per terms of employment			24,000
Education allowance		5,700	
Less : Exempt Rs. 100 per month for 2 children		2,400	3,300
Medical allowance—Expenditure not deductible			8,200
Servant, Sweeper and Watchman (appointed by assessee)			9,000
Telephone facility—Tax-free perquisite			-
Encashment of earned leave			4,000
LIP paid by employer			5,000
Value of rent-free house			25,385
Group Insurance Premium			1,440
	Gross salary		1,96,725
Less : Deduction under section 16(*ia*)			40,000
Less : Deduction for Profession tax under section 16(*iii*)			1,000
	Taxable Salary		1,55,725
Amount entitled to deduction u/s 80C :			
Contribution to RPF			14,000
Life insurance premium			5,000
			19,000

Notes—

(1) Assumed encashment of earned leave relates to the leave of current year, hence, included in salary for valuation of rent-free house.

(2) *Valuation of rent-free house :*

Salary = Rs. 1,16,400 + 24,000 + 3,300 + 8,200 + 4,000 = Rs. 1,55,900

15% of salary	23,350
10% cost of furniture	2,000
	25,385

P11 : *Shri Ghanshyam Das is the Principal of a college in Delhi. He is in the grade of Rs. 12,000-420-18,300 since 1st January, 2016.*

He gets 60% of his basic salary as dearness allowance and 10% of the basic pay as city compensatory allowance. He has been provided with a furnished house by the college owned by it, of the estimated rental value of Rs. 12,000 p.m. Furniture costing Rs. 25,000 has also been provided by the college. Shri Das has been using his personal car for his official and personal purposes. Expenses of the car amounting to Rs. 25,000 for official purposes are borne by the college.

He has been provided with the facility of a gardener, a watchman and a servant whom are paid salary by the college @ Rs. 450 p.m., Rs. 450 p.m. and Rs. 300 p.m. respectively. In the month of January 2020, he surrendered leave and got one month's basic pay and dearness allowance.

He contributes 15% of his pay and dearness allowance to the recognised provident fund towards which the college contributes an equal amount. Interest amounting to Rs. 12,500 at 12.5% has been credited to his provident fund account.

Assuming that his salary becomes due on the first day of the next month, determine his taxable income under the head 'Salaries' for the assessment year 2020-21.

Solution

Computation of Taxable Salary for the Assessment Year 2020-21

	Rs.	Rs.
Salary : Rs. 13,680 × 10	1,36,800	
: Rs. 14,100 × 2	28,200	1,65,000
D.A. 60% of Basic pay		99,000
CCA 10% of Basic pay		16,500
Encashment of earned leaves (*i.e.* Rs. 13,680 + 60% of Rs. 13,680)		21,888
Value of rent-free house		47,858
Gardener*, Sweeper and Watchman [(*Nil* + 450 + 300) × 12]		9,000
Contribution to recognised provided fund in excess of 12% (*i.e.* 3% of Rs. 2,64,000)		7,920
Interest on R.P.F. in excess of 9.5%		3,000
Gross salary		3,70,166
Less : Deduction under section 16(*ia*)		40,000
Taxable salary		3,30,166

Notes—

1. *In view of CBDT *Circular No. 122/1973*, if gardener is provided along with the house, then no separate valuation should be made.

2. *The value of rent-free house has been computed as under:*

15% of (Rs. 1,65,000+99,000+16,500+21,888)	45,358
Add: 10% cost of furniture	2,500
	47,858

P12 : *Smt. Madhu is an officer of M.P. Administrative Services in Bhopal in the pay scale of Rs. 5,000-200-7,000 since 1st July, 2018. She gets Rs. 1,700 p.m. as DA., 6.25% of basic pay as City Allowance and Rs. 500 p.m. as Entertainment Allowance.*

On 1st July, 2019 she was fixed in a new grade of Rs. 16,400-450-20,000 at Rs. 17,300. She gets 38% of basic pay as D.A., 6.25% of basic pay as City Allowance and Rs. 500 p.m. as Entertainment Allowance in the new grade.

She has been provided a car which is used for official purpose only. She has also been provided a Govt. Bungalow at a concessional rent, the fair rent of that bungalow is Rs. 1,000 p.m. A deduction @ 6% of her basic pay is made for the same. Had she not been provided this house at concessional rent, deduction @ 10% would have been made from her basic salary.

She had been on medical leave during the month of July and August, 2019 and she received half basic pay during this period. Her medical expenses Rs. 32,000 including Rs. 13,000 for her treatment in a Govt. Hospital and the balance for her treatment in a private hospital were reimbursed by the employer.

As per announcement of the Govt., dated 30th April, 2019 she was paid an interim relief of Rs. 250 p.m. since 1st August, 2018. She received cash equivalent to one month's basic pay and D. A. on surrender of earned leave in Nov., 2019.

Ascertain her taxable income from salary for the Assessment Year 2020-21, assuming that she paid Rs. 1,800 as employment tax to the Govt.

Solution :

Computation of Taxable Salary for the Assessment Year 2020-21

		Rs.	Rs.
Salary : Rs. 5,000 × 3		15,000	
: Rs. 17,300 × 7		1,21,100	
: Rs. 8,650 × 2		17,300	1,53,400
D.A. : Rs. 1,700 × 3		5,100	
: Rs. 1,38,400 × 38%		52,592	57,692
C.C.A.: Rs. 1,53,400 × 6.25%			9,588
Entertainment allowance			6,000
Car			*Nil*
House (Rs. 15,340- Rs.9,204)			6,136
Medical expenses		32,000	
Less: Govt. Hospital Expenses		-13,000	
Less: Expense in private hospital is taxable		*Nil*	19,000
Interim relief (Rs. 250×20)			5,000
Encashment of earned leave (Rs. 17,300 + 6,574)			23,874
	Gross salary		2,80,690
Less : Standard deduction		40,000	
Less: Entertainment allowance		5,000	
Less: Profession tax		1,800	46,800
	Taxable Salary		2,33,890

P13 : *Miss Megha is employed with Sharma Ltd. on a monthly salary of Rs. 20,000. She also gets dearness allowance (according to terms of employment) @ 25% of basic salary. The following facilities were also provided by her employer:*

1. *A rent free accommodation at Delhi, owned by the company.*
2. *She took the housing loan of Rs. 7,50,000 during 2018-19, on this company charges interest @ 6%. The entire loan is still outstanding. Suppose the rate of interest charged by the SBI on housing loan is 8% p.a.*
3. *On 1.1.2020 company provided her interest free loan of Rs. 15,000 to purchase a scooter and in addition to it farther provided a loan of Rs. 60,000 on 1.2.2020 for treatment of disease mentioned in Rule 3A. This amount is not reimbursed by insurance company.*
4. *She went to Mumbai on official work for 4 days but her stay was extended for 2 days to visit different places in Mumbai. Employer spent Rs. 6,000 for these 6 days on conveyance, travel, tour, boarding and lodging.*
5. *The company got corporate membership of Rambagh Club. During the previous year she enjoyed this club. If she obtains the similar type of facility at another club then she is supposed to pay Rs. 22,000.*

6. *The Company owns a laptop. The laptop was purchased by the company for Rs. 1,00,000 on 1.7.2015. She purchased this laptop from the company on 1.10.2019 at Rs. 4,000.*
7. *A car was purchased by the company on 1.5.2016 for Rs. 3,00,000. This car is sold to Miss. Megha on 1.8.2019 for Rs. 1,40,000.*
8. *Company provides her free refreshment and food in office. She used this facility for 300 days during the previous year. The cost of food to company is Rs. 65 per day and of refreshment Rs. 10 per day.*
9. *On her birthday company presented a gift item of Rs. 4,700. In addition to this company gifted Rs. 500 to each employee on its anniversary. Compute income from salary of Miss Megha for the A.Y. 2020-21.*

Solution

Computation of Taxable Salary for the Assessment Year 2020-21

	Rs.	Rs.
Salary		2,40,000
D.A. as per terms of employment		60,000
Rent free accommodation (15% of Rs. 3,00,000)		45,000
Housing loan : Interest @8%	60,000	
Less: interest charged	45,000	15,000
Loan to purchase scooter Rs. 15,000 during the P.Y. (exempt up to Rs. 20,000)		-
Loan for treatment of prescribed diseases of Rule 3A. (exempt)		-
Visit to Mumbai (extension of tour for 2 days is not for office purposes)		2,000
Club facility		22,000
Sale of assets:		
♦ Laptop [(Rs.1,00,000 *less* @50% reducing balance method for 4 years) - Rs.4,000]		2,250
♦ Car [(Rs.3,00,000 *less* @20% reducing balance method for 3 years) - Rs.1,40,000]		13,600
Food and refreshment:		
♦ Food [300 × (65 - 50)]		4,500
♦ Refreshment- Exempt		-
Gifts:		
♦ Gifts in kind- exempt up to Rs. 5,000		-
♦ Gifts in cash- taxable		500
Gross salary		4,04,850
Less : Deduction under section 16(*ia*)		40,000
Taxable Salary		3,64,850

MULTIPLE CHOICE QUESTIONS (MCQs)
[On all chapters of Salary Head]

1 : Mr. Ramesh starts working with Bharti Airtel Ltd. for the first time *w.e.f.* 1.1.2020 at a salary of Rs. 1,00,000 per month. Salary under this company becomes due on last of the month but is paid on 7th day of next month. What would be his taxable salary for A.Y. 2020-21?

(a) Rs. 4,00,000; (c) Rs. 3,00,000

(b) Rs. 2,00,000; (d) Rs. 1,00,000

2 : Mr. Ramesh starts working with Bharti Airtel Ltd. for the first time *w.e.f.* 1.1.2020 at a salary of Rs. 1,00,000 per month. Salary under this company becomes due on first day of the next month and is paid on 7th day of such next month. What would be his taxable salary for A.Y. 2020-21?

(a) Rs. 4,00,000; (c) Rs. 3,00,000

(b) Rs. 2,00,000; (d) Rs. 1,00,000

3 : Mr. Ram is working with A Ltd. since 1.10.2012. His salary is Rs. 80,000 per month since 1.1.2019. Since then he has not received any increment. Salary under this company becomes due on first day of the next month and is paid on 7th day of such next month. What would be his taxable salary for A.Y. 2020-21?

(a) Rs. 9,60,000; (c) Rs. 10,40,000

(b) Rs. 8,80,000; (d) Rs. 7,60,000

4 : X Ltd, pays a salary of Rs. 5,50,000 to his employee Mr. Ram and undertakes to pay the Income Tax amounting to Rs. 25,750 during the previous year 2019-20 on his behalf. The gross Salary of Mr. Ram shall be :

(a) Rs. 5,50,000; (c) Rs. 5,24,250

(b) Rs. 5,75,750; (d) None of the above.

5 : Ramesh was employed on 1.7.2013 in the grade of Rs. 15,000-400-17,000-500-22,000. His gross salary for the assessment year 2020-21 shall be :

(a) Rs. 1,99,200; (c) Rs. 2,08,500

(b) Rs. 2,04,000; (d) Rs. 2,10,000.

6 : Ramesh was employed on 1.7.2013 in the grade of Rs. 15,000-400-17,000-500-22,000. His salary is fixed at Rs. 16,200 from the beginning. His gross salary for the assessment year 2020-21 shall be :

(a) Rs. 2,26,500; (c) Rs. 2,08,500

(b) Rs. 2,04,000; (d) Rs. 2,10,000.

7 : Ram who was working with another company joined the present employer *w.e.f.* 1.5.2019 at a Salary of Rs. 20,000 p.m. His salary becomes due on first of next month. He was also entitled to a pension of Rs. 8,000 p.m. from his former employer as he retired on 31.3.2019. His pension is taxable on due basis. His gross salary for assessment year 2020-21 shall be :

(a) Rs. 2,20,000; (c) Rs. 3,16,000

(b) Rs. 2,96,000; (d) Rs. 2,00,000.

8 : Gratuity shall be fully exempt in the case of :

(a) Central and State Government employee only;
(b) Central and State Government employees and employees of local authorities;
(c) Central and State Government employee, employee of local authorities and employee of statuary corporation;
(d) None of the above.

9 : An employee is covered under Payment of Gratuity Act, 1972. Which of the following shall be covered while calculating exemption limit :

(a) (15 ÷ 26) × Average monthly salary × Completed years of service ;
(b) (15 ÷ 30) × Last drawn monthly salary × Completed years of service ;
(c) (15 ÷ 26) × Last drawn monthly salary × Completed years of service (ignoring any fraction of year)
(d) (15 ÷ 26) × Last drawn monthly salary × Completed years of service.

10 : An employee is covered under Payment of Gratuity Act, 1972. Which of the following shall be the meaning of 'salary' for calculating exemption limit :

(a) Basic + D.A.(any) + Commission (% based) ;
(b) Basic + D.A.(Terms of employment) + Commission (% based) ;
(c) Salary = Basic + D.A.(Terms of employment) + Commission (any)
(d) Salary = Basic + D.A.(any)

11 : An employee is NOT covered under Payment of Gratuity Act, 1972. Which of the following shall be the meaning of 'salary' for calculating exemption limit :

(a) Basic + D.A.(any) + Commission (% based) ;
(b) Basic + D.A.(Terms of employment) + Commission (% based) ;
(c) Salary = Basic + D.A.(Terms of employment) + Commission (any)
(d) Salary = Basic + D.A.(any)

12 : An employee is NOT covered under Payment of Gratuity Act, 1972. After 10 years and 11 months, he retires from his services on 28.02.2020 and receives gratuity of Rs. 4,50,000. His salary at the time of retirement was Rs. 50,000 p.m. which was increased *w.e.f.* 1.1.2020. Before that his salary was Rs. 40,000 p.m. What would be the amount of exemption available to him :

(a) Rs. 4,50,000;
(b) Rs. 10,00,000;
(c) Rs. 2,40,000;
(d) Rs. 2,10,000.

13 : An employee is COVERED under Payment of Gratuity Act, 1972. After 10 years and 11 months, he retires from his services on 28.02.2020 and receives gratuity of Rs. 4,50,000. His salary at the time of retirement was Rs. 50,000 p.m. which was increased *w.e.f.* 1.1.2020. Before that his salary was Rs. 40,000 p.m. What amount of exemption would be available to him :

(a) Rs. 4,50,000;
(b) Rs. 20,00,000;
(c) Rs. 3,17,308;
(d) Rs. 1,32,692.

14 : Mr. Ramesh is NOT covered under Payment of Gratuity Act, 1972. In the past, he has received gratuity of Rs. 5,00,000 out of gratuity of Rs. 3,00,000 was exempted at that time. Now he is retiring from his present employer and receiving gratuity amount. He shall be entitled to the exemption to the maximum extent of :

(a) Rs. 7,00,000;
(b) Rs. 5,00,000;
(c) Rs. 10,00,000;
(d) Not entitled, as he is not covered employee.

15 : Ram worked with a previous employer for 3 years but was not entitled to any gratuity. He worked with

the present employer for 8 years and 7 months. The completed years of service for calculating exemption of gratuity shall be taken as (assume he is not covered) :

(a) 9 years;
(b) 8 years;
(c) 11 years;
(d) 12 years.

16 : For calculating leave encashment, 'salary' includes :

(a) Basic + DA(if) ;
(b) Basic + DA(if) + Commission (any);
(c) Basic + DA;
(d) Basic + DA(if) + Commission (% based).

17 : For calculating leave encashment, 'salary' is calculated on the basis of average of :

(a) Last 10 months immediately preceding the month of retirement;
(b) Last 10 months immediately preceding the date of retirement;
(c) Last drawn salary;
(d) None of the above.

18 : Total service period = 10 years and 7 months; Average salary (based on last 10 months) = Rs. 50,000 p.m.; Leaves allowed in the company = 35 days in a year. Total leaves taken = 250 days. Amount of leave encashment received = Rs.2,65,000. Amount of exemption under section 10(10AA) will be :

(a) Rs.83,333;
(b) Rs.2,65,000;
(c) Rs.1,81,668;
(d) Rs.1,66,667.

19 : Total service period = 10 years and 7 months; Average salary (based on last 10 months) = Rs. 50,000 p.m.; Leaves allowed in the company = 35 days in a year. Total leaves at his credit at the time of retirement = 150 days. Amount of leave encashment received = Rs.2,65,000. Amount of exemption under section 10(10AA) will be :

(a) Rs. 98,333;
(b) Rs. 2,65,000;
(c) Rs.1,66,667;
(d) Rs.2,50,000.

20 : Mr. A retired on 15.4.2019 from a company. He was entitled to a pension of Rs. 4,000 p.m. At the time of retirement, he got 75% of the pension commuted and received Rs. 1,20,000 as commuted pension. Compute the taxable portion of commuted pension if he is entitled to gratuity :

(a) Rs. 53,333 ;
(b) Rs. 66,667;
(c) Rs.1,20,000;
(d) Rs. 78,667.

21 : Mr. A retired on 15.4.2019 from a company. He was entitled to a pension of Rs. 4,000 p.m. At the time of retirement, he got 3/5th of the pension commuted and received Rs. 1,80,000 as commuted pension. Compute the taxable portion of the commuted pension if he is NOT entitled to gratuity :

(a) Rs. 1,00,000;
(b) Rs. 30,000;
(c) Rs.1,80,000;
(d) Rs. 54,000.

22 : Uncommuted pension is taxable in the hands of :

(a) Government Employees ;
(b) Non-Government Employees;
(c) Both (a) and (b);
(d) None of the above.

23 : Which is of the following allowance is NOT taxable :

(a) Tiffin allowance;
(c) Compensatory allowance to Judges;

(b) Dearness allowance;

(d) Fixed medical allowance.

24 : House Rent Allowance is exempt upto :

(a) Amount of HRA received;

(b) Rent paid (–) 10% of salary of the employee;

(c) 50% of salary in case house is in Metro Cities and 40% in case house is in any other area;

(d) Lower of the above.

25 : Meaning of 'salary' for calculating HRA exemption :

(a) Basic + D.A.(any) + Commission (% based);

(b) Basic + D.A.(Terms of employment) + Commission (% based);

(c) Salary = Basic + D.A.(Terms of employment) + Commission (any);

(d) Salary = Basic + D.A.(any).

26 : X is entitled to a basic salary of Rs. 50,000 p.m. and dearness allowance of Rs. 10,000 p.m., 40% of which forms part of retirement benefits. He is also entitled to HRA of Rs. 20,000 pm. He actually lives with his parents in Mumbai and does not pay any rent. Market rent of that house is Rs. 20,000 pm in Mumbai. What amount of exemption will be available to him :

(a) Rs. 64,800 ;

(b) Rs. 2,40,000 ;

(c) Rs. 1,75,200;

(d) Nil.

27 : X is entitled to a basic salary of Rs. 50,000 p.m. and dearness allowance of Rs. 10,000 p.m., 40% of which forms part of retirement benefits. He is also entitled to HRA of Rs. 20,000 pm. He pays rent of rent of Rs. 22,000 p.m. What amount of exemption will be available to him if his office is in Delhi and the rented house is situated in Gurgaon :

(a) Rs. 1,99,200 ;

(b) Rs. 40,800 ;

(c) Rs. 2,40,000;

(d) Nil.

28 : Mr. A receives Children Education Allowance of Rs. 90 p.m. per child for 3 children. What amount will be taxable in this case :

(a) Rs. 840;

(b) Rs. 1,080;

(c) Rs. 3,240;

(d) Nil.

29 : Mr. A receives Children Education Allowance of Rs. 110 p.m. per child for 3 children. What amount will be taxable in this case :

(a) Rs. 2,400;

(b) Rs. 3,960;

(c) Rs.1,560;

(d) Nil.

30 : Ram is entitled to a transport allowance of Rs. 2000 p.m. for commuting from his residence to office and back. He spends Rs. 1200 p.m. The exemption shall be :

(a) Rs. 2,000 p.m.

(b) Rs. 1600 p.m.

(c) Rs. 1200 p.m.

(d) Nil.

31 : Ram is getting Servant Allowance Rs. 1000 p.m. He spends Rs. 600 p.m. on salary of servant. The exemption shall be :

(a) Rs. 1,000;

(c) Rs. 400;

(b) Rs. 600;
(d) Nil.

32 : Ramesh is entitled to Rs. 6,000 p.m. as medical allowance He spends Rs. 4,000 p.m. on his medical treatment and Rs. 1,000 p.m. on the medical treatment of his major son not dependent on him. The exemption in this case shall be :

(a) Rs. 4,000 p.m.;
(c) Rs. 6,000;
(b) Rs. 5,000 p.m.;
(d) Nil.

33 : An employee is provided with the facility of a rent free house in Delhi (population exceeds 25 lakh) by his employer. This house is owned by the employer. What value will be treated as perquisite ?

(a) 50% of salary of employee;
(c) 15% of salary of employee;
(b) 40% of salary of employee;
(d) Nil.

34 : An employee is provided with the facility of rent free house in Gurgaon (population exceeds 25 lakh) by his employer. This house is owned by the employer. What value will be treated as perquisite ?

(a) 50% of salary of employee;
(c) 15% of salary of employee;
(b) 40% of salary of employee;
(d) Nil.

35 : A Government employee is provided with the facility of a rent free house in Gurgaon (population exceeds 25 lakh) by the Government. What value will be treated as perquisite ?

(a) 50% of salary of employee;
(c) 15% of salary of employee;
(b) 40% of salary of employee;
(d) License fee determined by the Govt.

36 : An employee is provided with the facility of a rent free house in Gurgaon (population exceeds 25 lakh) by his employer. His basic salary = Rs. 30,000 pm.; D.A. (terms of employment) = 20,000 pm.; Commission (fixed) = 2,000 pm. Perquisites = Rs. 12,000 pm. What value will be taken for 'rent free house'?

(a) Rs. 93,600;
(c) Rs. 90,000;
(b) Rs. 1,15,200;
(d) Rs. 62,400.

37 : An employee is provided with the facility of a rent free house in a city (having population of 2 lakh) by his employer. His basic salary = Rs. 30,000 pm.; D.A. = 20,000 pm.; Commission (fixed) = 2,000 pm. Perquisites = Rs. 12,000 pm. What value will be taken for 'rent free house' ?

(a) Rs. 57,600;
(c) Rs. 45,000;
(b) Rs. 90,000;
(d) Rs. 28,800.

38 : If an accommodation is provided in hotel to an employee, its taxability will be :

(a) Rent of hotel or 15% of salary of the employee (whether government or not), whichever is lower;
(c) Rent of hotel or 15% of salary of the employee (non-government), whichever is lower;
(b) Rent of hotel or 24% of salary of the employee (whether government or not), whichever is lower;
(d) Rent of hotel or 24% of salary of the employee (non-government), whichever is lower.

39 : Which of the following accommodation will be taxable :

(a) Accommodation on beach site;
(c) Accommodation on oil exploration site;
(b) Accommodation on mining site;
(d) Accommodation in a remote area.

40 : A car of 1.6 litre is provided by the employer to its employee. The car is used by him partly for official and partly for his personal purposes. The expenses of running and maintenance for official purpose are met by the employer and that of private use are met by the employee himself. The valuation of this perquisite shall be:

(a) Rs. 900 pm. ;
(b) Rs.1,800 pm.;
(c) Rs. 600 pm.;
(d) Rs. 2400 pm.

41 : An employer has provided a motor car of 1.5 liter capacity to his employee. The employee is allowed to use for official purpose and for commuting from residence to office and back. The expenses of running and maintenance of Motor Car are met by the employer. The value of this perquisite shall be :

(a) Rs. 1,800 pm. ;
(b) Rs. 600 pm.;
(c) Rs. 2,400 pm.;
(d) Nil.

42 : Mr. X is provided with the facility of a car (without driver). Details are as under :

Cost of car	:	**Rs.8,00,000**
Engine Capacity	:	**1600 C.C.**
Owner	:	**Employer**
Expenses on car relating to personal use of employee	:	**Rs. 70,000**

What would be the value of perquisite if such car is used by him for his personal purpose ONLY ?

(a) Rs. 21,600 ;
(b) Rs. 1,50,000 ;
(c) Rs. 28,800;
(d) Rs. 70,000.

43 : Mr. X is provided with the facility of a car (with driver). Details are as under :

Cost of car	:	**Rs.8,00,000**
Engine Capacity	:	**1800 C.C.**
Owner	:	**Employer**
Expenses on car relating to personal use of employee	:	**Rs. 70,000**

What would be the value of perquisite if such car is used by him for his personal purpose as well as for official purpose ?

(a) Rs. 21,600 ;
(b) Rs. 1,50,000 ;
(c) Rs. 39,600;
(d) Rs. 70,000.

44 : Mr. X is provided with the facility of a car (without driver). Details are as under :

Cost of car	:	**Rs.8,00,000**
Engine Capacity	:	**1800 C.C.**
Owner	:	**Employee**
Expenses on car relating to personal use of employee	:	**Rs. 70,000**

What would be the value of perquisite if such car is used by him for his personal purpose as well as for official purpose ?

(a) Rs. 41,200 ;
(b) Rs. 70,000 ;
(c) Rs. 28,800;
(d) Nil.

45 : Mr. X is provided with the facility of a car (with driver of a salary of Rs.5,000 pm) *w.e.f.* 1.1.2020. Details

are as under :

Cost of car	:	**Rs.8,00,000**
Engine Capacity	:	**1800 C.C.**
Owner	:	**Employer**
Expenses on car relating to personal use of employee (other than driver's salary)	:	**Rs. 70,000**

What would be the value of perquisite for the P.Y. 2019-20 if such car is used by him for his personal purpose ONLY ?

(a) Rs. 9,900 ;
(b) Rs. 1,65,000 ;
(c) Rs. 39,600;
(d) Rs. 105,000.

46 : Mr. Raj takes an interest-free loan of Rs. 2,50,000 on 1.11.2019 from his employer to construct his house. The loan is repayable in 50 monthly installments from January 2020. What would be the amount of perquisite for the previous year 2019-20 if SBI Lending rate is 10% p.a. on 1.4.2019 and 12% on 1.4.2020 :

(a) Rs. 1,22,000 ;
(b) Rs. 12,200 ;
(c) Rs. 10,167.
(d) Rs.1,46,400.

47 : Three children of Ramesh, an employee of Amity International Ltd., are studying in a school, run by Amity Ltd. School fees is 2,500 pm. but employer recovers only 600 pm. However, a similar school around the locality charges 1,800 pm. What amount will be treated as perquisite ?

(a) Rs. 32,400 ;
(b) Rs. 7,200 ;
(c) Rs. 43,200.
(d) Rs. 68,400.

48 : Three children of Ramesh, an employee of Amity International Ltd., are studying in a school, run by Amity Ltd. School fees is 2,500 pm and hostel fees is 2,000 pm. But the employer recovers only 600 pm and 500 pm respectively. However, a similar school or a hostel around the locality charges 1,800 pm and 1,200 pm respectively :

(a) Rs. 68,400 ;
(b) Rs. 7,200 ;
(c) Rs. 61,200.
(d) Rs.32,400.

49 : What will be the value of perquisite if Bharat Petroleum Ltd. provides free gas connection to its employee?

(a) 5% of salary of employee;
(b) Manufacturing cost;
(c) Market price of such facility;
(d) Nil.

50 : What will be the value of perquisite if Delhi Metro Rail Corporation (DMRC) provides free gas connection to its employee?

(a) 5% of salary of employee ;
(b) Manufacturing cost ;
(c) Market price of such facility ;
(d) Cost to DMRC.

51 : Mr. A receives lunch from his employer @ Rs. 30 each whereas its cost to the employer is Rs. 110 per meal. Total lunch during the previous year = 200 Nos. What would be the value of perquisite :

(a) Rs. 6,000;
(b) Rs. 16,000;
(c) Rs.12,000;
(d) Nil.

52 : Mr. A receives free tea twice a day from his employer. Tea costs to the employer Rs. 7 each. Total tea provided during the previous year = 500 Nos. What would be the value of perquisite :

(a) Rs. 3,500;
(b) Rs. 2,500;
(c) Rs.1,000;
(d) Nil.

53 : Mr. Amit receives cash gift of Rs. 4,000 on the occasion of Diwali ; Also he receives wrist watch of Rs. 12,000 on his birthday from his employer company. What would be the value of perquisite :

(a) Rs. 4,000;
(b) Rs. 16,000;
(c) Rs.11,000;
(d) Nil.

54 : Mr. Amit joins X Ltd. *w.e.f.* 1.1.2020. From the beginning he is using a laptop (cost Rs. 40,000) and furniture (Cost Rs. 60,000) provided by X Ltd. What would be the value of perquisite for P.Y. 2019-20 :

(a) Rs. 10,000;
(b) Rs. 6,000;
(c) Rs. 2,500;
(d) Rs. 1,500.

55 : Employer's contribution to statutory fund shall be ?

(a) fully exempt;
(b) exempt upto 12% of salary;
(c) exempt upto 10% of salary;
(d) fully taxable.

56 : Interest credited to statutory provident fund shall be ?

(a) fully exempt;
(b) exempt upto 8.5% p.a.;
(c) exempt upto 9.5% p.a.;
(d) fully taxable.

57 : Employer's contribution to recognized provident fund shall be?

(a) fully exempt;
(b) exempt upto 12.5% of salary;
(c) exempt upto 12% of salary;
(d) fully taxable.

58 : Interest credited to recognized provident fund shall be?

(a) fully exempt;
(b) exempt upto 9.5% p.a.;
(c) exempt upto 8.5% p.a.;
(d) fully taxable.

59 : Employer's contribution to unrecognized provident fund shall be?

(a) No tax treatment during the year of contribution;
(b) exempt upto 12% of salary;
(c) fully exempt;
(d) fully taxable.

60 : Interest credited to unrecognized provident fund shall be?

(a) No tax treatment during the year of accrual;
(b) exempt upto 9.5% p.a.;
(c) fully exempt;
(d) fully taxable.

61 : Employees contribution towards provident fund is allowed as deduction. Which of the following fund is an exception to this rule?

(a) SPF;
(b) RPF;
(c) PPF;
(d) URPF.

62 : Mr. A receives the following payments :

Employers contribution	:	**Rs. 3,60,000**
His own contribution	:	**Rs. 3,60,000**
Interest on employer's contribution	:	**Rs. 1,10,000**
Interest on employee's contribution	:	**Rs. 1,10,000**
Duration of service	:	**6 years**

What shall be the tax treatment if such fund is RPF.

(a) Taxable under salary head Rs. 3,60,000
Taxable under O.S. Rs. 2,20,000

(b) Taxable under salary head Rs. 7,20,000
Taxable under O.S. Rs. 2,20,000;

(c) Taxable under salary head Rs. 4,70,000
Taxable under O.S. Rs. 1,10,000;

(d) fully exempt.

63 : Mr. A receives the following payments :

Employers contribution	:	**Rs. 3,60,000**
His own contribution	:	**Rs. 3,60,000**
Interest on employer's contribution	:	**Rs. 1,10,000**
Interest on employee's contribution	:	**Rs. 1,10,000**
Duration of service	:	**4 years**

What shall be the tax treatment if such fund is RPF.

(a) Taxable under salary head Rs. 3,60,000
Taxable under O.S. Rs. 2,20,000

(b) Taxable under salary head Rs. 7,20,000
Taxable under O.S. Rs. 2,20,000;

(c) Taxable under salary head Rs. 4,70,000
Taxable under O.S. Rs. 1,10,000;

(d) fully exempt.

64 : Mr. A receives the following payments :

Employers contribution	:	**Rs. 3,60,000**
His own contribution	:	**Rs. 3,60,000**
Interest on employer's contribution	:	**Rs. 1,10,000**
Interest on employee's contribution	:	**Rs. 1,10,000**
Duration of service	:	**6 years**

What shall be the tax treatment if such fund is URPF.

(a) Taxable under salary head Rs. 3,60,000
Taxable under O.S. Rs. 2,20,000

(b) Taxable under salary head Rs. 7,20,000
Taxable under O.S. Rs. 2,20,000;

(c) Taxable under salary head Rs. 4,70,000
Taxable under O.S. Rs. 1,10,000;

(d) fully exempt.

65 : Mr. A receives the following payments :

Employers contribution	:	**Rs. 3,60,000**
His own contribution	:	**Rs. 3,60,000**
Interest on employer's contribution	:	**Rs. 1,10,000**
Interest on employee's contribution	:	**Rs. 1,10,000**
Duration of service	:	**4 years**

What shall be the tax treatment if such fund is SPF.

(a) Taxable under salary head Rs. 3,60,000
Taxable under O.S. Rs. 2,20,000

(c) Taxable under salary head Rs. 4,70,000
Taxable under O.S. Rs. 1,10,000;

(b) Taxable under salary head Rs. 7,20,000 Taxable under O.S. Rs. 2,20,000;

(d) fully exempt.

66 : Amount received from recognized provident fund after five years of continuous service is:

(a) Fully exempt

(b) Fully taxable

(c) Taxable to the extent of employer's contribution and interest thereon

(d) Interest on employees contribution will be taxable under the head O.S. and employer's contribution plus interest thereon will be taxable under the head 'salary'.

67 : Which of the following income is taxable under the head 'income from salary :

(a) Salary received by a partner from firm

(b) Salary received by a Member of Parliament

(c) Salary of a Government Officer

(d) In all of the above cases.

68 : Harish is entitled to get a pension of Rs.600 per month from a private company. He gets three-fifth of the pension commuted and received Rs.36,000. He did not receive gratuity. The taxable portion of commuted value of pension is :

(a) Rs. 16,000

(b) Rs. 6,000

(c) Rs.18,000

(d) Rs. 12,000

69 : Sonali is an employee in a private company. In the previous year she received salary Rs.1,80,000 and entertainment allowance Rs.12,000. She spent Rs.6,000 on entertainment. Under section 16(ii), she is entitled to deduction of :

(a) Rs. 16,000

(b) Nil

(c) Rs.18,000

(d) Rs. 12,000

70 : Interest-free loan to an employee, where the amount of loan does not exceed any one of the following, shall be treated as the tax-free perquisite in all cases under section 17(2) :

(a) Rs. 10,000

(b) Rs. 15,000

(c) Rs.20,000

(d) Rs. 25,000

71 : Pankaj obtained interest-free loan of Rs.20,000 from his employer company for purchasing a two-wheeler. The market rate of interest on such loan is 20% per annum. The lending rate of State Bank of India is 15.5% and that of the private sector banks is 16%. The taxable amount of this perquisite will be computed at the rate of :

(a) 20%

(b) 16%

(c) Nil

(d) 15.5%

72 : The maximum exemption in respect of transport allowance granted to an employee to meet his expenditure for the purpose of commuting between the place of his residence and the place of his duty shall be :

(a) 1200 p.m.

(b) 1400 p.m.

(c) 1600 p.m.

(d) 1800 p.m.

ANSWERS TO MCQs

Question	Answer	Question	Answer	Question	Answer	Question	Answer	Question	Answer
1	C	2	B	3	A	4	B	5	C
6	A	7	B	8	B	9	D	10	D
11	B	12	D	13	C	14	A	15	C
16	D	17	B	18	A	19	C	20	B
21	B	22	C	23	C	24	D	25	B
26	D	27	A	28	B	29	C	30	B
31	D	32	D	33	C	34	C	35	D
36	A	37	D	38	B	39	A	40	C
41	D	42	B	43	C	44	A	45	D
46	C	47	B	48	C	49	B	50	D
51	A	52	D	53	C	54	D	55	A
56	A	57	C	58	B	59	A	60	A
61	D	62	D	63	C	64	C	65	D
66	A	67	C	68	B	69	B	70	C
71	C	72	C						



CHAPTER 13
INCOME FROM HOUSE PROPERTY
[Introduction]

13.1 Introduction

'Income from house property' is one of the five heads of income chargeable to tax under the Income -tax Act, 1961. Section 22 of the Act is the charging section and section 23 defines the 'annual value' of the house property which is charged to tax. Section 24 allows certain deductions out of the 'annual value' computed in accordance with the provisions of section 23. Section 27 discusses the cases of 'deemed ownership' where the owner is not the actual owner of the property.

13.2 Chargeability [Section 22]

This section provides as under—

- The annual value of property, consisting of any buildings or lands appurtenant thereto of which the assessee is the owner,
- shall be chargeable to income-tax under the head "Income from house property".
- **However,** provision of this section do not apply to such portions of such property as he may occupy for the purposes of any business or profession carried on by him the profits of which are chargeable to income-tax.

Thus, annual value will be taxable under this head if all the following conditions are satisfied—

Condition 1	Property should consist of any building or land appurtenant thereto.
Condition 2	Assessee must be the owner of the property.
Condition 3	The property may be used for any purpose, but it should not be used by the owner for the purpose of any business or profession carried on by him, the profits of which are chargeable to tax.

Important note : As evident from the charging section, the chargeability under this head is on 'ANNUAL VALUE' and not on 'rent', thus, in few cases (discussed later), the annual value will be taxable even though property is not actually let out and generating no rent. [*i.e.* deemed let out cases]

1. *IN RELATION TO **CONDITION—1**, FOLLOWING POINTS SHOULD BE NOTED*

   a. Buildings include not only residential buildings, but also the buildings let out for the purpose of factory, offices, shops, godowns, dance halls, lecture theatre, cinema hall and it includes other commercial premises also. In *Ghanshyam Das* v. *Debi Prasad* (SC) [1998], the Apex Court has held that a large stadium or an open air swimming pool constructed at a considerable expenses would be a building as it is a permanent structure and designed for useful purposes.

   b. Land appurtenant means land connected with the building (*i.e.* which is indivisible part of the building) like garden, garage, playground, cattle-shed, car-parking, roads connecting one

department with another department etc.

c. Income from letting out of vacant land (not appurtenant to building) is, however, taxable under the head "PGBP" or "Income from other sources".

2. *IN RELATION TO **CONDITION—2**, FOLLOWING POINTS SHOULD BE NOTED*

a. Owner means a legal owner. The requirement of registration of the sale deed is not warranted. Owner is the person who is entitled to receive income from the property in his own right- *CIT* v. *Podar Cement (P) Ltd.* [1997] 92 Taxman 541 (SC).

b. Subletting of house is taxable under 'income from other sources'.

c. Ownership includes both free-hold and lease-hold rights.

d. Ownership includes deemed ownership. (as defined under section 27)

e. The person who owns the building need not be the owner of the land upon which it stands.

f. The assessee must be the owner of the house property during the previous year. It is not material whether he is the owner in the assessment year.

g. If the title of the ownership of the property is under dispute in a court of law, the decision as to who will be the owner chargeable to income-tax under section 22 will be of the Income-tax Department till the court gives its decision to the suit filed in respect of such property.

3. *IN RELATION TO **CONDITION—3**, FOLLOWING POINTS SHOULD BE NOTED* :

a. Annual value of the property is not taxable if the following conditions are satisfied—

Condition 1	The property is used by the owner for the purpose of his business or profession.
Condition 2	The profits of such business or profession are chargeable to tax.

b. Since business carried on by firm is regarded as being carried on by all partners. Thus, any building belonging to any partner is regarded as used by him for the purpose of his business or profession and any rental income cannot be taxable under this head.

4. *CASES WHERE A BUILDING IS LET OUT, YET ITS TAXABILITY WILL NOT BE UNDER THIS HEAD—*

***Case 1 :** Where building is let out but such letting out is supplementary to the main business*	♦ Where the property is let out with the object of carrying on the business of the assessee in an efficient manner. Thus, letting is not the main business but it is supplementary to the main business. ♦ The rental income of such property will be taxable as business income.
***Case 2 :** Letting out of building along with other assets*	♦ Where a commercial property is let out along with furniture/machinery and the two lettings are inseparable, the income will either be assessed as business income or as income from other sources, as the case may be. ♦This is because, the income cannot be said to be derived from mere ownership of house property.

LETOUT OF PROPERTY ALONGWITH OTHER ASSETS—TAXABILITY AT A GLANCE

If letting of such property is *separable*

If letting is the main business:
- Income from property- "house property"
- Income from other asset- "PGBP"

If letting is not the main business:
- Income from property- "house property"
- Income from other asset- "other sources"

If letting of such property is *not separable*

If letting is the main business:
- **Entire** income will be taxable under "PGBP".

If letting is not the main business:
- **Entire** income will be taxable under "other sources".

13.3 Various other incomes taxable under section 22

Annual value of house property will be charged under the head 'Income from house property' in the following cases also—

1. Where it is held by the assessee as stock-in-trade of a business;

   For example: Earth Infrastructure Ltd. is a Delhi based real estate company. The company has constructed 100 guest houses at Noida. Pending their sale, it lets out these guest houses to various corporate entities. As a result it earned Rs. 1,00,000 on account of such letting. So now income of Rs. 1,00,000 will be taxable under section 22.

2. Where the assessee is engaged in the business of letting out of property on rent;

   For example: Mr. Harish is in the business of running hostels. He owns two hostels where students pursuing various professional courses stay. Yearly income from these hostels is Rs. 2,00,000. So now income of Rs. 2,00,000 will be taxable under section 22.

13.4 Composite rent- meaning and tax treatment

1. Meaning of composite rent: The owner of a property may sometimes receive rent in respect of building as well as other assets like say, furniture, plant and machinery or for different services provided in the building, for *e.g.* lifts, security, power backup. This amount is known as composite rent.

2. Tax treatment of composite rent

(a) *Where composite rent includes rent of building and* ***charges*** *for different services (lifts, security etc.)* : In that case the composite rent is to be split up and the sum attributable to use of property is to be assessed under section 22 as income from house property. The sum attributable to use of services is to charged to tax under the head PGBP or under the head Income from other sources.

(b) *Where composite rent is received from letting out of building and* ***other assets*** *(like furniture) and the two lettings are not separable* : If the letting out of building and other assets are not separable *i.e.* the other party does not accept letting out of buildings without other assets, then the rent is taxable either as business income or income from other sources. This is applicable even if sum receivable for the two lettings is fixed separately.

(c) *Where composite rent is received from letting out of buildings and other assets and the two lettings are separable* :

- ♦ If building is let out along with other assets, but the two lettings are separable *i.e.* letting out of one is acceptable to the other party without letting out of the other, then income from letting out of building is taxable under 'Income from house property';
- ♦ Income from letting out of other assets is taxable as business income or income from other sources;
- ♦ This rule is applicable even if a composite rent is received by the assessee from his tenant for the two lettings.

13.5 Income from house property situated outside India

In case of a resident in India (resident and ordinarily resident in case of individuals and HUF), income from property situated outside India is taxable, whether such income is brought into India or not. *In case of a non-resident or resident but not ordinarily resident in India,* income from a property situated outside India is taxable only if it is received in India. *In case of a non-resident or resident but not ordinarily resident in India,* income from a property situated.

13.6 Disputed ownership

If title of ownership of a house property is under dispute in a court of law, the decision as to who is the owner rests with the Income-Tax Department. The department has *prima-facie* the power to decide whether

the assessee is the owner and is chargeable to tax under section 22, without waiting for the judicial judgment of any suit filed in respect of the property.

13.7 Cases where income from house property is exempt from tax

1. Income from any farm house forming part of *agricultural income* [Section10(1)]
2. Annual value of any one palace in the occupation of an *ex-ruler* [Section 10(19A)]
3. Income from house property of a *local authority* [Section 10(20)]
4. Income from house property of an approved *scientific research association* [Section 10(21)]
5. Property income of universities, *educational institutions*, etc [Section 10(23C)]
6. Property income of any registered *trade union* [Section 10(24)]
7. Income from house property held for *charitable or religious* purpose [Section 11]
8. Property income of any *political party* [Section 13A]
9. Property used for own *business or profession.*
10. One *self-occupied* property of an individual/HUF.



CHAPTER 14
INCOME FROM HOUSE PROPERTY
[Annual Value]

14.1 Determination of 'annual value' [Section 23]

Determination of annual value involves the following steps—

Step—1	Determination of Gross Annual Value (GAV).
Step—2	From the gross annual value computed in step 1, deduct ***municipal tax paid and born*** by the ***owner*** during the previous year. Municipal taxes are allowed as deduction only in the previous year in which these are paid, and that is even if they relate to past years also. Even where property is situated outside the country, taxes levied by the local authority in that country are to be deducted while calculating the amount of NAV.
Step—3	The balance will be the Net Annual Value (NAV), which as per this Act is 'annual value'.

14.2 Determination of 'annual value' for different types of properties [Section 23]

From taxability point of view, properties may be categorised as under—

CATEGORY—1	Property let-out throughout the previous year; [Section 23(1)(*a*)/(*b*)]
CATEGORY—2	Property let-out and vacant during the whole or any part of the previous year; [Section 23(1)(*a*)/(*b*)/(*c*)]
CATEGORY—3	Property which is self-occupied or unoccupied throughout the year; [Section 23(2)]
CATEGORY—4	Property which is let-out for the part of year and self-occupied for part of year; [Section 23(3)]
CATEGORY—5	More than one property for self-occupation; [Section 23(4)]
CATEGORY—6	Property a portion of which is let-out and a portion is self-occupied.
CATEGORY—7	Property being 'stock-in-trade' which is NOT let out during the whole (or any part) of the previous year. [Section 23(5)] [Inserted by Finance Act, 2017 *w.e.f.* A.Y. 2018-19]

CATEGORY—1 : **Where the property is let out throughout the previous year [Section 23(1)(a)/(*b*)]:** Where the property is let out for the whole year, then the GAV would be the higher of—

a. Annual Value (*i.e.* reasonable expected rent), and

b. Actual rent received or receivable during the year

Annual value (*i.e.* reasonable expected rent): Section 23(1)(*a*): Annual value means a sum for which the property might reasonably be expected to be let from year to year. The *higher* of the following is generally taken to be the annual value:

(a) Fair rent of the property, and

(b) Municipal value,

However, where such property is covered by Rent Control Act, then *the amount so computed* cannot exceed the standard rent determined under this Act. In other words, the annual value will be the higher of (*a*) and (*b*), subject to maximum of the amount of the standard rent.

To conclude: GAV will be *higher* of **'A'** and **'B'**, below:

A. Actual amount received or receivable; or
B. Fair rent or Municipal value, *whichever is higher*, but maximum upto the amount of Standard rent. *i.e.* lower of [Standard Rent and (higher of municipal value and fair rent)]

Important note on rent received/receivable—

1. Advance rent cannot be treated as 'rent received/receivable' for the year of receipt and therefore, cannot be considered for calculating income from house property.
2. If any non-refundable deposit is made by the tenant, it will be included in 'rent received/receivable' on *pro rata* basis
3. Refundable deposit, if any, made by the tenant cannot be included in rent received/receivable.
4. If the tenant has undertaken to bear the cost of repair, or amount of municipal taxes, this amount cannot be added to 'rent received/receivable'.
5. If the owner undertakes to bear the expenses related to water, electricity of the property on behalf of tenant, the amount so borne by the owner, will be deducted from the rent of the property.

For example :

Particulars	*House 1*	*House 2*	*House 3*	*House 4*
Municipal value	1,60,000	1,10,000	1,30,000	48,000
Fair rent	1,80,000	1,20,000	1,30,000	50,000
Standard rent	N.A.	1,50,000	1,16,000	N.A.
Actual rent received	1,24,000	1,24,000	1,20,000	60,000
GAV	1,80,000	1,24,000	1,20,000	60,000

CATEGORY—2 : **Where let out property is vacant for part of the year [Section 23(1)(*a*)/(*b*)/(*c*)]:** If property is *let and was vacant* during the P.Y., the GAV will be calculated as under—

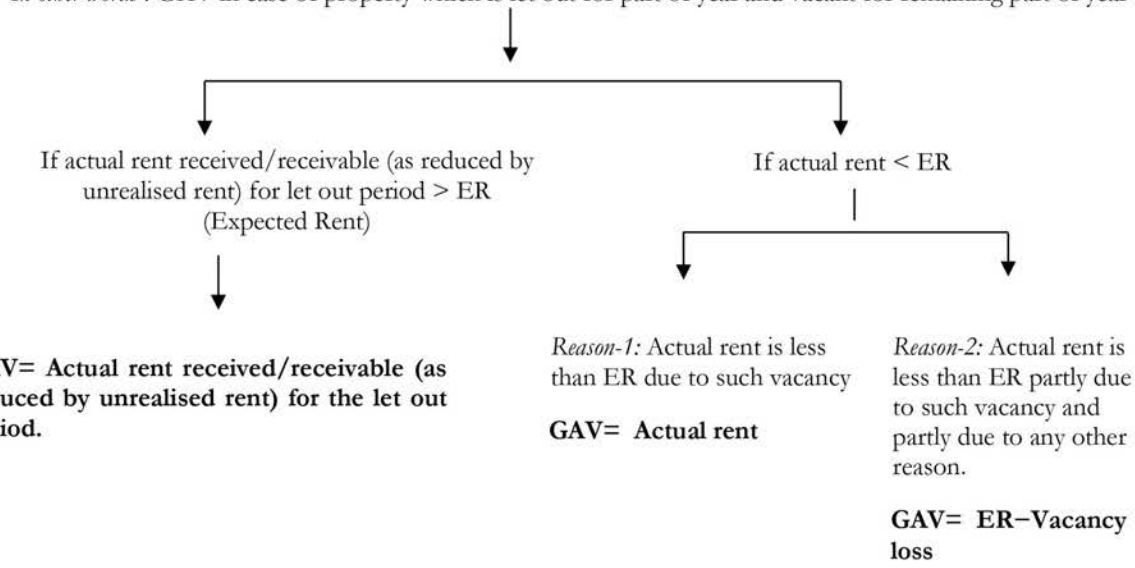
Situation	*GAV*
a. If rent received or receivable by the owner in respect of such property is *MORE* than 'reasonable expected rent' **[Section 23(1)(*b*)]**	The amount of rent so received or receivable.
b. If the 'rent received or receivable' of such property is *LESS* than 'reasonable expected rent', *owing to such vacancy,*- **Section 23(1)(*c*)**	The amount of rent so received or receivable.
c. If rent received or receivable by the owner in respect of such property is *LESS* than 'reasonable expected rent', partly *because of such vacancy and partly because of any other reason.*	'Reasonable expected rent' *as reduced by* loss due to such vacancy. *[CBDT Circular No. 14/2001]*

Note : *Situation 'C'* [*i.e.* actual rent being less than expected rent due to vacancy as well as other reason] may arise where (say) the actual rent in the area where such property is situated, is less.

CALCULATTION OF 'GAV' IN THIS CASE

ALTERNATIVE -1

In other words : GAV in case of property which is let out for part of year and vacant for remaining part of year



Problem 14.1 (Reason–1) : *Mr. Ram lets out his house property at a rent of Rs. 5,000 per month. The said property remains vacant for 3 months. Other details are as under:*

Fair rent (Rs.)	*50,000 p.a.*
Municipal valuation (Rs.)	*60,000 p.a.*
Standard rent (Rs.)	*55,000 p.a.*

You are required to calculate the amount of GAV.

Solution : Annual value *i.e.* Expected rent is Rs. 55,000 (*i.e.* higher of Rs. 50,000 and Rs. 60,000 but maximum up to Rs. 55,000); Actual rent received/receivable is Rs. 45,000, which is less than the 'expected rent'. But had this property been let out throughout the year then, actual rent received/receivable (*i.e.* Rs. 5,000 × 12 = Rs.60,000) could have been more than Expended Rent. So rent received/receivable, is less than expected rent owing to such vacancy. [*Situation 'b' above*].

So now as per *Section 23(1)(c)*, the amount of rent so received/receivable (*i.e.* Rs. 45,000) will be treated as GAV.

Problem 14.2 (Reason–2) : *Mr. Ram lets out his house property at a rent of Rs. 4,000 per month. The said property remains vacant for 3 months. Other details are as under—*

Fair rent (Rs.)	*50,000 p.a.*
Municipal valuation (Rs.)	*60,000 p.a.*
Standard rent (Rs.)	*55,000 p.a.*

You are required to calculate the amount of GAV.

Solution : Annual value *i.e.* Expected rent is Rs. 55,000 (*i.e.* higher of Rs. 50,000 and Rs. 60,000 but maximum up to Rs. 55,000). Actual rent received/receivable is Rs. 36,000, which is less than the 'expected rent'. Had this property been let out throughout the year, the actual rent received/receivable could have been Rs. 48,000 (*i.e.* Rs. 4,000 × 12). So rent received/receivable, is less than the expected rent NOT just because of vacancy but because of some other reason also. So of Rs.19,000 (*i.e.* 55,000 – 36,000) , Rs.12,000 (*i.e.* 4,000 × 3) because of vacancy and Rs. 7,000 (*i.e.* 55,000 – 48,000) because of rent being less. [*Situation 'c' above*]

So now as per *CBDT Circular No 14/2001*, GAV will be computed by deducting vacancy loss from Rs. 55,000. Thus, GAV will be Rs. 43,000 (*i.e.* Rs. 55,000 – 12,000).

ALTERNATIVE -2

Step 1: Compute the amount of **Annual value** (*i.e.* reasonable expected rent), being Fair rent or Municipal value, *whichever is higher*, but maximum up to the amount of Standard rent.

Step 2: Compute the amount of **Annual rent** *i.e.* rent received/receivable as reduced by the amount of unrealised rent but before adjusting loss due to such vacancy.

Step 3: Amount under *Step 1* or amount under *Step 2,* whichever is higher.

Step 4: Amount under *Step3 minus* loss due to such vacancy. The amount so arrived will be GAV.

14.3 Treatment of 'unrealised rent' [Explanation to section 23(1)]

The Actual rent received/receivable mentioned in section 23(1)(*b*) and (*c*) shall not include any amount of rent which the owner cannot realise, provided that, the below mentioned conditions (Rule 4) are satisfied—

Condition 1	The tenancy is *bona fide.*
Condition 2	The defaulting tenant has vacated, or steps have been taken to compel him to vacate the property.
Condition 3	The defaulting tenant is not in occupation of any other property of the assessee.
Condition 4	The assessee has taken all reasonable steps to institute legal proceedings for the recovery of the unpaid rent or satisfies the Assessing Officer that legal proceedings would be useless.

Problem 14.3 : *Find out the gross annual value in respect of the following properties of Mr. Ram for the A.Y. 2020-21—*

(Rs. in thousands)

	House–A	*House –B*	*House –C*	*House –D*	*House –E*
Municipal value (MV)	*280*	*360*	*360*	*280*	*462*
Fair Rent (FR)	*290*	*370*	*370*	*290*	*524*
Standard Rent (SR)	*284*	*350*	*350*	*284*	*482*
Monthly rent	*28*	*28*	*28*	*28*	*42*
Vacancy period (months)	*½*	*1*	*1*	*3*	*5*
Loss due to vacancy	*14*	*28*	*28*	*84*	*210*
Unrealised rent [P.Y. 2019-20]	*28*	*84*	*2*	*140*	*84*
Unrealised rent [P.Y. 2018-19]	*6*	*8*	*10*	*12*	*14*
Annual rent [*i.e.* rent if property is let out throughout the P.Y.]	336	336	336	336	504
Solution :					
Computation of gross annual value					
Step–1: expected rent [being MV or FR, *whichever is higher,* but maximum up to the amount of SR.]	284	350	350	284	482
Step–2: Annual rent [*i.e.* rent received/receivable as reduced by the amount of unrealised rent of P.Y. but before adjusting loss due to such vacancy]- (Unrealised rent of P.Y. 2018-19 is not considered)	308	252	334	196	420
Step–3: Amount under *Step–1* or amount under *Step–2,* whichever is higher.	308	350	350	284	482
Step–4: Amount under *Step–3 minus* loss due to such vacancy.	294	322	322	200	272

14.4 Deduction for municipal taxes paid (*i.e.* property taxes)

1. Property taxes are allowed as deduction from the GAV subject to the following two conditions:

a. These taxes are borne by *the assessee i.e.* owner; *and*

b. They actually, have been *paid during the previous year.*

2. If the above conditions are fulfilled, the deduction of municipal taxes will be allowed for the *entire* amount even if they exceed the amount of GAV.
3. If property taxes are levied by a local authority for any previous year, but these are not paid during that year, deduction from GAV shall NOT be allowed for that year.
4. However, if in any subsequent year the arrears are paid, then the amount so paid is allowed as deduction in computation of income from house property for that year.
5. Thus, we find that irrespective of the previous year in which the liability to pay such taxes arise according to the method of accounting regularly employed by the owner, the deduction in respect of such taxes will be allowed only in the year of actual payment.
6. In case of property situated outside India, taxes levied by local authority of that country in which the property is situated, are deductible. *CIT* v. *R. Venugopala Reddiar (Mad.)*

Problem 14.4 : *Gaurav, an American national, is a resident and ordinarily resident in India during the previous year 2019-20. He owns a house in California, which he has let out at $ 10,000 p.m. The municipal tax paid to the Municipal Corporation of California is $ 8,000 during the previous year 2019-20. Compute the taxable income Gaurav for the assessment year 2020-21. (Assume $ 1= INR 42.50)*

Solution : For the previous year 2019-20, Mr. Gaurav is resident and ordinarily resident in India. Therefore, income received by him by way of rent of the house property located in California is to be included in the total income in India. Municipal taxes paid in California, will be allowed as deduction from the GAV.

Computation of Income from house property of Mr. Gaurav for A.Y. 2020-21

Particulars	**Rs.**
Gross Annual Value ($ 10,000 × 12 × 42.50)	51,00,000
Less: Municipal taxes paid ($ 8,000 × 42.50)	3,40,000
Net Annual Value (NAV)	**47,60,000**
Less : Deduction u/s 24	
30% of NAV (*i.e.* 30% of Rs. 47,60,000)	14,28,000
Income from house property	**33,32,000**

14.5 Deduction from 'annual value' [Section 24]

Income under this head shall be computed after making the following deduction—

(a) Standard deduction [Section 24(*a*)]: Amount equal to 30% of NAV. This is a flat deduction and is allowed irrespective of the actual expenditure incurred. In case of self-occupied property where the annual value is *'nil'*, the assessee will not be entitled to such deduction.

(b) Interest on borrowed capital [Section 24(*b*)]: The amount of Interest payable on loans borrowed for the purpose of acquisition, construction, repairs, renewal or reconstruction can be claimed as deduction. Following points should be noted in this regard :

- It is immaterial whether the interest has actually been paid or not during the P.Y.
- Interest payable on a fresh loan taken to repay the original loan raised earlier for the aforesaid purposes is also admissible as a deduction. However, interest on unpaid interest is not allowed as deduction under this section.
- Any brokerage or commission paid for raising such loan is not allowed.

- *Interest pertaining to the period prior to completion of construction :* Interest payable on borrowed capital for the period prior to *the previous year in which the property has been acquired or constructed*, can be claimed as deduction over a period of 5 years in equal annual installments commencing from the year of acquisition or completion of construction.
- *Interest relating to the year of completion :* Interest relating to the *year of completion* of construction can be fully claimed in that year irrespective of the date of completion.

Problem 14.5 : *Mr. Ram had taken a loan of Rs.15,00,000 on 12.1.2019, for the purpose of construction of property. Interest was payable @ 10% p.a. The construction was completed on 11.7.2019. No principal repayment has been made up to 31.3.2019. Compute the amount of interest allowable as deduction under section 24 for the assessment year 2020-21.*

Solution

Computation of amount of interest allowable for the A.Y. 2020-21

Particulars	**Rs.**
(a) Pre-construction interest (12.1.2019 to 31.3.2019) : [(10% × 15,00,000) × 79/365] ÷ 5	6,493
(b) Interest for the year (1.4.2019 to 31.3.2020) *i.e.*10% of Rs.15,00,000	1,50,000
Amount of interest allowable for the A.Y. 2020-21	**1,56,493**

CATEGORY—3 : **Property which is self-occupied or unoccupied throughout the year: [Section 23(2)] :** Where the property is self-occupied for own residence or 'unoccupied' throughout the previous year, its Annual Value will be *Nil*, provided that no other benefit is derived by the owner from such property. Following points should be noted that—

a. The benefit of exemption of ONE self-occupied house is available only to an individual/HUF.

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

c. VALUATION : Calculation of annual value for this property is as under—

What to do	*Particulars*	*(Rs.)*
Calculate	GAV	*Nil*
Less	Municipal taxes	*Nil*
	NAV	***Nil***
Less	Standard deduction of 30% of NAV [Section 24(*a*)]	*Nil*
Less	Interest on borrowed capital [Section 24(*b*)] : Being LOWER of the following : ♦ Actual 'eligible interest' [*i.e.* 1/5th of pre-construction + previous year's] ♦ Rs.2,00,000 (if loan is taken on or after 1.4.1999 for construction/acquisition of house and it is completed with 5 years from the end of the F.Y. in which loan was taken) or Rs. 30,000	××
	Total [which either will be 'nil' or 'negative' *i.e.* loss under this head]	××

CATEGORY—4 : **Property which is let-out for the part of year and self-occupied for part of year: [Section 23(3)] :** If a single unit of a property is self-occupied for part of the year and let-out for the remaining part of the year, then the Annual value (*i.e.* reasonable expected rent) *for the whole year* shall be taken into account for determining the GAV.

VALUATION : Calculation of annual value for this property is as under—

What to do	*Particulars*	*(Rs.)*
Calculate	GAV [*i.e.* 'Expected Value' for the whole year or 'Actual Rent' for let out period, whichever is HIGHER]	××
Less	Municipal taxes [*i.e.* paid and borne by the owner]	××
	NAV	××
Less	Standard deduction of 30% of NAV [Section 24(*a*)]	××
Less	Interest on borrowed capital [Section 24(*b*)] : Actual 'eligible interest' [*i.e.* 1/5th of pre-construction + previous year's]	××
	Income/Loss under the head 'house property'	××

CATEGORY—5 : **More than one property for self-occupation [Section 23(4)] :** Where the assessee owns more than one property for self-occupation, then the income from any one such property, at the option of the assessee, shall be computed under the self-occupied property category [*i.e. CATEGORY—3*] and therefore, its annual value will be *nil*. The other self-occupied/unoccupied properties shall be treated as deemed let out properties (DLO).

VALUATION : Valuation in respect of DLO property is to be made as under—

What to do	*Particulars*	*(Rs.)*
Calculate	GAV [*i.e.* 'Expected Value' for the whole year]	××
Less	Municipal taxes [*i.e.* paid and borne by the owner]	××
	NAV	××
Less	Standard deduction of 30% of NAV [Section 24(*a*)]	××
Less	Interest on borrowed capital [Section 24(*b*)] : Actual 'eligible interest' [*i.e.* 1/5th of pre-construction + previous year's]	××
	Income/Loss under the head 'house property'	××

Notes—

a. This option can be changed year after year in a manner beneficial to the assessee.

b. The question of considering actual rent received/receivable does not arise. Consequently, no adjustment is necessary on account of property remaining vacant or unrealised rent.

CATEGORY—6 : **Property a portion of which is let-out and a portion is self-occupied :** Income from any portion or part of a property which is let out shall be computed separately under the 'let out property' category [*CATEGORY—1 or 2*] and the other portion or part which is self-occupied shall be computed under the 'self-occupied property' category [*CATEGORY—3*].

There is no need to treat the whole property as a single unit for computation of income from house property.
VALUATION : Valuation in respect of the portion which is **let-out** is to be made as under—

What to do	*Particulars*	*(Rs.)*
Calculate	GAV [*i.e.* Apportioned 'Expected Value']. Apportionment between 'self-occupied' portion and 'let-out' portion is to be made on the basis of either on 'plinth area' or 'built-up floor space' of these portions.	××
Less	Apportioned municipal taxes [*i.e.* paid and borne by the owner]	××
	NAV	××
Less	Standard deduction of 30% of NAV [Section 24(*a*)]	××

Less	Apportioned interest on borrowed capital [Section 24(*b*)] : Actual 'eligible interest' [*i.e.* 1/5th of pre-construction + previous year's]	××
	Income/Loss under the head 'house property'	××

CATEGORY—7 : **Where the property being 'stock-in-trade' is not let out during the whole (or part) of the previous year [Section 23(5)]:** This sub-section is inserted by Finance Act, 2017 w.e.f. A.Y. 2018-19. As per this sub-section, the annual value of the property shall be taken to be 'nil' if all the following conditions are satisfied :

(a) The property being any building or land appurtenant thereto is held as stock-in-trade,

(b) Such property or any part thereof is not let during the whole or any part of the previous year,

(c) the benefit (of annual value being nil) will be available only up to one year from the end of the financial year in which the certificate of completion of construction of the property is obtained from the competent authority.

14.6 Deduction of interest where GAV is 'nil' (*i.e.* 'self-occupied' property) [Section 24(b)]

In this case assessee will not be entitled to standard deduction. However, the assessee will be allowed deduction on account of interest (including 1/5th of the accumulated interest of pre- construction period) as under—

Situation	*Amount of deduction*
(a) Where the property has been *acquired, constructed, repaired, renewed or reconstructed* with borrowed capital **before** 1.4.99.	Actual interest upto Rs.30,000
(b) Where the property is *acquired or constructed* with capital borrowed on or after 1.4.99 and such *acquisition or construction* is completed within **5 years** from the end of the financial year in which the capital was borrowed.	Actual interest upto Rs.2,00,000
(c) Where the property is *repaired, renewed or reconstructed* with capital borrowed **on or after** 1.4.1999.	Actual interest upto Rs.30,000

Notes—

1. For the purpose of claiming deduction of Rs.2,00,000 as per *(b)* in the table given above, the assessee should furnish a certificate from the person to whom any interest is payable on the capital borrowed, specifying the amount of interest payable by the assessee for the purpose of such acquisition or construction of the property.
2. The entire amount of interest is allowed in case of let-out/deemed to be let-out properties.
3. Deduction of interest is available on accrual basis; therefore, interest accrued but not paid during the year can also be claimed as deduction.
4. Where a buyer enters into an arrangement with a seller to pay the sale price in installments along with interest due thereon, the seller becomes the lender in relation to the unpaid purchase price and the buyer becomes the borrower. In such a case, unpaid purchase price can be treated as capital borrowed for acquiring property and interest paid thereon can be allowed as deduction under this section.
5. As mentioned earlier, interest on unpaid interest is not deductible.

Problem 14.6 : *Mr. Ramesh has a house property situated in Delhi. Details are as under-*

	Rs.
Municipal valuation (p.a.)	*2,50,000*
Fair rent (p.a.)	*2,00,000*
Rent fixed by Rent Control Act (p.a.)	*2,10,000*

This property was let out for a rent of Rs. 20,000 p.m. However, the tenant vacated the property on 31.1.2020. Unrealised rent was Rs.20,000 (assume all conditions prescribed by Rule 4 are satisfied).

He paid municipal taxes @8% of municipal valuation. Interest on borrowed capital was Rs.65,000 for the year. Compute the income from house property of Mr. Ramesh for A.Y.2020-21.

Solution :

Computation of Income from house property of Mr. Ramesh for A.Y. 2020-21

(ALTERNATIVE—1)

(a) Expected Rent *i.e.* Rs. 2,10,000 [being higher of Rs. 2,50,000 and Rs. 2,00,000, subject to maximum of Rs. 2,10,000]

(b) Rent received/receivable *i.e.* Rs.1,80,000 (*i.e.* 2,00,000 – 20,000)

(c) Actual rent received is lower than Annual value owing to such vacancy [Since (2,40,000-20,000) > 2,10,000]; Therefore, GAV will be the amount of rent received *i.e.* Rs. 1,80,000.

(ALTERNATIVE—2)

Step 1: Compute the amount of Annual value (*i.e.* reasonable expected rent), being Fair rent or Municipal value, *whichever is higher*, but maximum upto the amount of Standard rent → **Rs. 2,10,000**

Step 2: Compute the amount of Annual rent *i.e.* rent received/receivable as reduced by the amount of unrealised rent but before adjusting loss due to such vacancy → **Rs. 2,20,000 [*i.e.* Rs. 2,40,000-20,000]**

Step 3: Amount under *Step1* or amount under *Step2,* whichever is higher→ **Rs. 2,20,000**

Step 4: Amount under *Step3 minus* loss due to such vacancy. The amount so arrived will be GAV. → **Rs. 1,80,000 [*i.e.* Rs. 2,20,000 – 40,000]**

Particulars	**Rs.**
Gross Annual Value	1,80,000
Less: Municipal taxes paid (8% of Rs. 2,50,000)	20,000
Net Annual Value (NAV)	**1,60,000**
Less: Deduction u/s 24	
(a) Standard deduction @30% of NAV	48,000
(b) Interest on borrowed capital	65,000
Income from house property	**47,000**

Problem 14.7 : *Mrs. Priya Rathee has one house property at Model town in Rohtak. She stays with her family in the house. The rent of similar property is Rs.25,000 p.m. The municipal valuation is Rs.23,000 p.m. Municipal taxes paid is Rs.8,000. The construction of the house was started in the year 2014 with a loan of Rs.20,00,000. The construction was completed on 30.11.2016. The accumulated interest up to 31.3.2016 is Rs.2,50,000. During the previous year 2019-20, Ms. Priya paid Rs.1,98,000 which included Rs.1,54,000 as interest. Compute Priya's income from house property for A.Y. 2020-21.*

Solution

Computation of Income from house property of Mrs. Priya Rathee for A.Y. 2020-21

Particulars	**Rs.**
Gross Annual Value	*Nil*
Less: Municipal taxes paid	*Nil*
Net Annual Value (NAV)	***Nil***
Less: Deduction u/s 24	
(a) Standard deduction @30% of NAV	*Nil*

(b) Interest on borrowed capital: Loan was taken on or after 1.4.1999 and construction of the property was completed within 3/5 years, therefore maximum limit would be of Rs.2,50,000 (including 1/5th prior period interest) Total interest Rs.1,54,000 + Rs.50,000 (1/5th of Rs.2,50,000) = Rs.2,04,000, but maximum upto Rs.2,00,000

2,00,000

Income from house property

-2,00,000

Problem 14.8 : *Mr. Ram owns a house property at Rohini in Delhi. The municipal value of the property is Rs.5,00,000, fair rent is Rs.4,20,000 and standard rent is Rs.4,80,000. The property was let-out for Rs.50,000 p.m. up to December 2019. Thereafter, the tenant vacated the property and Mr. Ram used the house for self-occupation. Rent for the months of November and December 2019 could not be realised in spite of the owner's efforts. All the conditions prescribed under Rule 4 are satisfied. He paid municipal taxes @12% during the year. He had paid interest of Rs.25,000 during the year for amount borrowed for repairs for the house property. Compute his income from house property for the A.Y. 2020-21.*

Solution :

Computation of Income from house property of Mr. Ram for A.Y. 2020-21

Computation of GAV:

(a) Annual value *i.e.* Rs. 4,80,000 [being higher of Rs. 5,00,000 and Rs. 4,20,000, subject to maximum of Rs. 4,80,000]
(b) Rent received/receivable *i.e.* Rs.3,50,000 (*i.e.* 4,50,000 – 1,00,000)
(c) GAV would be the higher of the amounts calculated under (a) and (b) above, *i.e.* Rs. 4,80,000.

Particulars	**Rs.**
Gross Annual Value	4,80,000
Less: Municipal taxes paid (5,00,000 × 12%)	60,000
Net Annual Value (NAV)	**4,20,000**
Less: Deduction under section 24:	
(a) Standard deduction @30% of NAV	1,26,000
(b) Interest on borrowed capital	25,000
Income from house property	**2,69,000**

Problem 14.9 : *Mr. Shyam has two houses, both of which are self-occupied. The particulars of the houses for the P.Y. 2019-20 are as under:*

Particulars	***House I***	***House II***
Municipal valuation (p.a.)	*1,00,000*	*1,50,000*
Fair rent (p.a.)	*75,000*	*1,75,000*
Standard rent (p.a.)	*90,000*	*1,60,000*
Date of completion	*31.3.2002*	*31.3.2004*
Municipal taxes paid during the year	*12%*	*8%*
Interest on money borrowed for repair of property during the current year	-	*55,000*

Compute Shyam's income from house property for A.Y. 2020-21 and suggest which house should be opted by Shyam to be assessed as self-occupied so that his tax liability is minimum.

Solution :

Computation of Income from house property of Mr. Shyam for A.Y. 2020-21

Let us first calculate the income from each house property assuming that they are deemed to be let out.

(Rs.)

Particulars	House I	House II
GAV, *i.e.* AV (*i.e.* FR or MV, *whichever is higher*, but upto SR)	90,000	1,60,000
Less: Municipal taxes paid during the year	12,000	12,000
Net Annual Value	**78,000**	**1,48,000**
Less: Deduction under section 24		
(a) Standard deduction (*i.e.* 30% of NAV)	23,400	44,400
(b) Interest on money borrowed	-	55,000
Income from house property	**54,600**	**48,600**

OPTION 1 (House I - self-occupied and House II - deemed to be let out): If House I is opted to be self-occupied, the income from house property shall be as under:

Particulars	(Rs.)
House I (Self occupied)	*Nil*
House II (Deemed to be let-out)	48,600
Income from house property	**48,600**

OPTION 2 (House II - self-occupied and House I - deemed to be let out): If House II is opted to be self-occupied, the income from house property shall be as under:

Particulars	(Rs.)
House I (Deemed to be let-out)	54,600
House II (Self occupied), Interest restricted to Rs. 30,000	-30,000
Income from house property	**24,600**

Since Option 2 is more beneficial, Shyam should opt to treat House II as self-occupied and House I as deemed to be let out. His income from house property would be Rs.24,600 for the A.Y. 2020-21.

Problem 14.10 : *Mr. Sumit owns a house in Mumbai. During the P.Y. 2019-20, 2/3rd portion of the house was self-occupied and 1/3rd portion was let out for residential purposes at a rent of Rs.8,000 p.m. Municipal value of the property is Rs.3,00,000 p.a., fair rent is Rs.2,70,000 p.a. and standard rent is Rs.3,30,000. He paid municipal taxes @10% of municipal value during the year. A loan of Rs.25,00,000 was taken by him during the year 2016 for acquiring the property. Interest on loan paid during the previous year 2019-20 was Rs.1,20,000. Compute Sumit's income from house property for the A.Y. 2020-21.*

Solution : There are two units of the house. Unit I with 2/3rd area is used by Mr. Sumit for self-occupation throughout the year and no benefit is derived from that unit, hence it will be treated as self- occupied and its annual value will be nil. Unit 2 with 1/3rd area is let-out throughout the P.Y. and its annual value has to be determined as per section 23(1).

Computation of Income from house property of Mr. Sumit for A.Y. 2020-21

Particulars	Rs.
Unit I (2/3rd area, Self-occupied)	
Annual Value	*Nil*
Less: Deduction under section 24(b), for interest [*i.e.* 2/3rd of Rs. 1,20,000]	80,000
Income from Unit I	**-80,000**
Unit II (1/3rd area, Let-out)	

Computation of GAV:

(a) Annual value *i.e.* Rs. 1,00,000 [being higher of Rs. 1,00,000 (1/3rd of MV) and Rs. 90,000 (1/3rd of Rs. 2,70,000 FR), subject to maximum of Rs. 1,10,000 (1/3rd of 3,30,000 SR)]
(b) Rent received/receivable *i.e.* Rs. 96,000 (*i.e.* 8,000 × 12)
(c) GAV would be the higher of the amounts calculated under (a) and (b) above, *i.e.* Rs. 1,00,000.

Particulars	**Rs.**
Gross Annual Value	1,00,000
Less: Municipal taxes *i.e.* 1/3rd of (3,00,000×10%)	10,000
Net Annual Value (NAV)	**90,000**
Less: Deduction u/s 24:	
(a) Standard deduction @30% of NAV	27,000
(b) Interest *i.e.* 1/3rd of Rs. 1,20,000	40,000
Income from Unit II	**23,000**
Income from house property (-80,000 + 23,000)	**-57,000**

14.7 Deductions for interest on money borrowed from outside India [Section 25]

Interest chargeable under this Act which is payable outside India shall not be deducted if:
(a) tax has not been paid or deducted from such interest and
(b) there is no person in India who may be treated as an agent under section 163.

14.8 Recovery of unrealised rent and arrears of rent [New Section 25A]

This section provides as under :

(1) The amount of :

- arrears of rent received, or
- the unrealised rent realized subsequently

from a tenant, as the case may be, by an assessee shall be deemed to be the 'income from house property' in respect of the financial year in which such rent is received or realised, whether the assessee is the owner of the property or not in that financial year.

(2) A sum equal to 30% of the arrears of rent or the unrealised rent referred to in (1) above shall be allowed as deduction.

E.g.—

Particulars	*Case 1*	*Case 2*
Amount of deduction (for unrealised rent)claimed	60,000	1,00,000
Deduction actually allowed as per *Explanation* to Sec. 23(1)	45,000	*Nil*
Amount realised subsequently	35,000	70,000
Amount taxable under section 25A	20,000-30% = 14,000	*Nil*

14.9 Treatment of income from co-owned property [Section 26]

Following points should be noted—

a. Where property is owned by two or more persons, whose shares are definite and ascertainable, then the income from such property cannot be taxed as income of an AOP.

b. The share income of each such co-owner should be determined in accordance with sections 22 to 25 and included in his individual assessment.

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

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

14.10 Deemed ownership [Section 27]

As per section 27, the following persons, though not legal owners of a property, are deemed to be the owners for the purposes of section 22 to 26 and income from the property will be computed in their hands—

(a) *TRANSFER TO A SPOUSE :* In case of transfer of house property by an individual to his or her spouse the transferor is deemed to be the owner of the transferred property.

EXCEPTIONS : In the following cases transferor will not be deemed to be owner of the house property—

Exception 1	Where such transfer is made with an adequate consideration.
Exception 2	Transfer is made to the spouse of the individual in connection with an agreement to live apart.

(b) *TRANSFER TO A MINOR CHILD :* In case of transfer of house property by an individual to his or her minor child, the transferor would be deemed to be owner of the house property transferred.

EXCEPTIONS : In the following cases transferor will not be deemed to be owner of the house property—

Exception 1	Where such transfer is made with an adequate consideration.
Exception 2	Transfer is made to a minor married daughter.

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

(c) *HOLDER OF AN IMPARTIBLE ESTATE :* The impartible estate is a property which is not legally divisible. The holder of an impartible estate shall be deemed to be the individual owner of all properties comprised in the estate.

(d) *MEMBER OF A CO-OPERATIVE SOCIETY ETC.:* A member of a co-operative society, company or other association of persons to whom a building or part thereof is allotted or leased under a House Building Scheme of a society/company/association, shall be deemed to be owner of that building or part thereof allotted to him although the co- operative society/company/ association is the legal owner of that building.

(e) *PERSON IN POSSESSION OF A PROPERTY :* A person who is allowed to take or retain the possession of any building or part thereof in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act shall be the deemed owner of that house property. This would include cases where the—

a. possession of property has been handed over to the buyer

b. sale consideration has been paid or promised to be paid to the seller by the buyer

c. sale deed has not been executed in favour of the buyer, although certain other documents like power of attorney/agreement to sell/will etc. have been executed.

In the above case, the buyer would be deemed to be the owner of the property although he is not registered owner.

(f) *PERSON HAVING RIGHT IN A PROPERTY FOR A PERIOD NOT LESS THAN 12 YEARS :* A person who acquires any rights in or with respect to any building or part thereof, by virtue of any transaction as is referred to in section 269UA(*f*) *i.e.* transfer by way of lease for not less than 12 years, shall be deemed to be the owner of that building or part thereof.

EXCEPTION: Any rights (of renewal given to the tenant) by way of lease from month to month or for a period not exceeding one year.

E.g.— Ram (owner of the property), has given his property on lease to Mr. Shyam on following terms—

	Tenant's right of renewal of lease	*Aggregate Lease period*	*Deemed owner as per section 27*
Case 1	After one and half years	15 years	Mr. Shyam
Case 2	After two years	12 years	Mr. Shyam
Case 3	After two years	10 years	Mr. Ram
Case 4	After six months	15 years	Mr. Ram

14.11 General Notes

1. Annual Value of the property can be negative in the following cases—

- **In case of self-occupied property:** Annual value of a property can be negative but only to the extent of Rs.2,00,000/Rs.30,000.
- **In case of let-out property:** The annual value can be negative because of deduction on account of municipal taxes and interest. There is no limit to which such income can be negative.

2. In a case where the entire investment in the property is made by the husband but the property is registered in the name of his wife, the income is chargeable in the hands of the husband— *CIT* v. *Ajit Kumar Roy* [2001] (Cal.)

MULTIPLE CHOICE QUESTIONS (MCQs)
(On all chapters of House Property)

5.1 : Section 22 fixes chargeability on :

(a) GAV;
(b) Annual Rent;
(c) Annual Value;
(d) Expected Value.

2 : Assessee carries on his own business or profession in a house property. Such house property :

(a) shall be treated as an 'assets' eligible for depreciation;
(b) Shall be treated as stock-in-trade;
(c) shall be deemed to let out and therefore, will be taxable under the head house property;
(d) Shall have no tax treatment.

3 : Mr. Ram has taken a house property on rent of Rs. 10,000 pm. He further, lets out such house property to a tenant @ Rs. 15,000 pm. Taxability of such property will be :

(a) Under the head 'house property' i.e. [(15,000−10,000)×12] −30% = Rs.42,000;
(b) Under the head 'PGBP i.e. [(15,000−10,000)×12] = Rs.60,000;;
(c) Under the head 'other sources' i.e. [(15,000−10,000)×12] = Rs.60,000;
(d) Sub-letting is not taxable.

4 : Which one of the following is NOT taxable under the head 'house property' ?

(a) Large stadium;
(b) Swimming pool;
(c) Land appurtenant to a building;
(d) Open land.

5 : Mr. Amit owns two houses for self-occupation. Taxability will be :

(a) Both these houses will be exempt;
(b) Both these houses will be taxable;
(c) One will be taxable as D.L.O. and other will be exempt as S.O.;
(d) None of the above.

6 : Tick out the deduction that would be available in case of one 'self-occupied' property :

(a) 30% Standard deduction;
(b) Interest on housing loan without any monetary limit;
(c) Interest on housing loan with the limit of Rs.30,000 or Rs.2,00,000;
(d) Repair & maintenance and insurance premium.

7 : Municipal value = Rs.1,10,000; Fair Rent = Rs. 1,30,000; Standard Rent = 1,20,000; Municipal taxes = 10%. Property is let out at a rent of Rs. 9,000 pm. What would be the NAV :

(a) Rs. 1,09,000;
(b) Rs. 1,08,000;
(c) Rs. 97,000;
(d) Rs. 1,19,000.

8 : Municipal value = Rs.1,10,000; Fair Rent = Rs. 1,30,000; Standard Rent = 1,20,000; Municipal taxes paid = Rs.1,40,000 (including arrears of Rs.1,20,000 of past 5 years). Actual rent (full year) = 1,08,000. What would be the NAV :

(a) Rs. 1,00,000;
(b) Rs. 1,10,000;
(c) (−) Rs. 10,000;
(d) (−) Rs. 20,000.

9 : In case of let out properties, deductions of interest on housing loan shall be allowed:

(a) Without any monetary limit ;
(c) With the monetary limit of Rs. 2,00,000;

(b) With the monetary limit of Rs. 2,00,000 or Rs.30,000;

(d) No deduction is allowed in respect of interest on housing loans.

10 : Deduction of the following shall be allowed from the actual rent received/receivable :

(a) Outstanding rent ;

(b) Unrealised rent (if few conditions are satisfied)

(c) Both;

(d) For none of them.

11 : Money borrowed for the purpose of repair of a house property, which is 'self occupied'. Deduction for interest shall be allowed :

(a) Upto Rs. 30,000 ;

(b) Upto Rs. 2,00,000 ;

(c) Without any limit;

(d) No deduction is allowed in respect of interest on money borrowed for repair purpose.

12 : Money borrowed for the purpose of repair of a house property, which is 'let out'. Deduction for interest shall be allowed :

(a) Upto Rs. 30,000 ;

(b) Upto Rs. 2,00,000 ;

(c) Without any limit;

(d) No deduction is allowed in respect of interest on money borrowed for repair purpose.

13 : Mr. X provides the following information :

Amount of loan (For construction of a house property)	**:**	**Rs.10,00,000**
Date of loan	**:**	**1.10.2017**
Rate of interest	**:**	**10% p.a.**
Date of completion of construction	**:**	**1.2.2020**

What would be the amount of deduction under section 24(b) for P.Y. 2019-20 if the property is let out?

(a) Rs. 2,33,333;

(b) Rs. 63,333 ;

(c) Rs. 1,00,000;

(d) Rs. 1,30,000.

14 : Mr. X provides the following information :

Amount of loan (For construction of a house property)	**:**	**Rs.10,00,000**
Date of loan	**:**	**1.10.2012**
Rate of interest	**:**	**10% p.a.**
Date of completion of construction	**:**	**1.2.2015**

What would be the amount of deduction under section 24(b) for P.Y. 2019-20 if the property is let out?

(a) Rs. 2,33,333;

(b) Rs. 63,333 ;

(c) Rs. 1,00,000;

(d) Rs. 1,30,000.

15 : Mr. X provides the following information :

Amount of loan (For repair of a house property)	**:**	**Rs.10,00,000**
Date of loan	**:**	**1.10.2016**
Rate of interest	**:**	**10% p.a.**
Date of completion of repair	**:**	**1.2.2020**

What would be the amount of deduction under section 24(b) for P.Y. 2019-20 if the property is 'self-occupied' out?

(a) Rs. 30,000;

(b) Rs. 63,333 ;

(c) Rs. 1,00,000;

(d) Rs. 1,30,000.

16 : Mr. A lets out his building along with furniture. The rent for the building is decided at Rs. 40,000 p.m. whereas for furniture Rs.10,000 p.m. Discuss the taxability of the above rent if letting of both these assets is SEPARABLE. Assume letting is NOT main business of Mr. A. :

(a) Rs. 50,000 p.m. will be taxable under 'house property' head ;

(b) Rs. 50,000 p.m. will be taxable under 'other source' head ;

(c) Rs. 40,000 p.m. will be taxable under 'house property' head and Rs. 10,000 p.m. under 'other source' head;

(d) Rs. 50,000 p.m. will be taxable under 'PGBP' head.

17 : Mr. A lets out his building along with furniture. The rent for the building is decided at Rs. 40,000 p.m. whereas for furniture Rs.10,000 p.m. Discuss the taxability of the above rent if letting of both these assets is INSEPARABLE. Assume letting is NOT main business of Mr. A. :

(a) Rs. 50,000 p.m. will be taxable under 'house property' head ;

(b) Rs. 50,000 p.m. will be taxable under 'other source' head ;

(c) Rs. 40,000 p.m. will be taxable under 'house property' head and Rs. 10,000 p.m. under 'other source' head;

(d) Rs. 50,000 p.m. will be taxable under 'PGBP' head.

18 : Mr. A lets out his building along with furniture. The rent for the building is decided at Rs. 40,000 p.m. whereas for furniture Rs.10,000 p.m. Discuss the taxability of the above rent if letting of both these assets is SEPARABLE. Assume letting is the main business of Mr. A. :

(a) Rs. 50,000 p.m. will be taxable under 'house property' head;

(b) Rs. 50,000 p.m. will be taxable under 'PGBP' head;

(c) Rs. 40,000 p.m. will be taxable under 'house property' head and Rs. 10,000 p.m. under 'other source' head;

(d) Rs. 40,000 p.m. will be taxable under 'house property' head and Rs. 10,000 p.m. under 'PGBP' head;

19 : X Ltd. is engaged in construction of residential flats and selling them. It has built up 50 flats in NOIDA. Till their sale, the company lets out them and earns rental income of Rs. 2,00,000. This income will be taxable :

(a) Under the head 'house property';

(b) Under the head 'PGBP' ;

(c) Under the head 'other source';

(d) Under the head 'PGBP' or other sources at the option of the assessee.

20 : Mr. Sumit is engaged in running hostels and PGs. During a period he has earned rental income of Rs. 3,50,000 from such business. This income will be taxable :

(a) Under the head 'house property';

(b) Under the head 'PGBP' ;

(c) Under the head 'other source';

(d) Under the head 'PGBP' or other sources at the option of the assessee.

21 : Under which of the following cases deduction of interest on borrowed capital will be allowed:

(a) Interest which is not paid during the P.Y.

(b) Interest which is paid in India on which no tax has been deducted at source

(c) Interest, the payment of which was made in cash

(d) All of the above

22 : Deduction of unrealised rent will be allowed if :

(a) It does not exceed 30% of rent receivable

(c) Condition of Rule 4 are satisfied

(b) It does not exceed 30% of GAV
(d) No such deduction is allowed

23 : Deduction of Municipal taxes will be allowed :

(a) If they are paid by the owner
(c) Whether or not they are paid
(b) If they are paid by the tenant
(d) When property is let out for whole year

24 : When deduction under section 24(a) *i.e.* 'Standard deduction' will NOT be allowed :

(a) If the property is self-occupied
(c) if property remain vacant at any time during the P.Y.
(b) If actual expenses of repair insurance etc. are not actually incurred by the assessee
(d) If standard rent is not available in that area

25 : A property is co-owned by two friends. Share of them determinable. Such property is self-occupied. What will be the treatment?

(a) Taxability will be made as if the property is owned by BOI
(c) Taxability will be made in the hands of both the co-owners and deduction of interest will be allowed upto Rs.2,00,000/30,000 to each of such co-owner separately
(b) Taxability will be made in the hands of any of co-owner and deduction of interest will be allowed only upto Rs.2,00,000/30,000
(d) Co-owned properties where shares are known are exempt from tax

26 : An assessee has claimed and allowed a deduction of unrealised rent of Rs.30,000 in the past. Later on during the P.Y. he has realised Rs.20,000 of such unrealised rent along with Rs.30,000 as arrear of rent. What will be the taxable amount? (Assume he has no other income) :

(a) Rs.50,000
(c) Rs.35,000
(b) Rs.41,000
(d) NIL

27 : An assessee recovers Rs.60,000 as outstanding rent (not being unrealised rent). He has no other income. What amount will be taxable?

(a) Rs.60,000
(c) Rs.51,000
(b) Rs.42,000
(d) NIL

28 : Mr. Ramesh gifted his house property to his wife in 2016. Mrs. Ramesh lets out the house property at the rate of Rs. 5,000 p.m. The income from such house property will be taxable in the hands of :

(a) Ramesh will be treated as 'deemed owner' and accordingly will be liable to pay tax
(b) Income will be first computed as Mrs. Ramesh's income and thereafter be clubbed in the income of Mr. Ramesh
(c) Income will be computed in the hands of Mrs. Ramesh's.

29 : Mr. Suresh transferred his house property to his wife in 2016 in agreement to live apart. Mrs. Suresh lets out the house property at the rate of Rs. 5,000 p.m. The income from such house property will be taxable in the hands of :

(a) Mr. Suresh will be treated as 'deemed owner' and accordingly will be liable to pay tax
(b) Income will be first computed as Mrs. Suresh's income and thereafter be clubbed in the income of Mr. Suresh

(c) Income will be computed in the hands of Mrs. Suresh.

30 : Mr. Ram gifted his house property to his minor son Luv kumar in 2018. Luv kumar lets out the house property at the rate of Rs. 5,000 p.m. The income from such house property will be taxable in the hands of :

(a) Ram will be treated as 'deemed owner' and accordingly will be liable to pay tax

(b) Income will be first computed as Luv kumar's income and thereafter it will be clubbed in the income of Mr. Ram

(c) Income will be computed in the hands of Luv kumar.

31 : Mr. Ram gifted his house property to his son's wife in 2018. She lets out the house property at the rate of Rs. 5,000 p.m. The income from such house property will be taxable in the hands of :

(a) Ram will be treated as 'deemed owner' and accordingly will be liable to pay tax

(b) Income will be first computed as son's wife's income and thereafter it will be clubbed in the income of Mr. Ram

(c) Income will be computed in the hands of son's wife.

32 : Mr. Ram gifted his house property to his minor married daughter in 2018. Such daughter lets out the house property at the rate of Rs. 5,000 p.m. The income from such house property will be taxable in the hands of :

(a) Ram will be treated as 'deemed owner' and accordingly will be liable to pay tax

(b) Income will be first computed as minor married daughter's income and thereafter it will be clubbed in the income of Mr. Ram

(c) Income will be computed in the hands of minor married daughter.

33 : Mr. Ram gifted his house property to his major son in 2018. Major son lets out the house property at the rate of Rs. 5,000 p.m. The income from such house property will be taxable in the hands of :

(a) Ram will be treated as 'deemed owner' and accordingly will be liable to pay tax

(b) Income will be first computed as major son's income and thereafter it will be clubbed in the income of Mr. Ram

(c) Income will be computed in the hands of major son.

34 : A property is leased out. Details are as under:
Total lease period : 15 years
Renewal period : Every 2 years
Who will be the owner?

(a) Lessor

(b) Lessee

35 : Assume in the above case the renewal period is 1 year instead of 2 year. Who will be the owner?

(a) Lessor

(b) Lessee

36 : Mr. A has transferred a house property to his wife. Under which of the following case Mr. A will not be treated as deemed owner:

(a) If such transfer is made with the adequate consideration

(b) If such transfer is made with the agreement to live apart

(c) In both (a) and (b)

(d) In none of (a) and (b)

37 : Amit is a member of house building Cooperative Society. Such society is the owner of the flats

constructed by it. One of the flats is allotted to Amit. The income from such house property shall be taxable in the hands of :

(a) Co-operative society

(b) Mr. Amit

ANSWERS TO MCQs

Question	Answer	Question	Answer	Question	Answer	Question	Answer	Question	Answer
1	C	2	A	3	C	4	D	5	C
6	C	7	A	8	D	9	A	10	B
11	A	12	C	13	D	14	C	15	A
16	C	17	B	18	D	19	A	20	A
21	D	22	C	23	A	24	A	25	C
26	C	27	D	28	A	29	C	30	A
31	B	32	B	33	C	34	B	35	A
36	C	37	B						



CHAPTER 15
INCOME FROM BUSINESS OR PROFESSION
[Introduction]

15.1 Meaning of business [Section 2(13)]

In view of section 2(13), business includes any (a) Trade, (b) Commerce, (c) Manufacture, or (d) any concern or adventure in the nature of trade, commerce or manufacture. Following should be noted:

- Business includes profession also.
- Business arises out of commercial transactions between two or more persons. One cannot enter into a business transaction with oneself.
- Following business incomes are not chargeable under the head PGBP:
  - (a) Rental income in case of dealer in property.
  - (b) Dividend on shares in case of dealer in shares.
  - (c) Winning from lotteries, races etc.

15.2 Incomes chargeable under the head PGBP [Section 28]

Following incomes shall be chargeable to tax under the head PGBP—

(i) Profits and gains of business or profession which was carried on by the assessee at any time during the previous year.

(ii) any compensation or other payment due to or received by,—

(a) *Termination/modification of management of Indian company* : any person, by whatever name called, managing the whole or substantially the whole of the affairs *of an Indian company*, at or in connection with the termination of his management or the modification of the terms and conditions relating thereto;

(b) *Termination/modification of management of other company* : any person, by whatever name called, managing the whole or substantially the whole of the *affairs in India* of any other company, at or in connection with the termination of his office or the modification of the terms and conditions relating thereto ;

E.g. *Mr. X (director) was engaged in coordination with all State Government, Central Govt, Local bodies to get all the required permissions to proceed with various projects/ works of India Constructions Private Limited. The company terminates these affairs of Mr. X and vest these activities to Mr. B (a newly appointed director) and pays Mr. X a sum of Rs. 2,00,000 as compensation.*

(c) *Termination/modification of management of agency* : any person, by whatever name called, holding an agency in India for any part of the activities relating to the business of any other person, at or in connection with the termination of the agency or the modification of the terms and conditions relating thereto ;

E.g. *During 2010-11 Bajaj Automotive Deals was an authorised dealer for Bajaj Pulsar for whole Delhi. w.e.f. 1.04.2011, Bajaj Auto Ltd. has modify such agency and restricted it to south Delhi only. As a compensation Rs. 5,00,000 was paid to Bajaj Automotive Deals.*

(d) *Vesting in Govt. of management of any business* : any person, for or in connection with the vesting in the Government, or in any corporation owned or controlled by the Government, under any law for the time being in force, of the management of any property or business.

(e) *Termination/modification of the terms of any contract relating to any business* : any person, by whatever name called, at or in connection with the termination or the modification of the terms and conditions, of any contract relating to his business [Inserted by Finance Act, 2018 *w.e.f.* A.Y. 2019-20]

(iii) Income derived by any trade, profession or similar associations from specific services rendered by them to their members.

Section 10(23A) provides that any income (other than income chargeable under the head "Income from house property" or any income received for rendering any specific services or income by way of interest or dividends derived from its investments) of an association or institution established in India having as its object the control, supervision, regulation or encouragement of the profession of law, medicine, accountancy, engineering or architecture or such other profession as the Central Government may specify, is exempt **provided** that—

- the association or institution applies its income, or accumulates it for application, solely to the objects for which it is established; and
- the association or institution is for the time being approved for the purpose of this clause by the Central Government by general or special order.

Provided further that where the conditions as given above are not complied with, the Central Government may, at any time after giving a reasonable opportunity of being heard, by order, withdraw the approval so granted.

(iv) Profit on sale of licence granted under import (control) order, 1955;

(v) Cash assistance received/receivable against export under any scheme of Government of India;

(vi) Any custom duty or excise duty repaid or repayable as drawback against export under duty draw back Rules, 1971;

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

(vii) Any profit on transfer of duty entitlement pass book scheme or duty free replenishment certificate;

(viii) The value of benefit or perquisite (convertible into money or not), arising from business or profession;

E.g. *Mr. Ram, a practicing chartered accountant, was providing valuable consultancy to X Ltd. In turn, the company had provided him with the facility of rent free house at a place near to the head office of the company. During the previous year X Ltd. has incurred Rs. 1,20,000 on such accommodation. So now Rs. 1,20,000 so incurred by the company will be taxable in the hands of Mr. Ram u/s 28.*

(ix) Any interest, salary, bonus, commission or remuneration received by a partner of firm from his firm upto the limits of section 40(*b*), if such amount exceeds the said limit, then excess amount will not be taxable in his hands;

E.g. *Mr. Shyam, is a partner in a professional firm. During the previous year, he was given remuneration of Rs. 2,00,000 out of which Rs. 1,70,000 was allowed under section 40(b) in the hands of the firm. So now Rs. 1,70,000 is taxable in the hands Mr. Shyam and Rs. 30,000 is disallowed in the hands of the firm under section 40(b).*

(x) Any sum received under key-man insurance policy (including bonus). However, where such sum is *received by the employee* on whose life it is taken, it shall be taxable in the hands of such employee under the head salary where employer-employee relationship exists, if no such relationship exists, under income from other sources.

"Keyman insurance policy" means a life insurance policy taken by a employer on the life of their employee(s) or is or was connected in any manner whatsoever with the business of the employer.

(xi) Any sum received or receivable in cash or in kind, under an agreement for-

a. Not to *carrying* out any activity in relation to any business; or

b. Not to *share* any know-how, patent, copyright, trademark, licence, franchise or any other business or commercial right of similar nature of information or technique likely to assist in the manufacture or processing of goods or provision for service.

However, the above sub-clause *(a)* shall not apply to-

a. Any sum which is chargeable to tax under the head *"capital gains"*, or

b. Any sum received as *compensation from MFMP* (Multilateral Fund of the Montreal Protocol) under United Nation Environment Programme.

(xii) Any sum receivable in cash or in kind, on account of any capital assets (other than land or goodwill or financial instrument) being demolished, discarded or transferred, if the whole of the expenditure on such capital asset has been allowed as deduction under section 35AD.

Explanation 2 to section 28 : If an assessee carries on a speculative transaction of such nature so as to constitute a business, that business of assessee must be deemed as distinct and separate from his other business.

15.3 Meaning of 'speculative transaction' [Section 43(5)]

A transaction shall be regarded as a speculative transaction if ***all*** the following conditions are satisfied—

Condition 1	Such contract is for sale/purchase of stock, share or commodity,
Condition 2	Such contract is ultimately settled,
Condition 3	Such settlement is made otherwise than by actual delivery or transfer.

If a contract is broken *i.e.* for any reason one party is unable to give delivery or other party is unable to take delivery, it is a case of breach of contract. Breach of contract is not regarded as speculation- *Bhagwan Dass Rameswar Dayal* v. *CIT* (Delhi)

EXCEPTIONS : Following shall not be regarded as speculative transactions—

(a) a contract in respect of *raw materials* entered by a person to guard against price fluctuations;

(b) a contract in respect of *stocks and shares* entered to guard against price fluctuations;

(c) a contract entered into by a member of a *forward market* to guard against loss;

(d) a transaction in respect of *trading in derivatives* carried out in a recognised stock exchange.

(e) a transaction in respect of *trading in commodity derivatives* carried out in a recognised stock exchange. Provided that in respect of trading in agricultural commodity derivatives, the requirement of chargeability of commodity transaction tax (CTT) shall not apply. [Inserted by Finance Act, 2018]

15.4 Computation of income from business or profession [Section 29]

Income under the head profits and gains of business or profession shall be computed in accordance with the provisions contained in section 30 to section 43D. It must, however, be noted that the specific allowance and deduction stated in these sections are not exhaustive, the Act further permits allowance of items of expenses under the residuary section 37(1), subject to the conditions contained therein.



CHAPTER 16
INCOME FROM BUSINESS OR PROFESSION
[Deductions of PGBP]

DEDUCTIONS AND ALLOWANCES OF PGBP [Sections 30-37]

16.1 Rent, rates, taxes, repairs and insurance for building [Section 30]

Under this section a deduction is allowed in respect of rent, rates, taxes, repairs and insurance of the building used by the assessee for the purpose of his business or profession. Deduction is allowed as under:

Nature of expenditure	*Deduction is allowed to*
Rent of building	Tenant of building
Current repair (not being capital expenditure)	Owner of building
Repair other than current repair (not being capital expenditure)	Tenant of building, if he undertakes to bear the cost of repair.
Land revenue, Local taxes, Municipal taxes, Insurance premium paid	The assessee who occupies the premises.

Notes—

1. **Current repairs meaning:** An expenditure incurred to **preserve and maintain** an already existing asset is current repair rather than bringing a new asset into existence - *Saravana spinning mills(P)Ltd.*
2. Where assessee himself is the owner of the premises and occupies it for his business purpose, no notional rent would be allowed under this section. However, where a firm has taken on rent premises belonging to one of its partners and pays rent to the landlord partner, rent would be deductible under section 30 as held in *Heastie* v. *Veitch*
3. **Explanation 1 to section 32(1) -** Where the tenant bears the capital expenditure on repairs, such capital expenditure is deemed as building owned by the tenant and depreciation is allowed on such deemed building to him. Where, however, the *owner* incurs the capital expenditure on repair of the building, such cost of repair shall be added to the actual cost of building and depreciation shall be allowed.

16.2 Repairs and insurance of machinery, plant and furniture [Section 31]

Where machinery, plant and furniture is used (at any time in the previous year) for the purpose of business or profession, a deduction under section 31 shall be given, in respect of such machinery, plant and furniture, for—

(a) the amount paid on account of **current repair** (not being a capital expenditure),

(b) the amount of **insurance premium** paid

Note : If owner lets out plant, machinery or furniture, the lessee would be entitled to such deduction.

16.3 Depreciation on assets [Section 32(1)]

1. QUALIFIED ASSETS

Following assets are qualified for deduction under section 32(1):

(a) **Tangible assets** being building, machinery, plant or furniture

(b) **Intangible assets** being know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature.

Notes—

- Building means superstructure only and does not include land because there cannot be any question of the destruction of site-*CIT* v. *London Hotel*
- Goodwill is an asset being 'any other business or commercial rights of similar nature' and therefore, depreciation thereon is allowable —*CIT* v. *Smifs Securities Ltd.* (2012) (SC)
- Website can be considered as 'any other business or commercial rights of similar nature' and therefore, depreciation thereon is allowable —*Makemytrip (India) (P.) Ltd* v. *CIT* (2012) (HC-Del.)

2. METHODS OF DEPRECIATION

Depreciation under income tax is calculated by using the following methods:

(a) Written down value method;

(b) Straight line method.

(a) *Written down value method* : Under this method the depreciation is charged every year at a fixed rate on the *reducing balance of the block of assets.* A certain percentage is applied to the previous year's book value, to arrive at the current year's depreciation/book value. Depreciation is charged on the 'block of assets', and not on individual assets. The block represents the group of assets for which the same rate of depreciation applies.

(b) *Straight line method* : Under this method the depreciation is calculated at a fixed rate every year on the amount of *actual cost of the asset.* Block of assets concept is not applicable in this case. This method is applicable on certain assets of power generating units referred to in section 32(1)(*i*).

3. CONDITIONS FOR CLAIMING DEPRECIATION

For claiming depreciation, assessee has to fulfil the following conditions—

Conditions (a)	Asset must be owned (wholly or partly) by the assessee.
Conditions (d)	Asset must be used for the purpose of business or profession of the assessee.
Conditions (c)	Asset must be used during the relevant previous year.
Conditions (d)	Depreciation shall be allowed on WDV of Block of asset at a prescribed rate.

(a) ASSET MUST BE OWNED (WHOLLY OR PARTLY) BY THE ASSESSEE : For claiming depreciation on any asset, the assessee must be the owner (wholly or partly). Other relevant considerations are as under—

(i) Registered ownership is not necessary for claiming depreciation, what has to be seen beneficial ownership and not registered ownership- *Mysor minerals* (SC)

(ii) Tax treatments in case of lease and hire purchase of the asset: Following points should be noted:

- *If the transaction is treated as a lease,* the lessor shall be eligible for depreciation on the asset. The entire lease rentals will be taxed as income of the lessor. The lessee, correspondingly, will not claim any depreciation and will be entitled to expense off the rentals.
- *If the transaction is a hire-purchase,* the hirer (*i.e.* hire purchaser) will be allowed to claim depreciation. This is based on an old Circular issued in year 1943.

(iii) **Explanation 1 to section 32(1) -** If assessee is the lessee of **building** and uses such building for his business or profession and incurs any **capital expenditure** on repairs of such building then, he can claim depreciation on such part.

(b) ASSET MUST BE USED FOR THE PURPOSE OF BUSINESS OR PROFESSION : For claiming depreciation the assets must be used by the assessee for the purpose of business or profession. Following other points should be noted:

(i) Proportionate depreciation for assets used for business as well as personal purpose-Section 38(2): Where an asset is partly used for the purpose of business or profession and partly for personal purpose then, under section 38(2), the depreciation under section 32(*1*)(*ii*) shall be restricted to a fair proportionate part thereof which the AO may determine, having regard to the use of such asset.

Note : While computing the WDV for next year, the depreciation **actually granted** to the assessee has to be taken into consideration and not the depreciation notionally allowed- *CIT* v. *Chirangi Lal* [1969] 74 ITR 80 (Del.)

(ii) Temple constructed inside the factory for the benefits of the employees eligible for depreciation.

(c) ASSET MUST BE USED DURING THE RELEVANT PREVIOUS YEAR : It is not necessary that asset must be used throughout the year, even use during any part of the year would be sufficient to claim depreciation.

2nd Proviso to section 32(1) : Where only 50% of normal depreciation is allowed [*i.e.* ½ of usual depreciation] : Where any asset falling within a block of asset is acquired by the assessee during the previous year and is put to use for a period of less than 180 days in that previous year, the depreciation under section 32(1)(*i*) or 32(1)(*ii*) or 32(1)(*iia*) shall be restricted to 50% of depreciation otherwise allowable.

Therefore, this proviso shall apply where—

- An asset is *acquired* during the previous year **and**
- It is *put to use* during the same previous year **but**
- Such put to use during the previous year is for a period which is *less than 180 days.*

Problem—16.1 : *Mr. S, a practicing chartered accountant has purchased a car for Rs. 20 Lakh as on January 21, 2020. Its estimated personal use is 30%. Rate of depreciation is 15%. Compute the amount of depreciation allowable under section 32 of the Income-tax Act, 1961 in respect of the assessment year 2020-21 by assuming that there are no other blocks of asset.*

Solution :

Calculation of amount of depreciation for the A.Y. 2020-21

	Rs.
Total depreciation (20,00,000 × 7.5%)	1,50,000
Less: depreciation not allowed by virtue of section 38(2) (1,50,000 × 30%)	45,000
Amount of depreciation allowance for A.Y. 2020-21	1,05,000
WDV for the next year	
Actual cost of the car	20,00,000
Less: depreciation **actually granted** (as per Chirangi Lal -Del.)	1,05,000
WDV for the next year	18,95,000

(d) DEPRECIATION SHALL BE ALLOWED ON THE WRITTEN DOWN VALUE (WDV) OF THE BLOCK OF ASSET AT PRESCRIBED PERCENTAGE.

4. MEANING OF 'WRITTEN DOWN VALUE (WDV)' [Section 43(6)] : Written down value (WDV) is calculated as follows—

	Rs.
WDV of the block of assets* as on 1st day of the previous year	×××
Add : Actual cost of the assets falling in this block acquired during the previous year	×××
Less : Money payable**, together with scrap value, in respect of the asset falling in this block which is sold, discarded, demolished, or destroyed during the previous year. However, this reduction cannot, in any case, exceed the value of asset computed above	(×××)
Less : Actual cost of the asset falling in this block transferred by way **of slump sale** referred to in section 50B, as reduced by the amount of depreciation *allowed/allowable as if this asset was the only asset in this block*. This reduction shall be limited to the value of assets computed before such reduction.	(×××)
Written Down Value (WDV) of the block for the purpose of charging current year depreciation	×××

For the purpose of this section—

a. **"block of assets"** means, the group of assets comprising in the same category of assets in respect of which same percentage of depreciation is prescribed.

b. **"money payable"** money payable means the sale price of the asset and it includes any insurance, salvage, or compensation payable in respect of such asset. It is not the gross consideration but the net consideration, *i.e.* after deduction the expenses incidental to such sale—*CIT* v. *Essar Shiping Ltd.* [2006] (Mum.)

Problem—16.2 : *A Ltd. sold one of its division under slump sale on 1.4.2019. The plant and machinery of this division were purchased at an actual cost of Rs. 16,00,000. Depreciation on these plant and machineries (as if these were the only asset under this block) up to 31.3.2019 is Rs. 7,50,000. Details regarding the block plant and machinery are as under:*

	Rs.
Opening WDV of the block	*25,00,000*
***Actual cost** of assets acquired as on 1.9.2019*	*15,00,000*
***Money payable** in respect of assets sold as on 1.6.2019*	*30,00,000*

You are required to calculate the amount of depreciation for the assessment year 2020-21. Assume rate of depreciation is 15%.

Solution :

Calculation of amount of depreciation for the assessment year 2020-21

		Rs.
Opening WDV of the block		25,00,000
Add: Actual cost of assets acquired as on 1.9.2019		(+) 15,00,000
Less: Money payable in respect of assets sold as on 1.6.2019		(−) 30,00,000
WDV before deduction on account of assets sold under slump sale		10,00,000
Actual cost of the assets sold under slump sale	16,00,000	
Less: Depreciation allowed/allowable on these assets	(−)7,50,000	
WDV of assets sold under slump sale (max. up to Rs. 10,00,000)	8,50,000	(−) 8,50,000
WDV of the block on which depreciation is allowed		1,50,000
Depreciation @ 15%		22,500

5. MEANING OF 'ACTUAL COST' [Section 43(1)]

Actual cost means the actual cost of the assets to the assessee as reduced by that portion of the cost thereof, if any, as has been met directly or indirectly by any other person or authority. In order to

discourage cash transactions even for capital expenditure, this section is amended by Finance Act, 2017 *w.e.f.* A.Y. 2018-19 to provide that where an assessee incurs any expenditure for acquisition of any asset in respect which a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft or use of electronic clearing system through a bank account, exceeds Rs.10,000, such expenditure shall be ignored for the purposes of determination of actual cost of such asset.

6. INCLUSIONS AND EXCLUSIONS IN 'ACTUAL COST'

♦ **Expenses relating to acquisition of assets :** The accepted accounting rule for determining cost of fixed asset is to include all the expenses directly relatable to acquisition of asset, the expenses necessary to bring the asset to site, install it and make it fit for use and expenses incurred to facilitate the use of the asset (*e.g.* cost incurred on its modification prior to use, training expenses of staff) and expenses on insurance power and fuel, incurred before commencement of business.

♦ **Interest :** *Supreme Court in case of Challapalli Sugars Ltd.* v. *CIT* (1975) (SC) has held that interest paid before the commencement of production on amounts borrowed by the assessee for acquisition and installation of plant and machinery forms part of the actual cost.

Further, Explanation 8 to section 43(1) provides that interest on money borrowed for the purpose of acquiring a capital asset pertaining to the period after **the asset is put to use** cannot be added to the cost of the asset and therefore, it can be claimed as deduction under section 36(1)(*iii*). *This rule is applicable whether the assessee is a new concern or an existing concern.*

Proviso to section 36(1)(iii) provides that where interest is paid in respect of capital borrowed for acquisition of an asset for extension of existing business or profession of asset for the period beginning from the date on which capital was borrowed till the date on which SUCH asset was first put to use, shall not be allowed as deduction. It may be noted that this proviso is not applicable in case of newly started concern.

7. 'ACTUAL COST' in certain special situations [Explanation to Section 43(1)]

Relevant Explanation	Situation	Actual cost of such asset under section 43(1)
1.	**Asset used in business after it ceases to be used for Scientific Research**	Actual cost of such asset **less** the amount of deduction allowed under section 35.
1A.	**Capital asset referred to in clause (*via*) of section 28, when used for the purposes of business or profession.**	**Actual cost of such asset to the assessee shall be the FMV which has been taken into account for the purposes of the said clause.**
2.	**Asset acquired by way of gift or inheritance.**	Actual cost to the previous owner **less** the amount of depreciation actually **allowed** upto A.Y. 1987-88 AND depreciation **allowable** on that asset for A.Y. 1988-89 and onwards assuming that such asset was the only asset in the Block.
3.	**Where transfer is of previously used asset (in business or profession) and A.O. is satisfied that such transfer is to reduce the tax liability by claiming depreciation on enhanced cost.**	Actual cost shall be the amount as the assessing officer may determine with the prior approval of Joint Commissioner.
4.	**Re- acquisition of the asset which was transferred by assessee after using it for the purpose of his business or profession.**	**Actual cost shall be LOWER of the following:** (a) Original actual cost to him **less** the amount of depreciation actually allowed to HIM up to A.Y. 87-88 AND the amount of depreciation that would have been allowable to him for A.Y. 88-89 onwards as if such asset was the only asset in the block. (b) Actual price at which the asset is acquired by him.
4A.	**Sale and lease back: Asset previously used by any person and on which depreciation has been allowed to him, sold to another person but taken back on lease by the seller from the purchaser.**	Notwithstanding anything contained in Explanation-3, the actual cost in the hands of person leasing such asset shall be the WDV of said asset at the time of purchase of such asset by him.

5.	**Where a building, previously the property of the assessee, is brought into use for the purpose of business or profession.**	**Actual cost shall be :** Actual cost of building ..... *Less* : The amount of depreciation calculated at the rate in force on such DATE (i.e. the date when such asset is brought into business) since the date of its acquisition. .....
6.	**Where a capital asset is transferred by a 100% holding company to its 100% subsidiary co. OR vice-versa.**	Actual cost of transferred asset to transferee company shall be the same amount as it would have been if the transferor company continues to hold such asset. *[This would cover transfer of "Non-depreciable" asset or the assets acquired during current P.Y. i.e. new assets]*
Explanation 2 to Sec. 43(6)	**Where a block of asset is transferred by 100% holding to its 100% INDIAN subsidiary or vice-versa**	Notwithstanding anything contained in section 43(1), the actual cost of the **block of asset** in the hands of transferee company shall be the WDV of the block in the hands of transferor company at the beginning of the P.Y. in which such transfer took place.
7.	**Where an amalgamating co. transfers any capital asset to amalgamated co. being an Indian co.**	Same as the provisions of Explanation 6.
Explanation 2 to Sec. 43(6)	**Where any block of asset is transferred by amalgamating co. to INDIAN amalgamated co.**	Notwithstanding the Sec. 43(1), the actual cost of the **block of asset** in the hands of amalgamated co. shall be the WDV of the block in the hands of amalgamating co. at the beginning of the P.Y. of such transfer.
9.	**Where an asset has been acquired on or after 1.4.1994 and cost of which includes the amount of Excise duty or additional duty leviable u/s 3 of Custom Tariff Act, 1975**	Actual cost of such asset shall be reduced by the amount of duty in respect of which claim of credit has been made AND allowed under Central Excise Rules, 1944.
10.	▪ **Where cost of an asset has been met directly or indirectly by Centre/State Govt. or any Authority or any other person, as of subsidy or grant etc.** ▪ **Where such subsidy etc. cannot directly relatable to the asset acquired.**	▪ Actual cost shall be calculated by deducting therefrom the amount of such subsidy or grant or reimbursement as the case may be. ▪ Following amount shall be deducted from actual cost: $\text{Total amount of subsidy} \times \frac{\text{Total cost of } \textit{such} \text{ asset}}{\text{Total cost of } \textit{all such assets} \text{ in respect of which or with reference to which such subsidy etc. has been received.}}$ **Note : Deduction of such subsidy is possible only when :** → Such subsidy is **in respect** of the assets acquired; **or** → Subsidy is **with reference** to the assets acquired.
11.	**Where an asset:** ✓ **is acquired outside India,** ✓ **by an assessee being an non- resident** ✓ **and such asset is brought into India** ✓ **for the purpose of his business or profession.**	**Actual cost shall be calculated as follows:** Actual cost of the asset to assessee ..... *Less* : Amount of depreciation calculated at the rate in force that would have been allowable had the asset been used in India for the said purposes since the date its acquisition by the assessee. ....
12.	**Where any asset is acquired by the assessee under a scheme of corporatisation of a recognised stock exchange in India (approved by SEBI)**	Actual cost shall be deemed to be the amount which would have been regarded as actual cost had there been no such corporatisation.
13.	**Actual cost in case of any capital asset on which deduction has been allowed or is allowable to the assessee u/s 35AD**	The actual cost of any capital asset on which deduction has been allowed or is allowable to the assessee under section 35AD, shall be treated as 'nil',— (a) in the case of such assessee; and (b) in any other case if the capital asset is acquired or received,— (i) by way of gift or will or an irrevocable trust; (ii) on any distribution on liquidation of the company; (iii) by such mode of transfer as is referred to in clauses (*i*), (*iv*), (*v*), (*vi*), (*vib*), (*xiii*), (*xiiib*) and (*xiv*) of section 47.

8. CAPITAL GAIN WHERE DEPRECIABLE ASSETS ARE TRANSFERRED [Section 50]

Provision of this section are summarised as under—

Situation-1 Transfer of **one or more** depreciable asset(s)		**Situation-2** Transfer of the **all** assets comprising in this block	
	Rs.		Rs.
Total sale consideration	.....	Total sale consideration	.....
Less : WDV of *entire block* at the beginning of P.Y.	.....	*Less* : WDV of *entire block* at the beginning of P.Y.	.....
Less : Expenses on such transfer	.....	*Less* : Expenses on such transfer	.....
Less : Actual cost of asset(s) acquired during the P.Y. falling in this block	.....	*Less* : Actual cost of asset(s) acquired during the P.Y. falling in this block	.....
If the resultant amount is (+), short term capital gain. However, if it is (-), then this section will not apply.	.....	**Short term capital gain/(Loss)**	.....

Note : Transfer includes destruction resulting insurance receipts- Section 45(1A): For the purpose of above section "transfer" includes the destruction or damage of a depreciable asset resulting in receipts of insurance claim referred to in section 45(1A). In this case the capital gain will be calculated with reference to *the year of receipts* whereas the depreciation shall be allowed only up to the year in which such destruction etc. took place.

9. RATES OF DEPRECIATION

Summary of depreciation rates is as under—

Block of assets	*Rates of depreciation as percentage of WDV*
I. BUILDING	
▪ Residential building other than hotels and boarding houses	5%
▪ Other buildings	10%
▪ Temporary structures/Building used for installing plant and machinery forming part of water supply system.	40%*
II. FURNITURE AND FITTINGS (Including electrical fittings)	10%
III. PLANT AND MACHINARY	
▪ General	15%
▪ Motor cars etc. used in a business of running them on hire	30%
▪ Others motor cars	15%
▪ Books of profession-	
• Annual publications	40%
• Other	40%
▪ Books of business of running libraries	40%
▪ Ships	20%
▪ Aeroplanes	40%
▪ Computer/computer software	40%

▪ Pollution Control Equipment	40%
IV. INTANGIBLE ASSETS	25%

Notes—

1. Building does not include land therefore, depreciation is allowed only on building - *CIT* v. *London Hotel.*
2. Where assessee purchases both land and building *and purchase price is composite and there is no indication for their separate prices*, the entire value shall be eligible for depreciation - *CIT* v. *Rajesh Exports Ltd.*
3. Building includes roads, bridges, culverts, wells and tube wells.
4. Plant includes ship, books, vehicles, scientific apparatus and surgical equipments but does not include tea bushes or live stock or building or furniture and fittings. Specially designed building such as hospital, cinema hall shall not be treated as plant - *CIT* v. *Anand Theaters*
5. As per *Explanation 5 to section 32(1),* depreciation shall be allowed to the assessee whether or not he has claimed it in his total income.

Problem—16.3 : *Ram and Sons Ltd. own the following assets:*

Name of asset	*Rate of depreciation*	*WDV as on 1.4.2019*
Factory building- Gurgaon	*10%*	*15,00,000*
Factory building- Noida	*10%*	*10,00,000*
Office building - Delhi	*10%*	*25,00,000*
Residential flats for staff- Delhi	*5%*	*2,00,000*
Car- Mercedes	*15%*	*3,00,000*
Car – Audi	*15%*	*2,00,000*
Plant- Gurgaon	*15%*	*1,00,000*
Plant- Noida	*30%*	*70,000*
Furniture- Delhi	*10%*	*50,000*

Following assets were ***acquired*** *during the previous year 2019-20:*

Name of asset	*Rate of depreciation*	*Purchase price (Rs.)*	*Date of purchase*
Car- Volkswagen	*15%*	*8,00,000*	*1.11.2019*
Furniture for Delhi office	*10%*	*80,000*	*1.12.2019*

Following assets were ***sold*** *during the previous year 2019-20:*

Name of asset	*Rate of depreciation*	*Sale price (Rs.)*	*Date of sale*
Car- Mercedes	*15%*	*9,00,000*	*1.05.2019*
Car – Audi	*15%*	*5,50,000*	*1.05.2019*
Furniture	*10%*	*1,00,000*	*1.05.2019*

You are required to calculate the amount of depreciation for the previous year 2019-20.

Solution

Calculation of amount of depreciation for the assessment year 2020-21 (*i.e.* P.Y. 2019-20)

Block 1 : Building-10%	Rs.
Opening WDV of the block	50,00,000
Add: Actual cost of the assets acquired during the previous year	*nil*

Less: Money payable in respect of assets sold during the previous year	*nil*
WDV of the block on which depreciation is allowed	50,00,000
Depreciation @ 10%	**5,00,000**

Block 2 : Building-5%	Rs.
Opening WDV of the block	2,00,000
Add: Actual cost of the assets acquired during the previous year	*nil*
Less: Money payable in respect of assets sold during the previous year	*nil*
WDV of the block on which depreciation is allowed	2,00,000
Depreciation @ 5%	**10,000**

Block 3 : Plant and machinery-15%	Rs.
Opening WDV of the block	6,00,000
Add: Actual cost of the assets acquired during the previous year	(+) 8,00,000
Less: Money payable in respect of assets sold during the P.Y. (Max.Rs.14 Lakh)	(–) 14,00,000
WDV of the block on which depreciation is allowed	*nil*
Depreciation @ 5%	*nil*

Short term capital gain under section 50 = Rs. 14,50,000 – 14,00,000= Rs. 50,000

Block 4 : Plant and machinery-30%	Rs.
Opening WDV of the block	70,000
Add: Actual cost of the assets acquired during the previous year	*nil*
Less: Money payable in respect of assets sold during the previous year	*nil*
WDV of the block on which depreciation is allowed	70,000
Depreciation @ 30%	**21,000**

Block 5 : Furniture-10%	Rs.
Opening WDV of the block	50,000
Add: Actual cost of the assets acquired during the previous year	(+) 80,000
Less: Money payable in respect of assets sold during the previous year	(-) 1,00,000
WDV of the block on which depreciation is allowed	30,000
Depreciation @ 5% [2nd proviso to section 32(1)]	**1,500**

Total amount of depreciation (5,00,000+10,000+21,000+1,500) = Rs. 5,32,500

10. DEPRECIATION IN CASE OF SUCCESSION, AMALGAMATION etc. [5th proviso to section 32(1)]

As per this section, where—

- ✓ **Conversion** of firm or sole proprietary into company u/s 47(*xiii*) or (*xiiib*) or (*xiv*), or
- ✓ **Succession** of business (other than on death), referred to in section 170, or
- ✓ **Amalgamation** of a company or co-operative bank, or
- ✓ **Demerger** of a company or co-operative bank

takes place, then the depreciation shall be calculated by following the below mentioned *steps*—

Step—1	Calculate the depreciation *on asset so transferred* by assuming that such transfer has not taken place.
Step—2	Amount of depreciation calculated under *Step—1* shall be *apportioned* between transferor and transferee *in the ratio of number of days* for which the asset are used by them during the previous year in which such transfer has taken place. (The day of transfer shall be counted in the hands of transferee)

Problem—16.4 : *A partnership concern was succeeded by a company as on December 1, 2019. The WDV of the block of assets as on April 1, 2019 was 5,00,000 carrying 15% rate of depreciation. Some more assets, falling under the same block, were purchased on November 15, 2019 for Rs. 3,00,000. All these assets are acquired by the company for Rs. 10,00,000. After such succession, the company further purchase some assets falling under the same block on January 1, 2020 for Rs. 4,00,000. WDV in the hands of company as on April 1, 2019 was Rs. 15,00,000. Calculate the amount of depreciation allowable in the hands of such firm and company for the assessment year 2020-21.*

Solution:

	Rs.
Calculation of the depreciation on asset so transferred (as if such transfer has not taken place)	
WDV as on April 1, 2019	5,00,000
Add: Actual cost of the assets acquired by the firm	3,00,000
Less : Money payable (sale of assets)	*Nil*
Depreciable amount	8,00,000
Total depreciation (15% on Rs. 5,00,000 *plus* 7.5% on 3,00,000)	97,500

Apportionment of depreciation in the number of days:

→ Depreciation in the hands of **Firm** : (75,000 × 244/365) + (22,500 × 16/137) = Rs. 52,765

→ Depreciation in the hands of **Company** : (75,000 × 121/365) + (22,500 × 121/137) = Rs. 44,735

Total depreciation in the hands of company:

		Rs.
WDV as on April 1, 2019		*15,00,000*
Add: Actual cost of the assets acquired from the firm		*10,00,000*
Add: Actual cost of the assets acquired by the company		*4,00,000*
Less : Money payable (sale of assets)		*Nil*
	Total	*29,00,000*
Depreciation allowable to the company:		
Depreciation on companies assets (15% of 15,00,000 *plus* 7.5% of 4,00,000)		*2,55,000*
Depreciation on assets so acquired		*44,735*
Closing WDV		*26,00,265*

[**Note :** In case of leap year, the days put to use and total number of days in a year will be changed accordingly]

11. ADDITIONAL DEPRECIATION ON NEW PLANT OR MACHINERY [Section 32(1)(*iia*)]

This section provides as under—

- ✓ In case of new *plant or machinery* (other than ship and aircraft);
- ✓ which has been acquired and *installed*—
  - (a) on or after 1.4.2005 by the assessee engaged in the *business of manufacture* or production of any article or thing or
  - (b) on or after 1.4.2012 by an assessee engaged in the business of generation, transmission or distribution of power or
  - (c) between 1.4.2015 to 31.3.2020 by the assessee engaged in the *business of manufacture* or production of any article or thing in any notified backward area in the state of Andhra Pradesh or Bihar or Telangana or West Bengal,
- ✓ additional deprecation at the following rates shall be allowed :
  - (a) *In case of (a) and (b)* : @ 20% of actual cost of such plant or machinery;
  - (b) *In case of (c)* : @ 35% of actual cost of such plant or machinery

Provided that no deduction shall be allowed in respect of:

(i) Any machinery or plant which is *previously used outside India* by any other person.

(ii) Where such *asset is installed in office,* residential accommodation or guest house.

(iii) Where such *asset is an office appliance* or road transport vehicle.

(iv) Where *whole actual cost of such asset is allowed as deduction* in any one previous year.

Note : As per 3rd proviso to section 32(1)(*ii*), if during the year of purchase of such plant or machinery it is put to use for a period less than 180 days, then additional depreciation @17.5% or 10% will be allowed in such first year and the balance thereof (*i.e.* 10% or 17.5%) will be allowed in the next year.

12. 'INVESTMENT ALLOWANCE' ON PURCHASE OF NEW PLANT AND MACHINERY [Section 32AC]

1. Eligible assessee : Deduction under this section is allowed to an assessee being a *company*, if all the following conditions are satisfied—

- such company is engaged in the business of manufacture of an article or thing; and
- during the previous year it makes an investment of an amount which exceeds **Rs.25 crore** in 'new asset'. Further, such investment should be made on or before 31.3.2017; No deduction under this section will be available *w.e.f.* A.Y. 2018-19; and
- such 'new asset' is installed on or before 31.3.2017. Provided that where the installation of the new assets are in a year other than the year of acquisition, the deduction under this sub-section shall be allowed in the year in which the new assets are installed.

2. Amount of deduction : 15% of actual cost of such asset.

3. Meaning of 'new asset': "New asset" means new plant or machinery but does not include—

- any plant or machinery which was used either within or outside India by any other person;
- any plant or machinery installed in any office premises or any residential accommodation;
- any office appliances including computers or computer software;
- any vehicle, ship or aircraft; or
- any plant or machinery, the whole of the actual cost of which is allowed as deduction (whether by way of depreciation or otherwise) under PGBP head.

4. Restriction on sale of 'new asset' for 5 years : If such new asset is sold or otherwise transferred, within a period of 5 years from the date of its installation, the amount of deduction allowed under this section shall be deemed to be the income of the assessee of the previous year of such sale. However, such new asset can be transferred under amalgamation or demerger. But then, the restriction will apply to amalgamating/resulting company.

Note : The investment allowance@15% under this section is in addition to:

- ✓ the *normal depreciation* referred to in section 32(1) and
- ✓ *additional depreciation* referred to in section 32(1)(*iia*).

Further, the investment allowance would not be reduced to arrive at the written down value of plant and machinery.

Problem—16.5 : *A Ltd. is engaged in manufacturing of floor tiles. It has acquired the following assets during the F.Y. 2019-20 :*

Type of asset	*Details of assets*	
	Cost (Rupees in Crore)	*Date of purchase (date of put to use)*
Furniture (10%)	*10*	*1.9.2019 (10.10.2019)*
Computer for office (60%)	*50*	*1.9.2019 (Immediate)*
Road transport vehicle (15%)	*30*	*1.2.2020 (Immediate)*
Plant and Machinery (15%)	*120*	*1.2.2020 (Immediate)*

Opening W.D.V of the 'block of assets' is as under:

♦ *Furniture (10%)* : *Rs. 20 Crore*

- *Computer and computer software (60%)* : *Rs. 80 Crore*
- *Plant and machinery (15%)* : *Rs. 200 Crore*

Based on the above information, you are required to compute the amount of normal depreciation, additional depreciation (if any) for the A.Y. 2020-21 as well as for A.Y. 2021-22. Assume no asset has been purchased during F.Y. 2020-21.

Solution : Computation of normal depreciation, additional depreciation and 'investment allowance' for A.Y. 2020-21

(Rs. in Crore)

Particulars	*Block-1 (Furniture-10%)*	*Block-2 (Plant & Mach-60%)*	*Block-3 (Plant & Mach-15%)*
Opening WDV	20	80	200
Additions	10	50	150
Deductions	-	-	-
W.D.V (A)	30	130	350
Normal depreciation (B)	2.5 [*i.e.*10% of 20 + 5% of 10]	78 [*i.e.* 60% of 130]	41.25 [*i.e.*15% of 200 + 7.5% of 150]
Additional dep. (C)	-	-	12 [*i.e.*10% of 120]
Closing WDV [A-B-C]	**27.5**	**52**	**296.75**

Notes–

1. Additional depreciation is not allowed on furniture, computer and vehicle as per provisions of section 32(1)(iia).
2. Additional depreciation on new plant and machinery will be allowed @ 10%, since days put to use are less than 180. The remaining 10% additional depreciation will be allowed in the next year.

Computation of normal depreciation, additional depreciation and 'investment allowance' for A.Y. 2021-22

(Rs. in Crore)

Particulars	*Block-1 (Furniture-10%)*	*Block-2 (Plant & Mach-60%)*	*Block-3 (Plant & Mach-15%)*
Opening WDV	27.5	52	296.75
Additions	-	-	-
Deductions	-	-	-
W.D.V (A)	27.5	52	296.75
Normal depreciation (B)	2.75	31.20	44.5125
Additional dep. (C)	-	-	12
Closing WDV [A-B-C]	**24.75**	**20.8**	**240.2375**

13. INVESTMENT ALLOWANCE IN 'NOTIFIED STATES' [Section 32AD]

1. Eligible assessee : Deduction under this section is allowed to *any assessee*,—

(*a*) which on or after 1.4.2015 sets up an undertaking or enterprise for manufacture or production of any article or thing in any backward area notified by Central Government in the State of Andhra Pradesh or Bihar or Telangana or West Bengal and

(*b*) which acquires and installs new plant and machinery for the purpose of said undertaking or enterprise between 1.4.2015 to 31.3.2020.

2. Amount of deduction : Amount of deduction will be 15% of actual cost of such new plant and machinery. This deduction will be in addition to the deduction provided in section 32AC. Thus, if conditions of these sections are satisfied, then assessee shall be eligible to claim deduction under section 32AC and 32AD.

3. Meaning of 'new asset': "New asset" means new plant or machinery but does not include—

- any plant or machinery which was used either within or outside India by any other person;

- any plant or machinery installed in any office premises or any residential accommodation;
- any office appliances including computers or computer software;
- any vehicle, ship or aircraft; or
- any plant or machinery, the whole of the actual cost of which is allowed as deduction (whether by way of depreciation or otherwise) under PGBP head.

4. Restriction on sale of 'new asset' for 5 years : If such new asset is sold or otherwise transferred, within a period of 5 years from the date of its installation, the amount of deduction allowed under this section shall be deemed to be the income of the assessee of the previous year of such sale. However, such new asset can be transferred under amalgamation or demerger. But then, the restriction will apply to amalgamating/resulting company.

Note : The deduction under this section will be in addition to :

- ✓ the *normal depreciation* referred to in section 32(1) and
- ✓ *additional depreciation* referred to in section 32(1)(*iia*).

Further, while calculating the written down value of the plant and machinery, deduction allowed under this section will not be considered.

14. SLM METHOD OF DEPRECIATION [Section 32(1)(*i*)]

An undertaking engaged in generating or generating and distributing power can claim depreciation, in respect of its asset acquired on or after 1.4.1997, by following any of the following methods:

(a) Written down value basis (WDV)

(b) Straight line basis (SLM)

Written down value basis	*Straight line basis*
▪ Such undertaking, *at its option*, can claim depreciation according to WDV method like other assessee. ▪ Once the option is exercised it shall be final and shall apply to all subsequent years. ▪ But for the assets which were acquired before 1.4.1997, only WDV basis shall apply.	▪ If the assessee does not (or not in time) exercise the option then, depreciation shall be allowed on the basis of SLM on all those tangible asset which the assessee acquired on or after 1.4.1997. ▪ **2nd proviso to section 32(1) shall also apply** in SLM basis also. ▪ The provisions of terminal depreciation or balancing charge shall apply in this case.

15. TERMINAL DEPRECIATION [Section 32(1)(*iii*)]

Where a depreciable asset, on which depreciation is claimed and allowed under section 32(*1*)(*i*) *[i.e. depreciation on SLM basis]* is sold, discarded, demolished or destroyed in any previous year then, the amount of depreciation *for such year* shall be calculated as follows :

	(*Rs.*)
Opening WDV of such asset	× ×
Less: Money payable including scrap value, if any	× ×
Amount of depreciation for such year	× ×

For this purpose, 'money payable' includes—

- Any insurance, salvage, compensation money payable in respect thereof, or
- Where such asset is sold, the price for which it is sold.

16. BALANCING CHARGE [Section 41(2)]

When a depreciable asset on which depreciation is claimed and allowed under section 32(*1*)(*i*) *[i.e. depreciation on SLM basis]* is sold, discarded, demolished or destroyed in any previous year *and money payable including scrap value if any, exceeds the opening WDV of such asset then, tax treatment of* ***such surplus*** *is as follows:*

(a) So much of the surplus which is equal to the amount of depreciation already claimed, is taxable as balancing charge under section 41(2) as business income.

(b) Remaining surplus, if any, shall be treated as capital gain and such capital gain may be short term or long term depending upon the period of holding of such asset.

Calculation of amount of capital gain (where case is of balancing charge)

	(Rs.)
Sale price of the asset	××
Less : Cost of acquisition asset u/s 50A *i.e.[WDV- terminal depreciation + Balancing charge u/s 41(2)]*	××
Amount of capital gain	××

Problem—16.6 : *A ltd. is a power generating unit. On 10.1.2019, it purchases a plant for Rs. 2,00,000 which is eligible for depreciation @12.77% on straight-line basis. The plant so acquired is sold on May 20, 2019, for:*

Case 1: Rs. 3,000

Case 2: Rs. 1,87,230

Case 3: Rs. 1,90,000

Case 4: Rs. 2,15,000

Compute the amount of terminal depreciation or balancing charge for the P.Y. 2019-20. [Assume that A Ltd. is not eligible to claim additional depreciation referred to in section 32(1)(iia)]

Solution :

Actual cost	2,00,000
Less : Depreciation for the P.Y. 18-19 @ 6.385% (*i.e.* 12.77 × 50%)	12,770
WDV April 1, 2019 (*i.e.* the first day of the previous year in which plant is sold)	**1,87,230**

Particular	*Case 1*	*Case 2*	*Case 3*	*Case 4*
	Rs.	Rs.	Rs.	Rs.
Sale proceeds	3,000	1,87,230	1,90,000	2,15,000
Less: WDV	1,87,230	1,87,230	1,87,230	1,87,230
Surplus	(-) 1,84,230	Nil	2,770	27,770
Terminal depreciation	1,84,230	Nil	-	-
Balancing charge	Nil	Nil	2,770	12,770
Capital gain u/s 50A:				
Sale proceeds	3,000	1,87,230	1,90,000	2,15,000
Less: COA as per Sec. 50A (*i.e.* WDV–Terminal Depreciation + Balancing Charge)	3,000	1,87,230	1,90,000	2,00,000
Short-term capital gain	Nil	Nil	Nil	15,000

17. CARRY FORWARD AND SET OFF OF UNABSORBED DEPRECIATION [Section 32(2)]

This section provides as under—

✓ The current year depreciation for any assessment year shall be set off:

(a) against the income of PGBP of that previous year and

(b) the balance, if any, against the income under ***any other head*** of that previous year,

Note : Current year depreciation cannot be set-off against income from 'salaries'.

- ✓ The depreciation to the extent not set off being unabsorbed depreciation, shall be carried forward to the following previous year and added to the depreciation of that previous year.
- ✓ However, if there is no amount of depreciation for that following previous year, the unabsorbed depreciation shall be deemed to be the depreciation for such previous year and so on for succeeding previous year.
- ✓ Therefore, *w.e.f.* assessment year 2002-03 unabsorbed depreciation can be carried forward indefinitely and set off against any other head of income.

  Note : unabsorbed depreciation cannot be claimed against income from 'salaries'.

- ✓ Where there is carry forward of business loss or speculation loss also then, the **order** of set off shall be as under:
  - (a) Set off of current year depreciation
  - (b) Set off of brought forward business loss or speculation loss
  - (c) Set off of unabsorbed depreciation
- ✓ Set off will be allowed even if the same business to which it relates is no longer in existence in the year in which the set off takes place.
- ✓ Depreciation can be carry forward by the same assessee. Except, the following cases:
  - (a) A firm is succeeded by a company [section 47(*xiii*)]
  - (b) A proprietorship concern is succeeded by a company [section 47(*xiv*)]
  - (c) In case of amalgamation
  - (d) In case of demerger
  - (e) In case of amalgamation as given under section 72AA

  Note : In case of *inheritance* the amount of unabsorbed depreciation cannot be carried forward by the successor of the business.

16.4 Tea/Rubber/Coffee development account [Section 33AB]

1. Conditions to be satisfied for claiming deduction—

♦ *Nature of business*	Assessee must be engaged in the business of growing and manufacturing of tea or rubber or coffee in India.
♦ *Deposit of amount*	Assessee has, within 6 months from the end of the previous year or before furnishing of ROI *whichever is earlier*, deposited any amount with - (a) NABARD under any approved scheme, or (b) Deposit Account opened by the assessee in accordance with the above scheme.
♦ *Audit of accounts*	The accounts of the assessee should be audited under this Act and report (Form 3AC) thereof is filed along with ROI.

2. Amount of deduction : *Lower of the following amount—*

a. Amount of deposited, or

b. 40% of the profits of such business before deduction under section 33AB, & 72. (*Author* : 'profit of such business' is to be calculated before bifurcating it into agriculture and non-agriculture)

Income from manufacture of tea, rubber, coffee, coffee roasted [Rule 8, 7A, 7B(1), 7B(2) respectively]
Income derived from the sale of tea grown and manufactured by the seller in India shall be computed as if it were income derived from business, and 40% (35% in case of rubber; 25% in case of coffee grown and cured; 40% in case of coffee grown, cured, roasted and grounded) of such income shall be liable to tax.

3. **Permissible withdrawals from the scheme :** Any amount of NABARD or Deposit Account shall not be allowed to be withdrawn except for the purposes specified in the scheme or in the circumstances specified below—
   (a) closure of business;
   (b) death of an assessee; (*Author* : In this case the money so withdrawn will not be taxable)
   (c) partition of a HUF; (*Author* : In this case the money so withdrawn will not be taxable)
   (d) dissolution of a firm;
   (e) liquidation of a company. (*Author* : In this case the money so withdrawn will not be taxable)

4. **Amount withdrawn can be used for acquiring business asset except few assets :** Notwithstanding anything contained in sub-section (3), where any amount standing to the credit of the assessee in the special account or in the Deposit Account is released during any previous year by the National Bank or withdrawn by the assessee from the Deposit Account, and such amount is utilised for the purchase of—
   (a) any machinery or plant to be installed in any office premises or residential accommodation, including any accommodation in the nature of a guest-house;
   (b) any office appliances (not being computers);
   (c) any machinery or plant, the whole of the actual cost of which is allowed as a deduction (whether by way of depreciation or otherwise) in computing the income chargeable under the head "Profits and gains of business or profession" of any one previous year;
   (d) any new machinery or plant to be installed in an industrial undertaking for the purposes of business of construction, manufacture or production of any article or thing specified in the list in the Eleventh Schedule,

   the whole of such amount so utilised shall be deemed to be the profits and gains of business of that previous year and shall accordingly be chargeable to income-tax as the income of that previous year.

5. Where any amount, standing to the credit of the assessee in the special account or in the Deposit Account, which is released during any previous year by the National Bank or which is withdrawn by the assessee from the Deposit Account for being utilised by the assessee for the purposes of such business in accordance with the scheme or the deposit scheme is not so utilised, either wholly or in part, within that previous year, the whole of such amount or, as the case may be, part thereof which is not so utilised shall be deemed to be profits and gains of business and accordingly chargeable to income-tax as the income of that previous year

6. Consequences if the new asset is transferred within 8 years from the end of the year of its acquisition: The deduction allowed under this section shall be withdrawn and cost of such asset shall be deemed to the income under the head PGBP (subject to rule 8, 7A, 7B as the case may be) of such previous year. However, this rule shall not apply where :

(a) Such asset is *sold* or transferred *to government*, or

(b) Such asset is transferred in a scheme of *succession of a firm by a company.*

Problem—16.7 : *A ltd. is engaged in the business of growing and manufacturing tea in India. For the previous year ending on 31-3-2019 its composite business profits before allowing deduction under section 33AB are Rs. 30,00,000. On September 1, 2019 it deposited a sum of Rs. 5,50,000 in the tea development account. During the previous year 2018-19 A ltd. incurred a business loss of Rs. 7,00,000 which has been carried forward. On January 25, 2021, it withdraws Rs. 5,00,000 and utilised it as under:*

- ✓ *Rs. 3,00,000 for purchase of non-depreciable asset as per the scheme specified*
- ✓ *Rs. 1,50,000 for the purpose other than specified in the scheme.*
- ✓ *Rs. 50,000 was spent for the purpose of the scheme on April 5, 2021.*

(a) Compute the business income of A ltd. for the A.Y. 2020-21.

(b) What are the consequences of money mis-utilisation/non-utilisation?

(c) What would be the consequence if the asset which was purchased for Rs. 3,00,000 is sold for Rs. 4,00,000 in April, 2021.

Solution : As per rule 8, before bifurcating the business into agriculture income and non-agriculture income, the income is to be computed under the head PGBP, which means beside other deductions, the deduction under section 33AB must have been claimed.

Computation of total income of A Ltd.

(A.Y. 2020-21)	**Rs.**
Profit before allowing deduction under section 33AB	30,00,000
Less: Deduction under section 33AB (*i.e.* 40% of Rs. 30 lakh or Rs. 5.5 lakh, whichever is lower)	5,50,000
	24,50,000
Less: agriculture income (*i.e.* 60% of Rs. 24,50,000)	14,70,000
Non-agriculture income taxable under section 28	9,80,000
Less: brought forward business loss of A.Y. 2019-20	7,00,000
Taxable business income	**2,80,000**
(A.Y. 2021-22)	
Mis-utilisation of amount withdrawn from such account	1,50,000
Non-utilisation of amount withdrawn from such account, in the same previous year	50,000
Total	**2,00,000**
Taxable business income (40%)	80,000
Agriculture income (60%)	1,20,000

(A.Y. 2021-22)	
Sale price	4,00,000
Less: Cost of non-depreciable asset	3,00,000
Short-term capital gain	**1,00,000**
Taxable business income (40% of Rs. 3,00,000)	**1,20,000**

16.5 Expenditure on scientific research [Section 35]

Under section 35 the amount deductible in respect of scientific research may be classified as under:

1. *In-house research*
2. *Contribution made to outsiders*

1. In-house research : Expenses incurred on in-house research carried out by the assessee, are allowed as deduction **provided** that the research work relates to the business of the assessee.

In respect of in-house research the following expenses may be claimed as deduction:

Revenue expenditure *[section 35(1)(i)]*	▪ All revenue expenditure incurred on scientific research for the business of the assessee, or ▪ Where expenditure incurred **before commencement** of business on: *(a)* payment of **salary** (other than perquisites) or *(b)* on **purchase of material** in respect of such research, *within 3 years* immediately preceding the date of commencement of the business shall be allowed as deduction in the previous year in which business is commenced, **provided that such expenditure is certified by the prescribed authority.**
Capital expenditure *[section 35(1)(iv)]*	▪ **All capital expenditure (except expenditure on acquisition of land** whether as such or as part of the property) on scientific research related for business of the assessee, shall be allowed as deduction in *the year in which they are incurred.* ▪ Further, the **capital expenditure during 3 years** immediately preceding the date of commencement of the business shall be allowed as deduction in the previous *year in which such business is commenced.*

2. Contribution made to outsiders : [Section 35(1)(*ii*), (*iii*), 35(2AA)] : Where the assessee does not himself carry on scientific research but makes contributions to the following institutions, a deduction is allowed as under—

Category of contribution	*Amount of deduction*
▪ Any approved scientific research association/approved university/ college or other institution for use in **scientific research [clause (*ii*)]**	➢ **A.Ys. 2018-19 to 2020-21 : 150%** of contribution ➢ **A.Y. 2021-22 onwards : 100%** of contribution
▪ Any approved university/college/other institution for use in research in **social science or statistical research [clause (*iii*)]**	➢ **A.Y. 2018-19 : 100%** of contribution
▪ National laboratory or university or IIT or other approved person, for use in approved **scientific research programme [Section 35(2AA)]**	➢ **A.Ys. 2018-19 to 2020-21 : 150%** of contribution ➢ **A.Y. 2021-22 onwards : 100%** of contribution

3. Recommendation for withdrawal of the approval : If the Assessing Officer is satisfied that the activities of above said institutions are not in accordance with the conditions for which these institutions are approved under these sections, he may, after giving an opportunity of being heard, recommend the Centre Government to withdraw the approval.

4. No withdrawal of deduction even if approval is withdrawn : Above deduction, shall not be denied merely on the ground that subsequent to the payment of such sum by the assessee, the approval of above mentioned institutions has been withdrawn.

5. Where any scientific research asset is sold the tax treatment shall be as under—

If sold after using in business	*Sold without using in business*
❒ This asset would have been included in block of asset with actual cost being NIL as per Explanation	❒ Under section 41(3) **least** of the following shall be taxable under the head PGBP:

1 to section 43(1). ❒ Provisions of section 43(6) and section 50 shall apply to such sale for the purpose of calculating capital gain.	*a.* Sale price; *b.* Amount of deduction allowed under Sec.35 ❒ Excess of sale price over cost of acquisition shall be chargeable as capital gain.

Notes—

1. **Capital expenditure** referred to in section 35(1)(*iv*) can be carried forward for indefinitely number of years and set off in any subsequent assessment year. Therefore, it shall be given the same treatment as is given to unabsorbed depreciation **– Section 35(4)**

   Problem—16.8 : *S Ltd. had carried scientific and incurred the following expenditure on such research:*

	Rs.
Expenditure of revenue nature	*4,00,000*
Expenditure of capital nature	*10,00,000*
Business income before allowing these expenses	*3,00,000*

   Compute the expenditure allowable to S Ltd. and amount of unabsorbed expenditure, if any.

   Solution :

Business income	3,00,000
Less: expenditure of revenue nature	4,00,000
Business loss	1,00,000

   So now as per the provisions of section 35(4), unabsorbed expenditure of Rs. 10,00,000 can be carried forward for infinite number of year.

2. In the event of amalgamation, the unabsorbed scientific research **capital expenditure** of amalgamating company shall be carried forward by the amalgamated company as they would have been carried forward by the amalgamating company if, the latter had not transferred the asset representing capital expenditure on scientific research.
3. Deduction by way of depreciation is not allowed in respect of the assets used in scientific research either in the year of purchase or in any subsequent year.

16.6 Weighted deduction to companies in respect of expenditure on in-house research and development facility [Section 35(2AB)]

1. Conditions for allowance of this deduction

Eligible assessee	This deduction is allowed to a **company** which is engaged in the business of: *(a) bio-technology, or* *(b) manufacture or production of any article/thing, not being an article or thing specified in 11th schedule.*
Nature of expense	Such company has incurred an expenditure, whether revenue or capital nature (not being an expenditure in the nature of cost of any land or building) on *approved in-house research and development facility.*
Agreement and audit	Such company has entered into an agreement with prescribed authority for- *(a) co-operation* in such research and development facility *and* *(b) audit of the accounts* maintained for that facility.

2. Amount of deduction: *150% of such expenditure for A.Y. 2018-19 to A.Y. 2020-21, thereafter, 100% of such expenditure.*

16.7 Expenditure on obtaining licence of telecommunication services [Section 35ABB]

1. Provisions of this section are as under:

- ✓ Where any *capital expenditure has been incurred* for acquiring licence to operate telecommunication services,
- ✓ either *before* commencement of business *or* thereafter at any time *during any previous year*
- ✓ and for which **actual payment has been made**,
- ✓ a *deduction will be allowed in equal annual instalment* over the period such licence remains in force.

2. Assessment year for deduction:

a. If the licence fee is paid **before** commencement of such business, the deduction shall be allowed commencing from the previous year in which such business commenced, or

b. If such fee is paid **after** commencement of such business, the deduction shall be allowed commencing from the previous year in which such fees is paid.

3. Sale of licence- tax treatment—

Where the ENTIRE licence is transferred	*Where only a PART of the licence is transferred*
▪ **If sale price is less than opening WDV** → WDV *minus* sale consideration shall be allowed as deduction u/s 35ABB *in the previous year* of such sale	▪ **If sale price is less than opening WDV** → WDV *minus* sale consideration shall be allowed as deduction u/s 35ABB *over the unexpired period.*
▪ **If sale price is more than opening WDV** → **Business income:** *lower of the following* shall be taxable as business income in the year of sale (whether or not business is in existence): *(a)* Sale price *minus* WDV ,or *(b)* Amount of deduction allowed u/s 35ABB → **Capital gain:** Excess of sale price over cost of licence shall be taxable as capital gain in the year of such sale.	▪ **If sale price is more than opening WDV** → Same treatment as is given in case of entire licence transfer

Note : Where a deduction under this section has been claimed and allowed in any previous year, no deduction on account of depreciation shall be allowed.

Problem—16.9 : *Air-talk Ltd. is a company incorporated in India for operating telecommunication services throughout the India. It obtains a telecommunication licence on May 10, 2017, life of which is 10 years and the total price of which is Rs. 5 crore. Payment for the licence is made as under:*

1. *Rs. 1,50,00,000 as on May 10, 2017;*
2. *Rs. 1,50,00,000 as on May 10, 2018;*
3. *Rs. 2,00,00,000 as on August 5, 2019.*

Compute the amount of deduction available per annum under section 35ABB in the following situations—

Situation 1: If the licence is not sold;

Situation 2: If a part of the licence is sold at Rs. 1,50,00,000 as on September, 24, 2019.

Situation 3: If the entire licence is sold for Rs. 2,50,00,000 as on January 21, 2020.

Solution : Deduction under section 35ABB is as under:

(Rs. in Lakhs)

Assessment year in which deduction is allowed	*Situation 1*	*Situation 2*	*Situation 3*
2018-19	$\frac{(150)}{10}$ =15	$\frac{(150)}{10}$ =15	$\frac{(150)}{10}$ =15
2019-20	$\frac{(150+150-15)}{9}$ =31.67 **OR** $15+\frac{(150)}{9}$ = 31.67	$\frac{(150+150-15)}{9}$ =31.67 **OR** $15+\frac{(150)}{9}$ = 31.67	$\frac{(150+150-15)}{9}$ =31.67 **OR** $15+\frac{(150)}{9}$ = 31.67
2020-21	$\frac{(300+200-46.67)}{8}$ =56.67 **OR** $31.67+\frac{(200)}{8}$ = 56.67 ***Note :*** *Deduction of Rs. 56.67 Lakh per annum will be available for future years till the assessment year 2027-28.*	$\frac{(300+200-150-46.67)}{8}$ =37.92 **OR** $31.67+\frac{(200-150)}{8}$ = 37.92 *Notes-* **1.** *Deduction of Rs. 37.92 Lakh per annum will be available for future years till the A.Y. 2027-28.* **2.** *No capital gain will arise in this case as the sale price of the part of the licence does not exceed its cost of acquisition.*	Deduction under section 35ABB will be calculated as under: Closing WDV – Sale price *i.e.*— = ***Rs. 203.33*** *(453.33— 250)* **OR** = *(150+150+200 – 15 – 31.67= Rs.453.33* Then, 453 – *250 = Rs.203.33* ***Note :*** *Deduction of Rs. 203.33Lakh will be available in the A.Y. 2020-21 and no further deduction will be available in any future years.*

Problem—16.10 : *Assume in the above example that the licence sold under situation 3, is sold for Rs. 550 lakh. Calculate the amount of business income and capital gain, if any.*

Solution

Deduction under section 35ABB will not be given in this case.

Total surplus amount = Rs. 550 – Rs. 453.33 *(i.e. sale price - closing WDV)* = Rs. 96.67

→ Amount of business income is Rs. 46.67 *i.e.* the amount of deduction under section 35ABB already allowed.

→ Amount of capital gains = Rs. 96.67 – Rs. 46.67 = Rs. 50 (short term capital gain)

or

Rs. 550 – Rs. 500 = Rs. 50 (short term capital gain)

16.8 Expenditure on obtaining right to use spectrum for telecommunication services [New Section 35ABA, inserted *w.e.f.* A.Y. 2017-18 by Finance Act 2016]

1. **Provisions of this section are as under :** Deduction under this section is allowed if :
   - during the previous assessee incurs any *expenditure of capital expenditure;*
   - it is incurred for *acquiring any right to use spectrum* for telecommunication services;
   - it is incurred either before the commencement of the business or thereafter;
   - and *for such expenditure payment has actually been made.*
2. **Deduction :** Deduction equal to the appropriate fraction of the amount of such expenditure shall be allowed for each of the relevant previous years. [Where relevant 'previous year' means the year in business is commenced or the year in which payment for such spectrum is actually made, whichever is later]
3. **Other provisions :** Other provisions of section 35ABB shall *mutatis-mutandis* apply to this section.

16.9 Deduction in respect of expenditure on 'specified business' [Section 35AD]

This section provides investment-linked tax incentive in respect of certain types of business, as under—

1. Conditions for allowances of deduction under this section

CONDITION 1 : Nature of specified business and nature of expense: The assessee incurs any *expenditure of capital nature*, wholly and exclusively, for the purposes of any specified business given below—

Type	*Nature of specified business*	*Date of commencement of business*
Type-1	Setting up and operating a **cold chain facility**	On or after 1.4.2009
Type-2	Setting up and operating a **warehousing** facility	On or after 1.4.2009
Type-3	Laying and operating a **cross-country** natural gas/crude/petroleum **pipeline**	On or after 1.4.2009
Type-4	Building and operating a new **hotel of two-star or above** category, anywhere in India.	On or after 1.4.2010
Type-5	Building and operating of a new **hospital** anywhere in India with at least 100 beds for patients.	On or after 1.4.2010
Type-6	Developing and building a **housing project under a scheme for slum redevelopment** or rehabilitation framed by the Central Government or a State Government, as the case may be, and which is notified by the CBDT.	On or after 1.4.2010
Type-7	Business in the nature of developing and building a **housing project under a scheme for affordable housing** framed by the Central/State Government and notified by the CBDT.	On or after 1.4.2011
Type-8	Capital expenditure for a new plant or newly installed capacity in any existing **plant for production of fertilisers**.	On or after 1.4.2011
Type-9	Setting up and operating an **inland container depot** or a container freight station notified or approved under the Customs Act, 1962.	On or after 1.4.2012
Type-10	Business of **bee-keeping** and production of honey and beeswax.	On or after 1.4.2012
Type-11	Business of setting up and operating a **warehousing facility for storage of sugar**.	On or after 1.4.2012

Type-12	Laying and operating a slurry **pipeline for the transportation of iron ore**	On or after 1.4.2014
Type-13	Setting up and operating a **semiconductor wafer fabrication manufacturing unit**, if such unit is notified by the CBDT.	On or after 1.4.2014
Type-14	Developing/maintaining/operating new infrastructure facility ['Infrastructure facility' means, road, toll road, rail system, highway project, water supply/treatment system, port, airport etc.] [*W.e.f.* A.Y. 2018-19]	On or after 1.4.2017

CONDITION 2 : Such specified business—

1. is not set up by splitting up, or the reconstruction, of old business;
2. is not set up by the transfer to such business of old machinery or plant;
3. where the business is of laying and operating a **cross-country** natural gas/crude/petroleum oil **pipeline** network for distribution, including storage facilities,—
   a. such business is owned by an Indian company
   b. it has been approved by the Petroleum and Natural Gas Regulatory Board;
   c. it has made not less than such proportion of its total pipeline capacity as specified by regulations made by the Petroleum and Natural Gas Regulatory Board available for use on common carrier basis by any person other than the assessee or an associated person.

2. Amount of deduction

Amount of deduction is based on the amount of qualifying expenditure. All expenditures of capital nature which are incurred, wholly and exclusively, for the purposes of such specified business, are qualifying expenditures except the following :

(i) *any expenditure of capital nature in respect of which the payment(s) made to a person in a day, otherwise than by an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account, exceeds Rs.10,000* [clause (i) is inserted by Finance Act, 2017 w.e.f. 2018-19], *or*

(ii) any expenditure incurred on the acquisition of any land or goodwill or financial instrument.

Amount of deduction is as under—

(a) Specified business of Type 1, 2, 5, 7 and 8	▪ Up to A.Y. 2012-13 : 100% of qualifying expenditure. ▪ From A.Y. 2013-14 to A.Y. 2017-18 : 150% of qualifying expenditure. ▪ From A.Y. 2018-19 : 100% of qualifying expenditure.
(b) Any specified business	100% of qualifying expenditure.

3. Year of deduction

Situation	*Year of deduction*
♦ *If expenditure is incurred prior to the date commencement of its operations*	The previous year in which the operations so commence, if such amount is capitalised in the books of accounts of the assessee on the date of commencement of operations.
♦ *If expenditure is incurred after commencement of its operations*	The previous year in which such expenditure is incurred.

4. No double deduction in respect of the specified business : where a deduction under this section is claimed and allowed in respect of the specified business for any assessment year, no deduction shall be

allowed under the provisions of Chapter VI-A in relation to such specified business for the same or any other assessment year.

Provided further that where any deduction has been availed of by the assessee on account of capital expenditure incurred for the purposes of specified business in any assessment year, no deduction under section 10AA shall be available to the assessee in the same or any other assessment year in respect of such specified business.

Notes—

1. For the purposes of this section, an **"associated person",** means a person,—
   - *a.* who participates, directly or indirectly, in the management/control or capital of the assessee;
   - *b.* who holds shares carrying 26% or more of the voting power in the capital of the assessee;
   - *c.* who appoints more than half of the Board of directors or members of the governing board, or one or more executive directors/executive members;
   - *d.* who guarantees not less than 10% of the total borrowings of the assessee;
2. Any machinery or plant shall not be regarded as old machinery or plant, if—
   - *a.* such machinery or plant was not used in India; and
   - *b.* such machinery or plant is imported into India; and
   - *c.* no deduction on account of depreciation in has been allowed/allowable on it.
3. Old machinery or plant can be transferred to such business if value thereof does not exceed 20% of the total value of the machinery or plant used in such business.
4. If any capital asset which was debited to profit and loss account, has been sold, amount received on sale shall be considered to be income under the head business/profession as per section 28.
5. As per section 73A, loss of specified business can be set off only from profits and gains of any other specified business (during the previous year or subsequent years). Further, carried forward of losses not set off, is allowed for unlimited number of years.
6. **Period of use of 'eligible asset' :** The asset in respect of which a deduction is claimed and allowed under section 35AD, shall be used only for the specified business for a period of **eight years** beginning with the previous year in which such asset is acquired or constructed. If within the period of said 8 years, such assets is ceased to be used for specified business, the total amount of deduction allowed under this section, as reduced by the amount of depreciation allowable under section 32, will be deemed to be income of the assessee for the previous year in which such assets is so ceased to be used for 'specified business'.
7. **Tax treatment when such asset is demolished etc. :** If any sum is received or receivable on account of any capital asset, in respect of which deduction under section 35AD has been allowed, being demolished, destroyed, discarded or transferred, will be treated as income of the assessee and will be chargeable to tax under this head.

16.10 Payment to associations/institutions carrying out Rural Development Programmes (RDP) [Section 35CCA]

1. The deduction shall be given where during the previous year the payment is made to:

(a) Any association to be used for carrying out any approved Rural Development Programme.

(b) Any association having its object training the person for implementation of such programme.

(c) National fund for rural development set up by Central Government.

(d) National urban poverty eradication fund set up and notified by Central Government.

2. No withdrawal of deduction even if approval is withdrawn

Above deduction, shall not be denied merely on the ground that subsequent to the payment of such sum by the assessee, the approval of above mentioned associations has been withdrawn.

16.11 Expenditure on Agriculture Extension Project (AEP) [Sec. 35CCC]

1. Conditions for allowability of this section—

Condition 1	During the previous year, assessee has incurred any expenditure on agricultural extension project.
Condition 2	Such project is notified by CBDT in accordance with the guidelines as may be prescribed.

2. Amount of deduction : On fulfillment of above conditions, assessee shall be allowed a deduction of a sum equal to **150%** of such expenditure However *w.e.f.* A.Y. 2021-22, this deduction shall be allowed **@100%** in place of existing 150%.

3. No deduction under any other provision : If deduction under this section is claimed in respect of such expenditure for any assessment year, then no deduction shall be allowed in respect of such expenditure under any other provisions of this Act for the same or any other assessment year.

Note : Agricultural extension project may include useful and practical information related to agriculture, including improved seeds, fertilizers, implements, pesticides etc.

16.12 Expenditure on Skill Development Project (SDP) [Section 35CCD]

1. Conditions for allowability of this section—

Condition 1	During the previous year, assessee being a company has incurred any expenditure (not being expenditure in the nature of cost of any land or building) on any skill development project.
Condition 2	Such project is notified by CBDT in accordance with the guidelines as may be prescribed.

2. Amount of deduction: On fulfillment of above conditions, assessee being a company shall be allowed a deduction of a sum equal to **150%** of such expenditure. However *w.e.f.* A.Y. 2021-22, this deduction shall be allowed **@100%** in place of existing 150%.

3. No deduction under any other provision : If deduction under this section is claimed and allowed in respect of such expenditure for any assessment year, then no deduction shall be allowed in respect of such expenditure under any other provisions of this Act for the same or any other assessment year.

16.13 Amortisation of preliminary expenses [Section 35D]

Provisions of this section are as under—

Eligible assessee	▪ Indian company, or ▪ Person resident in India other than a company.
Time and purpose of the expenditure	(a) Expenditure incurred **before** commencement of business, or (b) Expenditure incurred **after** commencement of business for ▪ extension of existing **undertaking,** or ▪ in connection with setting up a new unit.
Eligible expenses	Following expenses qualify for deduction under this section: (a) Expenses in connection with engineering services; (b) Expenses on preparation of a feasibility report and/or project report; (c) Expenses on conducting any survey necessary for the business of the assessee; (d) Legal charges for drafting any agreement for setting up such business; (e) Where assessee is *a company*, also the expenditure on: ▪ Legal charges for drafting and printing of the memorandum and articles of association. ▪ Fee for registration of the company. ▪ Expenses in connection with the public issue and expenditure on refunding the amount of oversubscription of shares/debenture **Note:** Expenses specified under (a), (b) and (c) *supra*, are eligible for deduction under this section only if either these are carried on by the assessee or by any concern which is approved in this behalf by the Board.
Overall deduction limit	(a) In case of company: ✓ 5% of the cost of project, or ✓ 5% of the capital employed, *whichever is more.* (b) In case of other assessee – 5% of cost of project.
Amount of deduction	1/5th of LOWER of the following will be allowed as deduction for each of the 5 years beginning with the year of commencement of business : *(a)* 'eligible expenses' or *(b)* 'overall limit'

Notes—

1. **Meaning of 'cost of project' :** It means the actual cost of the fixed assets shown in the books of the assessee on the last day of the previous year in which business commences or extension gets complete or new unit commences production.
2. **Meaning of 'capital employed' :** It means the aggregate of issued share capital, debentures and long term borrowings as on the last day of the previous year in which business commences or extension gets complete or new unit commences production.
3. **Meaning of 'long term borrowings' :** The term "long term borrowing" means-
   - ✓ *Indian borrowings*: Any borrowings from Government, IFCI, ICICI, or any other financial institution which is eligible for deduction under section 36(1)(*viii*) or any banking institution, or
   - ✓ *Foreign borrowings*: Any amount borrowed or debts incurred in a foreign country (in respect of purchase outside India of a plant and machinery) which is repayable in a period not less than 7 years.
4. **Audit :** The books of accounts of the relevant year(s) in which the expenditure is incurred should be audited and the audit report in Form No. 3B should be submitted along with the ROI of the *first year.*

16.14 Amortisation of expenses of amalgamation or demerger [Section 35DD]

This section allows deduction to an Indian company in respect of expenditures connecting with amalgamation or demerger. Conditions for allowability of this section are as under—

Condition 1	During the previous year, assessee being an Indian company has incurred any expenditure wholly and exclusively for the purposes of amalgamation or demerger of an undertaking.
Condition 2	Such expenditure is incurred on or after April 1, 1999

Amount of deduction: On fulfillment of above conditions, the assessee shall be allowed a deduction of a sum equal to 20% of such expenditure for each of 5 successive previous years beginning with the previous year of such amalgamation.

No deduction under any other provision: No deduction shall be allowed in respect of the said expenditure under any other provision of this Act.

Note : Deduction under section 35DD should be claimed by amalgamated company as amalgamating company will cease to exist.

16.15 Amortisation of expenditure relating to VRS [Section 35DDA]

Where **an assessee** incurs any expenditure in any previous year by way of payment of any sum to an employee in connection with his voluntary retirement, deduction shall be allowed as under—

- *Amount of deduction:* In computing the profits and gains of the business of that previous year, the assessee shall be allowed a deduction of **1/5th** of the amount so paid and the balance shall be deducted in equal instalments for each of the 4 immediately succeeding previous years.
- *Consequence of amalgamation/ demerger/ takeover etc.:* Where before the expiry of the said 5 years, business of the assessee is transferred to any other person on account of amalgamation or demerger of Indian company, takeover of firm or proprietorship by any company or succession of a private company by a LLP, then deduction for remaining period would be available to the transferee of such business (*i.e.* amalgamated/resulting Indian company, successor company or LLP). This provision is subject to fulfilment of certain conditions.
- Deduction for the previous year in which such amalgamation, demerger etc. has taken place, shall be allowed to the transferee of such business and not to the transferor.
- No deduction shall be allowed in respect of the expenditure mentioned in this section under any other provision of this Act.

16.16 Amortisation of expenditure for prospecting etc. of certain minerals [Section 35E]

Provisions of this section are as under—

Applicability of this section- conditions	✓ the assessee is an Indian company or resident non-corporate assessee, ✓ the assessee is engaged in prospecting or extraction or production of specified minerals (*i.e.* minerals as are specified in 7th schedule), ✓ the assessee incurs any qualified expenditure being expenditure on or in relation to, prospecting or extraction or production of these minerals (*other than expenditure on* ***acquisition*** *of any site or deposit of such sources, or expenditure on acquisition of building, machinery, plant, and furniture for which depreciation is admissible under section 32*).
When the expenditure should be incurred	Expenditure should be incurred during the year of commercial production and 4 years immediately preceding that year.
Quantum of deduction	*Lower of the following* amount shall be allowed as deduction for each year: *(a)* Amount equal to **1/10th** of such expenditure, or

	(b) Income from such business in the previous year. However, where "*(b)*" is less than "*(a)*" then, such un-allowed amount shall be carried forward and added to the next year but not beyond the 10th year.
Audit	The books of accounts of the relevant year(s) in which the expenditure is incurred should be audited and the audit report in Form No. 3B should be submitted along with the ROI of the *first year*.

Notes—

1. No deduction shall be allowed for such expenditure under any other provision of the Act.
2. **Deduction to be given to amalgamated/resulting company:** In case of amalgamation or demerger, the deduction shall continue to be available to the amalgamated company or resulting company (as the case may be) for the balance period including the year of such transfer.

16.17 'Paid' means [Section 43(2)]

"Paid" means actually paid or incurred according to the method of accounting upon the basis of which the profits or gains are computed under the head "PGBP".

16.18 Other deductions [Section 36]

1. INSURANCE [Section 36(1)(*i*), (*ia*), (*ib*)] : Deduction of the following will be allowed—

a. The premium paid for insurance against risk of damage or destruction of **stocks or stores.**

b. The premium paid by a federal milk co-operative society to effect or to keep in force an insurance on the **life of the cattle** owned by a member of a co-operative society.

c. The premium (paid by cheque) by the employer to effect or to keep in force an **insurance on the health** of his employees under the approved schemes.

2. BONUS OR COMMISSION TO EMPLOYEES [Section 36(1)(*ii*)] : Deduction will be allowed in respect of any sum paid to an employee as bonus or commission for services rendered, **provided that** such sum is not paid in place of profits or dividend.

Note : Bonus shall be allowed as deduction even if such bonus is in excess of the amount required to be paid under Payment of Bonus Act.

Example : During the previous year, X Ltd. had paid bonus to its employees as under:

Mr. Ram	:	Rs. 15,000 (performance bonus)
Mr. Shyam	:	Rs. 15,000 (performance bonus)
Mr. Ghanshyam (also a shareholder)	:	Rs. 25,000 (Rs. 15,000 is performance bonus)

So now as per the provisions of section 36(1)(*ii*), Rs. 45,000 is allowed as deduction in the hands of X Ltd. Out of Rs. 25,000 given to Mr. Ghanshyam, Rs. 10,000 is not performance bonus, therefore it is disallowed in the hands of X Ltd by virtue of this section.

3. INTEREST ON BORROWED CAPITAL [Section 36(1)(*iii*)] : Following points should be noted—

- The interest paid in respect of capital borrowed for the purposes of the business or profession is allowed as deduction.
- Interest paid on capital borrowed for acquisition of an asset for extension of business or profession, for the period till the date on which such asset was first put to use, shall not be allowed as deduction but it can be added to the actual cost of the asset. However, interest for the period after put to use of such asset, can be claimed as deduction.
- Interest on own capital (*i.e.* notional interest) is not allowed under this section.

4. DISCOUNT ON ZERO COUPON BOUNDS [Section 36(1)(*iiia*)] : Deduction of 'discount' on zero coupons bonds will be allowed to the 'issuer' of these bonds 'over the life of these bonds'. Details are as under—

a. The *pro rata* amount of discount on a zero coupon bond having regard to the period of life of such bond calculated in the manner as may be prescribed.

b. **"discount"** means the difference between the amount received or receivable and the amount payable on maturity or redemption of such bond.

c. **"period of life of the bond"** means the period commencing from the date of issue of the bond and ending on the date of the maturity or redemption of such bond;

Rule 8C: 'Pro rata amount of discount' on a zero coupon bond will be calculated as under—

(a) the period of life of the bond shall be converted into number of calendar months (or part of month if such part is fifteen days or more);

(b) the amount of discount shall be divided by the number of calendar months determined in accordance with clause (*a*);

(c) where one or more than one calendar month out of calendar months determined in accordance with clause (*a*) is or are included in a previous year, the amount determined in accordance with clause (*b*) shall be multiplied by the number of calendar months so included and the amount so arrived at shall be taken to be the pro rata amount of discount for that previous year.

Tax treatment of zero coupon bonds—

In the hands of issuing company	*In the hands of investor*
▪ Discount is deductible under section 36(1)(*iii*). ▪ Tax will not be deducted at source under section 194A by the issuing company.	▪ Maturity or redemption of zero coupon bonds will amount to "transfer" under section 2(47). ▪ If period of holding is more than 12 months, such bond would be a long term capital asset under section 2(42A). ▪ Long term capital gain would be taxable at the rate of 10% (+applicable SC+HEC) without indexation.

Problem—16.11 : *Delhi Infra Ltd., an infrastructure capital company, has issued zero coupon bonds as on November 5, 2019. These bonds are notified by the Government as zero coupon bonds for the purpose of section 2(48). Other details are as under:*

Issue price of a zero coupon bond	:	*Rs. 85*
Face value of a zero coupon bond (i.e. redemption price)	:	*Rs. 100*
Redemption date	:	*August 11, 2030*
Number of bonds subscribed by the public	:	*1,00,000*

Compute the amount of deduction available to Delhi Infra Ltd.

Solution :

Calculation of pro rata deduction available to Delhi Infra Ltd.

Total amount of discount offered [(Rs.100 - Rs.85) × 1,00,000]	:	Rs. 15,00,000 **(A)**
Face value of a zero coupon bond (*i.e.* redemption price)	:	Rs. 100
Date of issue	:	Nov 5, 2019
Round off of issue date by virtue of rule 8C (*i.e.* if fraction of calendar month is 15 days or more, take it as a full month, otherwise ignore it)	:	Nov 1, 2019
Date of redemption	:	Aug 11, 2030
Round off of redemption date by virtue of rule 8C (*i.e.* if fraction of calendar month is 15 days or more, take it as a full month, otherwise ignore it)	:	July 31, 2030
Period of life of the bonds (*i.e.* from November 1, 2019 to July 31, 2030)	:	129 months **(B)**
Pro rata deduction for one month [*i.e.* **(A)÷(B)**]	:	Rs. 11,627.91 **(C)**

Amount of deduction available for the A.Y. 20-21 [*i.e.* **(C)** × 5]	:	Rs. 58,140
Amount of deduction available from A.Ys. 21-22 to 29-30 [*i.e.* **(C)** × 12]	:	Rs. 1,39,535 p.a.
Amount of deduction available for the A.Y. 31-32 [*i.e.* **(C)** × 4]	:	Rs. 46,512

5. EMPLOYER'S CONTRIBUTION TO RPF OR ASF AS AN EMPLOYER [Section 36(1)(*iv*)] : Deduction will be allowed in respect of any sum paid by the assessee as an employer by way of contribution towards—

(a) a recognised provident fund (RPF), or

(b) an approved superannuation fund (ASF).

Provided that such contribution is to the extent prescribed while recognising or approving the fund.

6. EMPLOYER'S CONTRIBUTION TOWARDS NEW PENSION SCHEME [Section 36(1)(*iva*)] : Deduction will be allowed in respect of any sum paid by the assessee as an employer by way of contribution towards a Pension Scheme, as referred to in section 80CCD(2), on account of an employee shall be allowed as a deduction.

Quantum of deduction: Deduction will be subject to a limit of 10% of the salary of the employee.

7. EMPLOYER'S CONTRIBUTION TO APPROVED GRATUITY FUND [Section 36(1)(*v*)] : Deduction will be allowed in respect of any sum paid by the employer by way of contribution towards an approved gratuity fund, created for the exclusive benefit of the employees under an irrevocable trust.

8. DEDUCTION FOR EMPLOYEES CONTRIBUTION TO RPF OR ASF ETC. [Section 36(1)(*va*)] : Deduction will be allowed in respect of any sum received by the assessee from his employees towards their contributions (*i.e.* employees share) towards—

(a) any provident fund or

(b) superannuation fund or

(c) any fund set up for the welfare of such employees.

Provided that such sum is credited by the assessee to the employee's account in the relevant fund or funds on or before the "due date".

"Due date" means the date by which the assessee is required as an employer to credit an employee's contribution to the employee's account in the relevant fund under any Act, rule. *Currently it is:*

- ✓ **For P.F. - 20 days** (*i.e.* 15 days *plus* 5 days of grace period) from the end of month.
- ✓ **For E.S.I. - 21 days** from the end of month.

9. ALLOWANCE IN RESPECT OF DEAD OR PERMANENTLY USELESS ANIMALS [Section 36(1)(*iv*)]: Deduction will be allowed to the assessee in respect of animals which have been used (other than stock-in-trade) and have died or become permanently useless.

Quantum of deduction : Actual cost of that animal *minus* amount realised (if any) on its sale etc.

10. BAD DEBTS [Section 36(1)(*vii*)] : Any amount of bad debt or part thereof ***which is written off as irrecoverable*** in the accounts of the assessee for the previous year, is allowed as deduction subject to the provisions of section 36(2) *i.e.*—

(a) Such debt or part thereof must have been *taken into consideration* in computing the income of the assessee of the previous year or an earlier previous year, **or**

(b) It represents the money lent in ordinary course of the *business of banking or money-lending* which is carried on by the assessee.

Provision for bad and doubtful debts are not eligible for deduction: For the purposes of this clause, any bad debt or part thereof written off as irrecoverable in the accounts of the assessee shall not include any provision for bad and doubtful debts made in the accounts of the assessee.

Note : Assessee is not required to prove the debts as "bad", but to claim this deduction his is required to write-off such debt as irrecoverable in his books of accounts.

Section 41(4): Recovery of Bad debts : Where a deduction has been allowed in respect of a bad debt and the amount subsequently recovered on any such bad debt is greater than the amount of bad debts **not allowed, the excess** shall be deemed to be the income under the head PGBP of the previous year in which such recovery is made and accordingly chargeable to tax, *whether the business or profession in respect of which the deduction has been allowed is in existence or not.*

For example—

	Rs.
Total bad debts	*1,00,000*
Amount written off in the books of account	*60,000*
Amount subsequently recovered	*50,000*

Taxable amount under sec. 41(4) = [50,000—(1,00,000—60,000)] i.e. Rs.10,000

11. PROVISION FOR BAD/DOUBTFUL DEBTS OF 'RURAL' BRANCHES OF COMMERCIAL BANKS : Section 36(1)(viia) gives deduction for bad and doubtful debts in respect of 'rural' branches of commercial banks is as under :

Scheduled and non-scheduled bank (other than foreign banks)	Public financial institutions, State financial corporations etc.	Foreign banks	Non-banking financials company (NBFC)
▪ 8.5% of total income of the rural branch before this deduction and deductions of Chapter VI-A, *and* ▪ 10% of aggregate average advances made by the rural branch	▪ 5% of total income of the rural branch before this deduction and deductions of Chapter VI-A	▪ 5% of total income of the rural branch before this deduction and deductions of Chapter VI-A	▪ 5% of total income of the rural branch before this deduction and deductions of Chapter VI-A

12. EXPENDITURE ON PROMOTING FAMILY PLANNING BY A COMPANY [Section 36(1)(*ix*)] : A deduction is allowed in respect of any expenditure *bona fide* incurred by a **company** for the purpose of promoting family planning amongst its employees.

However, where such expenditure or any part thereof is of a ***capital nature***, 1/5th of such expenditure shall be deducted for the previous year in which it was incurred; and the balance thereof shall be deducted in equal instalments for each of the 4 immediately succeeding previous years.

Provided that the provisions of section 32(2) and section 72(2) shall apply in relation to deductions allowable under this clause as they apply in relation to deductions allowable in respect of depreciation. In other words, the assessee would be entitled to carry forward and set off the unabsorbed part of the allowance in the same manner as unabsorbed depreciation.

Where an asset (purchased for promoting family planning amongst the employees) is sold or transferred, the profit or loss shall be calculated in the same manner as is calculated on sale of asset purchased for the purpose of scientific research.

Note : Revenue expenditure incurred by the assessee other than the company assessee, on promoting family planning amongst his employees, is deductible under section 37(1). On capital expenditure for family planning he is entitled to claim depreciation under section 32.

13. DEDUCTION IN RESPECT OF SECURITIES TRANSACTION TAX (STT) : The assessee can claim deduction of the amount of securities transaction tax paid in respect of the taxable securities transactions, if income from such transaction have been included in his income under the head PGBP.

14. DEDUCTION IN RESPECT OF COMMODITIES TRANSACTION TAX (CTT) : The assessee can claim deduction of an amount of commodities transaction tax paid by him in respect of the taxable commodities transactions entered into during the previous year, if the income from these transactions is included in the income under the head PGBP.

15. DEDUCTION IN RESPECT OF ANY MARKED TO MARKET LOSS : The assessee can claim deduction of any marked to market loss or other expected loss as computed in accordance with the Income Computation and Disclosure Standards (ICDS) notified under sub-section (2) of section 145.

16.19 General deductions [Section 37]

Any expenditure expended *wholly and exclusively for the purposes of the business or profession* shall be allowed in computing the income chargeable under the head PGBP. Thus deduction under this section can be claimed in respect of an expenditure if all the following conditions are satisfied—

a. Such expenditure is not described in sections 30 to 36 and

b. Such expenditure must be of revenue nature and not of capital expenditure and

c. It is not personal expenditure of the assessee.

Deduction shall not be given in respect of advertisement in any souvenir, brochure, tract, pamphlet or the like published by a political party [Section 37(2B)]. However, any other advertisement expenditures are allowed under the provision of section 37(1).

Note—Contribution to a political a party is deductible under section 80GGB, if it is made by an Indian company or under section 80GGC, if it is made by a person other than an Indian company. Expenditure by way of advertisement to a magazine owned by a political party is treated as "contribution" to a political party for the purpose of section 80GGB but not for the purpose of section 80GGC. In other words, advertisement expenditure (in a magazine owned by a political party) is deductible under section 80GGB if the taxpayer is an Indian company but the same is not deductible under section 80GGC if the taxpayer is a person other than an Indian company.

Following points should be noted—

- ILLEGAL EXPENSES ARE NOT ALLOWED: Any expenditure the purpose of which is an offence or is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession—Explanation to section 37

- SHARE ISSUE EXPENSES ARE NOT ALLOWED: Any expenditure relating to issue of shares, it is settled law, is not allowable inasmuch as it is in the nature of capital — *Brooke Bond India Ltd.* v. *CIT* [1997] 91 Taxman 225 ITR 798 (SC).

- BONUS ISSUE EXPENSES ARE ALLOWED: Expenditure on issue of bonus shares is revenue expenditure and is accordingly allowed to be debited to profit and loss account as decided in *CIT* v. *Genreal Insurance Corporation* (2006) 156 Taxman 96 (SC). The court held that issuance of bonus shares does not result in inflow of fresh funds rather it is merely a reallocation of company's funds, hence it cannot be said that company has acquired a benefit or advantage of enduring nature. The expenditure is revenue in nature.
- Legal charges in connection with amendment to Articles of Association are allowed.
- Bribes/illegal gratifications are not deductible but tips paid for services rendered is deductible - *Gwalior Road Lines* v. *CIT* [1998] 234 ITR 230 (MP)

- Where heroin seized is held to be assessee's stock-in-trade it would be allowed. Since it is not business expenditure, but a business loss. Business losses are allowable on ordinary commercial principles in computing profits. *Dr. T.A. Quereshi* v. *CIT* [2006] 157 TAXMAN 514 (SC)
- INTEREST: Following points should be noted—
  - → Interest which is paid/payable under Income-tax act or Wealth-tax act, is disallowed. Further, interest paid/payable on loan taken to pay income tax is not allowable;
  - → Interest payable paid/payable under any other law, is allowed if it is of compensatory nature, but penal interest is not allowed.
- PENALTY: Following points should be noted—
  - → Penalty for infraction of Law is not allowable (Penalty for breach of *contract* is allowed).
  - → Penalty in the nature of compensation is allowed.
- Commission paid (also called as freebees) to doctors by a diagnostic centre for referring patients for diagnosis cannot be allowed as business expenditure under section 37 as it is illegal and against public policy—*CIT* v. *Kap Scan and Diagnostic Centre P. Ltd.* (2012) 344 ITR 476 (P&H) *also* see CBDT Circular No. 5/2012.
- **Expenditures on CSR—Not deductible :** Finance Act, 2014 has clarify that any expenditure incurred by an assessee on the activities relating to Corporate Social Responsibility (CSR) referred to in section 135 of the Companies Act, 2013 shall NOT be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession. [Explanation 2]



CHAPTER 17
INCOME FROM BUSINESS OR PROFESSION
[Amounts not deductible]

AMOUNTS NOT DEDUCTIBLE [Section 40]

Notwithstanding anything contained in section 30 to 38, the following amounts shall not be deducted in computing the income under the head PGBP:

17.1 Interest, royalty, fees payable outside India without TDS [Section 40(a)(*i*)]

Deduction shall NOT be allowed in respect of interest, royalty, technical fee or other sum, which is payable:

(i) outside India, or

(ii) in India to a non-resident or a foreign company,

on which tax is deductible at source under Chapter XVII-B and such tax-

(a) has not been deducted [*i.e.* "*non-deduction case*"] or,

(b) after deduction, has not been paid during the previous year or in the subsequent year before the 'due date of filing of return' given under section 139(1) [*i.e.* "*non-payment case*"]

Deduction will be allowed in the year of their payment : where in respect of such sum,

1. tax has been deducted in any subsequent year, or
2. has been deducted in the P.Y. but paid in subsequent year after the time given u/s 139(1),

such sum shall be allowed as deduction in the previous year in which such tax has been paid.

Deduction will be allowed if payer is not deemed to be assessee in default : Finance Act, 2019, has inserted 2nd proviso to this section (*w.e.f.* A.Y. 2020-21). This proviso provides relief from disallowance of any of such sum even if assessee fails to deduct tax thereon (wholly or partly).

Conditions for such relief are as under—

Condition 1	Tax is deductible on such sum but is not deducted by the payer (wholly or partly); [*i.e.* "*non-deduction case*"]
Condition 2	The payer is not deemed to be an assessee in default as per section 201(1). As per section 201(1), the 'payer' will not to be treated as assessee in-default if — ♦ The payee has furnished his **return** of income after taking into account such income; ♦ He 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 CA in such form as may be prescribed.

Thus, if the above conditions are satisfied, then for the purpose of section 40(*a*)(*i*), it shall be deemed that the payer has deducted and *paid the tax on such amount on the date of furnishing of return of income* by such non-resident payee.

17.2 Interest, commission or brokerage, rent etc. without TDS [Section 40(a)(*ia*)]

Deduction shall NOT be allowed **to the extent of 30% of 'ANY SUM'** payable to a resident on which tax is deductible at source under Chapter XVII-B and such tax,

(*a*) has not been deducted or, [*i.e.* "*non-deduction case*"]

(*b*) after deduction, has not been paid on or before the due date of filing of return specified in section 139(1), [*i.e.* "*non-payment case*"].

Deduction will be allowed in the year of their payment : Where in respect of such sum:

1. tax has been deducted in any subsequent year, or
2. has been deducted in the P.Y. but paid in subsequent year after the due date specified u/s 139(1),

such sum shall be allowed as deduction in the previous year in which such tax has been paid.

Deduction will be allowed if payer is not deemed to be assessee in default : Finance Act, 2012, has inserted 2nd proviso to this section (*w.e.f.* A.Y. 2013-14). This proviso provides relief from disallowance of any of such sum even if assessee fails to deduct tax thereon (wholly or partly).

Conditions for such relief are as under—

Condition 1	Tax is deductible on such sum but is not deducted by the payer (wholly or partly); [*i.e.* "*non-deduction case*"]
Condition 2	The payer is not deemed to be an assessee in default as per section 201(1). As per section 201(1), the 'payer' will not to be treated as assessee in-default if — ♦ The payee has furnished his **return** of income after taking into account such income; ♦ He 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 CA in such form as may be prescribed.

Thus, if the above conditions are satisfied, then for the purpose of section 40(*a*)(*ia*), it shall be deemed that the payer has deducted and *paid the tax on such amount on the date of furnishing of return of income* by the resident payee.

17.3 Payment without 'equalisation levy' [New clause (*ib*) of Section 40(a)]

Deduction shall NOT be allowed in respect of any consideration paid or payable to a non-resident for a specified service on which equalisation levy is deductible under the provisions of Chapter VIII of the Finance Act, 2016, and such levy has not been deducted or after deduction, has not been paid on or before the due date specified in section 139(1).

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

Notes–

- As per provisions of Chapter VIII of Finance Act 2016, any person who is making payment (*i.e.* consideration) to a non-resident for 'specified services', is under an obligation to deduct equalisation levy @6% of such consideration. However, no such deduction is made if the aggregate amount of consideration during the previous year does not exceed Rs.1,00,000.
- 'specified services' means online advertisement, any provision for digital advertising space or any other facility or service for the purpose of online advertisement and includes any other service as may be notified by the Central Government in this behalf.

17.4 Other amounts not deductible under PGBP [Section 40(a)]

(a) Income tax: Any sum paid on account of any tax levied on profits on the basis of or in proportion to the profit and gain of any business or profession. Therefore, the following amount shall be disallowed :

(i) Income tax paid under Indian income tax Act, 1961

(ii) Tax paid in foreign country for which relief or credit is available under section 90 or 90A or 91 of income tax Act, 1961. [Section 40(*a*)(*ii*)]

(b) Wealth tax: Any sum paid on account of wealth tax chargeable under wealth tax act, 1957 or any tax of similar nature chargeable under any law in-force in any foreign country is not deductible. [Section 40(*a*)(*iia*)]

(c) Salary payable outside India or to a non-resident, on which–

(i) tax has not been paid

(ii) nor deducted therefrom under chapter XVII-B. [Section 40(*a*)(*iii*)]

In other words such deduction will be allowed only when TDS has been deducted on such payment AND it is paid to the credit of Central Government within the time prescribed under chapter XVII-B.

(d) Provident fund payment without tax deduction at source [Section 40(*a*)(*iv*)]: Any contribution to–

(a) a provident fund, or

(b) other fund established for the benefit of employees of the assessee,

is not deductible unless the assessee has made **effective arrangements** to make sure that tax shall be deducted at source from any payment made from the fund which are chargeable to tax under the head "salaries".

(e) Tax on non-monetary perquisites paid by the employer [Section 40(*a*)(*v*)]: Where tax on non-monetary perquisites, referred to in section 10(10CC), is paid by the employer then, such amount shall not be allowed to be deducted.

Note : The amount so paid by the employer is not taxable in the hands of employees by virtue of section 10(10CC).

(f) Amount of royalty, licence fee, service fee payable to State Govt. Undertakings [Section 40(*a*)(*iib*)] : Any amount paid by way of royalty, licence fee, service fee, privilege fee, service charge, etc., which is levied exclusively on a State Government undertaking, by the State Government (SG), shall not be allowed as deduction while computing the income of such undertakings under the head "PGBP".

17.5 Disallowance in case of partnership firms [Section 40(b)]

Total income of the partnership firm is determined as a separate entity and it is computed under various heads of income. However, while computing taxable profits under the head 'Profits and gains of business or profession', a deduction is allowable to the firm on account of interest and remuneration payable to the partners.

Deduction of interest to partners is allowed under section 36 whereas remuneration to working partner is allowed under section 37.

Section 40(*b*) deals with the amounts which are not deductible in case of a firm. As per this section, interest and remuneration of partners can be claimed as deduction under section 36 or 37, as the case may be, but it will be subject to the following conditions—

Condition 1	Payment of remuneration to working partners and interest to *any partner* is authorised by and is in accordance with partnership deed.
Condition 2	Payment of remuneration/interest should not relate to a period prior to the date of such partnership deed.
Condition 3	Interest payable to any partner shall be allowed as a deduction subject to simple interest rate upto 12% per annum. If however, interest payable exceeds the rate of 12% per annum, then such excess amount is not deductible. If the partnership deed provides for interest at less than 12% per annum, the deduction of interest shall be allowed to the extent provided by the partnership deed.
Condition 4	Payment of salary, bonus, commission or remuneration by whatever name called, is not made any non-working partner. If made, it will be disallowed. It should be noted that interest can be paid to any partner including non-working partner upto the limits provided under *Condition 3*.
Condition 5	The payment of salary, bonus, commission or remuneration to any working partner shall be allowed as a deduction only to the extent of limits provided by this section. (*see* below)

Deduction in respect of any salary, bonus, commission or remuneration, by whatever name called, payable to any *working partner(s)* cannot exceed the following limits—

Amount of book profit	*Maximum limit provided by section 40(b)*
♦ Where book profit is negative *i.e.* in case of loss	- Rs. 1,50,000
♦ Where book profit is positive:	
→ on first Rs. 3,00,000 of the book-profit	- Rs. 1,50,000 or 90% of book-profit, whichever is higher
→ on the balance of book-profit	- 60 % of balance book profit

Notes—

a. **"book-profit"** means the net profit, as shown in the profit and loss account, computed under the head PGBP as increased by the aggregate amount of the remuneration paid or payable to all the partners of the firm *if such amount has been deducted* while computing the net profit.

b. **"Working partner"** means an individual who is actively engaged in conducting the affairs of the business or profession of the firm of which he is a partner.

Problem—17.1 : *R & Co. is a partnership firm consisting of three partners R, G, S, sharing profit and losses in ratio of 3:2:3. The firm was doing business in manufacture of electrical appliances. The Profit and loss account of the firm for the year ending 31-3-2020 was as under:*

	Rs.		*Rs.*
Purchases	*7,50,000*	*Sales*	*16,70,000*
Salary of staff	*2,72,000*	*Long-term capital gains*	*4,90,000*
Interest to Partners:		*Debenture Interest*	*40,000*

R	*25,200*		*Miscellaneous business receipts*	*4,000*
G	*2,64,000*		*Interest on drawings recovered from R*	*16,000*
S	*58,800*	*3,48,000*		
Depreciation		*1,80,000*		
Remuneration to partners:				
R	*1,02,000*			
G	*60,000*			
S	*72,000*	*2,34,000*		
Miscellaneous expenses		*1,80,000*		
Net profit:				
R	*96,000*			
G	*64,000*			
S	*96,000*	*2,56,000*		
		22,20,000		*22,20,000*

The following further details are furnished:

(1) The firm has completed all the formalities to be considered as a partnership assessed as such.

(2) The partnership deed was amended on 1.4.2019 providing remuneration and interest to partners as under:

Partner	*Remuneration*	*Interest on capital*
R (Working partner)	*Rs. 8,500 p.m.*	*14% simple interest*
G (Sleeping partner)	*Rs. 5,000 p.m.*	*16% simple interest*
S (Working partner)	*Rs. 6,000 p.m.*	*14% simple interest*

(3) Depreciation eligible under the Income-tax Act works to Rs. 96,000.

(4) Under Miscellaneous expenses Rs. 82,000 are inadmissible expenses.

Calculate the taxable income of firm and partners for the A.Y. 2020-21

Solution :

Computation of Book profits and remuneration deductible under section 40(b)

		Rs.
Net profit as per profit and loss account:		2,56,000
Less: Long-term capital gains		(-) 4,90,000
Less: Interest on debentures		(-) 40,000
Add: Depreciation as per Profit & Loss account		(+) 1,80,000
Less: Depreciation eligible under the Income-tax Act		(-) 96,000
Add: Remuneration to partners		(+) 2,34,000
Add: Interest to partners in excess of 12% not allowed under section 40(b)		
R 2/14 of Rs. 25,200	3,600	
R 4/16 of Rs. 2,64,000	66,000	
R 2/14 of Rs. 58,800	8,400	(+)78,000
Add: Inadmissible expenses included in Miscellaneous expenses		(+)82,000
	Book Profit	**2,04,000**

Remuneration to partners deductible as per section 40(b), being lower of the following:

a. (90% of Rs. 2,04,000) = Rs. 1,83,600; or

b. Rs. 1,74,000, *i.e.* Rs. 1,74,000

Computation of total income of the firm for the A.Y. 2020-21

		Rs.
Income from business:		
Book profit computed as above		2,04,000
Less: Admissible remuneration to partners		(-)1,74,000
Income under the head business		***30,000***
Income under the head capital gains:		
Capital gain		4,90,000
Income under the head capital gain		***4,90,000***
Income from other sources:		
Interest on debentures		40,000
Income under the head other sources		***40,000***
	Gross total income	**5,60,000**
Computation of tax:		
- *Special rates:* Tax on long-term capital gains 20% of Rs. 4,90,000		98,000
- *Normal rates:* Tax on balance of Rs. 70,000 @ 30%		21,000
Total		1,19,000
EC +SHEC @3%		3,570
	Total tax liability	**1,22,570**

AMOUNTS NOT DEDUCTIBLE IN CERTAIN CIRCUMSTANCES [Sec.40A]

Any expenditure or allowance, though specifically allowed under any other provisions of PGBP head, will NOT be deductible in certain circumstances, given under section 40A.

17.6 Payment to relatives [Section 40A(2)]

1. Transactions other than 'specified domestic transactions': Where the assessee incurs any expenditure in respect of which a payment has been made to a '**relative**' referred to in section 2(41), so much of expenditure as is considered to be excessive or unreasonable, shall be disallowed by the Assessing Officer having regards to:

(a) the **market value** of the goods or services for which payment is made, or

(b) the **benefit** derived by the assessee from such payment.

2. In case of 'specified domestic transactions' referred to in section 92BA : For the assessment years 2013-14 to 2016-17, in case of specified domestic transaction the disallowance on above mentioned basis cannot be made if such transaction is at arm's length price as is defined under section 92F(*ii*).

3. "Relative"- Meaning

Assessee	Relative means—
❒ Where assessee is an individual	✓ Spouse, brother, sister, or any lineal ascendant or descendant, or ✓ Any person in whose business such individual or his relative has substantial interest.
❒ Where assessee is a company, firm, AOP, HUF	✓ Any director of the company, partner of the firm, member of AOP/HUF, or ✓ Any relative of above persons, or ✓ Any other person in whose business the above persons has substantial interest.
❒ Any assessee	✓ Any "person" (*Being* a company, firm, AOP, HUF or director of such company, or partner of such firm or member of such AOP/HUF or relatives of such director, partner or member or any other company carrying on business or profession in which such first mentioned company is having substantial interest) having substantial interest in the business or profession of the assessee.

Notes—

1. Section 40A(2) can be invoked where any **"expenditure"** has been incurred by the assessee, but if suppose the assessee company sells some goods manufactured by it to one of its director at a price which is lower than the market price of these goods then, this section cannot be invoked.
2. This section covers all types of expenditures including expenditure on purchase of raw material, stores, goods or payment of salaries etc. to employees.
3. **Meaning of 'substantial interest'**- For the purposes of this sub-section, a person shall be deemed to have a substantial interest in a business or profession, if,
   a. in a case where the business or profession is carried on by a company, such person is, at any time during the previous year, the beneficial owner of shares carrying not less than 20% of the voting power; and
   b. in any other case, such person is, at any time during the previous year, beneficially entitled to not less than 20% of the profits of such business or profession

17.7 Payment in cash in excess of Rs.10,000/35,000 [Section 40A(3)]

As per this section, certain expenditures (which are otherwise allowed as deduction but by virtue of this section) will be disallowed if payment thereof is made otherwise than by an account payee cheque or account payee bank draft.

Provisions of this section are as under—

- Where the assessee incurs any expenditure of more than Rs. 10,000 (Rs.35,000 in case payment is made for plying, hiring or leasing goods carriages);
- In respect of such expenditure payment(s) is made to a person *in a day* which exceeds Rs. 10,000/35,000.
- Such payment is made otherwise than by an account payee cheque or account payee bank draft or electronic clearing system through a bank account

then, as per this section, the deduction shall not be allowed in respect of such expenditure upto the AMOUNT SO PAID.

Notes—

1. If an assessee gives donation, which is eligible for deduction under section 80G in cash, section 40A(3) is not applicable, since donation is not deductible under section 30 to 37 but is deductible under section 80G.
2. Section 40A(3) shall apply only where both the amount of bill and amount of payment exceeds Rs.10,000 (or as the case may be Rs.35,000).
3. The provision of the section do not apply to re-payment of loans or payment towards the purchase price of capital assets (the asset on which depreciation can be claimed) such as plant and machinery not for re-sale- [Circular No. 34, 1970]
4. Provision of section 40A(3) are applicable only in computing the income under the head PGBP and income from other sources – [Circular No. 34, 1970]
5. **Deduction claimed earlier and payment is made in current year- Section 40A(3A)**
   - ✓ Where any expenditure (exceeding Rs.10,000/35,000) has been claimed earlier on due basis,
   - ✓ and payment (exceeding Rs.10,000/35,000) in respect of which is made in any subsequent previous year otherwise than an account payee cheque/draft,
   - ✓ the payment so made shall be deemed to be the business income of the assessee of the previous year in which such payment is made even if the business has been discontinued.

Examples—

Circumstances	*Solution*
Expenditure: Rs.80,000. Cash payments are made as under— 1st payment : April 10, 2019 : Rs.5,000 2nd payment : April 12, 2019 : Rs.6,000 3rd payment : April 14, 2019 : Rs.4,000 4th payment : April 16, 2019 : Rs.65,000	Disallowance under section 40A(3) = Rs. 65,000
Expenditure: Rs.80,000. Full payment is made (in cash) on 10th April	Disallowance under section 40A(3) = Rs. 80,000.
Bill 1: 5,000 Bill 2: 8,000 Payment (in cash) in a day : 13,000 (for both the bills)	No disallowance since "an expenditure" represented by a bill amount does not exceed Rs. 10,000.
Mr. S purchases a building for Rs. 2,00,000, payment for which is made in cash.	Section 40A(3) is not applicable for purchase of capital assets. However, section 43(1), 'Actual Cost' is also amended by Finance Act, 2017 to provide that where an assessee incurs any expenditure for acquisition of any asset in respect which a payment or aggregate of payments made to a person in a day, otherwise than by an account payee cheque drawn on a bank or account payee bank draft or use of electronic clearing system through a bank account, exceeds Rs.10,000, such expenditure shall be ignored for the purposes of determination of actual cost of such asset.
Mr. S a *'kacha arhatiya'* (consignee agent) makes payment of Rs. 2,00,000 in cash for goods received by him for sale on consignment basis.	No disallowance since such payment is not "an expenditure" deductible in computing the business of the agent.

Mr. S a *'Puccha arhatiya'* (commission agent) makes payment of Rs. 2,00,000 in cash for goods received by him for sale on commission basis.	Rs. 2,00,000 will be disallowed being payment for "an expenditure".

Exception : Rule 6DD permits certain payments otherwise than an account payee cheque or demand draft under certain circumstances, as under—

1. where the payment is made to LIC, and other financial institution
2. where the payment is made to the Government.
3. where the payment is made through credit/debit card, e-payments, letter of credit (LOC), account adjustment by banks etc.
4. where the payment is made to cultivator or grower for the purchase agricultural or forest produce or the produce of animal husbandry or dairy or poultry farming, or fish or fish products.
5. where the payment is made for the purchase of the products of cottage industry (without the aid of power).
6. where the payment is made in a village or town, not served by any bank, to any villager thereof.
7. where any payment is made to an employee or his heir in connection with payment on account of gratuity or similar terminal benefit if aggregate amount does not exceed Rs.50,000.
8. where the payment is made by way of salary to the employee (after TDS), where such employee is temporarily posted for 15 days or more in a place other than normal place of duty.
9. where the payment was required to be made on a day on which the banks were closed.
10. where the payment is made for purchase of foreign currency.

17.8 Disallowance in respect of provision for gratuity [Section 40A(7)]

No deduction would be allowed to the assessee *in respect of any provision* made by him towards the payment of gratuity to his employees on their retirement, or on termination of service. However this provision is subject to the following two exceptions (*i.e. in the following cases provision for gratuity is allowed as deduction)*-

Exception 1	Where any such provision is made for the purpose of payment of any sum by way of contribution to an **approved gratuity fund**.
Exception 2	Where any such provision is made for the purpose of payment of **any** gratuity that has become **payable during the previous year** (provided that no deduction has been claimed in respect of such payment in any earlier year).

17.9 Disallowance in respect of contribution to non-statutory funds [Section 40A(9)]

No deduction shall be allowed where the assessee pays as an employer, any sum towards setting up or formation of or as contribution to any fund, trust, company, AOP, BOI, registered society, or other institution for any purpose. However, where any sum is paid by the assessee as an employer by way of contribution towards :

(a) Recognised provident fund, refer to in section 36(1)(*iv*), or

(b) Approved superannuation fund, refer to in section 36(1)(*iv*), or

(c) Approved gratuity fund, refer to in section 36(1)(*v*), or

(d) Any sum is required to be paid under any law-in-force,

then deduction shall be allowed to the assessee.

17.10 Disallowance of marked to market losses except computed in ICDSs [Section 40A(13)]

W.e.f. A.Y. 2017-18, no deduction or allowance shall be allowed in respect of any marked to market loss

or other expected loss, except as allowable under section 36(1)(*xviii*) [*i.e.* marked to market loss computed in accordance with ICDSs.

17.11 Certain deduction to be allowed only on actual payment [Section 43B]

Notwithstanding that the assessee follows mercantile method of accounting, the following expenditures are allowed as deduction ONLY IF the amount in respect of which has been *paid during the previous year or up to the 'due date of return filing'*—

(a) Any **tax, duty, cess** or fee, by whatever name called, under any law-in-force, or

(b) Employer's **contribution to provident fund** or superannuation fund or any other fund for the welfare of employees, or

(c) Any sum payable as **bonus or commission** to employees for service rendered, or

(d) Any sum payable as **interest on any loan** or borrowing from-

- Public financial institution, or
- State financial corporation, or
- State industrial investment corporation, or

(e) **Interest on any loan** or advance taken from a schedule bank including co-operative bank, or

(f) Any sum payable by an employer in **lieu of leave** to the credit of his employee, or

(g) any sum payable to the **Indian Railways** for the use of railway assets, or

(h) **any sum payable by the assessee as interest on any loan or borrowing -**

- **from a deposit taking non-banking financial company or**
- **from systemically important non-deposit taking non-banking financial company, in accordance with the terms and conditions of the agreement governing such loan or borrowing.**

Where :

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

[Inserted by Finance Act, 2019 w.e.f. AY 2020-21]

Deemed payments for the purpose of section 43B : Where under any scheme of the "State Government"—

a. payment of sales tax is *deferred* for specified number of years, or

b. sales tax is *converted into loan*,

then, it shall be assumed that the sales tax has been paid for the purpose of section 43B in the year in which such deferment/conversion takes place.



CHAPTER 18
INCOME FROM BUSINESS OR PROFESSION
[Misc. topics of PGBP]

18.1 Stamp duty value of land and building to be taken as 'sale price' [Section 43CA]

This section provides that where the consideration for the transfer of an asset (other than capital asset), being land or building or both, is less than the *stamp duty value*, this stamp value shall be deemed to be the full value of the consideration for the purposes of computing income under the head "PGBP". Such stamp value shall be calculated with reference to the following dates :

♦ If *all* the following conditions are satisfied : *(a)* the 'date of agreement' and the 'date of registration' are not same; *(b)* the consideration (or part thereof) has been received by an account payee cheque or an account payee bank draft or by use of electronic clearing system through a bank account or such other electronic mode as may be prescribed. *(c)* such consideration (or part thereof) has been received on or before the 'date of such agreement'.	The stamp duty value may be taken to be the one which is prevailing on the **'date of the agreement'**
♦ In any other case	The stamp duty value will be taken to be the one which is prevailing on the **'date of the registration'.**

Provided that where the stamp duty value does not exceed 105% of the consideration for such transfer, such consideration shall be deemed to be the full value of the consideration for such transfer.

Reference to Valuation Officer : Provisions of section 50C will apply *mutatis-mutandis.*

18.2 Deemed profits and their taxability [Section 41]

♦ *MEANING :* This section deals with 'recovery' of certain expenses of which deduction has been allowed to the assessee. Any such recovery, at any later date, will be taxable as 'deemed profit'.

♦ *TYPES OF DEEMED PROFITS :* Following are regarded as deemed profits—

Recovery against any deduction **[Section 41(1)]**	❒ *APPLICABILITY :* This section applies if following conditions are satisfied— *1* If in any *earlier year*, a DEDUCTION has been allowed to the assessee in respect of any EXPENSE (revenue or capital) or a TRADING LIABILITY has been incurred by him. *2* During the *current year*, the assessee has obtained a refund of such expenditure or has obtained a benefit in respect of such liability by way of remission or cessation thereof (including unilateral act of the assessee by writing off of such liability in his books). ❒ *TAXABILITY :* If above conditions are satisfied, the amount of refund or benefit so obtained by him, shall be deemed to be profit and gains of the business or profession of the assessee and will, therefore, be taxable in the year in which they are so received by the assessee (whether that business is continued or not). **Note :** If amalgamation or demerger or any other mode of succession has took place, taxability will be made in the hands of successor.

Sale of asset used for scientific research **[Section 41(3)]**	❒ *APPLICABILITY :* This section applies where an asset is sold after using it for scientific research. But such sale should NOT be after using it in any other business of the assessee. ❒ *TAXABILITY :* LOWER of the following will be deemed to be profit and gains and will, therefore, be taxable in the year of such sale : (a) Sale price ; (b) Amount of deduction allowed under section 35. **Note :** Excess sale price over its cost of acquisition will taxable as 'capital gain'.
Recovery of bad debts **[Section 41(4)]**	❒ *APPLICABILITY :* This section applies if any recovery is made out of BAD DEBTS which are allowed as deduction in any earlier year by virtue of section 36(1)(*vii*). ❒ *TAXABILITY :* Following amount will be deemed to be profit and gains and will, therefore, be taxable in the year of such recovery : *Recovery amount (−) deduction claimed but not allowed* Taxability will be made even if the business is discontinued by the assessee.
Amount withdrawn from special reserve **[Section 41(4A)]**	❒ *APPLICABILITY :* This section applies where any amount is withdrawn from any reserve created under section 36(1)(*viii*). ❒ *TAXABILITY :* The amount so withdrawn will be taxable in the year of such withdrawal irrespective of the fact whether the business is in existence in that year or not.
Recovery after discontinuance of business or profession **[Section 172(3A), (4)]**	As per these sub-sections, where any recovery is made out of discontinued business or profession, it will taxable in the year such recovery is made.
Set-off of loss beyond 8 years **[Section 41(5)]**	Normally, losses of business cannot be carried forward beyond 8 years, but if assessee makes any recover under section 41(1)/(3)/(4), then losses *pertaining to the year in which such business/profession (other than speculative business) was discontinued,* can be set off against such recovery even after the expiry of 8 years.

18.3 Taxability of foreign exchange fluctuation [Section 43A and 43AA]

These two sections deal with taxability of foreign exchange fluctuation by treating the gain as income and loss and expense. Provisions of these sections are as under—

Gain or loss due to foreign exchange fluctuation **[Section 43A]**	As per this section : - where an assessee has acquired any asset in any previous year from a country outside India for the purposes of his business or profession and, - due to change in exchange rate, the liability of the assessee (*i.e.* the amount payable for such asset) is increased or decreased during the *previous year of payment* - the amount by which the liability as aforesaid is so increased or decreased shall be added to, or, as the case may be, deducted from— (i) the 'actual cost' of the asset as defined in section 43(1); or (ii) expenditure of a capital nature referred to in section 35(1)(*iv*)/35A/36(1)(*ix*) (iii) the COA referred to in section 48.
Gain or loss due to foreign exchange fluctuation other than those provided by section 43A **[Section 43AA]**	(1) Subject to the provisions of section 43A, any gain or loss arising on account of any change in foreign exchange rates shall be treated as income or loss, as the case may be, and such gain or loss shall be computed in accordance with the ICDDs notified under section 145(2). (2) For the purposes of sub-section (1), gain or loss arising on account of the effects of change in foreign exchange rates shall be in respect of all foreign currency transactions, including those relating to— (i) monetary items and non-monetary items; (ii) translation of financial statements of foreign operations; (iii) forward exchange contracts;

	(iv) foreign currency translation reserves.

18.4 Compulsory maintenance of accounts [Section 44AA]

1. This section provides as under—

Person carrying on "specified profession"	*Person carrying on "non-specified profession" or person carrying on business*
❒ **Specified books of accounts :** Every person carrying on "specified profession" shall maintain books of accounts as prescribed by Rule 6F **if—** (a) gross receipts from such profession exceeds Rs. 1,50,000 **in each** of the 3 years immediately preceding the previous years, **or** (b) in case of new profession, gross receipts are likely to exceed Rs. 1,50,000 in **that** previous year. ❒ **Other books of accounts :** If his gross receipts are not in excess of the above said limits, such person shall have to maintain such books of accounts and other documents *as may enable the assessing officer to compute his total income.*	❒ **Other books of accounts :** Persons covered by the following *CATEGORIES* shall maintain such books of accounts and other documents *as may enable the assessing officer to compute his total income —* *CATEGORY 1*— Every person who is carrying on "non-specified profession" or a person who is carrying on business **if—** (a) **income** from such business or profession exceeds Rs. 1,20,000 (Rs. 2,50,000 in case of individual and HUF) in any of the 3 years immediately preceding the previous year [or in case of new business or profession, the income is likely to exceed Rs. 1,20,000 (Rs. 2,50,000 in case of individual and HUF) during the previous year], or (b) total **sale, turnover or gross receipts** of such business or profession exceeds Rs. 10,00,000 (Rs. 25,00,000 in case of individual and HUF) in any of the 3 years immediately preceding the previous year [or in case of new business or profession, the sale, turnover or gross receipts are likely to exceed Rs. 10,00,000 (Rs. 25,00,000 in case of individual and HUF) during the previous year], or *CATEGORY 2*— Every person who is covered by section 44AD or 44AE or 44AF or 44BB or 44BBB, and who claims his income to be lower than the deemed profits referred to in these sections. *CATEGORY 3*— Person covered by section 44AD **IF** his income exceeds the maximum amount not chargeable to tax. ❒ **No books of accounts :** If the assessee is not covered by any of the above *CATEGORIES,* he is not required to maintain any books of accounts.

2. Meaning of certain terms— for the purpose of this section,

- **"Specified profession"** include profession of legal, medical, engineering, architecture, accountancy, technical consultancy, interior decoration, authorised representative, film artist, company secretary, information technology.
- **"film artist"** means any person engaged in his professional capacity in the production of a cinematograph film whether produced by him or by any other person, as (*i*) an actor; (*ii*) a cameraman; (*iii*) a director; (*iv*) a music director; (*v*) an art director; (*vi*) a dance director; (*vii*) an editor; (*viii*) a singer; (*ix*) a lyricist; (*x*) a story writer; (*xi*) a screen-play writer; (*xii*) a dialogue writer; and (*xiii*) a dress designer.

3. Books of accounts prescribed by Rule 6F—

(i) a cash book;

(ii) a journal, if accounts are maintained on mercantile basis;

(iii) a ledger (including cash/bank accounts);

(iv) carbon copies of bills (serially numbered) exceeding Rs. 25 *issued by the person*;

(v) Original bills (and receipts) wherever issued to the person and if bills or receipts are not issued to the person and the amount of expenditure incurred does not exceed Rs. 50, payment voucher prepared and signed by the person.

Note : In case of **medical profession**, the assessee, in addition to the above, needs to maintain *a daily case register [Form No. 3C] and a stock register.*

4. Period of holding of books of accounts [Rule 6F(5)] : These books of accounts shall be kept and maintained for a period of 6 years from the end of the relevant assessment year.

5. Penalty for non-maintenance of books [Section 271A] : Where assessee fails to keep and maintain the books of account required under section 44AA, he shall pay by way of penalty a sum not exceeding Rs. 25,000.

18.5 Compulsory audit of accounts (*i.e.* Tax Audit) [Section 44AB]

1. Following persons are required to undergo tax audit—

Different persons	*Conditions given under sections 44AB*
▪ A person carrying on **business**	If the total sale, turnover or gross receipts from such business exceeds Rs. 1 crore in any previous year.
▪ A person carrying on **profession**	if the gross receipts from such profession exceeds 50 lakh in any previous year.
▪ A person carrying on **specified business** as defined in section 44AE, 44BB, or 44BBB	If such person claims profit and gains from the business to be lower than the deemed profit and gain computed under these sections.
▪ A person carrying on **specified business** referred to in section 44AD	If such person claims profit and gains from the business to be lower than the deemed profit and gain computed under sections 44AD(1) and whose total income exceeds the maximum amount not chargeable to tax.

2. Tax audit by whom : Tax audit shall be carried by a Chartered Accountant.

3. Form and time limit for furnishing report : The assessee is required to furnish such *audit report* in the prescribed form (*i.e. Form 3CA or 3CB*) and setting forth such *particulars* as may be required (*vide Form No. 3CD*) on or before the due date of furnishing return of income under section 139(1).

4. Tax audit not required in certain cases : Where a person is required to get his accounts audited **under any other law** then, it will be sufficient compliance of this section if such person gets the accounts audited under such other law before 30th September of the assessment year and furnish the audited report on or before 30th September of the Assessment year.

5. Penalty on failure to get accounts audited : [Section 271B]- If any person fails to get his accounts audited in respect of any previous year or years relevant to an assessment year or furnish a report of such audit as required under section 44AB, the Assessing Officer may direct that such person shall pay, by way of penalty, a sum equal to 0.5% 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 Rs. 1,50,000, whichever is less.

18.6 Method of accounting [Section 145]

♦ *METHOD OF ACCOUNTING*: Income chargeable under the head "Profits and gains of business or profession" or "Income from other sources" shall be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee- **[Section 145(1)]**

♦ *ASSESSMENT IN THE 'MANNER' PROVIDED BY SECTION 144:* Where the AO :

(a) is not satisfied about the correctness or completeness of the accounts of the assessee, or

(b) where the method of accounting so provided or the accounting standards notified by the Central Government, have not been regularly followed by the assessee,

he may make an assessment in the manner provided in section 144- **[Section 145(3)]**

♦ *VALUATION OF STOCK:* Valuation of stock is a vital factor in determining the taxable income of the assessee from the business, as correct profit cannot be ascertained unless the opening and closing stock are valued correctly.

Neither Income-tax Act nor rules thereof prescribes or permits any particular method of valuation of stock. It is now well settled law that the assessee can value his closing stock at cost or market price, whichever is lower.

Notes—

1. The Central Government may notify (in the Official Gazette) accounting standards to be followed by any class of assessees or in respect of any class of income – **Section 145(2).** *These Accounting Standards are required to be followed while computing income of the assessee. Thus, the assessee is not required to maintain books of account on the basis of these Accounting Standards.*
2. Assessee can opt separate basis for his separate businesses *e.g.* accrual basis for one business and cash basis for other business.
3. In case of income chargeable under the head "Income from salaries", "Income from house property" and "Capital gain", the method of accounting adopted by the assessee is not relevant in determining his taxable income.

18.7 Presumptive taxation under PGBP – *For Businesses* [Section 44AD and 44AE]

1. Summary of all these sections is as under—

Particulars	*Section 44AD* *Special provision for computing profits and gains of business on presumptive basis* *[Every eligible business]*	*Section 44AE* *Special provisions for computing profit and gains of business of plying, hiring or leasing goods carriage*
Applicability	Where 'eligible assessee' is engaged in 'eligible business' *Where—* ♦ **'eligible assessee'** means, Individual, HUF or Firm (other than LLP) being resident who has NOT claimed deductions of Section 10A, 10AA, 10B, 10BA, Heading-C deductions (80-IA, 80-IB etc.) ♦ **'eligible business'** means, any business (other than business referred to in section 44AE and business of agency or commission), whose turnover during the previous year DOES NOT exceed Rs. 2 crore.	Where assessee engaged in business of plying, hiring or leasing of goods carriage.
Overriding effect	This section overrides section 28 to 43C. Further, any deduction allowable under section 30 to 38 shall be deemed to have been already given full effect. ***Provided that*** *where the eligible assessee is a firm* ***(then up to the A.Y. 2016-17)****, the salary and*	This section overrides section 28 to 43C. Further, any deduction allowable under section 30 to 38 shall be deemed to have been already given full effect. ***Provided that*** *where the eligible assessee is a firm, the salary and interest paid to its partners shall be deducted*

	interest paid to its partners shall be deducted from the deemed income so computed subject to the conditions and limits specified in section 40(b). In such a case the "book profit" for the purpose of section 40(*b*) means the deemed income so computed.	*from the deemed income so computed subject to the conditions and limits specified in section 40(b).* In such a case the "book profit" for the purpose of section 40(*b*) means the deemed income so computed.
Deemed income (under PGBP)	Deemed income will be : ♦ **6%** of gross receipts of such business (or any higher sum declared by the assessee) received by an account payee cheque or demand draft or use of electronic clearing system through a bank ✓ during the previous year OR ✓ before the due date of filing of ITR in respect of the previous year. ♦ In any other case **8%** of gross receipts of such business, ♦ or any higher sum declared by the assessee.	Deemed income will be— ♦ In case of an assessee being the owner of Heavy Goods Vehicle : **Rs.1,000 per ton** of gross vehicle weight for every month or part of month per vehicle, or ♦ Other than heavy goods vehicle : Rs.**7,500** every month or part of month per vehicle, ♦ Or any higher income claimed to have earned by him. Where, 'Heavy Goods Vehicle' means any goods carriage the gross vehicle weight of which exceeds 12,000 kilograms. (1 Ton = 1000 kilograms)
Non-applicability of this section	In the following cases such scheme shall not apply: (i) where gross receipts from such business exceeds Rs. 2 crore; or (ii) where assessee claims profit to be less than 6% or 8% of gross receipts.	In the following cases such scheme shall not apply: (i) where assessee owns more than 10 vehicles at any time during the previous year; **or** (ii) where assessee claims profit to be lower than the amount specified as above.
Assessee has an option to claim lower profits than this section	Where an eligible assessee declares profit for any P.Y. in accordance with the provisions of this section and thereafter he declares profit for any of the 5 succeeding P.Y. NOT in accordance with the provisions of this section, then– *(a)* he shall not be eligible to claim the benefit of the provisions of this section for 5 P.Ys. subsequent to the P.Y. in which he has made such declaration. [Sub-section (4)], and *(b)* if his total income exceeds the maximum amount not chargeable to income-tax, he shall be required to keep and maintain books and accounts as per section 44AA and to get them audited as per section 44AB.	The assessee may claim lower profits and gains than the profits and gains specified in this section *supra*, if he keeps and maintains such books of account and other documents as required section 44AA **and** gets his accounts audited and furnishes a report of such audit as required by section 44AB.

2. Common provisions of section 44AD and 44AE :

(a) The written down value of any asset of an eligible business shall be deemed to have been calculated as if the eligible assessee had claimed and had been actually allowed the deduction in respect of the depreciation for each of the relevant assessment years.

(b) The provisions of chapter VI and VI-A shall be allowed.

(c) In case of 'eligible business' referred to in section 44AD, provisions of Chapter XVII-C (*i.e.* Advance Tax) are not applicable.

18.8 Presumptive taxation under PGBP– *For Professions* [New Section 44ADA]

Summarised provisions of this section are as under—

Particulars	*Section 44ADA* *Special provision for computing profits and gains of profession on presumptive basis.*
Applicability	Where 'eligible assessee' is engaged in 'eligible profession' Where— ♦ **'eligible assessee'** means, an individual, being a resident, engaged in any 'specified profession' referred to in section 44AA. ♦ **'eligible profession'** means, any specified profession referred to in section 44AA(1), whose total receipts during the previous year DOES NOT exceed Rs. 50 lakhs.
Overriding effect	This section overrides section 28 to 43C.
Deemed income (under PGBP)	50% of gross receipts of such profession or any higher sum declared by the assessee.
Non-applicability of this section	In the following cases such scheme shall not apply: *(i)* where gross receipts of such profession during the previous year exceeds Rs. 50 lakhs; or *(ii)* where assessee claims income to be less than 50% of gross receipts.
Assessee has an option to claim lower profits than this section	Where an eligible assessee declares his income to be lower than 50% of gross receipts and his total income exceeds maximum amount not chargeable to tax, he shall be required to keep and maintain books and accounts as per section 44AA and to get them audited as per section 44AB.

18.9 Special provision for computing the profits and gains of shipping business in case of non-residents [Section 44B]

(*i*) This section provides for computation of the profits and gains of the business of shipping carried on by non-residents to the extent they are chargeable to income-tax in India.

According to this, a sum equal to 7.5% of the aggregate of the following amounts must be deemed to be the profits and gains of the business of shipping chargeable to tax under the head 'profits and gains of business or profession'.

(*ii*) The amount paid or payable, whether within India or outside, to the assessee or to any person on his behalf on account of the carriage of passengers, livestock, mail or goods shipped at any port in India.

(*iii*) The amount received or deemed to be received in India by the assessee himself or by any other person on behalf of or on account of the carriage of passengers, livestock, mail or goods shipped at any port outside India.

The total of the above two amounts (*ii* and *iii*) must be ascertained and 7.5% thereof would be calculated and taken as the income from the business chargeable to tax in India. These provisions for computation of the income from the shipping business in case of non-residents would apply notwithstanding anything to the contrary contained in the provisions of sections 28 to 43A of the Income-tax Act. In other words, the income would be computed on this basis without applying the various provisions contained in sections 28 to 43A. Consequential provisions are also seen in section 172.

For the purposes of this section, *receipts* forming the basis of estimates on non-resident shipping lines will include demurrage and handling charges.

Section 44B v. Section 172 - There is difference between section 44B and section 172. In section 44B procedure for assessment and collection of tax is provided. The use of *non obstante* clause refers only to sections 28 to 43A and not to the other provisions of the Act as contemplated under section 172(1) - *V.M. Salgaocar & Bros. Ltd.* v. *Deputy Controller [1991] (Kar.).*

Point of difference	Section 172	Section 44B
▪ *Purpose of section*	This section is for the purpose of *levy and recovery of tax* in the case of any ship, belonging to or chartered by a non-resident, which carries passengers, livestock, mail or goods shipped at a port in India.	Under this section procedure for *assessment and collection* of tax is provided in the case of an assessee, being a non-resident, engaged in the business of operation of ships.
▪ *Overriding effect*	This section overrides all provisions of this Act.	This section overrides section 28 to 43A and not the other provisions of the Act.
▪ *Whether assessee can avail facility of regular assessment?*	Yes, under sub-section (7), assessee can avail facility of regular assessment and once the option is exercised, the regular assessment will be governed by section 44B.	Yes, this section is meant for regular assessment.
▪ *Taxability*	If the assessee not opts to exercise the option referred to in sub-section (7), 7.5% of amount received on account of carriage of goods, passengers, etc., is taxable at the rate applicable to a foreign company.	A sum equal to 7.5% of the aggregate of the amounts specified in section 44B(2) shall be deemed to be the profits and gains of such business chargeable to tax under the head PGBP and will be taxable at the rates applicable to a non-resident.
▪ *Benefits of Chapter VI are available (i.e. set off and carry forward of losses)*	No	Yes
▪ *Benefits of Chapter VI-A are available (i.e. deductions from GTI)*	No	Yes

Problem 18.1 : *Mr. John, a non-resident, is engaged in the business of shipping. During the previous year ending 31.3.2020, he collects freight in India from his various entities located in India and outside India as under:*

a. *on July 11, 2019 a sum of Rs. 80,00,000 on account of loading goods from Kandla port and Rs. 50,000 on account of demurrage charges [entire such sum is collected in India];*

b. *on January 21, 2020 a sum of Rs. 10,00,000 on account of loading of goods from Mumbai port and Rs. 1,60,000 on account of handling charges [entire such sum is paid in London];*

c. *on February, 12, 2020, a sum of Rs. 40,00,000 on account of loading of livestock from Colombo (Shri Lanka) [entire such sum is collected in India].*

Other information are as under-	*Rs.*
1. Expenditure incurred in India (out of which Rs. 50,000 is paid in cash)	*1,70,000*
2. Brought forward business loss of other business in India	*25,000*

Compute the tax liability of Mr. John for the assessment year 2020-21.

Solution :

Computation of tax liability of Mr. John

Ad-hoc assessment under section 172(4) :	Rs.
Collections from Kandla port (80,00,000+50,000)	80,50,000
Collections from Mumbai port (10,00,000+1,60,000)	11,60,000
Total collections from India	92,10,000
Total income under the provision of section 172 (*i.e.* 7.5% of total collections)	**6,90,750**
Tax on above income [As per section 172(4) *i.e.* at the rates applicable to a foreign company *i.e.* 41.6%]	**2,87,352**

For Rs.40,00,000 Mr. John will submit his ROI and tax will be computed under section 44B as follows-

	Rs.
Collections from Colombo	40,00,000
Profit under the head PGBP as per the provisions of section 44B (*i.e.* 7.5% of these collections)	3,00,000
Less : set off of loss brought forward	25,000
Total income	2,75,000
Tax (including HEC of 4%) on above income [at the rates applicable to an individual]	**1,300**
Total tax liability (*i.e.* Rs. 2,87,352 + Rs. 1,300)	**2,88,652**
Total tax liability- round off	**2,88,650**

If Mr. John opts to avail the benefit of section 172(7), his taxability will be as under:

	Rs.
Total collections from India and outside India (92,10,000+40,00,000)	1,32,10,000
Profit under the head PGBP as per the provisions of section 44B (*i.e.* 7.5% of total collections)	9,90,750
Less : set off of loss brought forward	25,000
Total income	9,65,750
Tax (including HEC) [at the rates applicable to an individual] (round off)	**1,09,880**
Less : Tax paid u/s 172 which is treated as advance tax- *A.S. Glittre* v. *CIT* [1997] 225 ITR 739 (SC)	**2,88,650**
Amount of refund (round off)	**1,78,770**

18.10 Provisions for computation of taxable income from activities connected with exploration of mineral oils [Section 44BB]

This section provides as under :

(1) Notwithstanding anything to the contrary contained in sections 28 to 41 and sections 43 and 43A,
- in the case of an assessee, being a non-resident,
- engaged in the business of
  - ✓ providing services or facilities in connection with, or
  - ✓ supplying plant and machinery on hire used, or to be used,
  - ✓ in the prospecting for, or extraction or production of, mineral oils,

a sum equal to 10% of the aggregate of the amounts specified in sub-section (2) shall be deemed to be the profits and gains of such business chargeable to tax under the head "PGBP".

Provided that this sub-section shall not apply in a case where the provisions of the following sections apply for the purposes of computing profits or gains or any other income referred to in those sections.

- section 42 (*i.e.* Special provision for deductions in the case of business for prospecting, etc., for mineral oil)
- section 44D/44DA (*i.e.* Special provision for computing income by way of royalties, etc., in case of non-residents having income from their Permanent Establishments (PEs) in India), or
- section 115A (*i.e.* Tax on dividends, royalty and technical service fees in the case of foreign companies) or
- section 293A (*i.e.* CG's Power to make exemption, etc., in relation to participation in the business of prospecting for, extraction, etc., of mineral oils)

(2) The amounts referred to in sub-section (1) shall be the following, namely :—

(*a*) the amount paid or payable (whether in or out of India) to the assessee or to any person on his behalf on account of the provision of services and facilities in connection with, or supply of plant and machinery on hire used, or to be used, in the prospecting for, or extraction or production of, mineral oils *in India*; and

(*b*) the amount received or deemed to be received in India by or on behalf of the assessee on account of the provision of services and facilities in connection with, or supply of plant and machinery on hire used, or to be used, in the prospecting for, or extraction or production of, mineral oils *outside India*.

(3) Such taxpayers may claim lower income than the present presumptive rate of 10%, if they keep and maintain books of accounts and documents as required under sub-section (2) of section 44AA and get their accounts audited under the provisions of section 44AB of the Act. The assessment in all such cases shall be done by the Assessing Officer under section 143(3).

18.11 Special provision for computing profits and gains of the business of operation of aircraft in the case of non-residents [Section 44BBA]

This section applies to a non-resident assessee who is engaged in the business of operation of aircraft. As per sub-section (1), a sum equal to 5% of the aggregate of the amounts specified in sub-section (2) is deemed to be the profits and gains chargeable to tax under the head "PGBP". Sub-section (2) specifies the following amounts -

(*a*) the amount paid or payable, whether in or out of India, to the assessee or to any person on his behalf on account of the carriage of passengers, livestock, mail or goods from any *place in India*; and

(*b*) the amount received or deemed to be received in India by or on behalf of the assessee on account of the carriage of passengers, livestock, mail or goods from any *place outside India*.

Problem 18.2

Mr. A, a non-resident, operates an aircraft between Bangkok and Mumbai. He received the following amounts in the course of the business of operation of aircraft during the year ending 31.3.2020 :

(i) Rs. 3 crore in India on account of carriage of passengers from Mumbai.

(ii) Rs. 2 crore in India on account of carriage of goods from Mumbai.

(iii) Rs. 1 crore in India on account of carriage of passengers from Bangkok.

(iv) Rs. 2 crore in Bangkok on account of carriage of passengers from Mumbai.

The total expenditure incurred by Mr. A for the purposes of the business during the year ending 31.3.2020 was Rs. 1.8 crore.

Compute the income of Mr. A chargeable to tax in India under the head "Profits and gains of business or profession" for the assessment year 2020-21.

Solution :

Keeping in view the provisions of section 44BBA, the income of Mr. A chargeable to tax in India under the head "Profits and gains of business or profession" is worked out hereunder –

	Rs.
Amount received in India on account of carriage of passengers from Mumbai	3,00,00,000
Amount received in India on account of carriage of goods from Mumbai	2,00,00,000
Amount received in India on account of carriage of passengers from Bangkok	1,00,00,000
Amount received in Bangkok on account of carriage of passengers from Mumbai	2,00,00,000
	8,00,00,000

Income from business under section 44BBA at 5% of Rs. 8,00,00,000 is Rs. 40,00,000, which is the income of Mr. A chargeable to tax in India under the head "Profits and gains of business or profession" for the A.Y.2020-21.

18.12 Special provision for computing profits and gains of foreign companies engaged in the business of civil construction etc. in certain turnkey power projects [Section 44BBB]

(*i*) Under this provision in the case of a foreign company engaged in the business of construction or the business of erection of plant or machinery or testing or commissioning thereof in connection with a turnkey power project approved by the Central Government in this behalf, a sum equal to 10% of the amount paid or payable (whether in or out of India) to the said assessee or to any person on his behalf on account of such civil construction, erection, testing or commissioning shall be deemed to be the profits and gains of such business chargeable to tax under the head 'PGBP'.

(*ii*) However, such taxpayers may claim lower income than the present presumptive rate of 10%, if they keep and maintain books of accounts and documents as required under section 44AA(2) and get their accounts audited under the provisions of section 44AB. The assessment in all such cases shall be done by the Assessing Officer under section 143(3).

18.13 Special provisions for computing income by way of royalties etc. in case of non-residents [Section 44DA]

As per this section, the royalty income or fees for technical services of a non-resident (not being a company) or a foreign company will be computed under the head "PGBP" in accordance with the provisions of this Act all the following conditions are satisfied :

Condition 1	Such income is received from Government or an Indian concern
Condition 2	Such income is in pursuance of an agreement made by such non-resident/foreign company with Government or the Indian concern after the 31st day of March, 2003
Condition 3	Such non-resident/foreign company carries on business in India through a permanent establishment (PE) situated in India, or performs professional services from a fixed place (FP) of profession situated in India,
Condition 4	The right, property or contract in respect of which such income is paid is effectively connected with such PE/FP.
Condition 5	Such assessee shall keep and maintain books of account and other documents in accordance with the provisions contained in section 44AA and get his accounts audited by a Chartered Accountant and furnish along with the return of income, the report of such audit in the prescribed form duly signed and verified by such accountant. [Section 44DA(2)]

Provided that deduction shall NOT be allowed,—

(*i*) in respect of any expenditure or allowance which is not wholly and exclusively incurred for the business of such PE/FP in India; or

(*ii*) in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the PE to its head office or to any of its other offices :

Provided further that the provisions of section 44BB shall not apply in respect of the income referred to in this section.

Note : There have been legal decisions which have expressed contradictory views regarding the scope and applicability of section 44BB vis-à-vis section 44DA on the issue of taxability of fee for technical services relating to the exploration sector.

In order to reflect the correct legislative intention regarding taxation of income by way of fee for technical services, section 44BB has been amended to exclude the applicability of section 44BB to the income which is covered under section 44DA. A similar amendment has been made in section 44DA to provide that provisions of section 44BB would not be applicable in respect of the income covered under section 44DA.

Therefore, if the income of a non-resident is in the nature of fees for *technical services*, it shall be taxable under the provisions of either section 44DA or section 115A irrespective of the business to which it relates. Section 44BB would apply only in a case where consideration is for *services and other facilities relating to exploration activity which are not in the nature of technical services.*

18.14 Summary – Section 44B, 44BB, 44BBA, 44BBB

Point of difference	Section 44B	Section 44BB	Section 44BBA	Section 44BBB
1. Nature of business	Business of **shipping** carried on by non-residents	Non-resident's business of ✓ providing services or facilities in connection with, or ✓ supplying plant and machinery on hire used/to be used ✓ in the prospecting for, or **extraction or production of mineral oils (PEP)**	Non-resident's business of operation of **aircraft**	Foreign company's business of construction or erection of plant or machinery or testing or commissioning thereof in connection with a **turnkey power project** approved by the CG
2. Assessee	Any non-resident	Any non-resident	Any non-resident	Foreign company
3. Income	(*i*) Amount paid or payable, whether within India (or outside) on account of the carriage of passengers, livestock, mail or goods shipped at any *port in India* (*ii*) Amount received or deemed to be received in India on account of the carriage of passengers, livestock, mail or goods shipped at any *port outside India.*	(*i*) Amount paid or payable (whether in or out of India) on account of the such services/supply of plant etc. (as is given in *1* above) for PEP of mineral oils *in India* (*ii*) Amount received or deemed to be received in India on account of such service/supply of plant etc. (as is given in *1* above) for PEP of mineral oils *outside India.*	(*i*) Amount paid or payable, whether in or out of India on account of carriage of passengers, livestock, mail or goods from any place in India (*ii*) Amount received or deemed to be received in India on account of carriage of passengers, livestock, mail or goods from any place outside India.	Amount paid or payable (whether in or out of India) on account of such civil construction, erection, testing or commissioning
4. Deemed income under the head PGBP	7.5% of the incomes specified in *3* above	10% of the incomes specified in *3* above	5% of the incomes specified in *3* above	10% of the incomes specified in *3* above

FOR YOUR PRACTICE

(Questions on all chapters of PGBP)

P.1 : *State, giving brief reasons, whether the following items are allowable while computing profits and gains of business or profession:*

(i) *Donation to a political party.*

(ii) *Fees paid to the lawyer for drafting a new Partnership Deed.*

(iii) *Sums paid to a Labour leader to call off the strike.*

(iv) *Salary paid to son, who is working in the office. The salary is reasonable.*

(v) *Rent paid to daughter for office block which was gifted to her at the time of her marriage.*

(vi) *Bonus to partner for extra services,*

(vii) *Interest paid to wife on money borrowed from her.*

(viii) *Subscription for magazines paid by a Doctor for the benefit of his patients.*

(ix) *Major repairs to the air-conditioner in the office.*

(x) *In the course of money-lending business, the assessee acquired certain properties in lieu of debts and held them as stock-in-trade. The properties so acquired were destroyed by enemy action and the assessee claims the loss as deduction.*

Solution

(i) Not allowed as it has nothing to do with the purpose of the business. However, he is entitled to deduction from gross total income u/s 80GGC.

(ii) Allowed under section 37(1).

(iii) Not allowed. The payment is just a protection money which is against public policy. [Explanation Sec. 37(1)]

(iv) It is allowed since it is reasonable.

(v) It is allowed provided it is reasonable.

(vi) Allowed provided it is as per Partnership Deed and fulfils all conditions of Sec. 40(b).

(vii) It is allowed provided it is reasonable.

(viii) It is allowed as it is in the interest of profession.

(ix) It is allowed provided it is in the nature of current repairs.

(x) It is allowed as it is the loss of stock-in-trade. The properties were kept as stock-in-trade.

P2 : *State, with reasons, the allowability of the following expenses under the Income-tax Act, 1961 while computing income from business or profession for the Assessment Year 2020-21:*

(i) *Provision made on the basis of actuarial valuation for payment of gratuity Rs.5,00,000. However, no payment on account of gratuity was made before due date of filing return.*

(ii) *Purchase of oil seeds of Rs.50,000 in cash from a farmer on a banking day.*

(iii) *Tax on non-monetary perquisite provided to an employee Rs.20,000.*

(iv) *Payment of Rs.50,000 by using credit card for fire insurance.*

(v) *Salary payment of Rs.2,00,000 outside India by a company without deduction of tax.*

(vi) *Sales tax deposited in cash Rs.50,000 with State Bank of India.*

(vii) *Payment made in cash Rs.30,000 to a transporter in a day for carriage of goods*

Solution :

(i) Not allowable as deduction: As per section 40A(7), no deduction is allowed in computing business income in respect of any provision made by the assessee in his books of account for the payment of gratuity to his

employees except in the following two cases:

(1) where any provision is made for the purpose of payment of sum by way of contribution towards an approved gratuity fund or;

(2) where any provision is made for the purpose of making any payment on account of gratuity that has become payable during the previous year.

Therefore, in the present case, the provision made on the basis of actuarial valuation for payment of gratuity has to be disallowed under section 40A(7), since, no payment has been actually made on account of gratuity.

Note: It is assumed that such provision is not for the purpose of contribution towards an approved gratuity fund.

(ii) Allowable as deduction : As per Rule 6DD, in case the payment is made for purchase of agricultural produce directly to the cultivator, grower or producer of such agricultural produce, no disallowance under section 40A(3) is attracted even though the cash payment for the expense exceeds Rs.20,000.

Therefore, in the given case, disallowance under section 40A(3) is not attracted since, cash payment for purchase of oil seeds is made directly to the farmer.

(iii) Not allowable as deduction : Income-tax of Rs.20,000 paid by the employer in respect of non-monetary perquisites provided to its employees is exempt in the hands of the employee under section 10(10CC). As per section 40(a)(v), such income-tax paid by the employer is not deductible while computing business income.

(iv) Allowable as deduction : Payment for fire insurance is allowable as deduction under section 36(1). Since payment by credit card is covered under Rule 6DD, which contains the exceptions to section 40A(3), disallowance under section 40A(3) is not attracted in this case.

(v) Not allowable as deduction : Disallowance under section 40(a)(iii) is attracted in respect of salary payment of Rs.2,00,000 outside India by a company without deduction of tax at source.

(vi) Allowable as deduction : As per Rule 6DD, if the payment is made to the Government and, under the rules framed by it, such payment is required to be made in legal tender, no disallowance under section 40A(3) is attracted even though the cash payment for the expense exceeds Rs.20,000.

(vii) Allowable as deduction : The limit for attracting disallowance under section 40A(3) for payment otherwise than by way of account payee cheque or account payee bank draft is Rs.35,000 in case of payment made for plying, hiring or leasing goods carriage. Therefore, in the present case, disallowance under section 40A(3) is not attracted for payment of Rs.30,000 made in cash to a transporter for carriage of goods.

P3 : *Sri Sharma is the proprietor of a business. His Profit and Loss Account for the year ended March 31, 2020, is as follows :*

Particulars	*Rs.*	*Particulars*	*Rs.*
Establishment	*4,800*	*Gross Profit*	*1,50,840*
Rent, Rates & Taxes	*2,900*	*Interest on Govt. Securities*	*5,400*
General Charges	*750*	*Rent from House Property*	*5,400*
Household Expenses	*51,730*		
Commission	*1,500*		
Discount & Allowances	*450*		
Provision for Bad Debts	*1,200*		
Postage & Telegrams	*270*		
Law Charges	*450*		

Advertising	*1,550*	
Fire Insurance Premium (for goods)	*360*	
Sales Tax Paid	*1,450*	
Repairs & Renewals (not for business premises)	*630*	
Loss on Sale of Motor-car (used for private purposes)	*1,800*	
Life Insurance Premium	*1,790*	
Wealth Tax	*740*	
Interest on Capital	*350*	
Audit Fee	*300*	
Interest on Bank Loan	*1,380*	
Provision for Depreciation	*2,500*	
Provision for Income tax	*3,900*	
Net Profit transferred to Capital A/c	*80,840*	
	1,61,640	*1,61,640*

Following further information is given:

(a) Actual Bad Debts written-off during the year amounting to Rs. 550.

(b) Amount of Income tax actually paid during the year is Rs. 4,200.

(c) Depreciation allowable is Rs. 1,700 as per Income tax Rules.

(d) Advertising Expenses include Rs. 550 spent on special advertising campaign to open a new shop in the market.

(e) Law charges are in connection with protection of a trademark.

(f) Sri Sharma carries on his business from a rented premise, half of which is used as his residence. Rent, Rates and Taxes include Rs. 2,400 paid as rent of the premises during the year.

(g) Bank loan is taken for business purposes.

Compute the business income of Sri Sharma and his total income for the A.Y. 2020-21.

Solution

Computation of Income from Business for the A.Y. 2020-21

	Rs.	*Rs.*
Net Profits as per Profit & Loss Account		80,840
Add : Expenses not allowed:		
Rent of one-half premises	1,200	
Household Expenses	51,730	
Provision for Bad Debts	1,200	
Loss on sale of Motor-car	1,800	
Repairs and Renewals	630	
Life Insurance Premium	1,790	
Wealth Tax	740	
Interest on Capital	350	
Provision for Depreciation	2,500	
Provision for Income tax	3,900	65,840

			1,46,680
Less : Items allowed but not charged:			
Bad Debts		550	
Depreciation		1,700	2,250
			1,44,430
Less : Items not taxable under business head:			
Interest on Govt. Securities		5,400	
Rent from House Property		5,400	10,800
	Income from Business		1,33,630

Statement of Total Income for the Assessment Year 2020-21

1. Income from House Property (A.V.)	5,400	
Less: 30% of A.V.	1,620	3,780
2. Income from Business		1,33,630
3. Income from Other Sources (Interest on Securities)		5,400
Gross Total Income		1,42,810
Less : Deduction under section 80C : LIP		1,790
Total Income		1,41,020

Notes—

1. Expenses incurred on special advertising campaign to open a new shop in the market are admissible as these are incurred for better marketing of the goods. [*Hindustan Commercial Bank Ltd. v. CIT* [1952] 21 ITR 353 (All.)]

2. Law charges incurred for the maintenance of an existing trademark are allowed.

3. Deduction under section 80L is not allowable.

4. Repairs and renewals are not for business premises, hence not allowable.

P4 : *Ram Ji Ltd., engaged in manufacture of medicines (pharmaceuticals), furnishes the following information for the year ended 31.3.2020 :*

(i) *Municipal tax relating to office building Rs.51,000 not paid till 30.9.2020.*

(ii) *Patent acquired for Rs.20,00,000 on 1.9.2019 and used from the same month.*

(iii) *Capital expenditure on scientific research Rs.10,00,000 which includes cost of land Rs.2,00,000.*

(iv) *Amount due from customer X, outstanding for more than 3 years, written off as bad debt in the books Rs.5,00,000.*

(v) *Income-tax paid Rs.90,000 by the company in respect of non-monetary perquisites provided to its employees.*

(vi) *Provident fund contribution of employees Rs.5,50,000 remitted in July, 2020.*

(vii) *Expenditure towards advertisement in souvenir of a political party Rs.1,50,000.*

(viii) *Refund of sales tax Rs.75,000 received during the year, which was claimed as expenditure in an earlier year.*

State with reasons the taxability or deductibility of the above items under the Income-tax Act, 1961.

Solution :

(i) As per section 43B, municipal tax is not deductible for A.Y. 2020-21 since it is not paid on or before 30.9.2020, being the due date of filing the return for A.Y. 2020-21.

Note – It is assumed that the company has not undertaken any international transaction during the year, and therefore, does not have to file a transfer pricing report under section 92E. Therefore, the due date of filing of return of the company would be 30th September, 2020.

(ii) Patent is an intangible asset eligible for depreciation@25%, as per section 32(2)(ii). Since it has been acquired and put to use for more than 180 days during the previous year 2019-20, full depreciation of Rs.5,00,000 (*i.e.* 25% of Rs.20,00,000) is allowable as deduction.

(iii) Weighted deduction@200% is available under section 35(2AB) in respect of expenditure incurred by a company on scientific research on in-house research and development facility as approved by the prescribed authority. However, cost of land is not eligible for deduction. Deduction under section 35(2AB) = 200% of Rs.8,00,000 = Rs.16,00,000.

Note: It is presumed that the in-house research and development facility is approved by the prescribed authority and is hence, eligible for weighted deducted@200% under section 35(2AB).

(iv) Bad debts *i.e.*Rs.5,00,000 written off in the books of account as irrecoverable is deductible under section 36(1)(*vii*), provided the debt has been taken into account in computing the income of the company in the current previous year or any of the earlier previous years.

(v) As per section 40(a)(*v*), income-tax of Rs.90,000 paid by the company in respect of non- monetary perquisites provided to its employees, exempt in the employee's hands under section 10(10CC), is not deductible while computing business income of the employer– company.

(vi) The employees' contribution to provident fund is taxable in the hands of the company since it is included in the definition of income under section 2(24)(*x*).

As per section 36(1)(*va*), provident fund contribution of employees is deductible only if such sum is credited to the employee's provident fund account on or before the due date under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952. In this case, since it is remitted after the due date under the said Act, it is not deductible.

Note: There is an alternate view that remittance of provident fund contribution of employees is deductible even though it is remitted beyond the due date under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, in case the same is remitted before the due date of filing return of income in view of the Delhi High Court decision in *CIT* v. *Aimil Ltd.*[2010] 321 ITR 508.

(vii) Expenditure towards advertisement in souvenir of a political party is disallowed under section 37(2B) while computing business income. However, the same is deductible under section 80GGB from gross total income provided the payment is made by any mode other than cash.

(viii) Refund of a trading liability is taxable under section 41(1), if a deduction was allowed in respect of the same to the taxpayer in an earlier year. Since sales tax was claimed as expenditure in an earlier year, refund of the same during the year would attract the provisions of section 41(1).

P5 : *The following is the Profit and Loss Account of Mr. X for the year ended on 31st March, 2020. Compute his taxable income from business for that year:*

Particulars	*Rs.*	*Particulars*	*Rs.*
Opening Stock	*15,000*	*Sales*	*1,80,000*
Purchases	*40,000*	*Closing Stock*	*20,000*
Wages	*20,000*	*Gift from father*	*10,000*
Rent	*46,000*	*Sale of Car*	*17,000*
Repairs of Car	*3,000*	*Income tax Refund*	*3,000*
Medical Expenses	*3,000*		
General Expenses	*10,000*		

Depreciation of Car	*4,000*	
Profit for the year	*89,000*	
	2,30,000	*2,30,000*

Following further information is given:

(1) *Mr. X carries on his business from a rented premise half of which is used as his residence.*

(2) *Mr. X bought a car during the year for Rs. 20,000. He charged 20% depreciation on the value of the car. The car was sold during the year for Rs. 17,000. The use of the car was 3/4th for the business and l/4th for personal use.*

(3) *Medical expenses were incurred during the sickness of Mr. X for his treatment.*

(4) *Wages include Rs. 250 per month on account of Mr. X's driver for 10 months.*

(5) *Opening stock is over-valued by 10% and closing stock is under-valued by 15%.*

Solution :

Computation of Taxable Income from Business for the A.Y. 2020-21

	Rs.	*Rs.*
Profit as per Profit & Loss A/c		89,000
Add : Items Disallowed:		
(i) l/4th Wages regarding driver's salary for personal use of car	625	
(ii) 1/2 Rent regarding personal use of house	23,000	
(iii) 1/4 Repairs of car regarding personal use	750	
(iv) Medical Expenses (Not for business)	3,000	
(v) Over-valuation of opening stock [15,000÷110×10]	1,364	
(vi) Under-valuation of closing stock [20,000÷85×15]	3,529	
(vii) Depreciation as the car was sold during the year	4,000	36,268
		1,25,268
Less : Items not taxable:		
(i) Income tax Refund	3,000	
(ii) Gift from father	10,000	
(iii) Sale of Car (Capital Receipt)	17,000	30,000
Taxable Income from Business		95,268

Notes—

1. Gift from father (*i.e.* relative) is not taxable at all.
2. No depreciation will be allowed on car as the car was purchased and sold during the same previous year. However, there is a short-term capital loss of Rs. 3,000, 3/4th of which relates to business. As such short-term capital loss of Rs. 2,250 will be carried forward to be set-off against capital gain of the following and subsequent years up to a maximum of 8 years.

P6 : *From the following profit & loss account of Ronie for the year ended 31.3.2020, compute his gross total income for the assessment year 2020-21:*

Particulars	*Amount*	*Particulars*	*Amount*
Opening Stock	*4,00,000*	*Sales*	*1,400,00,000*
Purchases	*1,30,00,000*	*Closing stock*	*4,80,000*
Salaries	*8,00,000*	*Income from house*	*80,000*
Rent, rates & taxes	*1,20,000*	*Property*	

Legal charges	*40,000*	*Dividend from an Indian Company*	*9,000*
Miscellaneous expenses	*20,000*		
Provision for bad debts	*30,000*		
Provision for gratuity	*20,000*		
Provision for income tax	*40,000*		
Salary to Mrs. Ronie	*36,000*		
Depreciation	*40,000*		
Net profit	*23,000*		
	1,45,69,000		*1,45,69,000*

Additional information :

1. *Purchases include Rs.1,00,000 paid in cash to cultivator for purchase of agricultural produce.*
2. *Purchases also include Rs.1,00,000 paid by way of compensation to a supplier as the assessee was unable to take the delivery of goods due to lack of storage space and finances.*
3. *Opening stock was over-valued by 25% and closing stock was under-valued by 25%.*
4. *Salary includes Rs.15,000 paid as customary bonus on the occasion of Diwali over and above the bonus payable under the Payment of Bonus Act, 1956.*
5. *Rent, rates & taxes include Rs.10,000 on account of disputed sales tax demand. Rs.3,000 on account of municipal taxes for property let out. It also includes Rs.5,000 as customs penalty paid during the year.*
6. *An amount of Rs.20,000 from a customer was written off from the provision for bad debts.*
7. *An employee retired on 28.3.2020. Gratuity payable to him was Rs.20,000. A provision was created for the same this year and it was paid on 2.4.2020.*
8. *Mrs. Ronie is a law graduate and actively working in the assessee's firm.*

Solution :

Computation of Gross Total Income of Ronie for the A.Y.2020-21

Particulars	Notes	Amount (Rs.)	Amount (Rs.)
PROFIT AND GAINS OF BUSINESS OR PROFESSION			
Net profit as per books of account			23,000
Add: Expenditures (debited to P&L A/c) disallowed :			
♦ Disputed sales tax demand	2	10,000	
♦ Municipal tax [to be allowed under 'house property' head]		3,000	
♦ Custom penalty	3	5,000	
♦ Provision for bad debts	4	30,000	
♦ Provision for income tax [Disallowed under section 40(a)]		40,000	88,000
***Less* : Expenditure allowed but not debited in P/L A/c :**			
♦ Bad debts	4	20,000	
***Less* : Income not taxable but credited to P/L A/c :**			
♦ Dividend received from companies		9,000	
***Less* : Income taxable under other heads but credited to P/L A/c :**			
♦ Income from house property		80,000	1,09,000
Adjustment of stock			
Add : Over valuation of opening stock [4,00,000 ÷ 125 × 25]			

Add : Under valuation of closing stock [4,80,000 ÷ 75 × 25]			2,000
		80,000	
INCOME FROM HOUSE PROPERTY		1,60,000	2,40,000
Gross Annual Value (Actual rent received)			2,42,000
Less : Municipal Taxes			
Net Annual value (NAV)		80,000	
Less : Standard deduction @ 30% of NAV [Section 23(a)]		3,000	
INCOME FROM OTHER SOURCES		77,000	
Dividend [Exempt under section 10(34)]		23,100	53,900
			Nil
		Gross Total Income	**2,95,900**

Notes—

1. Rule 6DD provides certain expenses, the payment in respect of which can be made in cash even beyond the limit prescribed under section 40A(3). The payment made to agriculturist falls under rule 6DD, therefore not to be disallowed.
2. Disputed sales tax demand is not allowed assuming it is still not paid [Section 43B]
3. Any payment for infringement of law is not allowed as deduction.
4. Provision for bad debt is disallowed. However, bad debt written off is allowed as per section 36(1)(vii).
5. As per section 40A(7), any provision which is made for payment of gratuity falling due during the previous year is, allowed. Also, section 43B requires certain payment (including gratuity) to be made before filing of return of income of the previous year. In the above case, since the gratuity liability relates to the previous year and it is paid before due date of filing of return, hence the same is allowed.
6. Payment to relative not being in excess shall be allowed as deduction. Further, Mrs. Ronie possesses technical or professional qualification. Hence, clubbing provision under section 64(1) is not attracted.
7. Payment of compensation to supplier is a business expenditure and shall be allowed.
8. Voluntary bonus to employee shall be allowed expenditure.

P7 : *A firm of company secretaries consisting of 3 partners earned a net surplus of Rs.2,08,000 during the accounting year ended 31st March, 2020 after charging interest on capital amounting to Rs.36,000 calculated @ 18% p.a. on the capital of partner but before charging remuneration to partners.*

You are required to calculate the taxable income of the firm and tax thereon after allowing the maximum allowable remuneration to partners under the provisions of the income tax Act, 1961.

Solution :

Computation of Taxable Income and Tax Liability for the A.Y. 2020-21

Particulars	Amount (Rs.)
Net profit as per books of accounts	2,08,000
Add: Disallowance of interest by virtue of section 40(b) i.e. interest in excess of 12% p.a. [Rs.36,000 × 6 ÷ 18]	12,000
Book Profit	2,20,000
Less: Remuneration to partner *[i.e.* 90% of Book Profit or Rs.1,50,000, whichever is higher] [Section 40(b)]	(–) 1,98,000
Profit and Gains of Business or Profession	**22,000**
Income Tax [Tax 30% + HEC 4%]	**6,864**

P8 : *Ram, Shyam and Ghanshyam are partners in a firm with equal shares. The profit and loss account for the year ending 31st March, 2020 shows at net profit of Rs.42,300 after debiting the following items:*

(i) Salary of Rs.24,000 each to Ram and Shyam.

(ii) Bonus to Ghanshyam Rs.18,000.

(iii) Commission of Rs.9,000, Rs.10,000 and Rs.15,000 to Ram, Shyam and Ghanshyam respectively.

(iv) Interest on capital @ 15% amounting to Rs.4,500, Rs.6,000 and Rs.15,000 paid to Ram, Shyam and Ghanshyam respectively.

Assuming that all partners are working partners and the firm fulfils the conditions of section 184, compute the total income of the firm and partners of the firm.

Solution :

Computation of Total Income of the Firm for A.Y. 2020-21

Particulars	Amount (Rs.)	Amount (Rs.)
PROFITS AND GAINS OF BUSINESS OR PROFESSION		
Net profit as per profit and loss account		42,300
Add: Expenditure disallowed but debited to P/L Account		
♦ Salary to partners [Rs.24,000 + Rs.24,000]	48,000	
♦ Bonus to Ghanshyam	18,000	
♦ Commission to partners [Rs.9,000 + Rs.10,000 + Rs.15,000]	34,000	
♦ Interest on capital to partners [in excess of 12% p.a.] [(Rs.4,500 + Rs.6,000 + Rs.15,000) ÷ 15% × 3%]	5,100	1,05,100
		1,47,400
Less: Allowable Remuneration [LOWER of the following]		
♦ Actual Remuneration [i.e. 48,000 + 18,000 + 34,000]	1,00,000	
♦ Maximum Allowable Remuneration as per section 40(b) [Rs.1,47,4000 × 90% or Rs.1,50,000, whichever is HIGHER]	1,50,000	1,00,000
	Total Income	**47,400**

Computation of Total Income of the Partners for A.Y. 2020-21

(Amount in Rs.)

Particulars	Ram	Shyam	Ghanshyam
INCOME FROM BUSINESS/PROFESSION			
♦ Salary [As per section 28]	24,000	24,000	–
♦ Bonus [As per section 28]	–	–	18,000
♦ Commission [As per section 28]	9,000	10,000	15,000
♦ Interest upto 12% p.a. [As per section 28] [i.e. Actual interest amount ÷ 15% × 12%]	3,600	4,800	12,000
Total	**36,600**	**38,800**	**45,000**

MULTIPLE CHOICE QUESTIONS (MCQs)
(On all chapters of PGBP)

1 : Which of the following income is NOT taxable under the head PGBP :

(a) Income from selling of lottery tickets;
(b) Dividend received by a stock broker;
(c) Income from speculation business;
(d) Income from illegal business.

2 : Income of trade profession or similar association :

(a) will be taxable from specific services rendered by it;
(b) Will not be taxable on "principles of mutuality";
(c) shall be deemed to let out and therefore, will be taxable under the head house property;
(d) Shall have no tax treatment.

3 : Which of the following incomes which are received by a partner from its firm will NOT be taxable in his hands—

(a) Remuneration received by partner;
(b) Interest on capital received by him;
(c) Interest on loan given by him to its firm;
(d) Profit share received by him.

4 : Which of the following income will be taxable under the head PGBP :

(a) Keyman insurance policy receipts in the hands of the employee concerned;
(b) Keyman insurance policy receipts in the hands of the employer;
(c) Keyman insurance policy receipts in the hands of family of the deceased employee;
(d) All of the above.

5 : Speculative business is treated as distinct and separate from normal business :

(a) True;
(b) False;

6 : Which of the following business is treated as "Speculative Business"—

(a) Trading in derivatives;
(b) Forward Markets;
(c) Hedging contracts;
(d) Intra-day transactions.

7 : Which of the following is NOT "eligible asset" for claiming depreciation—

(a) Intangible assets;
(b) Vacant factory building;
(c) Vacant land;
(d) Patent and Trade marks.

8 : For claiming depreciation, few conditions have to be satisfied. Which of the following is NOT among those conditions :

(a) Asset must be owned by the assessee;
(b) Asset must be used for the purpose of Business or profession of the assessee;
(c) Asset must be used throughout the P.Y;
(d) Block of asset concept is to be followed.

9 : If an asset is 60% used for Business and 40% for personal purpose, depreciation on that asset will be allowed:

(a) 60% of total depreciation ;
(c) No depreciation will be allowed;

(b) Full depreciation, unless it is fully used for personal purpose;
(d) A.O. may allow full depreciation.

10 : Half of the normal depreciation will be allowed if :

(a) Asset is required during the P.Y;
(b) Such asset is put to use during the P.Y;
(c) Such put to use is less than 180 days;
(d) All of the above.

11 : Date of purchase = 1.9.2019; Actual cost = Rs. 10,00,000 ; Date of put to use = 9.10.2019; Rate of Depreciation = 15%. What will be the amount of depreciation during P.Y. 2019-20 :

(a) Rs. 75,000;
(b) 10,00,000 × 10% × 5/12 = Rs.41,667;
(c) Rs. 1,50,000;
(d) 10,00,000 × 10% × 154/365 = Rs.42,192.

12 : Which of the following is NOT correct—

Case	Date of purchase	Date of put to use	For F.Y.2019-20, what will be the amount of depreciation
(a)	1.2.2020	2.2.2020	50% of Normal Depreciation
(b)	1.6.2019	2.6.2020	No Depreciation
(c)	1.7.2019	10.10.2019	50% of Normal Depreciation
(d)	1.2.2020	1.2.2020	Depreciation for 2 months

13 : An asset purchased on 1.3.2019. It is put to use on 2.3.2020. Depreciation rate is 15%. What would be the Depreciation on it for P.Y 2018-19 and 2019-20

(a) P.Y. 2018-19 = 7.5%
P.Y. 2019-20 = 15%
(b) P.Y. 2018-19 = Nil
P.Y. 2019-20 = 15%
(c) P.Y. 2018-19 = Nil
P.Y. 2019-20 = 7.5%
(d) P.Y. 2018-19 = 15%
P.Y. 2019-20 = 15%

14 : "Block of Assets" means—

(a) Asset falling under any category, having same rate of Dep.;
(b) All assets falling under a particular category even if have different rates of Dep.;
(c) Asset falling under the same category having same rates of Dep.;
(d) Asset purchased in the same previous year;

15 : Which of the following rate of depreciation is NOT correct—

(a) Computer software = 60%
(b) Intangible assets = 25%
(c) Pollution control equipment = 60%
(d) Motor car running in the business of plying, hiring = 30%

16 : Details in respect of block of 15% :

Opening balance (1.4.2019) : Rs.10,00,000

Purchase of new assets : Rs. 6,00,000
[Purchase date = 1.6.2019 ; (Put to use date = 12.10.2019)]

Sale of an old asset from this block (1.3.2020) : 7,00,000

What amount will be allowed as depreciation for P.Y. 2019-20 :

(a) 9,00,000 × 15% = Rs. 1,35,000;
(c) (8,00,000×15%)+(1,00,000×7.5%) = Rs.90,000

(b) (3,00,000×15%)+(6,00,000×7.5%) = Rs.90,000

(d) 9,00,000 × 7.5% = Rs. 67,500.

17 : Details in respect of block of 15% :

Opening balance (1.4.2019)	:	**Rs.10,00,000**
Purchase of new assets [Purchase date = 1.3.2020; (Put to use date = 2.3.2020)	:	**Rs. 6,00,000**
Sale of assets (1.6.2019)	:	**7,00,000**

What amount will be allowed as depreciation for P.Y. 2019-20 :

(a) (6,00,000 × 7.5%) + (3,00,000 × 15%) = Rs.90,000

(b) 9,00,000 × 15% = Rs.1,35,000

(c) Capital loss = 3,00,000 & depreciation on 6,00,000 × 15% = Rs.90,000

(d) Capital loss = 3,00,000 & depreciation on 6,00,000 × 7.5% = Rs.45,000

18 : Which of the following is NOT correct for ' Unabsorbed depreciation'—

(a) Unabsorbed Dep. means the depreciation which could not be set off due to insufficient profits;

(b) Unabsorbed Dep. can be carried forward for infinite number of years;

(c) Unabsorbed Dep. can be set off against income of any head in the P.Y. and in future years;

(d) Unabsorbed Dep. can be set off against income of any head other than 'Salary' in the P.Y. and in future years;

19 : Additional Depreciation is allowed on :

(a) New Building;

(b) New office appliances;

(c) New Ships or Aircrafts;

(d) New plant and machinery.

20 : Which of the following is not correct :

(a) Depreciation of additional floor constructed by the tenant will be claimed by tenant;

(b) If composite price is paid for land and building and prices cannot be separated, depreciation will be allowed on entire composite value;

(c) Depreciation of leased asset is claimed by the 'lessor';

(d) Depreciation on asset purchased under Hire purchase system is claimed by the Financial institution who has financed it.

21 : An asset purchased on 1.3.2019. It is put to use on 2.3.2020. Depreciation rate is 15%. What would be the Depreciation on it for P.Y 2018-19 and 2019-20?

(a) F.Y. 18-19 = 7.5% ; F.Y. 19-20 = 15%;

(b) F.Y. 18-19 = Nil ; F.Y. 19-20 = 7.5%;

(c) F.Y. 18-19 = Nil ; F.Y. 19-20 = 15%;

(d) F.Y. 18-19 = 15% ; F.Y. 19-20 = 15%;.

22 : Additional Depreciation of can be claimed by—

(a) Any assessee engaged in manufacture/ production of article or things;

(b) Company assessee engaged in manufacture/production of article;

(c) Any assessee engaged in manufacture or production of article or things OR engaged in generation or distribution of electricity;

(d) Any company engaged in manufacture or production of article or things OR generation or distribution of electricity ;

23 : A New plant is purchased by X LTD. (engaged in manufacturing). Details are as under :

Date of purchase	:	**1.11.2019**
Actual cost	:	**Rs.20,00,000**

Rate of Normal Dep. : 15%

What amount will be allowed as depreciation for P.Y. 2019-20—

(a) Normal Dep. @ 15% on Rs.20,00,000 AND Additional Dep. @20%on Rs.20,00,000	(c) Normal Dep. @ 7.5% on Rs.20,00,000 AND Additional Dep. @20%on Rs.20,00,000
(b) Normal Dep. @ 7.5% on Rs.20,00,000 AND Additional Dep. @20%on Rs.18,50,000	(d) Normal Dep. @ 7.5% on Rs.20,00,000 AND Additional Dep. @10%on Rs.20,00,000

24 : Additional Depreciation is calculated—

(a) @ 20% on 'Actual Cost' ;

(b) @ 20% on 'Actual Cost' as reduced by normal depreciation ;

(c) @ 20% or @ 10% on 'Actual Cost' if 2nd proviso to section 32(1) applies;

(d) @ 20% or @ 10% (as above), on 'Actual Cost' as reduced by normal depreciation.

25 : Additional Depreciation is allowed—

(a) If put to use days in first year are less than 180 days, then 10% in first year and 'nil' in next year;

(b) over the life of the asset ;

(c) If put to use days in first year are less than 180 days, then 10% in first year and 10% in next year;

(d) Always 10% during first year and 10% during 2nd year.

26 *W.e.f.* A.Y. 2015-16, investment allowance referred to in section 32AC(1A) is allowed—

(a) to a company engaged in manufacturing which has invested any amount in new plant &machinery;

(b) to a company engaged in manufacturing which has invested Rs.25 crores or more in new plant & machinery;

(c) to a company engaged in manufacturing which has invested more than Rs.25 crores in new plant and machinery;

(d) to any assessee who is engaged in manufacturing and has invested more than Rs.25 crores in new plant and machinery.

27 Investment allowance is calculated—

(a) at the rate of 10%;

(b) at the rate of 15%;

(c) at the rate of 20%;

(d) at the rate of 25%.

28 Investment allowance is calculated on—

(a) Actual cost – Normal Depreciation;

(b) Actual cost only ;

(c) Actual cost – Normal Depreciation – Additional Depreciation ;

(d) Normal Depreciation + Additional Depreciation;

29 Calculate amount of Investment Allowance under section 32AC(1). Details are as under :

Investment in New plant during F.Y 2016-17 = Rs.30 crore

Investment in Old plant during F.Y 2016-17 = Rs.5 crore

(a) @15% on 35 crore

(b) @20% on 35 crore

(c) @15% on 30 crore and *nil* on 5 crore

(d) *Nil* on 35 crore

30 X LTD. is engaged in generating and distributing electricity; It furnishes the following information:

Actual cost of Tangible Asset : Rs.10,00,000

Rate of Depreciation (SLM) : 12.77%
Date of purchase : 1.12.2018

This asset is sold on 10.6.2019 at Rs.6,00,000. What would be the effect during P.Y. 2018-19 and P.Y. 2019-20—

(a) P.Y. 2018 – 19, Depreciation = Rs.63,850
P.Y. 2019 – 20, Depreciation = Rs.1,19,546

(b) P.Y. 2018 – 19, Depreciation = Rs.1,27,700
P.Y. 2018 – 19, Terminal Dep.= Rs.2,72,300

(c) P.Y. 2018 – 19, Depreciation = Rs.63,850
P.Y. 2018 – 19, Terminal Dep. = Rs.3,36,150

(d) P.Y. 2018 – 19, Depreciation = Rs.1,27,700
P.Y. 2018 – 19, Terminal Dep. = Rs.3,36,150

31 Deduction for telecommunication license shall be allowed—

(a) At the rate of 10% p.a.
(b) At the rate of 15% p.a.
(c) During the year in which full payment thereof is made;
(d) Over the life of license.

32 Cost of license = Rs. 10 Crore (fully paid). Deduction under section 33ABB allowed till date = Rs.7 crore. This license is sold at Rs. 2 crore. What would be the implication of such sale :

(a) Rs. 1 crore shall be allowed as deduction under section 33ABB during the year of sale;
(b) Rs. 1 crore shall be allowed as deduction over the remaining life of the license;
(c) Rs. 1 crore shall be the Short Term Capital Loss;
(d) Rs. 1 crore shall be Long Term Capital Loss;

33 Section 35 allows deduction in respect of :

(a) Expenditures on In house Scientific Research ;
(b) Donation made to approved institutions etc. for scientific research etc.;
(c) Both 'a' and 'b';
(d) None of the above;

34 During the previous year, assessee incurs the following expenditures on scientific research—

Cost of land = Rs.50,00,000
Cost of building = Rs.20,00,000
Cost of material = Rs.3,00,000
Staff salary = Rs.6,00,000

What amount will be allowed as deduction under section 35 :

(a) Rs. 79,00,000

(b) (70,00,000 × 10%) = Rs.7,00,000

(c) Rs. 29,00,000

(d) Rs. 9,00,000

35 During 3 years immediately preceding the previous year in which business is commenced, X LTD. has incurred the following expenditures:

Cost of land = Rs. 65,00,000
Cost of building = Rs. 40,00,000
Cost of material = Rs. 4,00,000
Staff salary = Rs. 7,00,000
Electricity charges = Rs. 5,00,000

Which of the above expenses will be allowed as deduction under section 35 during the previous year in which business is commenced :

(a) Rs. 4,00,000 + 7,00,000 + 5,00,000 = Rs. 16,00,000

(b) Rs.4,00,000 + 7,00,000 = Rs. 11,00,000

(c) All expenses

(d) Rs.40,00,000 + 4,00,000 + 7,00,000

= Rs. 51,00,000

36 On making donation to certain Approved Institutions, section 35 allows deduction of a certain percentage of such donations amount. In this regard, which of the following is CORRECT —

Nature of donation	*Deduction Allowed*	*Nature of donation*	*Deduction Allowed*
(a) :		(c) :	
▪ Donation for Scientific Research	= 100%	▪ Donation for Scientific Research	= 150%
▪ Donation for Social Science	= 100%	▪ Donation for Social Science	= 100%
▪ Donation for Approved Scientific Research Programme	= 100%	▪ Donation for Approved Scientific Research Programme	= 150%
(b) :		(d) :	
▪ Donation for Scientific Research	= 100%	▪ Donation for Scientific Research	= 100%
▪ Donation for Social Science	= 150%	▪ Donation for Social Science	= 150%
▪ Donation for Approved Scientific Research Programme	= 150%	▪ Donation for Approved Scientific Research Programme	= 150%

37 Scientific Research asset is sold after using in normal business. What would be implication—

(a) The amount received will be Long term capital gain or Short term capital gain;

(b) The amount received will be Business income;

(c) The amount received will always be Short term capital gain;

(d) The amount received will be deducted from WDV of the Block of asset to which such asset was falling. If it exceeds WDV, there will be short term capital gain;

38 Which of the following business is NOT eligible Business for the purpose of section 35AD—

(a) Business of fisheries;

(b) Business of Bee-keeping ;

(c) Cold storage facility;

(d) Warehousing of sugar;

39 : Which out of the following is not a condition to be fulfilled for claiming expenditure under section 37(1) :

(a) Such expenditure should not be covered under sections 30 to 36;

(b) Expenditure should be of capital nature;

(c) Expenditure should not be of a personal nature;

(d) Expenditure should have been incurred wholly or exclusively for the purpose of the business or profession.

40 : Financial statement of 'A' on 31.3.2020 reveals that the following expenses were due during year ended 31.3.2020 but have been paid after 31.3.2020 :

Employer's contribution to provident fund = Rs. 55,000 (Rs. 25,000 paid on 15.7.2020, Rs.10,000 paid on 31.7.2020 and Rs. 20,000 paid on 15.1.2021)

The due date of filing return is 31.7.2020. What would be the deduction for A.Y. 2020-21 :

(a) Rs.55,000;

(b) Rs.35,000;

(c) Rs.10,000;

(d) Rs.45,000.

41 : M owns the following commercial vehicles :

(i) 2 light commercial vehicles (weight being 6,000 kgs. each) : one for 9 months and two days and the other for 12 months

(ii) 2 heavy good vehicle (weight being 16,000 kgs. each) : one for 6 months and 25 days and the other for 11 months and 12 days

(iii) 2 medium goods vehicles (weight being 10,000 kgs. each) : one for 6 months and the other for 8 months and 15 days Compute the income from business of M for P.Y. 2019-20 if he opts for the scheme under section 44AE :

(a) Rs.4,05,000;
(b) Rs.3,90,000;
(c) Rs.4,20,000;
(d) Rs. 5,81,500.

42 : Which of the following expense will NOT be allowed as deduction :

(a) Insurance premium paid for employee by cash;
(b) Insurance premium paid for stock by cash;
(c) Insurance premium paid for insurance of life of cattle by cash
(d) Insurance premium paid for insurance of plant and machinery by cash

43 : Payment of bonus or commission to the employees who are shareholders of the company will be allowed as deduction under section 36 :

(a) if it is paid by account payee cheque;
(b) if it is within the limit of payment of Bonus Act;
(c) if it is paid in place of Profits and Dividend
(d) if it is NOT paid in place of Profit and Dividend

44 : Deduction for bad debts is allowed only if :

(a) it is shown to the satisfaction of A.O that they are actually bad debts;
(b) they are loan debts which was given bona fide;
(c) they are sundry debts and are written off in the books of account of the assessee
(d) always allowed

45 : X LTD. has written off the following Bad debts :

Loan Debts = Rs.1,60,000

Sundry (Trade) Debts = Rs.1,40,000

How much amount will be allowed as deduction ?

(a) not allowed;
(b) Rs.3,00,000;
(c) Rs.1,40,000
(d) Rs.1,60,000

46 : Deduction for bad debts allowed in earlier years = Rs.1,60,000 as against Rs.2,00,000 claimed. During the previous year Rs.85,000 is recovered from such debtor. What amount will be taxable?

(a) Rs.85,000;
(b) Rs.40,000;
(c) Rs.45,000
(d) Rs.1,60,000

47 : Provision for bad debts is allowed as deduction if :

(a) Such provision is made on rational basis and scientific basis;
(b) Such provision is based on actuarial valuation;
(c) they does not exceed 10% of total debts
(d) not allowed

48 : Which of the following interest will be disallowed :

(a) interest on loan taken for working capital

(b) interest on loan taken for purchase of raw material

(c) interest (*i.e.* notional) on own capital of the proprietor

(d) interest on loan if such interest exceeds 10% p.a. rate.

49 : Interest on loan taken for purchase of plant and machinery for the period upto the date put to use will be:

(a) Added to the actual cost of the plant and machinery

(b) Allowed as deduction

(c) either (a) or (b); at the option of the assessee

(d) Allowed in 5 annual instalments i.e. 1/5th every year.

50 : X LTD. deposited the following amounts to the provident fund :

It own contribution	=	**Rs.1,65,000**
Employee's contribution deducted by it from their salary	=	**Rs.1,65,000**
Date of deposit	=	**28 July, 2019**
Month to which such contribution relates	=	**June, 2019**

How much amount will be allowed as deduction?

(a) Rs.3,30,000

(b) Rs.1,65,000

(c) Not allowed

(d) Allowed only upto 12% of salary of these employees

51 : X LTD. deposited the following amounts to the provident fund :

It own contribution	=	**Rs.1,65,000**
Employee's contribution deducted by it from their salary	=	**Rs.1,65,000**
Date of deposit	=	**28 December, 2020**
Month to which such contribution relates	=	**June, 2019**

How much amount will be allowed as deduction for the P.Y. 2019-20 ?

(a) 3,30,000

(b) 1,65,000

(c) Not allowed

(d) Allowed only upto 12% of salary of these employees

52 : While computing income under the head PGBP, which of the following will be disallowed :

(a) Excise Duty

(b) Sales Tax

(c) VAT

(d) Wealth Tax

53 : The profit share received by a partner from his firm will be :

(a) Taxable under PGBP

(b) Taxable under Other Source

(c) Taxable under the head Salary

(d) Exempt

54 : Interest on working capital paid by a firm to its partner. Details are as under :

Partner	=	**Non-working**
Rate of interest	=	**18% p.a.**
Rate of interest in 'partnership deed'	=	**15% p.a.**

What would be the tax treatment ?

(a) 3% will be disallowed
(b) 6% will be disallowed
(c) Fully allowed
(d) Disallowed

55 : Payment of remuneration to non-working partner will be :

(a) Fully allowed
(b) Allowed upto certain limits as provided by section 40(b)
(c) Disallowed
(d) interest on loan if such interest exceeds 10% p.a. rate

56 : From the following information calculate the amount to be disallowed under section 40(b) :

Book profit	=	**Rs.5,00,000**
Remuneration to working partner	=	**Rs.3,80,000**
Remuneration to non-working partner	=	**Rs.90,000**

(a) Rs.90,000
(b) Rs.20,000
(c) Rs.4,70,000
(d) Fully allowed.

57 : From the following information calculate the amount to be disallowed under section 40(b) :

Book profit	=	**Rs.5,00,000**
Remuneration to working partner	=	**Rs.4,70,000**

(a) Fully allowed
(b) Rs.20,000
(c) Rs. 80,000
(d) Rs. 1,70,000

58 : From the following information calculate the amount to be disallowed under section 40(b) :

Interest paid to partners on their loan	=	**Rs.18,000 at the rate of 18%**
Interest paid to partners on their capital contribution	=	**Rs.25,000 at the rate of 15%**

(a) Rs.5,000
(b) Rs.6,000
(c) Rs. 11,000
(d) Fully allowed

59 : Income of a firm under the head PGBP is Rs. 3,00,000 BEFORE making adjustments of the following items which are debited to the profit and loss account :

Interest paid to working partners	=	**Rs.50,000 at the rate of 20%**
Remuneration to non-working partners	=	**Rs.1,20,000**
Remuneration to working partners	=	**Rs.3,60,000**

What will be the amount of 'book profit'

(a) Rs.3,00,000
(b) Rs.3,50,000
(c) Rs. 8,30,000
(d) Rs. 8,00,000

60 : Which of the following income is NOT taxable under the head PGBP :

(a) Income from selling of lottery tickets;
(b) Dividend received by a stock broker;
(c) Income from speculation business;
(d) Income from illegal business.

61 : Income of trade profession or similar association :

(a) will be taxable from specific services rendered by it;
(b) Will not be taxable on "principles of mutuality";
(c) shall be deemed to let out and therefore, will be taxable under the head house property;
(d) Shall have no tax treatment.

62 : Which of the following incomes which are received by a partner from its firm will NOT be taxable in his hands—

(a) Remuneration received by partner;
(b) Interest on capital received by him;
(c) Interest on loan given by him to its firm;
(d) Profit share received by him.

63 : Expenditure incurred on family planning amongst the employees is allowed to:

(a) any assessee;
(b) a domestic company;
(c) an assessee which is a company or Cooperative society
(d) any company.

64 : Capital expenditure incurred on family planning amongst employees of the company assessee :

(a) Is allowed as deduction in full
(b) Is allowed as deduction in 5 equal instalments
(c) Is allowed as deduction in 10 equal instalments
(d) Is disallowed.

65 : The business income of a company assessee is Rs. 40,000. This income is arrived at before claiming Rs. 60,000 being 1/5th of capital expenditure on family planning. The balance Rs. 20,000 shall be treated as :

(a) Business loss
(b) Unabsorbed expenditure on family planning
(c) A dead loss i.e. loss for which no tax treatment is provided
(d) None of the above.

66 : The business income of a company assessee before claiming Rs. 60,000 being revenue expenditure on family planning is Rs.40,000. The balance Rs. 20,000 shall be treated as:

(a) Business loss
(b) Unabsorbed expenditure on family planning
(c) A dead loss i.e. loss for which no tax treatment is provided
(d) None of the above.

67 : The business income of a company assessee before claiming deduction of revenue and capital expenditure is Rs.6,00,000. The revenue and capital expenditure incurred during the year are Rs. 7,00,000 and Rs. 10,00,000 respectively. The unabsorbed expenditure on family planning in this case shall be :

(a) Rs. 3,00,000
(c) Rs. 2,00,000 and Rs. 1,00,000 shall be business

loss

(b) Rs. 11,00,000

(d) Rs. 80,000 and Rs. 7,00,000 shall be business loss.

68 : Deductions under section 37(1) shall be allowed of those expenditure which are of :

(a) Revenue nature

(b) Capital nature

(c) both revenue and capital nature;

(d) None of revenue and capital nature.

69 : If the 'payer' is able to establish that the payee has furnished the return of income by including such income on which tax was deductible at source and has paid tax due on income declared by him in such return of income, it shall be deemed that the assessee (*i.e.* payer) has deducted and paid tax on such income :

(a) On the date of payment of tax by the payee

(b) On the date when the tax was deductible at source

(c) On the date of furnishing return of income by the resident payee

(d) On the date 'payer' so proves.

70 : Deductions under section 40(b) shall be allowed on account of salary/remuneration paid to :

(a) Any partner

(b) Managing partner only

(c) Working partner only

(d) Those partners who are entitled to receive salary or remuneration as per terms of partnership deed.

71 : Where any land or building forming part of stock-in-trade is transferred, then for the purpose of computing income under the head PGBP, the consideration price for this purpose shall be deemed to be :

(a) Price at which such asset is transferred

(b) Stamp duty value on the date of transfer

(c) Fair market value on the date of transfer

(d) HIGHER of fair market value or stamp duty value.

72 : A person carrying on non-specified profession is :

(a) Required to maintain books of account

(b) Required to maintain prescribed books of account

(c) Not required to maintain books of account

(d) Section 44AA does not apply to non-specified professionals.

73 : A person carrying on specified profession is required to maintain the prescribed books of account of the current previous year if the gross receipts of such profession in all the three preceding previous year exceeds :

(a) Rs. 1 crore

(b) Rs. 25,00,000

(c) Rs. 1,50,000

(d) Rs. 60,000.

74 : A person carrying on specified profession is :

(a) Required to maintain prescribed books of account in all cases

(b) Required to maintain prescribed books of

(c) prescribed books of account if the gross receipt of all the three preceding previous years exceeds Rs. 1,50,000, otherwise such books of account as will enable the Assessing Officer to compute him business income

(d) NOT required to maintain books of accounts

account if the gross receipt of all the three preceding previous years exceeds Rs. 1,50,000, otherwise no account books of are to be maintained

if his accounts were subject to audit under section 44AD in the preceding F.Y.

75 : If a person sets up a specified profession during the current previous year, he is :

(a) required to maintain prescribed books of account

(b) required to maintain prescribed books of account if the gross receipts of such profession is likely to exceeds Rs. 1,50,000 otherwise such books of account which will enable the Assessing Officer to compute his total income

(c) not required to maintain books of account

(d) NOT required to maintain books of accounts if his accounts were subject to audit under section 44AD in the preceding F.Y.

76 : An individual who is carrying on non-specified profession is :

(a) not required to maintain any books of account

(b) required to maintain book of account of the current previous year if in any of the 3 preceding previous years his total income exceeded Rs. 1,20,000 AND his gross receipts exceeded Rs. 10 lakhs.

(c) required to maintain book of account of the current previous year if in any of the 3 preceding previous years his total income exceeded Rs. 1,20,000 OR gross receipts exceeded Rs. 10 lakhs.

(d) required to maintain book of account of the current previous year if in any of the 3 preceding previous years his total income exceeded Rs. 2,50,000 OR gross receipts exceeded Rs. 25 lakhs.

77 : A partnership firm is carrying on non-specified profession is :

(a) not required to maintain any books of account

(b) required to maintain book of account of the current previous year if in any of the 3 preceding previous years its total income exceeded Rs. 1,20,000 AND his gross receipts exceeded Rs. 10 lakhs.

(c) required to maintain book of account of the current previous year if in any of the 3 preceding previous years its total income exceeded Rs. 1,20,000 OR gross receipts exceeded Rs. 10 lakhs.

(d) required to maintain book of account of the current previous year if in any of the 3 preceding previous years its total income exceeded Rs. 2,50,000 OR gross receipts exceeded Rs. 25 lakhs.

78 : A company, which sets up a new business during the current previous year is required to maintain books of account if its :

(a) total income of the current year exceeds or is likely to exceed Rs. 1,20,000

(b) his total income of any of 3 preceding previous years exceeded Rs. 1,50,000

(c) gross receipt/turnover of the current year exceeds or likely to exceed Rs. 10,00,000

(d) condition mentioned either in (a) or (c) is satisfied.

79 : Tax audit is compulsory in case a person is carrying on business whose gross turnover/sales/receipts, as the case may be, exceeds :

(a) Rs. 60 lakhs
(b) Rs. 1 crore
(c) Rs. 40 lakhs
(d) Rs. 25 lakhs.

80 : For person carrying on profession, tax audit is compulsory, if the gross receipts of the previous year exceeds :

(a) Rs. 10 lakhs
(b) Rs. 1 crore
(c) Rs. 15 lakhs
(d) Rs. 50 lakh.

81 : Section 44AD relating to presumptive income of a business (excluding business covered under section 44AE) is applicable in case of :

(a) any assessee;
(b) any assessee being an individual or HUF or a firm;
(c) any assessee being an individual or HUF or a firm other than limited liability partnership firm;
(d) any assessee being an individual or HUF or a firm who is a resident but excluding limited liability partnership firm

82 : Presumptive income of taxation referred to in section 44AD is not applicable to :

(a) person carrying on profession referred to in section 44AA(1)
(b) a person carrying on any agency business
(c) a person earning income in the nature of commission or brokerage income
(d) a person referred to in (a), (b) and (c) above

83 : If an eligible assessee is engaged in any business other than plying, hiring or leasing of goods transport and he had opted for presumptive income scheme under section 44AD, the assessee shall :

(a) be entitled to deduction under section 30 to 37
(b) not be entitled to any deduction under section 30 to 37
(c) not be entitled to deduction under section 30 to 37 except on account of interest on capital and loan from a partner and remuneration to working partner as per section 40(b)
(d) entitled to claim deduction of any expense but upto the amount of 'book profit'.

84 : In case an assessee is engaged in the business of plying, hiring or leasing goods carriage, presumption income scheme under section 44AE is applicable if the assessee is the owner of maximum of :

(a) 8 goods carriages
(b) 10 goods carriages
(c) 12 goods carriages
(d) 10 heavy and 10 other goods carriage.

85 : As per presumptive income scheme under section 44AE, the presumed income for P.Y. 2019-20 shall be :

(a) Rs.3,000 p.m. per goods carriage
(b) Rs.7,500 p.m. or part of month per goods carriage vehicle for light and medium vehicles and Rs. 1,000 per ton p.m. or part of month for
(c) Rs.7,500 p.m. or part of month per goods carriage vehicle (heavy/light/medium)
(d) Rs.5,000 p.m. per heavy goods vehicle and Rs.4,500 p.m. per vehicle other than heavy goods vehicle.

heavy vehicles

86 : Where the payment of an expenditure claimed as deduction by any assessee carrying on business or profession other than who is in transport business exceeds Rs.10,000, it should be paid by:

(a) crossed cheque/draft
(b) Account payee cheque/account payee draft
(c) Account payee cheque
(d) any mode other than cash.

87 : Where the above payment is not made by account payee cheque or account payee draft:

(a) 20% of such payment shall be disallowed
(b) 100% of such payment shall be disallowed.
(c) 100% of such payment shall be disallowed
(d) 100% of such payment shall be disallowed unless such payment falls under the exceptions prescribed.

88 : From the following information, calculate the amount to be disallowed under section 40(b)

Book profit	=	**5,00,000**
Remuneration to working partner	=	**3,80,000**
Remuneration to non-working partner	=	**90,000**

(a) 90,000;
(b) 20,000;
(c) 4,70,000;
(d) Fully allowed

89 : From the following information, calculate the amount to be disallowed u/s 40(b)

Book profit	=	**5,00,000**
Remuneration to working partners	=	**4,70,000**

(a) Fully allowed;
(b) 20,000;
(c) 80,000;
(d) 1,70,000

90 : Interest paid to partners is as under:

Rs.18,000 @ 18% on their loan

Rs.25,000 @ 15% on their capital contribution

What amount will be disallowed as per section 40(b)?

(a) 5,000;
(b) 6,000;
(c) 11,000;
(d) Fully allowed

91 : Income under the head PGBP Rs.3,00,000 before adjusting the following: (i.e. these expenses are debited to P/L but no adjustment is made)

Rs.50,000 interest @ 20% to working partners

Rs.1,20,000 remuneration to non-working partners

Rs.3,60,000 remuneration to working partners

What is the amount of 'Book Profit'?

(a) 3,00,000;
(b) 3,50,000;
(c) 8,30,000;
(d) 8,00,000

92 : Where transaction with 'Relatives' exceeds Rs.20 crore these transaction will be treated as:

(a) Prescribed domestic transactions;
(c) Specified Domestic Transactions;

(b) High level Domestic Transactions;
(d) W.e.f. A.Y. 2018-19, none of the above

93 : Where transactions with 'Relatives' referred to in section 40A(2) exceeds Rs.20 crore the disallowance of excessive payment will be based on :

(a) Fair Market Value of these transactions;
(c) Benefit derived from these transactions;
(b) Arm's Length Price (ALP) thereof;
(d) Estimate made by the A.O

94 : Section 40A(2) covers :

(a) Revenue expenses
(c) Both
(b) Capital expenses
(d) Revenue + 1/5 of capital nature expenses

95 : During the previous year X LTD. makes cash payment of Rs.50,000 to a contractor against a bill no. 501. What would be the disallowance under section 40A(3) :

(a) Rs.30,000;
(c) Rs.50,000;
(b) Rs.20,000;
(d) Rs.10,000 *i.e.* 20% of such payment

96 : During the previous year X LTD. makes cash payment of Rs.50,000 to a contractor against a bill no. 501 (of Rs.20,000) and bill no. 502 (of Rs.30,000). What would be the disallowance?

(a) Rs.50,000;
(c) Rs.30,000;
(b) Rs.20,000;
(d) Rs.6,000 i.e. 20% of such payment

97 : During the previous year X LTD. makes cash payment of Rs.26,000 to a contractor engaged in plying, hiring, leasing of goods carriage. What would be the disallowance?

(a) Rs.6,000;
(c) Rs.26,000 × 20% = 5200;
(b) Rs.26,000;
(d) NIL

98 : During the previous year X LTD. makes cash payment of Rs.26,000 to a contractor engaged in plying of passengers carriage. What would be the disallowance?

(a) Rs.6,000;
(c) 16,000;
(b) Rs.26,000;
(d) NIL

99 : Which of the following expense will be disallowed?

(a) Cash payment of Rs.60,000 in a day to a farmer for purchasing sugarcane;
(c) Payment of Rs.80,000 by credit card to a contractor in a single day against a single bill;
(b) Cash payment (after TDS) of Rs.70,000 to an employee who is deputed to other place for 25 days;
(d) Payment of Rs.60,000 by 'cross cheque' to a contractor in a single day against a single bill;

100 : Sections 43B allows deduction in respect of certain expenses on actual payment basis. Which of the following expense is covered by this section ?

(a) Employers contribution towards provident fund
(c) Statutory payments like excise duty, sales tax etc.
(b) Employers contribution towards gratuity fund
(d) All of the above.

101 : Sections 43B allows deduction in respect of certain expenses on actual payment basis. Where an

assessee is following mercantile system of accounting, upto what date those expenses may be paid for claiming their deduction ?

(a) Upto the date of filing of return of income under section 139(1)

(b) Upto 31st march of the P.Y.

(c) Within 30 days from the date when these expenses are incurred.

(d) Upto the expiry of the A.Y.

102 : During the P.Y. 2019-20, X Ltd. pays salary of Rs. 10,00,000 to one of its employee (resident). TDS was deductible thereon but was not deducted by the company. What amount will be disallowed ?

(a) Rs. 3,00,000

(b) Rs. 10,00,000

(c) The amount equal to the TDS default

(d) Nil.

103 : During the P.Y. 2019-20, Y Ltd. pays salary of Rs. 10,00,000 to one of its employee (non-resident). TDS was deductible thereon but was not deducted by the company. What amount will be disallowed ?

(a) Rs. 3,00,000

(b) Rs. 10,00,000

(c) The amount equal to the TDS default

(d) Nil.

104 : During the P.Y. 2019-20, Z Ltd. pays lease rent of Rs. 2,00,000 (to a resident) for use of generator. Details are as under :

Date of payment of lease rent	**:**	**30.3.2020**
Date of deduction of tax at source	**:**	**30.3.2020**
Date of deposit of TDS	**:**	**30.9.2020**

Discuss the allowability and non-allowability of such lease rent.

(a) Deduction will be allowed for lease rent of Rs. 2,00,000 during the P.Y. 2020-21.

(b) Deduction will be allowed for lease rent of Rs. 2,00,000 during the P.Y. 2019-20.

(c) No deduction will be allowed for such rent.

(d) Rs. 60,000 will be disallowed during P.Y. 2019-20, however, during P.Y. 2020-21, such amount will be allowed as deduction.

105 : During the P.Y. 2019-20, Z Ltd. pays lease rent of Rs. 2,00,000 (to a resident) for use of generator. Details are as under :

Date of payment of lease rent	**:**	**30.3.2020**
Date of deduction of tax at source	**:**	**30.3.2020**
Date of deposit of TDS	**:**	**31.12.2020**

Discuss the allowability and non-allowability of such lease rent.

(a) Deduction will be allowed for lease rent of Rs. 2,00,000 during the P.Y. 2020-21.

(b) Deduction will be allowed for lease rent of Rs. 2,00,000 during the P.Y. 2019-20.

(c) No deduction will be allowed for such rent.

(d) Rs. 60,000 will be disallowed during P.Y. 2019-20, however, during P.Y. 2020-21, such amount will be allowed as deduction.

106 : During the P.Y. 2018-19, Z Ltd. pays lease rent of Rs. 2,00,000 (to a non-resident in India) for use of generator. Details are as under :

Date of payment of lease rent	**:**	**30.3.2020**
Date of deduction of tax at source	**:**	**30.3.2020**

Date of deposit of TDS : 31.12.2020

Discuss the allowability and non-allowability of such lease rent.

(a) No disallowance if payment (without TDS) is made to non-resident. Hence fully allowed.

(b) Rs. 2,00,000 will be disallowed during P.Y. 2019-20 and no deduction will be allowed in subsequent years even if it is paid.

(c) Rs. 2,00,000 will be disallowed during P.Y. 2019-20, however, during P.Y. 2020-21, such amount will be allowed as deduction.

(d) Rs. 60,000 will be disallowed during P.Y. 2019-20, however, during P.Y. 2020-21, such amount will be allowed as deduction.

107 : Section 40(a)(*i*) disallows certain expenditures in respect of which payment is made to 'non-residents' IF these payments are made without TDS. Which of the following payment is NOT covered by this section :

(a) Interest

(b) Royalty

(c) Commission

(d) Salary

108 : Section 40(a)(*ia*) disallows expenditures in respect of which payment is made to residents IF these payments are made without TDS. Which of the following payment is covered by this section :

(a) Interest

(b) Royalty

(c) Salary

(d) Any sum on which tax is deductible.

ANSWERS TO MCQs

Question	Answer	Question	Answer	Question	Answer	Question	Answer	Question	Answer
1	B	2	A	3	D	4	B	5	A
6	D	7	C	8	C	9	A	10	D
11	A	12	D	13	B	14	C	15	C
16	B	17	A	18	C	19	D	20	D
21	C	22	C	23	D	24	C	25	C
26	C	27	B	28	B	29	C	30	C
31	D	32	A	33	C	34	C	35	D
36	C	37	D	38	A	39	B	40	B
41	D	42	A	43	D	44	C	45	C
46	C	47	D	48	C	49	A	50	B
51	C	52	D	53	D	54	B	55	C
56	A	57	C	58	C	59	D	60	B
61	A	62	D	63	D	64	B	65	B
66	B	67	A	68	A	69	C	70	C
71	B	72	A	73	C	74	C	75	B
76	D	77	C	78	D	79	B	80	D
81	D	82	D	83	C	84	B	85	B
86	B	87	D	88	A	89	C	90	C
91	D	92	D	93	B	94	A	95	C
96	A	97	D	98	B	99	D	100	D
101	A	102	A	103	B	104	B	105	D
106	C	107	D	108	D				



CHAPTER 19

CAPITAL GAINS
[Chargeability and definitions]

19.1 Chargeability [Section 45(1)]

Any profits or gains arising from the *transfer* of a *capital asset* effected in the previous year shall be chargeable to income-tax under the head "Capital gains", and shall be deemed to be the income of the previous year in which the transfer took place **provided that** it is not exempt under section 54, 54B, 54D, 54EC, 54F, 54G and 54GA.

19.2 Meaning of 'capital asset' [Section 2(14)]

Capital asset means :

(a) property of any kind held by an assessee, whether or not connected with his business or profession,

(b) any securities held by a Foreign Institutional Investor (FII) which has invested in such securities in accordance with the regulations made under the SEBI Act, 1992

but does not include—

(i) Any **stock-in-trade**, held for the purposes of his business or profession,

(ii) **Personal effects** (*i.e.* movable property including wearing apparel and furniture) held for personal use by assessee or any member of his family dependent on him. However in the following cases, effect are although personal yet, they are treated as 'capital asset':

a. Jewellery;

b. Archaeological collections;

c. Drawing;

d. Paintings;

e. Sculptures;

f. Any work of art

For this purposes, **"jewellery"** includes—

(a) ornaments made of gold, silver, platinum or any other precious metal or any alloy containing one or more of such precious metals, whether or not containing any precious or semi-precious stone, and whether or not worked or sewn into any wearing apparel;

(b) precious or semi-precious stones, whether or not set in any furniture, utensil or other article or worked or sewn into any wearing apparel.

Notes—

1. Jewellery will not be treated as personal effect, though it is movable and may be for personal use. Therefore, jewellery shall be capital asset for capital gain purposes.

2. Any personal effect shall not be treated as **capital asset** if (*i*) it is a movable asset, except jewellery etc. and (*ii*) it is held for personal use by the assessee or any member of his family dependent on him.
3. *Maharaja Rana Hemant Singhji* v. *CIT* (SC): Gold and silver coins and bars used for puja of deities as a matter of pride or ornamentation and normally not intended for personal or household use are not "personal effects" and are, therefore, treated as capital assets.
4. As has been judicially held, Car, scooter, furniture etc. are personal effects.

(iii) **Agricultural land in India, excluding a land situated**—

(i) *IN MUNICIPALITY, i.e.* land situated within the jurisdiction of a municipality (or cantonment board) which has a population of 10,000 or more according to the last preceding census of which the relevant figures have been published before the first day of the previous year ; or

(ii) *IN URBANISATION AREA, i.e.* land situated within in specified distance (mentioned in the table below), *measured aerially*, of municipality or cantonment board having the specified range of population as given below—

Range of population of municipality or cantonment board (according to the last preceding published census)	*specified distance from the local limit of such municipality etc. [Land situated within this distance is a 'capital asset']*
(1)	(2)
> 10,000 but ≤ 1,00,000	2 kilometres or less than that
> 1,00,000 but ≤ 10,00,000	6 kilometres or less than that
> 10,00,000	8 kilometres or less than that

Thus, transfer of the land which situated in the area specified in (*a*) or (*b*), would be chargeable under this chapter.

(iv) 6½% **Gold Bonds**, 1977 or 7% Gold Bonds, 1980, or National Defence Gold Bonds, 1980.

(v) Special Bearer Bonds, 1991.

(vi) Gold Deposit Bonds issued under the Gold Deposit Scheme, 1999 or **Deposit Certificates issued under Gold Monetisation Scheme, 2015**

Explanation—For the removal of doubts, it is hereby clarified that "property" includes any rights in or in relation to an Indian company, including rights of management or control or any other rights whatsoever. [Explanation inserted by Finance Act, 2012, *w.r.e.f.* 1.4.1962]

This Explanation is inserted to supersede the ruling of Supreme Court in case of *Vodafone International Holdings B.V.* v. *Union of India* [2012] 204 Taxman 408, wherein it was held that influence/persuasion of a parent company over its subsidiary could not be construed as a right in the legal sense.

Note : The word "property of any kind" is wide enough; it includes not only tangible assets but intangible assets also (*e.g.* goodwill, route permits, tenancy right, lease hold right, copyright etc.)

TYPES OF CAPITAL ASSETS

There are two types of capital assets short term capital assets and long term capital assets.

19.3 Meaning of 'short term capital asset' [Section 2(42A)]

Short-term capital asset means a capital asset held by an assessee for not more than 12/**24**/36 (as the case may be) months immediately preceding the date of its transfer. Details are as under :

Capital asset	To be treated as short term, the holding period should not exceed
Listed shares (equity or preference)	12 months

Unlisted shares (equity or preference)	24 months
Other *listed* securities (*i.e.* debentures etc.),	12 months
Other *unlisted* securities (*i.e.* debentures etc.),	36 months
Units of the Unit Trust of India, or	12 months
Units of equity oriented fund (whether listed or not)	12 months
Zero coupon bonds.	12 months
Immovable property being land or building or both	24 months
Any other capital asset	36 months

19.4 Meaning of 'long term capital asset' [Section 2(29A)]

It means a capital asset which is not a short-term capital asset.

19.5 Determination of 'period of holding' [Expl. to section 2(42A)]

In determining holding period, the following exclusion/inclusion of certain period must be noted—

Situation	Exclusion/Inclusion of period
Share held in a company in **liquidation**	Exclude the period subsequent to the date of liquidation.
Capital asset mentioned in section **49(1)**	Included the period of holding of the previous owner.
Allotment of shares in an **amalgamated** Indian co.	Included the period of holding in amalgamating co.
Right shares (whether subscribed by the shareholder or by the person in whose favour such right is renounced)	The period shall be reckoned from the date of allotment of right shares.
Right entitlement : where such right to subscribe shares is renounced in the favour of any other person.	The period shall be reckoned from the date of the **offer** of such right by the company or institution **to the date of renouncement**.
Capital asset, being share or shares of a company, acquired by a non-resident assessee on redemption of GDRs [referred to in section 115AC]	The period shall be reckoned from the date on which a request for such redemption was made.
Equity shares received as a result of conversion of preference shares	While determining the period of holding of equity shares, include the period of preference shares.
Conversion (or treatment) of 'inventory' into 'capital asset'	The period of holding shall be reckoned from the date of such conversion or so treatment.

19.6 Meaning of 'transfer' of capital asset [Section 2(47)]

Transfer in relation to capital assets includes the following	Clarifications
a. The sale, exchange or relinquishment of the asset.	→ **Sale** - it is defined as a contract founded on money consideration between seller and buyer to transfer the property in subject goods. → **Exchange** on the other hand is a situation where two persons mutually transfer the ownership of one thing for the ownership of another. → **Relinquishment of the assets** means withdrawn from or abandoning or giving up anything or cease to hold.
b. The extinguishment of any rights therein.	Extinguishment of right means to put a total end or termination **of right** in a capital asset. The difference between relinquishment and extinguishment is that

	the former is in relation to any **asset** whereas the latter is in relation to **right** therein.
c. The compulsory acquisition thereof under any law.	Where the acquisition (under any law) takes place even if the assessee was not willing to transfer the asset, is called compulsory acquisition.
d. Conversion of asset into stock-in-trade.	It is basically conversion of a capital asset into a non-capital asset.
e. The maturity or redemption of a zero coupon bond.	***"zero coupon bond"*** means a bond as notified by the C.G.,— (a) issued by any infrastructure capital company or infrastructure capital fund or public sector company; (b) in respect of which no payment and benefit is received or receivable before maturity or redemption from the issuer company or fund.
f. Any transaction of allowing possession of any immovable property in part performance of a contract referred to in *Sec. 53A* of the Transfer of Property Act, 1882	Where : (a) possession of property is handed over to buyer **and** (b) sale consideration has been paid by the buyer **but** (c) the sale deed has not been executed (or if executed but not registered) in favour of the buyer, then, *such transaction will be regarded as 'transfer' for the purpose of this section.*
g. Any transaction which has the effect of transferring an immovable property.	Normally the multi-storey buildings or other dwelling units are registered in the name of the co-operative societies or companies formed by their members or shareholders. So if any member of such co-operative society or company transfers his membership which has the effect of transferring his building, it will also be treated as a 'transfer'.

Explanation 2—*"Transfer" includes disposing of or parting with an asset or any interest therein, directly or indirectly, absolutely or conditionally, voluntarily or involuntarily, by way of an agreement (whether entered in India or outside India) or otherwise. (Abstract)*

19.7 Transactions NOT regarded as 'transfer' [Section 46 and 47]

For the purpose of section 45, the following transactions are not regarded as transfer:

1. Distribution of **assets** by a company to its shareholders at the time of its liquidation is not regarded as transfer **in the hands of the company, [Sec. 46(1)]**
2. any distribution of capital assets on the total or partial partition of a HUF**,**
3. any transfer of a capital asset under a gift or will or an irrevocable trust.

   Provided that this clause shall not apply to the transfer of a capital asset being shares, debentures or warrants allotted by a company to its employees under ESOP**.**
4. any transfer of a capital asset by a company to its 100% subsidiary company (or *vice- versa*), **provided that** such transferee company is an Indian company.
5. any transfer, in a scheme of amalgamation, of a capital asset by the amalgamating company to the amalgamated company, **provided that** such transferee company is an Indian company.
6. any transfer, in a scheme of amalgamation, of a capital asset being a **share(s) held in an Indian company**, by the amalgamating foreign company to the amalgamated foreign company, if:
   a. at least 25% of the shareholders of the amalgamating foreign company continue to remain shareholders of the amalgamated foreign company, **and**
   b. such transfer does not attract tax on capital gains in the country of amalgamating co.

   (These provisions are applicable *mutatis-mutandis* in case of a demerger of a foreign company with another foreign company)
7. any transfer, in a scheme of amalgamation, of a capital asset being shares of a foreign company [referred to in Explanation 5 to section 9(1)(*i*)] which derives (directly/indirectly) its value substantially from shares of an Indian company, held by the amalgamating foreign company to the amalgamated foreign company, if :

a. at least 25% of the shareholders of the amalgamating foreign company continue to remain shareholders of the amalgamated foreign company, and

b. such transfer does not attract tax on capital gains in the country of amalgamating co.

(These provisions are applicable *mutatis-mutandis* in case of a demerger of foreign company with the only difference that at least 75% shareholders of demerged foreign company continue to remain shareholder of resulting company).

8. any transfer, in a scheme of amalgamation of a banking company with a banking institution.

9. any transfer, in a demerger, of a capital asset by the demerged company to the resulting company, if the resulting company is an Indian company.

10. transfer of shares in amalgamating company/demerged company, in lieu of allotment of shares in amalgamated company/resulting company in the above cases.

11. any transfer of a capital asset (being a Government Security carrying a periodic payment of interest) made outside India through an intermediary dealing in settlement of securities, by a non-resident to another non-resident.

12. any transfer of Sovereign Gold Bond issued by the RBI under the Sovereign Gold Bond Scheme, 2015, by way of redemption, by an assessee being an individual;

13. any transfer of a capital asset, being any work of art, book, drawing, painting, photograph or print etc., to the Government or a University or National Art Gallery to be of national importance.

14. any transfer by way of conversion of bonds or debentures of a company into shares or debentures of that company.

15. any transfer of a capital asset by a firm to a company as a result of succession of the firm by a company in the **business carried** on by the firm. *Provided that all the following conditions are satisfied* :

- all the assets and liabilities of the firm become the assets and liabilities of the company.
- all the partners of the firm become the shareholders of the company in the **proportion of their capital accounts** stood on the date of such succession.
- As a consideration, the partners of the firm receive the shares (only) in that company.
- the partners of the firm have 50% or more of the total voting power in the company and continue it for 5 years or more from the date of the succession. [Sec. 47(*xiii*)]

16. where a sole proprietary concern is succeeded by a company in the business carried on by it as a result of which the sole proprietary concern transfers any capital asset to the company, *provided that all the following conditions are satisfied:*

- all the assets and liabilities of the concern become the assets and liabilities of the company.
- the shareholding of the proprietor in the company is 50% or more of the total voting power in the company and continue it for 5 years or more from the date of the succession.
- As a consideration, the proprietor receives the shares (only) in that company. [Sec. 47(*xiv*)]

17. any transfer in a scheme for lending of any securities under an agreement or arrangement, which the assessee has entered into with the borrower of such securities and which is subject to the guidelines issued by the Securities and Exchange Board of India, established under section 3 of the Securities and Exchange Board of India Act, 1992 or the Reserve Bank of India constituted under of section 3(1) of the Reserve Bank of India Act, 1934

18. any transfer of a capital asset or intangible asset by a private company or unlisted public company to a limited liability partnership (LLP) in accordance with the provisions of section 56 or section 57 of the Limited Liability Partnership Act, 2008:

Provided that—

a. all the assets and liabilities of the company immediately before the conversion become the assets and liabilities of the LLP;

b. all the shareholders of the company immediately before the conversion become the partners of the LLP and their capital contribution and profit sharing ratio in the LLP are in the same proportion as their shareholding in the company on the date of conversion;

c. the shareholders of the company do not receive any consideration or benefit, directly or indirectly, in any form or manner, other than by way of share in profit and capital contribution in the LLP;

d. the aggregate of the profit sharing ratio of the shareholders of the company in the LLP shall not be less than fifty per cent at any time during the period of 5 years from the date of conversion;

e. the total sales, turnover or gross receipts in business of the company in any of the three previous years preceding the previous year in which the conversion takes place does not exceed 60 lakh rupees; and

f. the total value of the assets as appearing in the books of account of the company in any of the three previous years preceding the previous year in which the conversion takes place does not exceed Rs.5 crore; and

g. no amount is paid, either directly or indirectly, to any partner out of balance of accumulated profit standing in the accounts of the company on the date of conversion for a period of 3 years from the date of conversion. [Sec. 47(*xiiib*)]

19. any transfer of a capital asset in a transaction of reverse mortgage under a scheme made and notified by the Central Government.

20. any transfer of a capital asset, being share of a 'special purpose vehicle' to a business trust in exchange of units allotted by that trust to the transferor.

21. any transfer by a unit holder of a capital asset, being a unit or units, held by him in the consolidating scheme of a mutual fund, made in consideration of the allotment to him of a capital asset, being a unit or units, in the consolidated scheme of the mutual fund.

22. any transfer, made outside India, of a capital asset being rupee denominated bond of an Indian company issued outside India, by a non-resident to another non-resident.

23. any transfer by way of conversion of preference shares of a company into equity shares of that company.

24. any transfer of a capital asset, being—

(a) bond or GDRs referred to in sub-section (1) of section 115AC; or

(b) rupee denominated bond of an Indian company; or

(c) derivative,

(d) such other securities as may be notified by the Central Government in this behalf

made by a non-resident or a specified fund on a recognised stock exchange located in any International Financial Services Centre and where the consideration for such transaction is paid or payable in foreign currency.

Explanation.— For the purposes of this clause,—

- "International Financial Services Centre" shall have the meaning assigned to it in section 2(*q*) of SEZ Act, 2005.
- "Recognised stock exchange" shall have the meaning assigned to it in clause (*ii*) of *Explanation 1* to clause (*5*) of section 43.
- "Derivative" shall have the meaning assigned to it in clause (*ac*) of section 2 of the Securities Contracts (Regulation) Act, 1956.
- "securities" shall have the meaning assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956;
- "specified fund" means a fund established or incorporated in India in the form of a trust or a company or a limited liability partnership or a body corporate,—

(i) which has been granted a certificate of registration as a Category III Alternative Investment Fund and is regulated under the Securities and Exchange Board of India (Alternative Investment Fund) Regulations, 2012, made under the Securities and Exchange Board of India Act, 1992;

(ii) which is located in any International Financial Services Centre;

(iii) which is deriving income solely in convertible foreign exchange;

(iv) of which all the units are held by non-residents;

[Amended by Finance Act, 2019 w.e.f. A.Y. 2020-21]

25. any transfer of a capital asset, being—

(a) bond or GDRs referred to in sub-section (1) of section 115AC; or

(b) rupee denominated bond of an Indian company; or

(c) derivative,

made by a non-resident on a recognised stock exchange located in any International Financial Services.



CHAPTER 20
CAPITAL GAINS
[Calculation of capital gain]

20.1 Year of chargeability of capital gain

Capital gains are generally taxable in the assessment year relevant to the previous year in which **transfer** of the capital asset takes place.

Transfer of immovable property when documents are registered: Title to immovable assets will not pass utill conveyance deed is executed and registered—*Alapati Venkataramiah* v. *CIT* [1965] 57 ITR 185 (SC). A document on subsequent registration will take effect from the time when it was executed and not from the time of its registration.

Transfer of movable property: Title to movable property passes at the time when property is delivered pursuant to contract to sell. Entries in the books of accounts are not relevant for determining the date of transfer—*Alapati Venkataramiah* v. *CIT* [1965] 57 ITR 185 (SC).

However, in the following cases the above general rule will not apply—

Situations	Year of chargeability of capital gain
▪ *Transfer on an immovable property where documents are not registered.*	Capital gain will be taxable in the assessment year relevant to the previous year in which conditions referred to in section 53A of Transfer of Property Act, 1882, are satisfied.
▪ *Conversion of capital asset into stock-in-trade.*	Capital gain will be taxable in the assessment year relevant to the previous year in which such stock-in-trade is sold by the assessee.
▪ *Compulsory acquisition of capital asset.*	*Original compensation:* Capital gain will be taxable in the assessment year relevant to the previous year in which such compensation **or** part thereof, is first received. *Enhanced compensation:* Capital gain will be taxable in the assessment year relevant to the previous year in which enhanced compensation is received by the assessee (*i.e. on receipt basis*).
▪ *Damage or destruction of any capital asset by fire or other calamities which result in receipt of an insurance claim or other asset.*	Capital gain will be taxable in the assessment year relevant to the previous year in which such insurance claim or other asset is **received** by the assessee.

Problem—20.1 : *Mr. Ram sells a house to Mr. Shyam as per sale deed dated March 30, 2014. The documents are, however, registered on April 10, 2014. Discuss the year of chargeability.*

Solution: In the case of immovable property, ownership is transferred when sale deed is registered. In such a case, 'transfer' takes place from the date of execution of the sale deed and not from the date of registration. Therefore, in this case the capital gain will be taxable in the assessment year 2014-15 *i.e.* relevant to the previous year 2013-14.

Problem—20.2 : *Mr. Kumar sells a house to Mr. Sameer as per agreement to sale dated March 30, 2013. Mr. Sameer pays the consideration on March 31, 2013. Possession of the property is handed over to Mr. Sameer as on May 11, 2013. The sale deed is yet to be registered. Discuss the year of chargeability.*

Solution: Where conditions referred to in section 53A of Transfer of Property Act, 1882, are satisfied, the transfer takes place. In this case these conditions are satisfied as on May 11, 2013, therefore transfer takes place during the previous year 2013-14. Therefore, in this case the capital gain will be taxable in the assessment year 2014-15.

Problem—20.3 : *Mr. Sumit sells debentures to Mr. Gaurav on March 10, 2014. On the same day transfer deed is signed and debenture certificates are delivered to Mr. Gaurav. Entries regarding such transfer are however, passed in the books of account of company on May 15, 2014. Discuss the year of chargeability.*

Solution: When a movable property is delivered pursuant to a contract to sell, the ownership is transferred. In this case, ownership is transferred on March 10, 2014 and consequently, capital gain is taxable for the A.Y. 2014-15.

20.2 Mode of computation of capital gain [Section 48]

Method of computation of capital gain depends upon the type of the capital asset transferred.

If transferred asset is a short term capital asset:		If transferred asset is a long term capital asset:	
	Rs.		*Rs.*
Full value of consideration	.....	**Full value of consideration**	.....
Less: Expenses of transfer	.....	*Less:* Expenses of transfer	.....
Less: Cost of acquisition (COA)	.....	*Less:* Indexed cost of acquisition (COA)	.....
Less: Cost of improvement (COI)	.....	*Less:* Indexed cost of improvement (COI)	.....
Gross capital gain	.....	**Gross capital gain**	.....
Less: Exemptions available under section 54B, 54D, 54G and 54GA	.....	*Less:* Exemptions available under section 54, 54B, 54D, 54EC, 54F, 54G and 54GA	.....
Taxable short term capital gain	.....	**Taxable Long term capital gain**	.....

20.3 Indexed cost of acquisition and indexed cost of improvement [2nd proviso to section 48]

Provisions of indexation will apply in case of long term capital gain on transfer of a long-term capital asset, other than capital gain arising to a non-resident from the transfer of shares in, or debentures of, an Indian company referred to in the first proviso.

Indexed cost of acquisition [Explanation (iii) to Section 48] means an amount which bears to the cost of acquisition the same proportion as Cost Inflation Index for the year in which the asset is transferred bears to the Cost Inflation Index for the first year in which the asset was held by the assessee or for the year beginning on 1.4.2001, whichever is later.

Indexed cost of improvement [Explanation (iv) to Section 48] means an amount which bears to the cost of improvement the same proportion as Cost Inflation Index for the year in which the asset is transferred bears to the Cost Inflation Index for the year in which the improvement to the asset took place.

Cost Inflation Index (CII) in relation to a previous year means such Index as the Central Government may, having regard to 75% of average rise in the Consumer Price Index for urban non-manual employees for the immediately preceding previous year to such previous year, by notification in the Official Gazette, specify, in this behalf.

FORMULATION

1. Indexing of cost of acquisition—

▪ **If asset is acquired by the assessee himself**	COA to the assessee × $\frac{\text{CII of the year of transfer by the assessee}}{\text{CII of the year of acquisition by the assessee or CII of the financial year 2001-02, whichever is later}}$
▪ **If asset is acquired by the 'previous owner'**	COA to the 'previous owner × $\frac{\text{CII of the year of transfer by the assessee}}{\text{CII of the year in which asset was 'first held'* by the assessee or CII of the financial year 2001-02, whichever is later}}$

* Where any capital asset is acquired by the previous owner and assessee has acquired it under the circumstances referred to in section 49(1) (gift, will etc.), then as per Explanation (*iii*) to Section 48, indexing will start from the financial year in which the property is *'first held' by the assessee*. However, High Court of Delhi in case of *Arun Shungloo Trust* v. *CIT* [2012] has held that the indexing will be allowed from the financial year in which the said asset is acquired by the previous owner. Similar view is given by Bombay High Court in case of *CIT* v. *Manjula J. Shah* [2012]

2. Indexing of cost of improvement—

▪ **If asset is acquired by the assessee or by previous owner or on AFTER 1.4.2001**	COI of the asset × $\frac{\text{CII of the year of transfer by the assessee}}{\text{CII of the year in which improvement was made by the assessee or previous owner}}$
▪ **If asset is acquired by the assessee or by previous owner BEFORE 1.4.2001**	*Nil.* If asset is acquired by the assessee or by previous owner before 1.4.2001, then COI shall be ignored [*see* Section 55(2)]

Notes—

a. 3rd Proviso to section 48 : Nothing contained in the first and second provisos shall apply to the capital gains arising from the transfer of a long-term capital asset being an equity share in a company or a unit of an equity oriented fund or a unit of a business trust referred to in section 112A.

b. **4th proviso to section 48 :** Provision contained in second proviso shall not apply to long term capital gain arising from the transfer of a long-term capital asset *being bond or debenture* other than capital indexed bonds issued by the Government or Sovereign Gold Bond issued by the RBI.

c. **7th proviso to section 48 :** While computing capital gain, no deduction shall be allowed for Security Transaction Tax (STT) which is paid on buying on selling of these securities.

d. **Cost Inflation Index (CII) [Explanation (iii) to Section 48] :** The Central Government has notified the following CII :

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

20.4 Full value of consideration

Full value of consideration is the amount of consideration received or receivable by the transferor without making any deduction therefrom. It may be in cash or in kind (*e.g.* in case of exchange of assets) but in case of kind the market value of the asset acquired shall be the full value of consideration.

Problem—20.4 : *Mr. Ram purchases a house property for Rs.1,06,000 on May 15, 1965. The following expenses are incurred by him for making addition/alternation to the house property:*

	Rs.
a. Cost of construction of first floor in 1974–75	*1,35,000*
b. Cost of construction of the second floor in 1985–86	*3,10,000*
c. Cost of construction of the third floor in 2006–07	*4,50,000*

Fair market value of the property on 1.4.1981 and on 1.4.2001 is Rs.4,50,000 and Rs.60,00,000 respectively. The house property is sold by Mr. Ram on August 15, 2019 for Rs.1,90,00,000 (expenses incurred on transfer Rs. 50,000). Compute the capital gain for the assessment year 2020–21.

Financial year	*Cost Inflation Index (CII)*
2001-02	*100*
2006–07	*122*
2019–20	*289*

Solution :

Computation of capital gain for the Assessment Year 2020-21

	Rs.
Full value of consideration	1,90,00,000
Less : Expenses incurred on such transfer	50,000
Less : Indexed cost of acquisition *i.e.* 60,00,000 × 289÷100 (*see* Note 1)	1,73,40,000
Less : Indexed cost of improvement *i.e.* 4,50,000 × 289÷122 (*see* Note 2)	10,65,984
Long-term capital gains chargeable to tax during the A.Y.2020–21	5,44,016

Note—

1. FMV on 1.4.1981 is of no relevance now. FMV on 1.4.2001 or actual cost, whichever is higher is to be treated as cost of acquisition.
2. Cost of construction during F.Y. 1974-75 and 1985-86 is to be ignored.

20.5 Computation of capital gain in case of non-residents [1st proviso to sec.48 & rule 115A]

In the case of an assessee, who is a non-resident (including a foreign company), capital gains arising from the transfer of a capital asset being **shares** in, or **debentures** of, an Indian company shall be computed as follows:

(a) Conversion into foreign currency	**Convert the following—** (a) cost of acquisition, (b) expenditure incurred exclusively in connection with such transfer, (c) full value of the consideration. **Conversion rate to be used—** ▪ in case of *(a)*, the average of TTB rate and TTS rate prevailing on the *date of acquisition* of the capital asset, ▪ in case of *(b) and (c)*, the average of TTB rate and TTS rate prevailing on the *date of transfer* of the capital asset.

	Currency for conversion: the above conversion will be done into the same currency as was utilised in acquiring the capital assets so transferred. **Where—** ♦ TTB means, telegraphic transfer buying rate as adopted by SBI. ♦ TTS means, telegraphic transfer selling rate as adopted by SBI.
(b) Capital Gain	Now compute the amount of capital gain (long term/short term) in the foreign currency.
(c) Re-conversion into Rupee	The capital gains so computed in such foreign currency shall be reconverted into Indian currency by applying TTB rate prevailing on the date of such transfer.

Notes—

1. The aforesaid manner of computation of capital gains shall be applicable in respect of capital gains accruing or arising from every reinvestment thereafter in, and sale of, shares or debentures of, an Indian company.
2. Provisions of second proviso to section 48 will not apply where the case is of first proviso, i.e. first proviso is mandatory if applicable.
3. TTB rate and TTS rate in relation to above section is the rate of exchange adopted by *State Bank of India (SBI)* for purchasing or selling such currency where such currency is made available by that bank through telegraphic transfer.
4. Residential status of the assessee will be checked at the time of such transfer.

Problem—20.5 : *Mr. John a non–resident foreign citizen, remits $50,000 to India on July, 11, 2000. The said amount is partly utilised as on August 10, 2000 for purchasing 50,000 shares of ABC India Pvt Ltd (unlisted), an India company. Shares of ABC Pvt Ltd were acquired at Rs. 20 per share (Rs. 1 per share is paid for brokerage). These shares are sold at Rs. 55 per share on March 15, 2020 (brokerage of Rs. 2 per share is also paid).*

Telegraphic transfer buying and selling rates as adopted by the State Bank of India, on various dates are as under:

Date	*TT Buying (1$)*	*TT Selling (1$)*
July 11, 2000	*32*	*34*
August 10, 2000	*35*	*37*
March 15, 2020	*73*	*75*

You are required to calculate the amount of capital gain.

Solution

Calculation of the amount of capital gain if transaction is not carried on recognised stock exchange

Sale consideration (50,000 × Rs. 55) ÷ Rs. 74 (*i.e.* average of Rs.73 and Rs.75)	$37,162.16
Less : Cost of acquisition (50,000 × Rs.21) ÷ Rs.36 (*i.e.* average of Rs.35 and Rs.37)	$29,166.67
Less : Expenses on transfer (50,000 × Rs.2) ÷ Rs.74 (*i.e.* average of Rs.73 and Rs.75)	$1,351.35
Long term capital gain	$6,644.14
Capital gain in Rupees term (6,644.14 × 73)	Rs. 4,85,022.38
Rounded off	Rs. 4,85,020

20.6 Provision of indexation NOT allowed in certain cases

Different situations where indexation is not allowed

1. Transfer of bond/debenture other than capital indexed bonds of Central Government – **4th proviso to section 48.**
2. Transfer of shares/debenture of an Indian company by a NRI in foreign currency **- 1st proviso to section 48.**
3. Transfer of a depreciable asset, other than those used by power generating units eligible for depreciation on SLM basis.
4. Transfer of undertaking or division in a slump sale **- section 50B**.

COMPUTATION OF CAPITAL GAIN IN CERTAIN CASES

20.7 Receipt of insurance money on damage/destruction of capital asset [Section 45(1A)]

Where any person receives at any time during any previous year any money or other assets under insurance from an insurer on account of damage to, or destruction of, any capital asset, as a result of—

(i) flood, typhoon, hurricane, cyclone, earthquake or other convulsion of nature;

(ii) riot or civil disturbance; or

(iii) accidental fire or explosion; or

(iv) action by an enemy or action taken in combating an enemy (with or without a declaration of war),

then, any profits or gains arising from receipt of such money or other assets shall be chargeable under the head Capital gains and shall be deemed to be the income of such person *of the previous year in which such money or other asset was received.*

For the purposes of section 48, **value of any money or the fair market value** of other assets on the date of such receipt shall be deemed to be the full value of the consideration.

Notes—

1. Insurance monies for loss of raw material shall be treated as normal trading receipt as raw material is not a 'capital asset', however, it may be taxable as trading receipt under section 28 or 56.
2. Where any asset is destroyed and no insurance compensation is received, it shall be treated as a dead loss, because neither section 45(1) nor section 45(1A) get attracted.
3. Also note the following in respect of this section—

▪ *Previous year in which capital gain is taxable*	The previous year in which such money or other asset is **received** by the assessee. However, indexing, if required, will be done till the date of such destruction etc.
▪ *Full value of consideration*	Value of any money or the fair market value of other assets on the date of such receipt.
▪ *Cost of acquisition of the assets so damaged or destructed*	The value at which such asset was acquired by the assessee or by the previous owner referred to in section 49(1).

Problem—20.6 : *Mr. Raj owns a house property which was acquired by him as on 1.6.1979 at Rs. 5,00,000 [Its FMV as on 1.4.1981 is Rs. 4,50,000 and on 1.4.2001 is Rs.52,00,000]. Cost of improvement of Rs. 50,000 was incurred on such house as on 10.6.1980 and Rs.7,00,000 on 1.3.2001. The said property was destroyed by fire on 21.1.2017. Compensation of Rs. 1,55,00,000 was paid by the insurance company to Mr. Raj as on 10.4.2019. You are required to calculate the amount of capital gain. (CIIs for F.Y. 2001-02, 2016-17 and 2019-20 are 100, 264 and 289 respectively)*

Solution :

Calculation of the amount of capital gain of Mr. Raj for the assessment year 2020-21

		(Rs.)
Full value of consideration		1,55,00,000
Less : Indexed COA	Rs. 52,00,000 × $\frac{264}{100}$	1,37,28,000
Less : Indexed COI		*Nil*
Long term capital gain		17,72,000

Notes—

1. Capital gain will arise in the year of receipt of compensation, whereas indexing will be done till the year of

destruction etc.

2. Cost of improvement before 1.4.2001 is ignored.

20.8 Conversion of capital asset into stock-in-trade [Section 45(2)]

The profits or gains arising from the 'transfer' by way of conversion by the owner of a capital asset into stock-in-trade of a business carried on by him shall be chargeable to income-tax as his income of the previous year in which such stock-in-trade is sold or otherwise transferred by him.

For the purposes of section 48, the **fair market value** of the asset on the date of such conversion or treatment shall be deemed to be the full value of the consideration.

Notes—

1. The sale of such stock-in-trade will impact with two heads *viz* 'income under the head capital gains' and 'profit and gains of business and profession'.
2. Also note the following in respect of this section—

▪ *Previous year in which capital gain is taxable*	The previous year in which such stock-in-trade is sold by the assessee. However, indexing, if required, will be done till the date of conversion of such capital asset into stock-in-trade.
▪ *Full value of consideration*	Fair market value of such assets on the date of such conversion.
▪ *Cost of acquisition of the assets so converted*	The value at which such asset was acquired by the assessee or by the previous owner referred to in section 49(1).

Problem—20.7 : *Mr. Ram has made an investment of Rs. 10,00,000 in gold (i.e. 2 kilograms) as on 1.10.2001. On 11.7.2007 he opened a jewellery shop and converted the said gold into stock-in-trade. The FMV of the gold as on 11.7.2007 was Rs. 32,00,000. Out of the said gold, 1 kilogram gold was sold as on 10.4.2012 at Rs. 25,00,000 and balance 1 kilogram was sold on 15.5.2019 at Rs. 28,00,000. You are required to calculate the amount of total income of Mr. Ram for various assessment years.*

Solution :

Calculation of the amount of total income of Mr. Ram for the assessment year 2013-14

Income from business (PGBP):	*Rs.*
Sale of stock-in-trade	25,00,000
Less : Purchase price (*i.e.* 50% of its FMV as on the date of such conversion)	16,00,000
	9,00,000
Income under the head capital gains:	
Full value consideration (*i.e.* 50% of its FMV as on the date of such conversion)	16,00,000
Less : Indexed cost of acquisition = Rs. 5,00,000 × 129/100	6,45,000
Long term capital gain	9,55,000
Total income	**18,55,000**

Calculation of the amount of total income of Mr. Ram for the assessment year 2020-21

Income from business (PGBP):	*Rs.*
Sale of stock-in-trade	28,00,000
Less : Purchase price (*i.e.* 50% of its FMV as on the date of such conversion)	16,00,000
	12,00,000

Income under the head capital gains:	
Full value consideration (*i.e.* 50% of its FMV as on the date of such conversion)	16,00,000
Less : Indexed cost of acquisition = Rs. 5,00,000 × 129/100	6,45,000
Long term capital gain	9,55,000
Total income	**21,55,000**

20.9 Transfer of capital asset by partner to his firm [Section 45(3)]

The profits or gains arising from the transfer of a capital asset by a person to a firm or other AOP or BOI (not being a company or a co-operative society) in which he is or becomes a partner or member, by way of capital contribution or otherwise, shall be chargeable to tax as his income *of the previous year in which such transfer takes place.*

For the purposes of section 48, the **amount recorded in the books** of account of the firm, AOP or BOI as the value of the capital asset shall be deemed to be the full value of the consideration.

Notes—

1. Note the following in respect of this section—

▪ *Previous year in which capital gain is taxable*	The previous year in which such capital assets is brought into by the new partner.
▪ *Full value of consideration*	The amount recorded in the books of accounts of the firm.
▪ *Cost of acquisition of the assets so converted*	The value at which such asset was acquired by the assessee or by the previous owner referred to in section 49(1).

Problem—20.8 : *Mr. Rahim enters into partnership with ABC & Co on 5.4.2019 and as a capital contribution he transfers a house property owned by him to ABC & Co. The said property was acquired by Rahim's father as on 10.10.1978 at Rs. 5,00,000. Rahim's father gifted the said property to Mr. Rahim on 1.6.2005. Cost of improvement of Rs. 50,000 was incurred on such house by his father as on 10.6.1984 and Rs. 1,50,000 by Mr. Rahim as on 1.10.2006. Amount recoded in the books of accounts of ABC & Co. is Rs. 57,00,000, however its FMV on this date was Rs.60,00,000. The FMVs of property on various dates are : on 1.4.1981 = Rs.4,80,000; on 1.4.2001 = Rs.18,00,000 and on 10.6.2005 = Rs.25,00,000. You are required to calculate the amount of capital gain.*

Solution :

Calculation of the amount of capital gain of Mr. Rahim for the assessment year 2020-21

		(*Rs.*)
Full value of consideration		57,00,000
Less : Indexed COA =	Rs. 18,00,000 × 289/117	44,46,154
Less : Indexed COI =	Rs. 1,50,000 × 289/122	3,55,328
Long term capital gain		8,98,518

Notes—

1. Where any capital asset is acquired under the circumstances referred to in section 49(1), then indexing will start from the financial year in which the property is *'first held' by the assessee*. Therefore, the financial year 2005-06 is the financial year in which the said property is first held by the assessee *i.e.* Mr. Rahim. However, High Court of Delhi in case of *Arun Shungloo*

Trust v. *CIT* [2012] has held that the indexing will be allowed from the financial year in which the said asset is acquired by the previous owner. Similar view is given by Bombay High Court in case of *CIT* v. *Manjula J. Shah* [2012]

2. Cost of improvement incurred by Rahim's father will be ignored as the improvement was made before 1.4.2001.

20.10 Distribution of capital asset on dissolution of firm [Section 45(4)]

The profits or gains arising from the transfer of a capital asset by way of distribution of capital assets on the dissolution of a firm or other AOP or BOI (not being a company or a co-operative society) or otherwise, shall be chargeable to tax as the income of the firm, AOP or BOI, *of the previous year in which the said transfer takes place.*

For the purposes of section 48, **the fair market value** of the asset on the date of such transfer shall be deemed to be the full value of the consideration.

Bombay High Court in case of *CIT* v. *A.K. Naik Associates* has held that the expression 'otherwise' appearing in section 45(4) not only include cases of dissolution but also include cases of retirement of partners even though there is no dissolution and the business is continuing.

In *A.L.A. Firm* v. *CIT* (SC), it was held that on dissolution or discontinuance of business, value of stock-in-trade shall be the fair market value (FMV) and the difference between its FMV and book value will be the income under the head PGBP.

Notes—

1. The capital gain is taxable in the hands of the firm.
2. Full value consideration in the hands of the firm will be the fair market value of the assets on the date of such transfer. However, cost of acquiring these assets to the partner(s) will be the agreed consideration between the firm and partners.
3. Also note the following in respect of this section—

▪ *Previous year in which capital gain is taxable*	The previous year in which such transfer takes place *i.e.* the year of distribution of capital assets by the firm.
▪ *Full value of consideration*	The fair market value of the assets on the date of such transfer.
▪ *Cost of acquisition of the assets to the firm*	The value at which these assets were acquired by the firm.

Problem—20.9 : *ABC & Co. a partnership firm consisting 3 partners A, B and C. On 5.4.2019 the said firm is dissolved and the assets of the firm are distributed as under:*

Particulars	*Office building (given to A)*	*Listed debenture (given to B)*	*Plot of land (given to C)*
Date of acquisition	*Jul 10, 1980*	*Aug 10, 2004*	*Mar 10, 2005*
Cost of acquisition (Rs.)	*5,00,000*	*2,00,000*	*8,00,000*
W.D.V. as on 31.3.2019	*30,000*	*N.A.*	*N.A.*
F.M.V. as on 5.4.2019	*52,00,000*	*4,50,000*	*28,00,000*
F.M.V. as on 1.4.1981	*6,00,000*	*N.A.*	*N.A*
F.M.V. as on 1.4.2001	*36,00,000*	*N.A.*	*N.A*
Agreed price between firm and its partners	*50,00,000*	*3,00,000*	*15,00,000*

Compute the amount of taxable capital gain in the hands of the firm and the amount of cost of acquisition in the hands of the retiring partners.

Solution :

Calculation of the amount of capital gain of ABC & Co. for the assessment year 2020-21

Office building:	*(Rs.)*
Full value of consideration	52,00,000
Less: Cost of acquisition (*i.e.* the W.D.V.)	30,000
Short term capital gain under section 50	51,70,000

Listed debentures:

Full value consideration	4,50,000
Less: Cost of acquisition (as per 3rd to section 48, indexing is not allowed in case of debenture)	2,00,000
Long term capital gain	2,50,000

Plot of land:

Full value consideration	28,00,000
Less : Indexed COI = Rs.8,00,000 × 272/113	19,25,663
Long term capital gain	8,74,337

Cost of acquisition of these assets in the hands of the partners, is the price agreed between the firm and its partners *i.e.*—

- In case of Mr. A	Rs. 50,00,000
- In case of Mr. B	Rs. 3,00,000
- In case of Mr. C	Rs. 15,00,000

20.11 Capital gain in case of compulsory acquisition of capital asset [Section 45(5)]

Capital gain arises from the transfer of a capital asset, *i.e.* compulsory acquisition under any law, the compensation for which was determined or approved by the Central Government or the Reserve Bank of India, and the compensation for such transfer is enhanced or further enhanced by any court, Tribunal or other authority, the capital gain shall be dealt with in the following manner, namely:

(a) Initial compensation	*ENTIRE compensation will be taxable in the year of its receipt (whether received wholly or partially)* : The capital gain in respect of compensation awarded for first time by the Central Government or the Reserve Bank of India shall be chargeable as income under the head "Capital gains" of the previous year in which such compensation **or** part thereof, was first received.
(b) Enhanced compensation	*OLNY received portion of compensation will taxable in the year of its receipt* : The amount by which the compensation is enhanced or further enhanced by the court, Tribunal or other authority shall be deemed to be income chargeable under the head "Capital gains" of the previous year in which such amount is received by the assessee. Cost of acquisition in this case shall be taken to be *nil* as it has already been deducted at the time of computation of capital gain in case of (*a*), above. *'Provided that any amount of compensation received in pursuance of an interim order of a court, Tribunal or other authority shall be deemed to be income chargeable under the head "Capital gains" of the previous year in which the* ***final order*** *of such court, Tribunal or other authority is made;*
(c) Reduction of compensation	Where in the assessment for any year, the capital gain arising from the transfer of a capital asset is computed by taking the compensation referred to in clause (a) or (b), and subsequently such compensation is reduced by any court, Tribunal or other authority, such assessed capital gain of that year shall be **recomputed** by taking the compensation as so reduced by such court, Tribunal or other authority to be the full value of the consideration. It is called rectification under section 155 and is done within a period of 4 years from the end of the previous year in which order reducing such compensation is passed by the said authority.

Treatment of interest on compensation or enhanced compensation :

♦ *Year of chargeability [Sec. 145A(b)]*	Such interest shall be deemed to be the income of the *year in which it is received.*
♦ *Income from other sources [Sec. 56(2)(viii)]*	Amount of interest referred to in section *145A(b)* shall be chargeable to tax under the head *'income from other sources'*
♦ *Amount of deduction [Sec. 57(iv)]*	Amount equal to ***50%*** of the amount of interest referred to in section *56(2)(viii)*, shall be allowed as ***deduction*** and no other deduction will be allowed in respect of such interest under any other provision of this Act.

Explanation—where by reason of the death of the person who made the transfer, or for any other reason, the enhanced compensation or consideration is received by any other person, the amount referred to in clause (b) shall be deemed to be the income, chargeable to tax under the head "Capital gains", of such other person.

However, the original compensation will always be taxable in the hands of the transferor. After his death his legal representatives will file income tax return on his behalf.

Expenditure on transfer : Expenditures incurred wholly and exclusively in connection with transfer of capital asset (like legal expenses, registration fee, stamp duty, brokerage etc.) are called expenditure on transfer and are deductible while calculating the capital gain under section 48. However, any expenses which have been claimed as deduction under any other provisions of this Act cannot be claimed as a deduction under this chapter.

Problem—20.10 : *Mr. Ramesh has purchased a plot of land in Narela (Delhi) for Rs. 5,00,000 as on 1.1.1980. He gifted the said plot of land to his son Dinesh on his birthday as on 6.11.2005. On 10.9.2009 such plot was compulsorily acquired by the Government and compensation of Rs. 40,00,000 was fixed for it. Out of the total compensation amount Rs. 25,00,000 was received by Mr. Dinesh as on 1.5.2010. While the balance amount is pending, Mr. Dinesh has filed a suit against such compensation amount. The case was decided in the favour of Mr. Dinesh and he was awarded Rs. 15,00,000 as additional compensation. Total expenses incurred by Mr. Dinesh on such case are Rs. 75,000. Balance of original compensation and enhanced compensation (including interest) are received as under:*

Nature of receipt	*Amount (Rs.)*	*Date of receipt*
Balance of original compensation	*15,00,000*	*2.4.2011*
Part of enhanced compensation	*10,00,000*	*5.9.2014*
Balance of enhanced compensation	*5,00,000*	*5.5.2019*
Interest on compensation	*1,20,000*	*5.5.2019*

The FMVs of property on various dates are : on 1.4.1981 = Rs.4,50,000; on 1.4.2001 = Rs.20,00,000 and on 6.11.2005 = Rs.25,00,000. Considering the above data, you are required to calculate the total income of Mr. Dinesh for various assessment years.

Solution :

Calculation of the amount of total income of Mr. Dinesh for the assessment year 2011-12

	Rs.
Income under the head capital gains:	
Full value consideration (Entire original compensation is taxable in the year of its receipt whether fully or partly)	40,00,000
Less : Indexed cost of acquisition = Rs. 20,00,000 × 148/117	25,29,914
Long term capital gain	14,70,086

Calculation of the amount of total income of Mr. Dinesh for the assessment year 2015-16

		Rs.
Income under the head capital gains:		
Full value consideration (Enhanced compensation is taxable in the year of its receipt)		10,00,000
Less : Cost of acquisition		*Nil*
Less: Expenses on transfer (*i.e.* expenses on the case)		50,000
	Long term capital gain	9,50,000

Calculation of the amount of total income of Mr. Dinesh for the assessment year 2020-21

		Rs.
(a) Income under the head capital gains:		
Full value consideration (Enhanced compensation is taxable in the year of its receipt)		5,00,000
Less : Cost of acquisition		*Nil*
Less: Expenses on transfer (*i.e.* expenses on the case)		25,000
	Long term capital gain	4,75,000
(b) Income from other sources:		
Interest on compensation [taxable under section 56(2)(*viii*)]		1,20,000
Less: Deduction of 50% under section 57(*iv*)		60,000
	Income from other sources	60,000
	Total income of A.Y. 2020-21	**5,35,000**

Notes—

1. Where any capital asset is acquired under the circumstances referred to in section 49(1), then indexing will start from the financial year in which the property is *'first held' by the assessee*. Therefore, the financial year 2005-06 is the financial year in which the said property is first held by the assessee *i.e.* Mr. Dinesh. Indexing will be made till the date of compulsory acquisition.
2. Entire original compensation is taxable in the year of its receipts whether fully or in partly, whereas enhanced compensation is taxable only in the year of its receipt *i.e.* as an when the amount of enhanced compensation is received by the assessee that much of the amount will taxable in that previous.
3. Enhanced compensation will be short term or long term depending upon the nature of the capital gain in respect of the original compensation.

20.12 Capital gain in case of transfer of land or building or both under 'specified agreement' [Section 45(5A)]

This section is inserted by Finance Act, 2017, *w.e.f.* A.Y. 2018-19. It provides as under :

- ✓ Notwithstanding anything contained in sub-section (*1*),
- ✓ where the capital gain arises to an assessee, being an individual or a Hindu undivided family,
- ✓ from the transfer of a capital asset, being land or building or both (*i.e.* before development)
- ✓ under a specified agreement,
- ✓ the capital gains shall be chargeable to income-tax as income of the previous year in which the certificate of completion for the whole or part of the project is issued by the competent authority; and
- ✓ for the purposes of section 48, the stamp duty value (on the date of issue of the said certificate) of his share, being land or building or both in the project (*i.e.* after development), as increased by

the consideration received in cash, if any, shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset.

[*Author*: E.g. Assessee transfers his plot to a contractor on which contractor builds a building. So as per this section, FVC of assessee's plot = SDV of his share in such new building, on the date of issue of completion certificate by the competent authority]

Provided that the provisions of this sub-section shall not apply where the assessee transfers his share in the project on or before the date of issue of said certificate of completion, and the capital gains shall be deemed to be the income of the previous year in which such transfer takes place.

Explanation.—For the purposes of this sub-section, the expression—

(*i*) "competent authority" means the authority empowered to approve the building plan by or under any law for the time being in force;

(*ii*) "specified agreement" means a registered agreement in which a person owning land or building or both, agrees to allow another person to develop a real estate project on such land or building or both, in consideration of a share, being land or building or both in such project, whether with or without payment of part of the consideration in cash;

(*iii*) "stamp duty value" means the value adopted or assessed or assessable by any authority of Government for the purpose of payment of stamp duty in respect of an immovable property being land or building or both.'

20.13 Cost of acquisition (COA) [Section 55(2)]

Cost of acquisition is the value which the assessee has paid, or the amount which he has incurred, for acquisition of the asset. It includes the amount incurred for completing or acquiring the title.

1. Cost of acquisition in case of assets acquired before 1.4.2001 : Where the capital asset became the property of the assessee or the previous owner before 1.4.2001, the assessee has option to take its cost of acquisition, being any of the following amounts—

a. the cost of acquiring such asset to the assessee or previous owner, or

b. the fair market value of the asset as on 1.4.2001

Notes—

(i) In order to reduce tax liability, the assessee should choose higher of the above amounts.

(ii) This option is not available in case of capital assets being goodwill of business, right to manufacture, right to carry on business, trademark or brand name of business, tenancy rights, route permits, loom hours, whether these are self-generated or purchased.

2. Cost of acquisition in case of financial assets : Some time a person who owns shares/securities becomes entitled to subscribe to any additional shares/securities or as the case may be, he is allotted additional shares/securities without any payment. Such shares/securities are called as financial assets. The cost of acquisition of these financial assets is ascertained as under:

Financial asset	Cost of acquisition
(a) **Original shares** on the basis of which assessee becomes entitle to right shares.	Amount paid for acquiring these shares.
(b) **Right entitlement** if rights are renounced by the assessee in favour of other person	Nil
(c) **Right shares** subscribed by the **other person**	Purchase price paid to the person renouncing such right ***plus*** amount paid to the company allotting such shares.

(d) **Right shares** subscribed by the **assessee**	Amount paid by him for acquiring such asset.
(e) **Bonus shares** allotted before 1.4.2001	FMV on 1.4.2001
(f) **Bonus shares** allotted on or after 1.4.2001	Nil

Notes—

1. Option to take fair market value (FMV) as on 1.4.2001 is also applicable in case of assets given in clause *(a)*, and *(d)* of the above table.
2. Where the capital asset became the property of the assessee by any of the modes specified in section 49(1), and the capital asset became the property of the previous owner before 1.4.2001, cost of acquisition means the cost of the capital asset to the previous owner or the fair market value of the asset on 1.4.2001, at the option of the assessee.

Problem—20.11 : *Ms. Preeti purchases 1,000 equity shares in X Ltd (unlisted) at a cost of Rs.115 per share (brokerage 1%) in January 1998. She gets 100 bonus shares in August 2000. She again gets 500 bonus shares by virtue of her holding on February 2005. Fair market value of the shares of X Ltd. on April 1, 2001 is Rs.120. In January 2020, she transfers all shares @ Rs.440 per share (brokerage 1%).*

Compute the capital gains taxable in the hands of Ms. Preeti for the A.Y. 2020–21.

Financial year	*Cost Inflation Index (CII)*
2001-02	*100*
2004-05	*113*
2019-20	*289*

Solution :

Computation of capital gain for the Assessment Year 2020–21

	Rs.
1000 Original shares	
Full value of consideration (1000 × 440)	4,40,000
Less : Expenses incurred on such transfer (1% of 4,40,000)	4,400
Less : Indexed cost of acquisition *i.e.* (120 × 1000 × 289/100)	3,46,800
Long-term capital ***gain***	88,800
100 Bonus shares	
Full value of consideration (100 × 440)	44,000
Less : Expenses incurred on such transfer (1% of 44,000)	440
Less : Indexed cost of acquisition *i.e.* (120 × 100 × 289/100) (*see* Note)	34,680
Long-term capital ***gain***	8,880
500 Bonus shares	
Full value of consideration (500 × 440)	2,20,000
Less: Expenses incurred on such transfer (1% of 2,20,000)	2,200
Less: Indexed cost of acquisition	*Nil*
Long-term capital ***gain***	2,17,800
Total long term capital gain/(loss) [Rs.88,800 + Rs.8,880 + Rs.217,800]	**315,480**

Note : Cost of acquisition of bonus shares acquired before 1.4.2001 is the FMV as on 1.4.2001 (being the higher of the cost or the FMV as on 1.4.2001).

20.14 Cost of improvement (COI) [Section 55(1)]

This section provides as under—

Nature of capital asset	Cost of improvement
(a) Goodwill of a business *(b)* Right to manufacture, process any article or thing *(c)* Right to carry on any business or profession	*Nil*
(d) Any other asset	All expenditure incurred by the assessee/previous owner on their improvement on or after 1.4.2001, but any expenditure before this date will not be considered.

20.15 COA and COI in case of 'intangible assets' [Section 55(2) and 55(1)]

These two sections provide as under—

Intangible Asset	What is cost of acquisition (COA) under section 55	What is cost of improvement (COI) under section 55	Option to take FMV as on 1.4.2001, is available or not
1. Goodwill of business 2. Right to manufacture, produce article or thing, 3. Right to carry on any business or profession	▪ If these assets are **purchased** by the assessee or previous owner, the cost of acquisition (COA) will be the purchase price. ▪ **In any other case** *i.e.* if these are not purchased, then COA will be *Nil*	**Always *Nil***	**Not available**, even if these are purchased before 1.4.2001.
4. Trademark or brand name of business, 5. Tenancy rights, 6. Route permits, 7. Loom hours.	Same as above	**All expenditure of capital nature** incurred by the assessee or by the previous owner on their improvement **on or after 1.4.2001** But expenditure before this date will not be considered.	Same as above

Important note on self-generated assets : Self-generated assets are those assets which require no cost in their acquisition or creation. The Supreme Court in *CIT* v. *B.C. Srinivasa Setty [1981] 5 Taxman 1*, has held that in order to calculate capital gain it is necessary to deduct the cost of acquisition from the full value of consideration of the capital asset. Unless cost of acquisition is correctly ascertainable, it is not possible to apply the provision of section 48. Once the section 48 cannot be applied, the capital gain thereon cannot be charge to tax. Thus, if a self-generated capital asset is transferred, capital gain cannot be taxable.

But certain amendments were made in Income tax Act and now capital gain arising on transfer of self-generated assets given in above table [*i.e.* intangible assets], are chargeable to tax.

Spontaneous grown trees can be said to be self-generated and as such there will be no capital gain on their transfer- *Suman Tea & Plywood Industries Pvt. Ltd.*

20.16 COA in certain specified circumstances [Section 49]

Costs of acquisition of capital assets acquired in different situations is as under—

Section	Different capital asset acquired by the assessee	Cost of acquisition of the capital asset referred in Column (2) to the assessee will be as under
(1)	(2)	(3)
49(1)	Where the capital asset becomes the property of the assessee— *1.* on any distribution of assets on partition of a HUF, *2.* under a gift or will, *3.* by succession, inheritance or devolution, *4.* on distribution of assets on the liquidation of a company, *5.* under a transfer to a revocable or an irrevocable trust, or *6.* under any transfer by a holding company to its 100% subsidiary company or *vise-versa* provided that the transferee company is an Indian company, *7.* under any scheme of amalgamation by the amalgamating company to amalgamated Indian company, *8.* by transfer of shares of an Indian company by the amalgamating foreign company to the amalgamated foreign company, *9.* by transfer of capital asset by a banking company to a banking institution, *10.* By conversion by an individual of his separate property into HUF property referred to in section 64(2), *11.* Succession of sole proprietorship/firm by a company referred to in section 47(*xiii*) and 47(*iv*)	Cost of acquisition in these cases will the cost of acquisition to the previous owner. **Note:** *Previous owner* of the property means the last previous owner.
49(2)	Capital asset being shares in an Indian amalgamated company, which are allotted to the assessee in lieu of his shares of amalgamating company.	The COA of shares of amalgamated company will be the cost at which shares of amalgamating company were acquired by the assessee.
49(2A)	Capital asset, being a share or debenture in a company, which became the property of the assessee on conversion of convertible debentures etc. of that company	The COA of these shares or debentures to the assessee shall be deemed to be that part of the cost of debenture, debenture-stock or deposit certificates in relation to which such asset is acquired by the assessee.
49(2AA)	Specified security or sweat equity referred to in section 17(2)(*vi*).	The COA of this capital asset will be the FMV which has been taken into account for the purpose of section 17(2)(*vi*)
49(2AAA)	Where the capital asset being rights of a partner referred to in section 42 of the Limited Liability Partnership Act, 2008 became the property of the assessee on conversion as referred to in section 47(*xiiib*).	The COA of capital asset being rights of a partner will be the cost of acquisition to him of the shares in such company.
49(2ABB)	Cost of acquisition of the capital asset, being share or shares of a company acquired by a non-resident assessee, consequent to redemption of GDRs referred to in Section 115AC	The price of such share(s) prevailing on any recognized stock exchange on the date on which a request for such redemption was made.
49(2C)	The shares in the resulting company, allotted at the time of demerger.	COA of shares of × Net book value of assets transferred

	Note : Net worth means the aggregate of the paid up share capital and general reserves of the demerged co. immediately before demerger.	demerged company Net worth of the demerged company
49(2D)	Capital asset, being original shares, of demerged company.	COA of these shares *minus* COA calculated under section 49(2C).
49(4)	A property value of which has been subject to tax under section 56(2)(*vii*), *i.e.* **"Gifts"**	COA will be the value taken under section 56(2)(*vii*).
49(5)	Capital gain arising from the transfer of an asset declared under the Income Declaration Scheme, 2016	COA of the asset shall be deemed to be the FMV of the asset which has been taken into account for the purposes of the said Scheme.
49(6)	Capital gain arising from the transfer of a specified capital asset (being land or building or both, under land pooling scheme) referred to in section 10(37A), which has been transferred after the expiry of 2 years from the end of the financial year in which the possession of such asset was handed over to the assessee.	COA of such specified capital asset shall be its stamp duty value as on the last day of the second financial year after the end of the financial year in which the possession of the said specified capital asset was handed over to the assessee.
49(7)	Where the capital gain arises from the transfer of a capital asset, being share in the project, in the form of land or building or both, referred to in section 45(5A)	COA shall be the amount which is deemed as full value of consideration in section 45(5A).
49(8)	Capital gain arising from the transfer of an asset, being the asset held by a trust or an institution in respect of which accreted income has been computed and the tax has been paid thereon in accordance with the provisions of Chapter XII-EB. *Notes–* ▪ This chapter contain provisions relating to taxing the income of a trust if such trust ceases to be an exempt entity. ▪ 'Accreted income' for this purpose means the amount by which the aggregate FMV of the total assets of the trust, as on the specified date, exceeds the total liability of such trust computed in accordance with the method of valuation as may be prescribed.	COA of such asset shall be deemed to be the fair market value of the asset which has been taken into account for computation of accreted income as on the specified date referred to in sub-section (2) of section 115TD
49(9)	COA of the capital asset referred to in clause (via) of section 28 [*i.e.* Conversion of stock-in-trade into capital asset]	COA shall be deemed to be their FMV on the date of such conversion)

20.17 COA in case debentures are converted into shares [Section 49(2A)]

Where the capital asset, being a share or debenture in a company, became the property of the assessee in consideration of a transfer referred to in clause (*x*) of section 47, the cost of acquisition of the asset to the assessee shall be deemed to be that part of the cost of debenture, debenture-stock or deposit certificates in relation to which such asset is acquired by the assessee.

Therefore, on sale of capital assets being shares or debenture as given above, the capital gain shall arise and be chargeable in the previous year in which such transfer takes place.

Note : Conversion of preference shares into equity shares will be regarded as transfer (being exchange) and there will be capital gain in the hands of shareholder on the *date of allotment* of equity shares and the full value consideration in this case shall be the fair market value of equity shares on the date of such allotment.

Problem—20.12 : *Mr. X purchased convertible debentures for Rs.5,00,000 during August 2002. The debentures were converted into shares in September 2004. These shares were sold for Rs.15,00,000 in August, 2019. The brokerage expenses is Rs.50,000. You are required to compute the capital gains in case of Mr. X for the assessment year 2020–21.*

Financial year	*Cost Inflation Index (CII)*
2002–03	*105*
2004–05	*113*
2019–20	*289*

Solution :

Computation of capital gain for the Assessment Year 2020–21

	Rs.
Full value of consideration	15,00,000
Less : Expenses incurred on such transfer i.e. brokerage expenses	50,000
Less : Indexed cost of acquisition *i.e.* 5,00,000 × 289/113	12,78,761
Long-term capital gains chargeable to tax during the A.Y.2020–21	1,71,239

Note: For the purpose of computing capital gains, the holding period is considered from the date of allotment of these shares *i.e.* September 2004 to August 2019.

Section 50: Special provision for computation of capital gains in case of depreciable assets (Discussed in the chapter of PGBP)

20.18 Computation of capital gains in case of 'slump sale' [Section 50B]

1. Meaning of slump sale : As per section 2(*42C*), "slump sale" means the transfer of one or more undertakings as a result of the sale for a lump sum consideration without assigning the values to the individual assets and liabilities.

2. Chargeability : Any profits or gains arising from the slump sale shall be chargeable to income-tax as capital gains arising from the transfer of long term capital assets and shall be deemed to be the income of the previous year in which the transfer takes place.

However, if the undertakings owned and held by an assessee for not more than 36 months immediately preceding the date of its transfer, then such slump sale will result into short-term capital gain.

3. Cost of acquisition of undertaking : In relation to capital assets being an undertaking or division transferred by way of such sale, the "net worth" of the undertaking, shall be deemed to be the cost of acquisition and the cost of improvement for the purposes of sections 48 and 49 *and benefit of indexation will not be available in this case.*

4. Meaning of certain terms–

Net worth	Aggregate value of its total assets *minus* value of liabilities as per its books of account. **Provided** that any change on account of revaluation of assets shall be ignored. **Note :** If net worth is negative, it is taken as equal to zero and sale consideration will become capital gain – *Zuari Inds. Ltd.* v. *CIT* (Bom.)
Aggregate value of total assets	→ *In the case of depreciable assets* - **The WDV of the block of assets** → *In the case of capital assets in respect of which whole of the expenditure has been allowed/ allowable as deduction under section 35AD*- **Nil** → *In the case of other assets* - **The book value of such assets**

5. Furnishing of a report from a chartered accountant showing computation: Every assessee shall furnish along with the ROI, a report (in Form 3CEA) of a chartered accountant, certifying that the net worth has been computed correctly.

Explanation 1 to section 50B— For the purposes of this clause, "undertaking" shall include any part of an undertaking, or a unit or division of an undertaking or a business activity **taken as a whole**, but does not include individual assets or liabilities or any combination thereof not constituting a business activity.

Explanation 2 to section 50B—For the removal of doubts, it is hereby declared that the determination of the value of an asset or liability for the sole purpose of payment of stamp duty, registration fees or other similar taxes or fees shall not be regarded as assignment of values to individual assets or liabilities.

Notes—

1. In case of slump sale, no profit under the head PGBP shall arise, even if, the stock in trade of said undertaking is transferred along with other assets.
2. Cost of acquisition *i.e.* "actual cost" of each asset of such undertaking/division in the hands of transferee will be the fair proportion of total consideration paid in slump sale and accordingly the depreciation on these assets will be calculated.
3. Expenses on transfer will be deducted in computing the capital gain under this section also.

Problem—20.13 : *India Bulls a Gurgaon based company is having two divisions namely India Bulls Securities and India Bulls Real Estate. Balance sheet of the company for the year ended 31.3.2019 is as under:*

		Rs.		Rs.
Paid up share capital		*1,00,00,000*	***Division 1: Securities***	
Reserve and surplus		*40,00,000*	*Fixed assets-WDV (i.e. after depreciation):*	
Division 1: Securities			*Building*	*40,00,000*
Current Liabilities:			*Plant and machinery*	*15,00,000*
Sundry creditors	*6,50,000*			
Short term loans	*3,00,000*	*9,50,000*	*Current assets:*	
			Sundry Debtors	*2,00,000*
Division 2: Real Estate			*Cash and Bank*	*1,70,000*
Current Liabilities:			*Other current assets*	*3,50,000*
Sundry creditors	*5,00,000*			
Short term loans	*3,50,000*	*8,50,000*	***Division 2: Real Estate***	
Long term loan		*15,20,000*	*Fixed assets-WDV (i.e. after depreciation):*	
			Building	*50,00,000*
			Plant and machinery	*8,00,000*
			Current assets:	
			Sundry Debtors	*6,00,000*
			Cash and Bank	*8,50,000*
			Stock-in-trade	*13,50,000*
			Other current assets	*25,00,000*
		1,73,20,000		***1,73,20,000***

The following further details are furnished :

(1) India Bulls decides to sell the Securities division (established in 2001) to another company 'India Infoline' Ltd on July 11, 2019. The price fixed was Rs. 75,00,000.

(2) Market value of the building of the Securities division as on 31.3.2019 is Rs. 60,00,000.

Calculate the amount of capital gain for the assessment year 2020–21.

Solution :

Computation of the amount of capital gain for the assessment year 2020–21

	Rs.
Full value of the consideration	75,00,000

Less: Net worth (*see* Note below)		(-) 52,70,000
	Long term capital gain (Since the division is older than 3 years)	**22,30,000**
Note: *Calculation of the amount of 'net worth'-*		
Fixed assets:		
Building		40,00,000
Plant and machinery		15,00,000
Current assets:		
Sundry Debtors		2,00,000
Cash and Bank		1,70,000
Other current assets		3,50,000
	Total of assets (A)	62,20,000
Less:		
Current Liabilities:		
Sundry creditors		6,50,000
Short term loans		3,00,000
	Total of liabilities (B)	9,50,000
	Net worth (A) – (B)	**52,70,000**

20.19 Capital gain on distribution of assets in case of liquidation [Section 46]

1. Treatment in the hands of company : Where the assets of a company are distributed to its shareholders on its liquidation, such distribution shall not be regarded as a transfer by the company. If, however, the liquidator sells the assets of the company and distributes the funds so collected, the company will be liable to pay tax on such gains- *Shri Kannan Rice Mills Ltd.* v. *CIT.*

2. Treatment in the hands of shareholders : Where a shareholder on the liquidation of a company receives any money or other assets from the company, he shall be chargeable to tax under this head.

3. The full value of consideration in this case will be calculated as under :

Money so received or the market value of the other assets on the date of distribution	××××
Less : The amount assessed as dividend under section 2(22)(*c*)	××××
Full value of consideration	××××

Note : *Cost of acquisition of the assets acquired in the event of liquidation,* will be the money so received or the market value of the other assets on the date of distribution. (No deduction will be made for deemed dividend).

20.20 Full value consideration in case of land and building [Section 50C]

(1) **Full value of consideration of land/building-**

- Where the consideration in case of transfer of **land or building or both,**
- is less than the value adopted or assessed or assessable by the "stamp valuation authority "for the purpose of payment of stamp duty in respect of such transfer (*i.e.* SDV),
- the S.V. shall be deemed to be the full value of the consideration of such transfer.
- **Provided that** where such SDV does not exceed 105% of the consideration received or accruing as a result of the transfer, the consideration so received or accruing as a result of the transfer shall, for the purposes of section 48, be deemed to be the full value of the consideration. **[Inserted by Finance Act, 2018 w.e.f. A.Y. 2019-20]**

(2) **Reference to Valuation officer:** Without prejudice to the provisions of sub-section (1), the Assessing Officer may refer the valuation of the capital asset to a Valuation Officer where—

(a) the assessee claims before any Assessing Officer that the S.V. exceeds the fair market value of the property as on the date of transfer; **and**

(b) the S.V. has not been disputed in any appeal or revision before any Authority or Court.

(3) Where the value ascertained under sub-section (2) exceeds the S.V., the S.V. shall be taken as the full value of the consideration received or accruing as a result of the transfer.

Provided that where the 'date of the agreement' fixing the amount of consideration and the 'date of registration' for the transfer of the capital asset are not the same, the SV on the 'date of agreement' may be taken for the purposes of this section provided that BOTH the following conditions are satisfied :

Condition –1	the amount of consideration, or a part thereof, has been received by any mode other than cash;
Condition –2	the amount referred to in *Condition –1*, has been received on or before the *date of the agreement.*

Note—

Where in the assessment for any year, a capital gain is computed by taking the value in accordance with sub-section (1) of section 50C, and subsequently such value is revised in any appeal or revision or reference referred to in clause (b) of sub-section (2) of that section, the Assessing Officer shall amend the order of assessment so as to compute the capital gain by taking the full value of the consideration to be the value as so revised in such appeal or revision or reference; and the provisions of section 154 shall, so far as may be, apply thereto, and 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 or reference. [Section 155(15)]

20.21 Full value consideration in case of 'unquoted shares' [New Section 50CA]

This section provides as under :

- Where the consideration in case of transfer of unquoted share of a company,
- is less than the FMV of such share (determined in such manner as may be prescribed),
- the FMV so determined shall, for the purposes of section 48, be deemed to be the full value of consideration for such transfer.

Where, "quoted share" means the share quoted on any recognised stock exchange.

20.22 Reference to Valuation Officer for ascertaining FMV [Section 55A]

With a view to ascertaining the **fair market value** of a capital asset for the purposes of this Chapter, the Assessing Officer may refer the valuation of capital asset to a Valuation Officer—

Situation	Condition
Valuation is done by Registered Valuer	If the 'Assessing Officer' (A.O.) is of the opinion that there exist *any variance* between its FMV as per Registered Valuer and FMV as per A.O.
Valuation is done by assessee	If the A.O. is of the opinion that FMV estimated by him exceeds the FMV claimed by the assessee and such difference is more than: ♦ Rs. 25,000; **OR** ♦ 15% of FMV claimed by the assessee;
In any other case	If the A.O. is of the opinion that it is necessary so to do.

Note : Where reference to valuation officer is made under sub-section (2) above, the provisions of section 16A, 23A, 24, 34AA, 35 and section 37 of Wealth tax Act, 1957, shall apply *mutatis-mutandis.*

20.23 Fair market value deemed to be full value consideration in certain cases [Section 50D]

Where the consideration in case of transfer of a capital asset is not ascertainable or cannot be determined, then, for the purpose of computing income chargeable to tax as capital gains, the fair market value of the said asset on the date of transfer shall be deemed to be the full value of the consideration in respect of such transfer.

20.24 Treatment of advance money received [Section 51]

This section provides as under :

- If any capital asset was (on any previous occasion) the subject of negotiations for its transfer, and
- any advance money is received and forfeited by the **assessee** in respect of such negotiations,
- then, such amount shall be deducted from the cost for which the asset was acquired or the WDV or the FMV, as the case may be, in computing the cost of acquisition.

Thus, any advance money forfeited by the 'assessee' is to be deducted from cost of such asset (*i.e.* COA or WDV or FMV). But if any advance money is forfeited by the 'previous owner', then it shall NOT be considered.

Note : Since section 51 nowhere mentioned the word "indexed cost of acquisition", therefore, the amount forfeited by the assessee will first be deducted from the cost of acquisition of the asset and thereafter provision of indexation will be applied on such balance amount and if the balance amount is a minus figure, the cost of acquisition will be *nil* and such excess amount will be a capital receipt not chargeable to tax.

Finance Act, 2014 has inserted a proviso to this section, which provides that where any advance money has been included in the total income of the assessee for any previous year as per section 56(2)(*ix*), then, such sum shall NOT be deducted from the cost of acquisition of such asset (*i.e.* COA or WDV or FMV).

Following are the highlights of the Finance Act 2014 in respect of advance money forfeited :

Amendment	Consequences of the amendment
♦ **Section 2(24) is amended so as to treat advance money forfeited as an "income".**	Earlier it was not treated as an 'income' but now such amount falls in the definition of 'income'.
♦ **Section 56(2) is extended by inserting a new clause (ix) thereto.**	Such 'income' will be taxable under the head 'income from other sources'
♦ **A proviso is inserted to section 51.**	The amount which is treated as 'income' and is taxed as above, will NOT be deducted from COA/WDV/FMV of the asset in respect of which such advance money is forfeited.



CHAPTER 21
CAPITAL GAINS
[Exemptions]

21.1 Exemptions under the head capital gains

There are certain situations where although there is a capital gain but it is not chargeable to tax. These exemptions are of two types :

1. Capital gain expressly exempt under section 10.
2. Capital gain exempt under section 54, 54B, 54D, 54EC, 54F, 54G, 54GA.

1. Capital gain expressly exempt under section 10.

Section	Detailed provisions
10(33)	**Capital gain on transfer of units of US- 64** Any capital gain arising from the transfer of a capital asset, being a unit of the Unit Scheme, 1964 is exempt from tax **provided that** such transfer takes place on or after 01-04-2002.
10(37)	**Capital gain on compulsory acquisition of urban agricultural land** In case of an assessee, being **individual or HUF**, any capital gain arising from transfer of agricultural land is not chargeable to tax if **all** the following conditions are satisfied— (*i*) such land is an urban agricultural land [*i.e.* situated in any area referred u/s 2(*14*)(*iii*)] (*ii*) such land, during the period of 2 years immediately preceding the date of transfer, was used for agricultural purposes by such HUF or individual or his parent. (*iii*) such transfer is by way of compulsory acquisition under any law. (*iv*) compensation or consideration (including enhanced compensation) for such transfer has been received by such assessee on or after 01-04-2004. **Note:** where part of **original** compensation is received before 01.04.2004, the exemption cannot be entertained, therefore, **entire** amount of original compensation must be received on or after 01.04.2004 for claiming such exemption. **However,** where original compensation (entire amount or any part) is received before 01.04.2004 and **enhanced** compensation is received after 01.04.04 then, exemption under section 10(37) can be claimed in respect of enhanced compensation.
10(38)	**Long term capital gain on transfer of equity shares/units** Any income arising from the transfer of a long-term capital asset, being an **equity share** in a company or a **unit** of an equity oriented fund, is exempt from tax, if— (*a*) the transaction of sale thereof is entered on or after 01-10-2004, **and** (*b*) such transaction is chargeable to securities transaction tax (STT). **Provided that** this exemption shall NOT apply if transaction of *acquisition* of these equity shares is NOT chargeable to STT. However, certain acquisitions (as notified by the Central Govt. like IPO, bonus/right etc. are exempt from this requirement). So now, this exemption will be available only if transactions of both SALE and PURCHASE of these equity shares are subject to STT.

	Provided also that nothing contained in this clause shall apply to any income arising from the transfer of long-term capital asset, being an equity share in a company or a unit of an equity oriented fund or a unit of a business trust, made on or after the 1st day of April, 2018. [Inserted by Finance Act, 2018, w.e.f. A.Y. 2019-20] *"Equity oriented fund"* means a fund— *(i)* where the investible funds are invested in equity shares of domestic companies to the extent of more than 65% of the total proceeds of such fund; **and** *(ii)* which has been set up under a scheme of a Mutual Fund specified u/s 10(23D).

2. **Capital gain exempt under section 54, 54B, 54D, 54EC, 54F, 54G, 54GA, 54 GB-** these are discussed at the end of the chapter.

21.2 Tax on short term capital gain in case equity shares and units of equity oriented funds [Section 111A]

This section provides as under—

Applicability of section 111A	Where total income of an assessee includes any **short-term capital gain**, arising from transfer of **equity shares or units** of an equity oriented fund, **and**— (a) the transaction of sale of such equity shares/units is entered into on or after 1.10.2004 **and** (b) such transaction is chargeable to securities transaction tax (STT).
Computation of tax under section 111A	The tax payable by the assessee on the total income shall be the aggregate of— (i) the amount of income-tax on such **short-term capital gains** calculated at the rate of **15% and** (ii) the amount of income-tax payable on the balance amount of the total income, calculated with the applicable slabs. **BENEFIT OF SLAB** ✓ In the case of an individual or a HUF, being a **resident**, ✓ where the total income excluding such short-term capital gains is below the maximum amount which is not chargeable to income-tax, then, ✓ such short-term capital gains shall be reduced by the amount of such shortage, **and** ✓ tax on the balance of such short-term capital gains shall be computed **@ 15%.**
Other provisions	*1.* Where the gross total income of an assessee includes any short term capital gains referred as above then, deduction under Chapter VI-A, and rebate under section 88 shall not be allowed on such capital gain. *2.* Short term capital gain other than given in section 111A, shall be chargeable at normal rate of tax.

21.3 Tax on long term capital gains [Section 112]

This section provides as under—

Where the total income of an assessee includes any income, being "long-term capital gain", the tax payable by the assessee on the total income shall be the aggregate of—	
1. in the case of an **individual or a HUF**, being a resident	(i) the amount of income-tax payable on the total income as reduced by the amount of such long-term capital gains, at the applicable slabs; **and** (ii) the amount of income-tax on such long-term capital gains calculated at the rate of 20%. **BENEFIT OF SLAB** ✓Where the total income excluding such LTCG is below the maximum amount which is

	not chargeable to income-tax, then, ✓ such LTCG shall be reduced by the amount of such shortage, and ✓ tax on the balance of such long-term capital gains shall be computed **@ 20%.**
2. in the case of non-resident **individual and foreign company**	(i) the amount of income-tax payable on the total income as reduced by the amount of such long-term capital gains, at the applicable slabs; **and** (ii) amount of income-tax on long-term capital gains calculated at the following rates — *1.* **10%** in case of long term capital gain on unlisted securities computed without giving effect to first proviso [*i.e.* not to compute capital gain in foreign currency] and second proviso [*i.e.* without using indexing provisions] to section 48; *2.* **20%** on any other long term capital gains.
3. in the case of a **domestic company**	(i) the amount of income-tax payable on the total income as reduced by the amount of such long-term capital gains, at the applicable slabs; **and** (ii) the amount of income-tax on such long-term capital gains calculated @20%.
4. in **any other case** of a resident	(i) the amount of income-tax payable on the total income as reduced by the amount of such long-term capital gains, at the applicable slabs; **and** (ii) the amount of income-tax on such long-term capital gains calculated @20%.
Other provisions	Where the gross total income of an assessee includes any LTCG referred as above then, deduction under Chapter VI-A, and rebate under section 88 shall not be allowed on such capital gain.

21.4 Tax on LTCG arising on transfer of listed securities etc. [Proviso to section 112]

1. Applicability of this proviso: Assessee is having any long term capital gain on transfer of capital asset, being—

(a) listed securities; or

(b) unit of UTI; or

(c) zero coupon bond.

With the introduction of Finance Act, 2014, the concessional rate of tax on capital gain (as provided below) will NOT be available in case of 'Units of Mutual fund'.

2. Tax payable : lower of the following amounts, will be the amount of tax payable in such case:

(i) amount of tax on such long term capital gain, calculated @ 20%, after indexation, **or**

(ii) amount of tax on such long term capital gain, calculated @ 10%, before indexation,

For this purpose **'Securities'** include :

(i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of any company;

(ii) Government securities.

21.5 Tax on LTCG in certain cases [Section 112A] (New Section)

In order to minimize the economic distortions and to curb the erosion of tax base, the exemption granted by section 10(38) is withdrawn and this new section is inserted by Finance Act, 2018. This section will be effective from A.Y. 2019-20 and thus applicable on transfers made on or after 1.4.2018. This section provides as under :

(1) Applicability of this section : Notwithstanding anything contained in section 112, the tax payable by an assessee on his total income shall be determined in accordance with the provisions of sub-section (2), if—

(i) the total income includes any income chargeable under the head "Capital gains";

(ii) the capital gains arise from the transfer of a long-term capital asset

- being an equity share in a company or
- a unit of an equity oriented fund or
- a unit of a business trust;

(iii) STT has been paid—

- in case of equity share : on acquisition and transfer thereof; in a company or
- In case of units of an equity oriented fund : on transfer thereof
- In case of units of a business trust : on transfer thereof

(2) Tax payable : The tax payable by the assessee on the total income referred to in sub-section (1) shall be the aggregate of—

(i) Income tax @10% on such LTCG exceeding Rs.1,00,000 (*i.e.* on excess amount only. Therefore, LTCG up to Rs.1,00,000 will be exempt) and

(ii) Income tax payable on balance income as if the balance income were the total income of the assessee.

Provided that in the case of an individual or a HUF, being a resident, where the total income as reduced by such LTCG is below the maximum amount which is not chargeable to income-tax, then, the LTCG, for the purposes of clause (i), shall be reduced by the amount by which the total income as so reduced falls short of the maximum amount which is not chargeable to income-tax. [*Author*: This benefit is called as 'benefit of slab'; so if the other income is less than the taxable limit, the shortfall will first be deducted from FULL amount of LTCG followed by the exemption of Rs.1,00,000 of section 10(38).]

(3) The condition specified in clause (iii) of sub-section (1) shall not apply to a transfer undertaken on a recognised stock exchange located in any International Financial Services Centre and where the consideration for such transfer is received or receivable in foreign currency.

(4) The Central Government may, by notification in the Official Gazette, specify the nature of acquisition in respect of which the provisions of sub-clause (a) of clause (iii) of sub-section (1) shall not apply.

(5) Where the gross total income of an assessee includes any long-term capital gains referred to in sub-section (1), the deduction under Chapter VI-A shall be allowed from the gross total income as reduced by such capital gains.

(6) Where the total income of an assessee includes any long-term capital gains referred to in sub-section (1), the rebate under section 87A shall be allowed from the income-tax on the total income as reduced by tax payable on such capital gains.

Explanation.—For the purposes of this section,—

(a) "Equity oriented fund" means a fund set up under a scheme of a mutual fund specified under clause (23D) of section 10 and,—

(i) in a case where the fund invests in the units of another fund which is traded on a recognised stock exchange,—

(A) a minimum of 90% of the total proceeds of such fund is invested in the units of such other fund; and

(B) such other fund also invests a minimum of 65% of its total proceeds in the equity shares of domestic companies listed on a recognised stock exchange; and

(ii) in any other case, a minimum of 65% of the total proceeds of such fund is invested in the equity shares of domestic companies listed on a recognised stock exchange:

Provided that the percentage of equity shareholding or unit held in respect of the fund, as the case may be, shall be computed with reference to the annual average of the monthly averages of the opening and closing figures;

Problem—7.14 : *For the P.Y. 2018-19, Mr. Suresh (resident of 62 years) has LTCG of Rs.3,10,000 on transfer of listed equity shares of X Ltd. (STT paid on their transfer) and salary income of Rs. 2,20,000. Calculate the tax payable for the A.Y. 2019-20.*

Solution : As the taxable limit for Mr. Suresh is Rs. 3,00,000, so his other income *i.e.* salary falls short (than the taxable limit) by Rs.80,000. This shortfall will *first* be deducted from LTCG followed by the exemption of section 10(38). Therefore, taxable capital gain = Rs.3,10,000 – Rs.80,000 (*i.e.* benefit of slab) – Rs.1,00,000 {*i.e.* exemption of 10(38)} = Rs. 1,30,000. Tax payable under section 112A is = 1,30,000 @10% *i.e.* 13,000 *plus* 4% HEC Rs.13,452.

21.6 COA of equity shares, equity oriented funds or units of business referred to in Section 112A [Section 55(2)(ac)]

If equity shares, equity oriented fund or units of a business trust referred to in section 112A are acquired by the assessee BEFORE 1.2.2018, then their COA will be calculated as under :

Step 1	**Take LOWER of :** ♦ **FVC received/accruing as a result of such transfer, or** ♦ **FMV of such asset on 31.1.2018**
Step 2	**Take HIGHER of :** ♦ **LOWER calculated in Step 1** ♦ **COA of such capital asset.**
Explanation	**FMV of these shares/funds/units means :** **(i) If they are listed on 31.1.2018 :** *Highest price on that stock exchange on 31.1.2018*; **Provided that** where there is no trading in such asset on such exchange on the 31.1.2018, the highest price of such asset on such exchange on a date immediately preceding the 31.1.2018 when such asset was traded on such exchange shall be the FMV; **(ii) In case of units which are not listed on 31.1.2018 :** *Their NAV on 31.1.2018 shall be taken to be their FMV*; **(iii) In case of shares :** → *Not listed on 31.1.2018 but listed on the date of transfer, or* → *Listed on a recognised stock exchange on the date of transfer and which became the property of the assessee in consideration of share which is not listed on such exchange as on 31.1.2018 by way of transaction not regarded as transfer under section 47* *[E.g. shares of amalgamated company listed on the date of transfer which were received in pursuance of holding of shares of amalgamating company which were not listed on 31.1.2018]* Their FMV will be calculated by using the following formula : $\text{Their COA} \times \frac{\text{CII of FY 2017-18}}{\text{CII of the first year such asset is first held by the assessee or CII of FY 2001-02, whichever is later}}$

Problem—7.15 : *With the following data, calculate the amount of capital gain and tax thereon :*

(Rs.in lakhs)

Details	*Case 1*	*Case 2*	*Case 3*	*Case 4*	*Case 5*	*Case 6*
Date of transfer	*10.3.2018*	*10.3.2018*	*2.4.2018*	*2.4.2018*	*2.4.2018*	*2.4.2018*
Date of acquisition	*2.2.2018*	*1.1.2017*	*1.1.2017*	*2.2.2018*	*1.1.2017*	*1.1.2017*
COA	*100*	*100*	*100*	*100*	*100*	*110*
FMV on 31.1.2018	*110*	*90*	*120*	-	*115*	*105*

Sale Price (FVC)	140	120	110	130	125	104

Solution :

(Rs.in lakhs)

Details	Case 1	Case 2	Case 3	Case 4	Case 5	Case 6
Applicability of section 112A	No	No	Yes	Yes	Yes	Yes
Applicability of section 55(2)(ac)	No	Yes	Yes	No	Yes	Yes
COA	100	100	110	100	115	110
Capital Gain	40 [STCG Taxable u/s 111A]	Exempt u/s 10(38)	110-110 = 0	30 [STCG Taxable u/s 111A]	125-115=10 [Exempt u/s 10(38) = 1 Taxable u/s 112A = 9]	104-110=-6 [Loss]
Tax (+ HEC)	6.24 (@ 15.6%)	Nil	0	4.68 (@ 15.6%)	0.936 (@10.4%)	0

21.7 Capital gain exempt in certain cases [Section 54, 54B, 54D, 54EC, 54F, 54G, 54GA, 54GB]

Particulars	*Section 54*	*Section 54B*	*Section 54D*	*Section 54EC*
Assets transferred	Residential house property (*i.e.* building or land appurtenant thereto) whose income is taxable under the head "house property".	Agriculture Land	Land or building of industrial undertaking which is transferred in *compulsory acquisition under any law.*	Long term capital asset being land or building or both [Inserted by Finance Act, 2018, *w.e.f.* A.Y. 2019-20]
Who can claim exemption	Individual/HUF	Individual/HUF	Any assessee	Any assessee
Period of use/possession of asset- how long	The asset so transferred should be a long term capital asset.	The agriculture land should be used by him/parents, for agriculture purpose for at least 2 years before such transfer.	Such land or building should be used by the assessee for the purpose of industrial undertaking for at least 2 years before such transfer.	Any long term capital asset.
Capital gain, eligible for exemption	Long term	Long term/short term	Long term/short term	Long term
Eligible New Asset	*One* residential house *in India* (whether acquired or constructed)	Agriculture land (whether in rural area or in urban area).	Land or building for industrial purpose.	Bonds of NHAI or REC or bonds of Indian Railway Finance Corporation Limited which are redeemable after **5 year** but maximum **Rs.50 Lakh**
Maximum period allowed for investment	*If purchased*- 1 year before or 2 years after the *date of* such transfer. *If constructed*- 3 years after the *date of* such transfer.	Within 2 years from the date of such transfer.	Within 3 years from the date of receipts of compensation in respect of such transfer.	Within 6 months from the date of such transfer.
Amount of exemption	To the extent such capital gain is invested in new asset.	like section 54	like section 54	like section 54
Treatment of unutilised amount	Up to the date of furnishing of income tax return, the unutilised amount of such capital gain should be deposited into "Capital gain deposit account".	like section 54	like section 54	Not applicable
Where such new asset is transferred- tax treatment	Where such asset is transferred within a period of 3 year from the date of its acquisition/ construction, the COA of such asset will be reduced by the amount of exemption so withdrawn.	like section 54	like section 54	Amount of capital gain exempted earlier will now be taxable as long term capital gain in the year of such transfer. *Note :* transfer includes conversion into money.

Particulars	*Section 54F*	*Section 54G*	*Section 54GA*
Assets transferred	Any long term capital asset other than residential house	▪ Capital asset situated in an urban area which is used for the purpose of industrial undertaking ▪ being plant, machinery, land or building **and** ▪ such transfer is effected for shifting of such undertaking to *non-urban area.*	Replace the word "*non-urban area"* in case of section 54G with the word *"special economic zone"*, rest will be same.
Who can claim exemption	Individual/HUF	Any assessee	Any assessee
Period of use/possession of asset	Any long term capital asset.	Whether short term capital assets or long term capital assets.	like section 54G
Nature of capital gain, eligible for exemption	Long term	Long term/short term	like section 54G
Eligible New Asset	*One* residential house property *in India* (whether acquired or constructed) **Note:** But on date of *transfer*, the assessee should not own more than one residential house property (other than this new house)	**Following expenses are eligible :** (i) expenditure on acquiring or constructing new plant, machinery, land or building for such industrial undertaking; (ii) expenditure on *specified purpose i.e.* shifting expenses	like section 54G
Maximum period allowed for investment	*If purchased*- 1 year before or 2 years after the *date of* such transfer. *If constructed*- 3 years after the *date of* such transfer.	1 year before or 3 years after such transfer.	like section 54G
Amount of exemption	Proportionate capital gain *i.e.*– $\text{Total capital gain} \times \frac{\text{Amount invested in new asset}}{\text{Net Consideration}}$	To the extent such capital gain is invested in new asset.	like section 54G
Treatment of unutilised amount	Up to the date of furnishing of income tax return, the unutilised amount of *proportionate capital* gain should be deposited into "Capital gain deposit account scheme".	like section 54	like section 54G
Where such new asset is transferred- tax treatment	❒ *Where new house is transferred within 3 years: (i)* capital gain on such transfer will be STCG. *(ii)* Capital gain exempted under this section will be taxable as LTCG. ❒ *With 2 houses in hand, assessee purchases/ constructs another house within 2/3 years as the case may* - Capital gain exempted under this section will be taxable as LTCG.	like section 54	like section 54G

Important notes—

1. Cost of land in an integral part of cost of residential house, whether purchased or constructed.
2. Construction of new house may start before the date of transfer, but it should be completed after the date of transfer of original house- *J.R. Subramanya Batt 1987 (Kar.)*
3. In case of compulsory acquisition of the house, the period of 1 year before or 2/3 year after will start from the date of receipt of compensation (whether initial or enhanced)- **Sec. 54H**
4. Unutilised amount of deposit under capital gain account scheme cannot be taxed in the hands of deceased or legal heirs.
5. Neither section 54 nor section 54EC stipulates that deductions under these sections shall be available only if investment in the specified asset is made in the name of the assessee only. Hence, deduction under section 54 and section 54EC cannot be denied to an assessee if she has made such an investment jointly with her spouse —*DIT, International Taxation* v. *Mrs. Jennifer Bhide* [2011] 15 taxmann.com 82 (Kar.)

Particulars	Section 54GB	Section 54EE [w.e.f. A.Y. 2017-18]
Assets transferred	Long term capital asset, being a residential property (a house or a plot of land);	Any long term capital asset.
Who can claim exemption	Individual or HUF	Any assessee
Period of use/possession of asset- how long	The asset so transferred should be a long term capital asset.	Any long term capital asset.
Nature of capital gain, eligible for exemption	Long term	Long term
Eligible New Asset	Subscription to the equity shares of an 'eligible company'. [*About this scheme* : This section gives relief from long term capital gains tax to an individual or an HUF on sale of a residential property (house or plot of land) in case of re-investment of sale consideration in the equity of a new start-up SME company in the manufacturing sector which is utilized by the company for the purchase of new plant and machinery]	Units, issued before the 1st day of April, 2019, of such fund as may be notified by the Central Government. But Maximum Rs. 50 Lakh.
Maximum period allowed for investment	Before the due date of furnishing of return of income under section 139.	Within 6 months from the date of such transfer.
Amount of exemption	Proportionate capital gain *i.e.*- $\text{Total capital gain} \times \frac{\text{Amount invested in new asset } \textit{by such eligible company}}{\text{Net Consideration}}$	Proportionate capital gain *i.e.*- $\text{Total capital gain} \times \frac{\text{Amount invested in new asset}}{\text{Net Consideration}}$
Treatment of unutilised amount	The amount received by the company for issue of shares to the assessee, to the extent it is not utilised by the company for the purchase of the new asset before the due date of furnishing of ITR by the assessee, shall be deposited by the company (before the said due date) in an account in any such bank or institution as may be specified and shall be utilised in accordance with any specified scheme.	Not applicable
Withdrawal of exemption	In the following cases, the exemption will be withdrawn— 1. If the amount so deposited is not utilised by the eligible company for purchase of new plant and machinery within 1 year from the date of receipt of subscription from assessee; 2. If such new asset is sold by the company within a period of **3 years (w.e.f. A.Y. 2020-21; earlier, 5 years)** from the date of its acquisition; 3. If the equity shares acquired by the assessee are sold by him within a period of 5 years from the date of their acquisition;	Where such asset is transferred within a period of 3 year from the date of its acquisition, the amount of capital gain exempted earlier will be taxable as long term capital gain in the year of such transfer. *Note* : transfer includes conversion into money.
Meaning of certain terms	*'ELIGIBLE COMPANY':* 'Eligible company' means a company which fulfils *all* the following conditions— *a.* It is a company incorporated in India during the period from the 1st day of April of the previous year in which the capital gain arises to the assessee to the due date of furnishing of ITR by the assessee;	

	b. It is engaged in the business of manufacture of an article or a thing or in an 'eligible business' *c.* referred to in Explanations to section 80IA; *d.* It is a company in which the assessee has more than **25% (w.e.f. A.Y. 2020-21; earlier, 50%)** share capital or more than **25% (w.e.f. A.Y. 2020-21; earlier, 50%)** voting rights after the subscription in shares by the assessee; and *e.* It is a company which qualifies to be a small or medium enterprise under the Micro, Small and Medium Enterprises Act, 2006 or is an eligible start-up referred in Explanations to section 80IA;	

Problem 21.1 : *Abhay purchased 1000 listed equity shares of Rs.10 each at Rs.100 per share from a broker on 4th May, 2002. He paid Rs.3,000 as brokerage. On 15th March, 2018, he was given bonus shares by the company on the basis of one share for every two shares held. On the same date, he was also given a right to acquire 1000 rights shares @ Rs. 90 per share. He acquired 50% of the rights shares offered and sold the balance 50% of the rights shares for a sum of Rs. 87,500 on 7th April, 2018. The rights shares were allotted to him on 30th April, 2018.*

All the shares held by him were sold on 24th September, 2018 @ Rs. 280 per share through a recognized stock exchange. Compute capital gain and tax for the assessment year 2019-20 assuming his income from other sources is Rs.1,70,000.

Solution :

Computation of Capital Gain of Mr. Abhay for the A.Y.2019-20

Particulars	Workings	Amount (Rs.)
♦ CAPITAL GAIN ON TRANSFER OF ORIGINAL SHARES		
Full value consideration	1000 shares × Rs.280	2,80,000
Less : Indexed COA	[(1000 × 100) + 3,000] × 280/105	2,74,667
	Long term capital gain	**5,333**
♦ CAPITAL GAIN ON TRANSFER OF BONUS SHARES		
Sale consideration	500 shares × Rs.280	1,40,000
Less : Cost of acquisition (COA)	COA after 1.4.2001 is taken to be 'nil'	Nil
	Short term capital gain	**1,40,000**
♦ CAPITAL GAIN ON TRANSFER OF RIGHT ENTITLEMENT		
Sale consideration	Lump-sum consideration	87,500
Less : Cost of acquisition	COA of 'right entitlement' is always taken as 'nil'	Nil
	Short term capital gain	**87,500**
♦ A CAPITAL GAIN ON TRANSFER OF RIGHT SHARES		
Sale consideration	500 shares × Rs.280	1,40,000
Less : Cost of acquisition	500 shares × Rs.90	45,000
	Short term capital gain	**95,000**
	Total capital gain	**3,27,833**
	Gross Total Income	**4,97,833**

Computation of tax for the A.Y.2019-20

(Rs.)

Particulars	Other income	STCG	LTCG	Total tax
(A) Income	1,70,000	3,22,500	5,333	
(B) Shifting	+80,000	-80,000	-	
(C) Balance	2,50,000	2,42,500	5,333	
(D) Tax	*Nil*	36,375*	533	36,908
(E) HEC@4%				1,476
			Total	**38,384**

* Tax on STCG is payable at the rate of 15%.

Problem 21.2 : *Anurag sells a plot of land on 8th July, 2017 for Rs.40,00,000 and paid commission on its sale @1%. He purchased this plot on 19th December, 1988 for 4,20,000. Its FMV on 1.4.2001 is 6,80.000. On 1st February, 2018, he purchased a residential house for Rs.15,00,000. He owns one residential house on 8th July, 2017. You are required to calculate amount of capital gains chargeable to tax for the A.Y. 2018-19 by assuming :*

(i) Anurag sells the new residential house before 1st February, 2021, what will be the taxable amount of capital gains and in which year it will be charged to tax?

(ii) If Anurag purchases any other residential house before 1st February, 2020, what will be the taxable amount of capital gains and in which year it will be charged to tax?

Solution :

Computation of Capital Gain of Anurag for A.Y. 2018-19

Particulars	Calculations	Amount (Rs.)
Full Value Consideration		40,00,000
Less : Expenses on transfer	40,00,000 × 1%	40,000
Less : Indexed COA	6,80,000 × 272 ÷ 100	18,49,600
	Gross LTCG	**21,10,400**
Less : Exemption under section 54F	21,10,400 × 15 ÷ 39.60	7,99,394
	Taxable LTCG	**13,11,006**

Case 1 : Anurag sells the new house before 1st February 2021 : If the house for which exemption is availed under section 54F is sold before the expiry of 3 years from the date of its acquisition, the tax treatment would be as under :

(a) WITHDRAWAL OF EXEMPTION : The capital exempt under section 54F, will be taxable in the assessment year relevant to the previous year in which such new eligible house is sold. Thus, if suppose such new eligible house is sold on 25.1.2021, the capital gain of Rs. 7,99,394 (i.e. amount of exemption) will be taxable as LTCG for A.Y. 2021-22 (*i.e.* P.Y. 2020-21).

(b) STCG ON TRANSFER OF NEW HOUSE: Transfer of such new house will result short term capital gain and be taxable in the A.Y. relevant to the previous year in which such new eligible house is sold.

Case 2: Anurag purchases a new house before 1st February 2020 : If assessee owns more than two houses (including the house for which exemption is availed under section 54F) within a period of 2 years from the 'date of transfer' of the house for which exemption has been claimed, the exemption given under section 54F will be withdrawn and the capital exempted under section 54F, will be taxable in the assessment year relevant to the previous year in which assessee purchases such third house. Thus, if suppose assessee purchases a new third house on 25.1.2020, the capital gain of Rs. 7,99,394 (i.e. amount of exemption) will be taxable as LTCG for A.Y. 2021-22 (*i.e.* P.Y. 2020-21).

MULTIPLE CHOICE QUESTIONS (MCQs)
(On all chapters of capital gains)

7.1 : For an income to be chargeable under the head Capital Gains, which of the following condition must be satisfied :

(a) There must be "sale" of an "asset"
(b) There must be "sale" of a "capital Asset"
(c) There must be "transfer" of an "asset"
(d) There must be "Transfer" of a "Capital Asset"

2 : Which of the following is NOT regarded as "Capital Asset" :

(a) Personal car
(b) Car exclusively used in business
(c) Residential house of the assessee
(d) Office building of the assessee

3 : Which of the following is NOT regarded as "Capital Asset" :

(a) Stock in trade
(b) personal effects
(c) agriculture land in India (other than land in municipal area or in urban area)
(d) All of the above

4 : Which of the following personal effect is treated as "Capital Asset" :

(a) Precious wrist watch
(b) Precious furniture
(c) Personal jewellery
(d) Expensive home theater

5 : Which of the following agriculture land is treated as "Capital Asset" :

(a) land situated at 3 kms distance from a small town having population of 90,000
(b) land situated at a distance of 7 kms from a city having population of 8,00,000
(c) land situated at a distance of 8 kms from a city having population of 15,00,000
(d) land situated at a distance of 1 km from a small town having population of 9,000.

6 : A capital asset is treated as 'short term capital assets' if :

(a) its period of holding does not exceeds 36 months excluding the day of transfer
(b) its period of holding does not exceed 36 months including the period of transfer
(c) period mentioned in (a) and in certain cases, 12 months
(d) period mentioned in (b) and in certain cases, 12 months

7 : Consider the following data :

Date of purchase of unlisted debentures = 1.10.2015
Date of their transfer = 10.10.2016

Such Capital Gain will be :

(a) Long term
(b) Short term
(c) No capital gain but its an income chargeable to tax under other sources
(d) Fully exempt.

8 : Which of the following is NOT correct :

Capital Asset	Holding period in determining long term or short term
(a) Unlisted shares	24 Months
(b) Residential house of assessee	24 Months
(c) Listed debentures	12 Months
(d) Unlisted Debentures	12 Months

9 : Which of the following is NOT correct :

Capital Asset	Holding period in determining long term or short term
(a) Jewellery	36 Months
(b) Units of UTI	36 Months
(c) Zero Coupon Bonds	12 Months
(d) Unlisted Preference shares	24 Months

10 : In respect of inclusion and exclusion, which of the following is NOT correct :

(a) period of holding of "previous owner" : Excluded

(b) period of holding after Liquidation : Excluded

(c) period of holding in Amalgamating Company : Included

(d) All are correct

11 : Which one of the following is treated as a 'transfer' :

(a) Transfer of 'assets' by an amalgamating company to amalgamated Co.

(b) Transfer of 'assets' by a company under liquidation to its shareholders

(c) Gift, will of shares acquired from open market

(d) Gift of ESOPs

12 : Which one of the following is treated as a 'transfer' :

(a) Transfer of 'assets' by a firm to a company (if few conditions are satisfied)

(b) Transfer of 'assets' by a sole proprietary firm to a company (if few conditions are satisfied)

(c) Transfer of assets by a L.L.P to a company (if few conditions are satisfied)

(d) Transfer of assets by a private company to a L.L.P (if few conditions are satisfied)

13 : Long Term Capital Gain is calculated by deducting Indexed COA, Indexed COI and expenses relating to transfer, from Full Value Consideration :

(a) True

(b) False

(c) True for non-depreciable assets and assets on which SLM is followed

(d) True for depreciable assets.

14 : Capital Gain on Depreciable assets is calculated as per the following formula :

(a) Transfer price – W.D.V

(b) Transfer price – Indexed COA – Indexed COI

(c) Transfer price – COA – COI – Transfer Expenses

(d) No need to calculate it, as it is exempt

– Transfer Expenses

15 : An assessee sells his office building, its taxability will be under :

(a) the head 'House Property'
(b) the 'Capital Gains'
(c) the head 'PGBP'
(d) the head 'O.S.'

16 : An assessee sells his residential building, its taxability will be under :

(a) the head 'House Property'
(b) the 'Capital Gains'
(c) the head 'PGBP'
(d) the head 'O.S.'

17 : Period of holding of bonus shares shall be reckoned from :

(a) the date of holding of original shares
(b) the date of offer of bonus shares
(c) the date of allotment of such bonus shares
(d) None of the above

18 : Period of holding of right shares or any other security shall be reckoned from:

(a) the date of the right shares/any other securities are offered
(b) the date of right shares/such securities are applied by the assessee
(c) the date of allotment of right shares/such securities.
(d) None of the above

19 : Distribution of assets by a company at the time of liquidation shall be regarded as a transfer and subject to capital gain:

(a) in the hands of the company
(b) in the hands of the shareholders
(c) in the hands of both company as well as shareholders
(d) neither in the hands of a company nor in the hands of shareholders.

20 : Distribution of assets at the time of partial or complete partition of H.U.F. shall:

(a) be regarded as a transfer in the hands of H.U.F. for capital gain purposes
(b) be regarded as a transfer in the hands of coparceners
(c) not be regarded as transfer in the hands of H.U.F.
(d) neither be regarded as transfer in the hands of H.U.F. nor in the hands of coparceners

21 : Transfer of capital asset under a gift or will or to an irrevocable trust shall:

(a) be regarded as transfer in the hands of donor
(b) not be regarded as transfer in the hands of donor
(c) not be regarded as transfer in the hands of donor but the donee will be liable to pay tax thereon.
(d) not be regarded as transfer in the hands of donor and donee will NOT be liable to pay on such gift etc.

22 : Transfer by holding company to its subsidiary company or by a subsidiary company to its holding company shall not be regarded as transfer if the holding company owns:

(a) 90% shares of the subsidiary company
(b) 100% shares of the subsidiary company
(c) 51% shares of the subsidiary company.
(d) 26% shares of the subsidiary company.

23 : Amalgamation of company as per scheme of amalgamation shall not be regarded as transfer provided the amalgamated company is:

(a) a domestic company
(b) a Public Ltd. Company
(c) an Indian company
(d) a foreign company

24 : The period of holding of shares acquired in exchange of convertible debentures shall be reckoned from:

(a) the date of holding of debentures
(b) the date when the debentures were converted into shares

25 : Securities transaction tax paid by the seller of shares and units shall

(a) be allowed as deduction as expenses of transfer
(b) not be allowed as deduction

26 : Securities transaction tax paid by the purchaser of shares/units shall

(a) form part of the cost of such shares and units
(b) not form part of the cost of such shares and units

27 : The assessee is allowed to opt for market value as on 1.4.2001 in case of :

(a) All capital assets
(c) All capital assets other than depreciable assets, goodwill of a business, right to manufacture, tenancy rights, loom hours and route permits.
(b) All capital assets other than depreciable asset
(d) Now this option is not available in case of any capital asset.

28 : Where the capital asset became the property of the assessee in any mode given under section 49(1), the cost of acquisition of such assets shall be :

(a) the market value of the asset as on the date of acquisition by the assessee
(c) LOWER of (a) or (b)
(b) cost for which the previous owner of the property acquired it
(d) HIGHER of (a) or (b).

29 : Where a shareholder of an amalgamating company gets the shares of the amalgamated company in lieu of the shares held by him in an amalgamating company, the cost of acquisition of such shares shall be:

(a) Market value of the shares of an amalgamating company as on the date of amalgamation
(c) Market value of the share of the amalgamated company as on the date of amalgamation
(b) Cost at which shares of amalgamating company were acquired
(d) HIGHER of (a) or (c).

30 : If the shares are acquired on conversion of debentures, the cost of acquisition of such share shall be:

(a) Market value of the shares on the date of conversion
(c) Cost of acquisition of the debentures.
(b) Market value of the debentures on the date of conversion
(d) HIGHER of (a) or (c).

31 : The cost of acquisition of the employees stock option shall be:

(a) Fair market value of the specified security or sweet equity shares which has been taken into account for the purpose of valuation of perquisite
(c) Fair market value of the specified security or sweat equity which has been taken into account for the purpose of valuation of perquisite as reduced by the amount paid by the employee.
(b) Price at which it was offered to employee
(d) Nil.

32 : If the goodwill of a business, right to manufacture or produce, tenancy rights, route permit or loom hours is acquired before 1.4.2001, the cost of acquisition of such asset shall be:

(a) cost for which it was acquired by the assessee
(c) HIGHER of (a) or (b)

(b) market value as on 1.4.2001
(d) Nil.

33 : If the bonus shares are acquired BEFORE 1.4.2001, the cost of acquisition of such bonus share shall be:

(a) Nil
(b) market value of such bonus share on the date of allotment
(c) market value as on 1.4.2001
(d) HIGHER of (b) or (c)

34 : If the bonus shares are acquired on or AFTER 1.4.2001, the cost of acquisition of such shares shall be:

(a) Nil
(b) market value of such bonus share on the date of allotment
(c) market value as on 1.4.2001
(d) HIGHER of (b) or (c)

35 : The cost of acquisition of the right shares to a person who purchased the right to acquire the share from the existing shareholder shall be:

(a) market value of right share on the date of allotment
(b) price at which these shares are offered
(c) price at which these shares are offered plus the amount paid to the person renouncing the right.
(d) HIGHER of (a) or (c)

36 : If any advance money received (in 2012) by the assessee in any earlier occasion of transfer, which could not materialize, is forfeited, such money shall :

(a) be taxable in the year it is forfeited
(b) be deducted from the cost of acquisition of such asset
(c) be taxable by assuming it to be long term capital gin
(d) not be taxable.

37 : If advance money forfeited (in 2012) is more than the cost of acquisition of the assets, the excess amount shall:

(a) be taxable as capital gain in the year of forfeiture of money
(b) be taxable as capital gain in the previous year in which the asset against which advance money was received is transferred
(c) be treated as capital receipt and hence not taxable.
(d) None of the above.

38 : Cost of improvement of goodwill of a business or right to manufacture or produce any article or thing shall be:

(a) Nil
(b) the capital expenditure incurred
(c) the capital expenditure incurred on or after 1.4.2001
(d) None of the above

39 : Cost of improvement of tenancy rights, route permits or loom hours shall be:

(a) nil
(b) the capital expenditure incurred
(c) the capital expenditure incurred on or after 1.4.2001
(d) None of the above

40 : No indexation of cost of acquisition is done even though there is long-term capital gain in case of:

(a) bonds or debentures
(b) certain shares, debentures held by non-residents
(c) Depreciable assets
(d) All of the above

41 : The cost inflation index number of the F.Y. 2001-02 and F.Y. 2013-14 are :

(a) 100 and 939
(c) 100 and 220

(b) 100 and 852 (d) 125 and 852

42 : Conversion of capital asset into stock in trade will result into capital gain of the previous year:

(a) in which such conversion took place (c) in which consideration for sale of such stock in trade is received.

(b) in which such converted asset is sold or otherwise transferred (d) EARLIER of (b) and (c).

43 : Taxability of conversion of personal effect into stock in trade and sale of such stock in trade will be:

(a) under the head capital gains (c) 'Conversion' will be taxable under capital gain head and 'sale' will be taxable under the head PGBP.

(b) under the head PGBP (d) Either (a) or (b), at the option of the assessee.

44 : Where capital asset is converted into stock in trade then for the purpose of computation of capital gain, the full value of consideration shall be :

(a) the market value of the asset on the date of sale of such asset (c) the price for which it is sold

(b) the market value of the asset on the date of conversion of such asset (d) HIGHER of (a) and (b).

45 : Where the capital asset is converted into stock in trade, the indexation of cost of acquisition and cost of improvement shall be done :

(a) till the previous year of conversion of such capital asset (c) No indexing is to be made.

(b) till the previous year in which such asset is sold (d) None of the above

46 : Where a partner transfers any capital asset into the business of firm, the sale consideration of such asset to the partner shall be:

(a) market value of such asset on the date of such transfer (c) cost of such asset to the partner

(b) cost of such asset to the partner or any previous owner (d) price at which it was recorded in the books of the firm

47 : Where any capital asset is transferred by a firm to its partner by way of distribution on the dissolution of firm, the full value of consideration in this case shall be :

(a) the price at which such asset was given to partners (c) fair market value of the asset on the date of such transfer.

(b) cost or W.D.V. of such asset on the date of distribution (d) Transfer of capital assets by a firm to its partners is not treated as 'transfer'.

48 :Where the entire block of the depreciable asset is transferred after 36 months, there will be:

(a) short-term capital gain (c) short-term capital gain or loss

(b) long-term capital gain (d) long-term capital gain or loss

49 : Where a capital asset, other than certain urban agricultural land, is compulsorily acquired, then the capital gain shall arise in the previous year:

(a) of compulsory acquisition (c) in which part or full consideration is received

(b) in which full consideration is received (d) Where an assets is compulsorily acquired under any law, such transaction is NOT

regarded as 'transfer'.

50 : In the case of compulsory acquisition, the indexation of cost of acquisition or improvement shall be done till the:

(a) previous year of compulsory acquisition
(b) in which the full compensation received
(c) in which part or full compensation is received.
(d) Where an assets is compulsorily acquired under any law, such transaction is NOT regarded as 'transfer'

51 : In case of compulsory acquisition, if enhanced compensation is received then for purpose of computation of capital gain the cost of acquisition and cost improvement in that case shall be taken as :

(a) nil
(b) cost of acquisition or cost of improvement which was in excess of initial compensation earlier received
(c) Excess of indexed COA prevailing during the year of receipt of such enhanced compensation over indexed COA prevailing during the year of receipt of original compensation.
(d) As may be prescribed.

52 : In case of compulsory acquisition if initial compensation or enhanced compensation is received by legal heir due to death of assessee, then capital gain shall:

(a) not be taxable in the hands of legal heir
(b) be taxable in the hands of legal heir
(c) for initial compensation the legal heir will be taxable as representative assessee and for enhanced compensation such legal heir himself shall be taxable as an assessee.
(d) None of the above

53 : If goodwill of a business which is self-generated is transferred, there will:

(a) not be any capital gain
(b) be capital gain
(c) be a short-term capital gain
(d) be short term, long term capital gain depending upon the date of commencement of such business.

54 : Where a company purchases its own shares there will be capital gain to the :

(a) company
(b) Shareholder, except where this payment falls in section 10(34A)
(c) neither to the company nor to the shareholder
(d) both to the company and the shareholder

55 : For claiming exemption under section 54, the assessee should transfer :

(a) any house property (residential/commercial)
(b) a residential house property
(c) a residential house property the income of which is taxable under the head income from house property
(d) None of the above

56 : In the above case, the residential house property should be transferred :

(a) before 36 months
(b) after 36 months
(c) after 12 months
(d) before 12 months

57 : Exemption under section 54 is available to:

(a) all assessees
(b) individuals only
(c) individual as well as HUF
(d) Domestic companies.

58 : For claiming exemption under section 54, the assessee should purchase another residential property:

(a) within 2 years after the date of transfer
(b) within 3 years after the date of transfer
(c) within one year before or 2 years after the date of transfer
(d) within one year before and 3 years after the date of transfer.

59 : For claiming exemption under section 54, the assessee should construct the residential property within:

(a) one year before or within 2 years after the date of transfer
(b) one year before or within 2 years after the date of transfer
(c) within 3 years after the date of transfer
(d) within 2 years after the date of transfer

60 : The exemption under section 54 shall be available:

(a) to the extent of capital gain invested in the house property
(b) proportionate to the net consideration price invested
(c) to the extent of amount actually invested
(d) proportionate to the gross consideration price invested

61 : If the assessee wishes to deposit money under capital gain scheme for claiming exemption under section 54, it should be deposited within:

(a) six months from the date of transfer
(b) within six months from the end of the relevant previous year
(c) due date of furnishing the return of income u/s 139(1)
(d) six months or within due date of furnishing the return of income whichever is earlier

62 : Amount unutilized in the capital gain scheme for which exemption was claimed u/s 54 shall be treated as long-term capital gain of:

(a) previous year in which period of 2 years has expired from the date of deposit
(b) the year in which period of 2 years has expired from the date of transfer
(c) in which period of 3 years has expired from the date of transfer
(d) in which period of 3 years has expired from the date of deposit

63 : The new house purchased or constructed for which exemption was claimed under section 54, should not be transferred within 3 years :

(a) from the date of transfer of original house
(b) from the date of its purchase/construction
(c) from the end of the previous year in which such house is purchased or constructed.
(d) from the end of the previous year in which transfer took place.

64 : Where a new house property for which exemption was claimed u/s 54 is transferred within 3 years from the date of its acquisition then :

(a) capital gain exempt under section 54 earlier shall be taxable
(b) the entire capital gain on new transfer shall be taxable as short term capital gains.
(c) for purpose of computation of capital gain, the cost of acquisition of the said house shall be reduced by the amount of capital gain exempt u/s 54 earlier
(d) EITHER (b) or (c) at the option of the assessee.

65 : Exemption under section 54EC shall be available to:

(a) any assessee
(b) individual only
(c) individual or HUF
(d) company assessee only

66 : Exemption under section 54EC shall be available for transfer of:

(a) any long-term capital asset
(b) residential house property
(c) any long-term capital asset other than residential house property
(d) Long term capital asset being bonds or debentures.

67 : *W.e.f.* A.Y. 2015-16, as per provisions of section 54EC, the assessee shall be allowed exemption:

(a) to the extent of capital gain invested subject to maximum of Rs.50 lakhs for the whole life of the assessee.
(b) to the extent of capital gain invested subject to maximum of Rs.50 lakhs per financial year.
(c) proportionate to the net consideration price so invested
(d) to the extent of the capital gain invested

68 : For claiming exemption under section 54EC, amount to the extent of the capital gain subject to maximum of Rs.50 lakhs should be invested :

(a) within 2 years from the date of transfer
(b) within 3 years from the date of transfer
(c) within Six months from the date of transfer
(d) within six months of transfer or before the due date of furnishing the return of income, whichever is earlier

69 : For claiming exemption under section 54EC, the amount to the extent of capital gain subject to maximum 50 lakhs should be invested within six months from the date of transfer in :

(a) State Bank of India
(b) notified Securities
(c) Bonds of the NHAI or RECL or other bonds notified by the C.G.
(d) Government bonds or debentures.

70 : Exemption under section 54F is available to :

(a) any Assessee
(b) an individual
(c) an individual or HUF
(d) Domestic company only

71 : Exemption under section 54F is available in respect of transfer of :

(a) any capital asset
(b) residential house property
(c) any capital asset other than residential house property.
(d) any long term capital asset other than residential house property.

72 : Exemption under section 54F is available:

(a) to the extent of amount invested
(b) proportionate to the net consideration price so invested
(c) to the extent of amount actually invested.
(d) proportionate to the gross consideration price so invested.

73 : Exemption under section 54F is available if the new asset acquired is:

(a) any residential house property
(b) any house property
(c) residential house property for self-occupation.
(d) any capital asset other than residential house.

74 : For claiming exemption under section 54F, the amount to the extent of net consideration price is to be

invested in the purchase of residential house property within.

(a) 2 years from the date of transfer
(b) 3 years from the date of transfer
(c) one year before or 2 years after the date of transfer
(d) one year before or 3 years after the date of transfer

75 : For claiming exemption under section 54F, the amount to the extent of consideration price is to be invested in the construction of the residential house property within:

(a) 3 years after the date of transfer
(b) 2 years after the date of transfer
(c) one year before or 2 years after the date of transfer
(d) one year before or 3 years after the date of transfer

76 : Exemption under section 54F shall not be allowed if the assessee, on the date of transfer owns:

(a) any residential house
(b) a residential house which is let out
(c) a house which is self-occupied
(d) more than one residential house.

77 : For P.Y. 2018-19, the total income of a non-resident individual (age 85 years) including 'long-term capital gain of Rs. 40,000 is Rs. 3,00,000. The tax on total income shall be:

(a) Rs. 10,920
(b) Rs. 10,815
(c) Rs. 8,240
(d) Nil.

78 : For P.Y. 2018-19, the total income of a resident individual (age 58 years) including 'long-term capital gain of Rs. 50,000 is Rs. 2,70,000. The tax on total income shall be :

(a) Rs. 11,330
(b) Rs. 1,560
(c) Rs. 8,755
(d) Rs. 6,180

79 : Long-term capital gain on sale of equity shares and units of an equal oriented fund shall be

(a) taxable @ 10% without indexation
(b) exempt
(c) taxable @15%
(d) exempt up to Rs.1,00,000 if sold through a recognised stock exchange in India and such transaction is chargeable to STT, any excess will be taxable under section 112A.

80 : Short-term capital gain on sale of equity shares and units of an equal oriented fund shall be

(a) at the normal rate
(b) exempt
(c) taxable @20%
(d) at the rate of 15% if transferred through a recognised stock exchange and such transaction is chargeable to STT

81 : Deductions under section 80C to 80U shall be allowed :

(a) From long term capital gain on transfer of bonds or debentures.
(b) From long term capital gain arising from transfer of any long term capital asset by individual or HUF.
(c) From long term capital gain arising from transfer of any long term capital asset by individual or HUF being resident.
(d) Not allowed.

82 : Deduction under section 80C to 80U is allowed from:

(a) income from long-term capital gain as well as
(c) short-term capital gain referred to in section

short-term capital gain

(b) short-term capital gain other than which is referred to in section 111A.

111A i.e. from shares transferred through a recognised stock exchange

(d) neither from long-term capital gain nor from short term capital gain.

83 : Under section 10(37) any capital gain whether short-term or long-term shall be exempt if:

(a) it is on account of transfer of urban agricultural land

(b) it is on account of compulsory acquisition of urban agricultural land by Government and the assessee is individual

(c) it is on account of compulsory acquisition of urban agricultural land by Government and the assessee is individual or HUF

(d) it is on account of compulsory acquisition of urban agricultural land by Government and the assessee is individual or HUF being resident

84 : Under section 10(38), any income from long term capital gain from transfer of equity shares shall be exempt upto Rs.1,00,000 if :

(a) such shares are sold through National Stock Exchange

(b) such shares are sold through Bombay Stock Exchange

(c) such shares are sold through any recognised stock exchange in India and STT is paid

(d) such transfer is made by an individual/HUF.

85 : Provisions of indexation will not apply:

(a) In case of transfer of depreciable asset

(b) In case of bonds and debentures

(c) In case of non-residents having shares and debentures of Indian company

(d) All of the above

86 : C.I.I of F.Y 2001-02 is :

(a) 100

(b) 109

(c) 116

(d) 125

87 : C.I.I of F.Y 2017-18 is :

(a) 264

(b) 272

(c) 1125

(d) None of the above

88 : Cost of improvement is ignored if:

(a) it is incurred by previous owner

(b) it is incurred before 1.4.2001

(c) it is incurred between 1.4.1981 to 31.3.2001

(d) it is incurred after 1.4.2001

89 : Opening W.D.V of a stock = 3,00,000. Few assets are sold there from at Rs.2,80,000. What will be the result?

(a) Short term capital loss of Rs.20,000

(b) Long term/Short term capital loss of Rs.20,000 depending upon holding period

(c) Remaining W.D.V of Rs.20,000

90 : Option to take FMV as on 1.4.2001 is not applicable in case of :

(a) Goodwill of business

(c) Brand name

(b) Tenancy Rights

(d) All of the above

91 : Receipt money or asset by a shareholder at the time of liquidation will be chargeable to tax in his hands. In this case the Full Value Consideration :

(a) Money so received + FMV of such asset received

(b) Money so received – Deemed dividend of sec.2(22)(c)

(c) Money so received + FMV of such asset received – Deemed dividend of sec.2(22)(c)

(d) Money so received + FMV of such asset received + Deemed dividend of sec.2(22)(c)

92 : Advance money forfeited :

(a) will always be ignored

(b) will be considered if such money is forfeited by the 'previous owner'

(c) will be considered if forfeited by the assessee himself

(d) will always be considered

93 : : Date of acquisition of an asset is 2.4.2001.

COA = 11,60,000
FMV on 1.4.2001 = 11,80,000
Date of sale = 1.3.2018
Sale price = 35,00,000
What will be the amount of Capital gain?

(a) Rs. 3,44,800

(b) Rs. 2,90,400

94 : Date of allotment of 200 No. of bonus shares was 1.3.2001. FMV of these bonus shares on 1.4.2001 was Rs.10 each. Date of sale is 1.2.2019 and sale price is Rs.120 each. What will be the amount of capital gain if these shares are unlisted :

(a) Rs.18,400

(b) Exempt

(c) Rs.22,000

(d) Rs.24,000

95 : Date of allotment of 200 No. of bonus shares was 1.5.2001. FMV of these bonus shares on 1.4.2001 was Rs.10 each. Date of sale is 1.2.2019 and sale price is Rs.120 each. What will be the amount of capital gain if these shares are unlisted :

(a) Rs.1,500

(b) Rs.24,000

(c) Exempt

(d) Rs.22,000

96 : Date of allotment of 200 No. of bonus shares was 1.3.2001. FMV of these bonus shares on 1.4.2001 was Rs.10 each. Date of sale is 1.2.2019 and sale price is Rs.120 each. What will be the amount of capital gain if these shares are listed :

(a) Rs.1,500

(b) Rs.24,000

(c) Rs.22,000

(d) Exempt

97 : Date of acquisition of goodwill of business was 1.7.1998. Cost of acquisition was Rs.70,000. Its FMV on 1.4.2001 was Rs.2,00,000. Such goodwill is transferred on 1.3.2019 at Rs.60,00,000. What will be the amount of capital gain?

(a) Rs.54,56,000

(b) Rs.58,04,000

(c) Rs.59,30,000

(d) Rs.58,00,000

98 : Self-generated goodwill of business is sold for Rs.50,00,000. Goodwill of such business was once

estimated at Rs.12,00,000 on 1.6.2001. Date of sale is 1.3.2019. What will be the amount of capital gain?

(a) Rs.50,00,000
(b) Rs.38,00,000
(c) Rs.20,00,000
(d) Fully exempt

99 : M owns two machineries (A and B) eligible for depreciation at the rate of 15%. The WDV of these machines as on 1st Apr of the previous year was Machine A = Rs. 25,000 and Machine B = Rs. 40,000. No other asset was acquired in this block during the year. Machine A was sold during the previous year for Rs. 75,000. Discuss the taxability.

(a) STC Gain of Rs. 10,000
(b) Income under the head PGBP Rs. 10,000
(c) STC Gain of Rs. 50,000
(d) No capital gain as depreciation would be allowed on one of the machines left with M

100 : During F.Y. 2018-19, Mr. A has transferred 1,000 equity shares of X Ltd. (listed) at Rs.650 per share. These shares were acquired by him at Rs.80 each during F.Y. 2006-07. Discuss the taxability.

(a) LTCG of Rs.4,66,393, fully taxable @20%.
(b) LTCG of Rs.1,00,000 exempt; LTCG of Rs.3,66,393 taxable @10%
(c) LTCG of Rs.1,00,000 exempt; LTCG of Rs.3,66,393 taxable @20%
(d) LTCG of Rs.4,66,393 is fully exempt.

PAST EXAM (TRUE-FALSE/FILL IN THE BLANKS)

1. Indexation of cost of acquisition is necessary for short-term capital gain.

Ans. False. Indexation is NOT necessary for calculating short term capital gain. Indexed cost of acquisition is necessary only in case of long-term capital gain [*vide* explanation (*iii*) to Section 48].

2. Income from transfer of self-generated goodwill of a profession is not chargeable to tax under the head 'capital gains'.

Ans. True. It has been held by Supreme Court in case of *CIT* v. *B C Srinivasa Setty* [1981] that if cost of acquisition of any assets is indeterminate the formula for calculating capital gains fails. Therefore, no capital gains will be calculated in these cases. Goodwill of profession is still governed by this case. Therefore, on sale thereof no capital gain will be calculated.

However, in case of goodwill of business and few more intangible capital assets, if their cost of acquisition is indeterminate, it will be taken to be *Nil* and entire sale price thereof will be treated as capital gain.

3. Zero-coupon bonds shall be treated as 'short-term capital asset' if held for more than 12 months but not more than 36 months.

Ans. False. As per section 2(42A), zero coupon bonds held for more than 12 months, are treated as long-term capital asset.

4. Assets of personal use are also considered as capital assets.

Ans. Partially true. As per section 2(14), 'capital assets' does not include 'personal effects' (like TV, Motorcycle, Car and other house hold articles meant for personal use of assessee or his family). However, certain assets which are although meant for personal purpose, yet they are treated as 'capital assets' like jewellery, drawing, paintings, house etc.

ANSWERS TO MCQs

Question	Answer	Question	Answer	Question	Answer	Question	Answer	Question	Answer
1	D	2	A	3	D	4	C	5	C
6	C	7	B	8	D	9	B	10	A
11	D	12	C	13	C	14	A	15	B
16	B	17	C	18	C	19	B	20	D
21	D	22	B	23	C	24	B	25	B
26	B	27	C	28	B	29	B	30	C
31	C	32	A	33	C	34	A	35	C
36	B	37	C	38	A	39	A	40	D
41	C	42	B	43	C	44	B	45	A
46	D	47	A	48	C	49	C	50	A
51	A	52	C	53	B	54	B	55	C
56	B	57	C	58	C	59	C	60	A
61	C	62	C	63	B	64	C	65	A
66	A	67	A	68	D	69	C	70	C
71	D	72	B	73	A	74	C	75	A
76	D	77	A	78	B	79	D	80	D
81	D	82	B	83	C	84	C	85	D
86	A	87	B	88	B	89	C	90	D
91	C	92	C	93	B	94	A	95	B
96	D	97	B	98	A	99	A	100	B



CHAPTER 22

INCOME FROM OTHER SOURCES

[Chargeability and taxability of gifts]

22.1 Incomes specially included under this head [Section 56(2)]

This is the last and residual head of income. Where any income is not chargeable to tax under the preceding heads, it will be taxable under this head. Following conditions must be satisfied for an income to be charged under this residuary head:

Condition 1	There must be an income;
Condition 2	That income is not exempt under this Act;
Condition 3	That income is not chargeable to tax under other heads specified under chapter IV.

22.2 Incomes specially included under this head [Section 56(2)]

The following incomes, shall be chargeable to income-tax under this head—

1. Dividends, other than the dividend referred to in section 115-O;

2. Income by way of winnings from lotteries, crossword puzzles, races including horse races, card games and other games of any sort or from gambling or betting of any form or nature whatsoever.

3. Following incomes, if these are not chargeable to income-tax under the head "PGBP":

(a) Any sum received by the assessee from his employees as contributions to any PF or superannuation fund or any fund set up for the benefit of the employees,

(b) Income by way of interest on securities,

(c) Income from machinery, plant or furniture belonging to the assessee and let on hire,

(d) Where an assessee lets on hire machinery, plant or furniture belonging to him **and also** buildings, if such letting is inseparable, the income from such letting.

4. Any sum received under a Key-man insurance policy including bonus, if such income is not chargeable to income-tax under the head "PGBP" or under the head "Salaries".

5. **Share premium in excess of the fair market value to be treated as income :** Clause (*viib*) provides as under—

♦ **Conditions for applicability**	(a) Assessee is a company (other than a company in which the public are substantially interested);
	(b) It receives any consideration for issue of shares (equity/preference) from any person being a resident;
	(c) Such consideration exceeds the *face value* of these shares (it means shares are issued at premium).
♦ **Taxability**	If all the above conditions are satisfied, then the excess of consideration over the *fair market value* of these shares will be taxable under this head.

♦ **Non-applicability**	This clause however, shall not apply where such consideration is received by : (i) A venture capital undertaking from a venture capital company/venture capital fund, or (ii) a company from a class or classes of person as may be notified.

6. Income by way of interest received on compensation or on enhanced compensation referred to in section 145A(*b*). [*Section 56(2)(viii)*]

7. **Any advance money forfeited on relation to a 'capital asset'[Section 56(2)(*ix*)] :** Any sum of money received as an advance or otherwise in the course of negotiations for transfer of a capital asset, if—

(*a*) such sum is forfeited; and

(*b*) the negotiations do not result in transfer of such capital asset.

8. **Sum of money or property received by any assessee [Section 56(2)(*x*)] :** Taxability of sum of money or property in the hands of **any assessee** [as amended by Finance Act, 2017; earlier taxability in the hands of individuals/HUF and Company/firms was covered by clause (*vii*) and (*viia*) respectively] can be summarized as under—

Gifts from EMPLOYER on any occasion to employee or his family **[Rule 3(7)(iv)]**	**Gifts exempt from taxation [Proviso to Section 56(2)(*x*)]**	**Gift of sum of money** **[Section 56(2)(*x*)]**	**Gift of immovable property** **[Section 56(2)(*x*)]**	**Gift of movable property** **[Section 56(2)(*x*)]**
1	**2** **[Except 1]**	**3** **[Except 1 and 2]**	**4** **[Except 1 and 2]**	**5** **[Except 1 and 2]**
❒ *Gift in kind/voucher etc.*— Exempt upto the value of Rs. 5,000. Any excess amount, if any, will be taxable under the head 'Income from salary'. ❒ *Gift in cash*— Fully taxable	Any sum of money, movable or immovable property will not be treated as income if it is received— ▪ from any 'relative' on any occasion; ▪ from anyone on assessee's marriage; ▪ contemplation of death of payer or under will or an inheritance; ▪ from local authority, educational institution or trusts etc. ▪ under various clauses of section 47 ▪ BY trust, institutions etc. referred to in section 10(23C) (*iv*)/(*v*)/(*vi*)/(*via*) ▪ FROM an individual BY a trust created for the benefit of relative of such individual	Where in any previous year an individual or a HUF receives any sum of money from any person(s), its taxability will be as under— ▪ if such sum of money is more than Rs. 50,000 then entire such amount will be taxable; ▪ if such sum of money is up to Rs. 50,000 then nothing will be taxable.	Where in any previous year an individual or a HUF receives an immovable property from any person(s), its taxability will be as under— ▪ *With consideration* : if such property is received for a consideration and the stamp duty value of which EXCEEDS such consideration : (a) by more than Rs. 50,000 **and** (b) **by more than 105% of the consideration (*w.e.f.* A.Y. 2019-20)** then, entire such difference amount will be taxable; ▪ *Without consideration* : if such immovable	Where in any previous year an individual or a HUF receives any movable property from any person(s), its taxability will be as under— ▪ *With consideration* : if such property is received for a consideration and fair market value of which exceeds such consideration by more than Rs. 50,000, entire such difference amount will be taxable; ▪ *Without consideration* : if such movable property is received without any consideration and fair market value of which exceeds Rs. 50,000,

			property is received without consideration and its stamp duty value exceeds Rs. 50,000, entire amount will be taxable. ▪ **Transfer between 100% holding-subsidiary companies will be exempt (*w.e.f.* A.Y. 2019-20).**	entire such fair market value will be taxable;

Notes—

1. **Meaning of 'relative' :** For the purposes of this clause, "relative"

(*a*) In case of an **individual** means—

(i) spouse of the individual;
(ii) brother or sister of the individual;
(iii) brother or sister of the spouse of the individual;
(iv) brother or sister of either of the parents of the individual;
(v) any lineal ascendant or descendant of the individual;
(vi) any lineal ascendant or descendant of the spouse of the individual;
(vii) spouse of the person referred to in clauses (*ii*) to (*vi*).

(*b*) In case of a **HUF** means, any member thereof.

2. **Meaning of 'property' :** For the purposes of this clause, "property" means the following 'capital assets' :
   - Immovable property being land or building or both;
   - Shares and securities;
   - Jewellery;
   - Archaeological collections;
   - Drawing;
   - Paintings;
   - Sculptures;
   - Any work of art.
   - Bullion
3. **Gift not covered by the definition of 'property':** Since cars, two wheelers, wrist watches etc. are not covered under the definition of 'property' therefore, if an assessee receives any of such gift, it will not be chargeable to tax. Similarly, agriculture land situated in rural area in India [*i.e.* rural agriculture land] is not a 'capital asset', therefore, receipt of any such land will not taxable in the hands of recipient.
4. **Explanatory memorandum to the finance bill, 2010** clarifies that the provisions of section 56(2)(*vii*) not apply to stock-in-trade, raw material and consumable stores of any business of such recipient. Also, gifts received by an individual/HUF of rural agricultural land situated in India shall be exempt from tax as it is not a capital asset as defined in section 2(*14*).
5. **As per concise oxford dictionary, 'bullion'** is defined as 'gold or silver before coining or manufacture'. 'Bullion' therefore, is gold or silver in the form of bars or ingots. Gold coins are not bullion as can be seen from the above definitions. Further, these are not 'jewellery' as these are not for personal adornment. Thus, it appears that gold coins are neither bullion nor jewellery and, therefore, gifts of gold coins received are not taxable in the hands of recipient individuals/HUFs. This matter requires the CBDT's clarification.
6. If a professional received a gratuitous receipt from an external source, and such receipt was linked with services rendered by him to his client, it should be treated as received in the exercise of profession. Thus these receipts are taxable under the head PGBP.

7. Clause (x) shall not apply to any such property received by way of a transaction not regarded as transfer under various clauses of section 47.
8. Chargeability of gift received in cheque will be from the date of its receipt and not from the date of clearance thereof.
9. The limit of Rs. 50,000 to be applied as under :

(a)	**Immovable property** received with consideration	The limit of Rs.50,000 will be applied **separately** for each transaction of immovable property received with consideration.
(b)	**Immovable property** received without consideration	The limit of Rs.50,000 will be applied **separately** for each transaction of immovable property received without consideration.
(c)	**Movable property** received with consideration	The limit of Rs.50,000 will be applied on **aggregate** of all transactions of movable property received with consideration.
(d)	**Movable property** received without consideration	The limit of Rs.50,000 will be applied on **aggregate** of all transactions of movable property received without consideration.
(e)	Gifts in the form of **money**	The limit of Rs.50,000 will be applied on **aggregate** of all transactions of sum of money.

E.g.— *If suppose on his B'day, Mr. Ram received cash of Rs. 40,000, gold chain of Rs.45,000 and a painting of Rs.20,000 from his friends A, B and C. So now, we have 2 categories of gifts i.e. money and movable property without consideration. Cash will not be taxable as it does not exceed Rs. 50,000 but movable property of Rs.65,000 will be taxable as their aggregate exceeds the monetary limit of Rs.50,000.*

E.g.— *If suppose on his B'day, Mr. Ram received cash of Rs. 40,000, gold chain of FMV being Rs.45,000 from his friends A and B. Later on during the same previous year, he purchased painting at Rs.5,000 from an unregistered dealer, its FMV is Rs.25,000.*

So now, we have 3 categories of gifts i.e. money, movable property without consideration and movable property with consideration. Money is not taxable as its value doesn't exceed Rs.50,000, similarly movable property without consideration is not taxable as its FMV doesn't exceed Rs.50,000. Also, movable property with consideration is not taxable as the difference between its FMV and consideration doesn't exceed Rs.50,000.

10. Determination of Fair Market Value [Rule 11UA] : For the purposes of section 56 of the Act, the fair market value of a property, other than immovable property, shall be determined in the following manner, namely—

❒ *Valuation of jewellery, archaeological collections, drawings, paintings, sculptures or any work of art*	**a.** *IF IT IS PURCHASED FROM A REGISTERED DEALER*— in case the such jewellery, drawing, painting etc. is received by the way of purchase on the valuation date, from a registered dealer, **the invoice value** thereof shall be the FMV; **b.** *IN ANY OTHER CASE*— In case such jewellery, drawing, painting etc. is received by any other mode and the value thereof exceeds rupees 50,000, then assessee may obtain the report of registered valuer in respect of the **price it would fetch** if sold **in the open market** on the valuation date;
❒ *Valuation of shares and securities*	**(*a*)** the fair market value of **quoted shares and securities** shall be determined as under— (i) *if these are received by way of transaction carried out on any recognized stock exchange* : the FMV of such shares and securities shall be the Transaction Value as recorded in such stock exchange; (ii) *if these are NOT received as above* : the FMV of such shares and securities shall be,— ▪ *If they are traded on stock exchange on valuation date* : the lowest price of such shares and securities quoted on any recognized stock exchange *on the valuation date*; ▪ *If they are NOT traded on stock exchange on valuation date* : the lowest price of such shares and securities on any recognized stock exchange *on a date immediately preceding the valuation date* when such shares and securities were traded on such stock exchange. **(*b*)** the fair market value of **unquoted equity shares** shall be the value, on the valuation date, of such unquoted equity shares as determined as under— $\text{The fair market value of unquoted equity shares} = \frac{\text{(Asset – Liabilities)}}{\text{(Paid up Equity Share Capital)}} \times \text{(Paid up value of each such share)}$

	Where : ♦ **Asset** = Book value of the assets in Balance Sheet as reduced by any amount paid as advance tax under the Income-tax Act and any amount shown in the balance sheet including the debit balance of the profit and loss account or the profit and loss appropriation account which does not represent the value of any asset. ♦ **Liabilities** = Book value of liabilities shown in the Balance Sheet but not including the following amounts— *a.* the paid-up capital in respect of equity shares; *b.* the amount set apart for payment of dividends on preference shares and equity shares where such dividends have not been declared before the date of transfer at a general body meeting of the company; *c.* reserves, by whatever name called, other than those set apart towards depreciation; *d.* credit balance of the profit and loss account; *e.* any amount representing provision for taxation, other than amount paid as advance tax under the Income-tax Act, to the extent of the excess over the tax payable with reference to the book profits in accordance with the law applicable thereto; *f.* amount representing provisions made for meeting liabilities, other than ascertained liabilities; *g.* any amount representing contingent liabilities other than arrears of dividends payable in respect of cumulative preference shares. ♦ **Paid up Equity Share Capital** = Total amount of paid up equity share capital as shown in Balance Sheet. **(*c*)** the FMV of unquoted preference shares and securities shall be estimated to be price it would fetch if sold in the open market on the valuation date and the assessee may obtain a report from a merchant banker (registered with SEBI) or a Chartered Accountant in respect of such valuation.

Problem—22.1 : *During F.Y. 2019-20, Mr. Ravi has purchased a residential apartment from a builder in Gurgaon. Details are as under :*

Particulars	*Case 1*	*Case 2*	*Case 3*	*Case 4*
Consideration	*5,00,000*	*5,00,000*	*5,00,000*	*12,00,000*
SDV	*5,40,000*	*5,30,000*	*5,70,000*	*12,55,000*
FMV	*6,00,000*	*6,00,000*	*6,00,000*	*14,00,000*

Discuss the taxability (if any) in the hands of Mr. Ravi.

Solution :

Rs.

Particulars	*Case 1*	*Case 2*	*Case 3*	*Case 4*
Consideration	5,00,000	5,00,000	5,00,000	12,00,000
SDV	5,40,000	5,30,000	5,70,000	12,55,000
Difference	40,000	30,000	70,000	55,000
105% of Consideration	5,25,000	5,25,000	5,25,000	12,60,000
Whether Condition 1 satisfied? (*i.e.* SDV > Consideration)	Yes	Yes	Yes	Yes
Whether Condition 2 satisfied? (*i.e.* SDV > Consideration by more than Rs.50,000)	No	No	Yes	Yes
Whether Condition 3 satisfied? (*i.e.* SDV > 105% of Consideration)	No	Yes	Yes	No
Taxable amount	*Nil*	*Nil*	*70,000*	*Nil*

Problem—22.2 : *Mr. Ram receives the following things during the previous year ending 31.3.2020 :*

1. *Purchase of a drawing from Husain's gallery at Rs. 6,36,000 (including VAT) vide Invoice No. 536 dated 24.9.2019. Its FMV is, however, Rs. 8,00,000;*

2. *Gift of a car from his friend, its FMV is Rs. 3,50,000;*
3. *Purchase of a car for his wife at Rs. 1,90,000, its FMV is Rs. 2,50,000;*
4. *On his marriage dated 28.12.2019, he receives Rs. 1,25,000 from a non-relative.*
5. *On his birthday dated 21.1.2020, he receives gifts as under—*
   - *Rs. 25,000 from his grandfather;*
   - *Rs. 51,000 from younger brother his grandfather;*
   - *Rs. 60,000 from his friend;*
   - *A motorcycle from his employer (FMV of which is Rs. 45,000)*
6. *A house purchased at Rs. 1,00,000 in Mumbai from his friend on the occasion of new year. Stamp value of this house is Rs. 25,00,000.*
7. *A house received as gift from his friend for supporting him in TV serial 'Kaun Banega Crorepati' (KBC). Stamp value of this house is Rs. 25,00,000.*
8. *Winning of Rs. 70,000 (after TDS) from TV serial 'KBC's 'Ghar Baithe Jito Jackpot'*
9. *A Swiss made wrist watch purchased from a friend at Rs. 1,00,000. Its FMV is Rs. 5,00,000.*
10. *A gold ring purchased from a friend at Rs. 1,50,000. Its FMV is Rs. 4,00,000.*
11. *A Laptop purchased from his employer at Rs. 1,500 as on 13.3.2029. [This was purchased by the company at Rs. 45,000 on 30.3.2017]*

With the above information, Ram consults you regarding their taxability for the A.Y. 2020–21.

Solution :

Taxability under the head 'income from other sources' [Gifts]

Nature of receipt	*Taxable amount*		
	Sum of money	*Movable property*	*Immovable property*
1. Purchase of drawing [In case movable property is purchased from a registered dealer, its 'invoice value' is considered as 'fair market value'. As the drawing is purchased at 'invoice value', nothing will be taxable]	-	*Nil*	-
2. Gift of a car from his friend [Since 'car' is not covered by the term 'property', therefore, not chargeable to tax]	-	*Nil*	-
3. Purchase of a car at a price lower than its FMV [not chargeable to tax, reason is same as is in case of 2 above]	-	*Nil*	-
4. Marriage gits are exempt [*vide proviso to section 56(2)(vii)*]	*Nil*	-	-
5. Birthday gifts— ❒ Gift from grandfather (i.e. relative) is exempt	*Nil*	-	-
❒ Gift of Rs. 51,000 is taxable as it is received from non-relative on no-marriage occasion and its value exceeds Rs. 50,000.	*51,000*	-	-
❒ Gist of Rs. 60,000 is taxable as it is received from non-relative on no-marriage occasion and its value exceeds Rs. 50,000.	*60,000*	-	-
❒ Gift of motorcycle from employer is taxable under the head 'income from salaries'	-	-	-
6. House purchased at a price lower than its stamp duty value is currently taxable [*i.e.* immovable property with consideration]	-	-	*24,00,000*
7. Gift of house from friend is taxable as it is received from non-relative on non-marriage occasion and its stamp duty value exceeds Rs. 50,000.	-	-	*25,00,000*
8. Winning from any lottery/games etc. is taxable. It is added to 'income from other sources separately.	-	-	-
9. Purchase of a wrist watch at a price lower than its FMV [*see* 2 above]	-	*Nil*	-

10. Purchase of a gold ring is taxable [As it is not purchased from any registered dealer, its fair market value is to be considered. It is purchased at a price lower than FMV and such difference is more than Rs. 50,000, thus entire such difference will be taxable]	-	*2,50,000*	-
11. Purchase of TV from employer is taxable under the head 'salaries'	-	-	-
Total	**1,11,000**	**2,50,000**	**49,00,000**
Total of 'gifts'			**52,61,000**

Taxability under the head 'income from other sources' [other incomes]

Winning from 'Ghar Baithe Jito Jackpot' [Grossing up]	$= \frac{70,000}{70} \times 100 =$	1,00,000
Total income under the head 'income from other sources'		**53,61,000**

Income under the head 'salaries'

Motor cycle gift from employer [taxable in excess of Rs. 5,000]	40,000
Laptop purchased from employer is taxable as perquisite [*i.e.* Rs. 45,000 *less* depreciation @ 50% for 2 completed years]	9,750
Total income under the head 'salaries'	**49,750**
Gross total income of Mr. Ram for the A.Y. 2020-21	**54,10,750**



CHAPTER 23

INCOME FROM OTHER SOURCES

[Taxability of dividend and other income]

23.1 Dividend referred to in section 115-O is exempt from tax [Section 10(34)]

Dividend received by a shareholder to have the following tax treatment :

Case	Tax treatment
(*a*) In case of a resident **assessee** but not being : ✓ Domestic company ✓ Institution referred to in section 10(23C)(*iv*)/(*v*)/(*vi*)/(*via*) ✓ Trust or institution registered under section 12A or 12AA having aggregate dividend [Including deemed dividend of section 2(22)(a), (b), (c) or (d)] income exceeding Rs.10,00,000 during the previous year from domestic company/companies [Section 115BBDA]. **Note :** This 10% rate is a 'special tax rate' like we have 20% in case of LTCGs. *Applicable* SC and HEC will also be levied over it.	(a) Dividend in excess of Rs.10 lakh will be taxable @10% in their hands EVEN IF the company is subject to DDT on such dividend. (b) No deduction in respect of any expenditure or allowance or set-off of loss will be allowed from such dividend.
(*b*) In case of assessees referred to in (*a*) above, having aggregate dividend income NOT exceeding Rs.10,00,000 during the previous year from domestic company/companies;	Entire such dividend will be exempt.

Dividend is exempt in the hands of shareholder IF Dividend Distribution Tax (DDT) referred to in section 115-O is paid on it by the company. Section 115-O covers the dividend received [including deemed dividends referred in section 2(22)(*a*),(*b*),(*c*),(*d*) and (*e*)] from *domestic company.*

1. What is dividend

Section 2(22), gives an inclusive definition of dividend, but in ordinary connotation it is a sum paid to or received by a shareholder in proportion to his shareholding in a company, out of total sum distributed by such company. Dividend includes deemed dividend referred to in section 2(22). **As per section 2(22), dividend is defined as under :**

Section	Dividend includes	Other relevant notes
2(22)(*a*)	Any distribution by a company, to the extent of accumulated profits (capitalised or not), resulting release of its assets to its shareholders.	**Amount of dividend**- Market value of the property.
2(22)(*b*)	Any distribution to its shareholders by a company ✓ **of debentures**/debenture-stock/deposit certificates, ✓ **of bonus** to its preference shareholders, to the extent of accumulated profits (capitalised or not).	If bonus shares are issued to **equity shareholders**, it does not amount to distribution of dividend.
2(22)(*c*)	Any **distribution** to the shareholders of a company **on its liquidation**, to the extent of its accumulated profits (capitalised or not).	In such case, there will be no capital gain in the hands of the company u/s 46(1), however, the shareholder will be subject to capital gain.

2(22)(*d*)	Any **distribution** to its shareholders by a company **on the reduction of its capital**, to the extent of accumulated profits (capitalised or not).	
2(22)(*e*)	any payment by a company, other than a company in which the public are substantially interested (*i.e.* a closely held company), of any sum, ✓ by way of advance or loan ✓ to any **beneficial owner** of equity shares holding not less than 10% of the voting power, or ✓ to any concern in which such shareholder is a member or a partner and in which he has a **substantial interest**, ✓ to the extent of accumulated profits. ***IMPORTANT NOTE*** Where any loan or advance is given to any concern, it will be treated as deemed dividend if **both** the following conditions are satisfied : 1. Such shareholder is a beneficial owner (holding 10% or more of the voting power) of equity shares at **the time of such loan or advance AND** 2. He has a substantial interest in such concern, **at any time during the previous year.**	1. **"Concern"** means a HUF, or a firm or an AOP or a BOI or a company. 2. **"Substantial interest":** a person shall be deemed to have a substantial interest in a concern, if he is, ***at any time*** during the previous year, beneficially entitled to 20% or more of the income of such concern. ***3.*** Section 2(22)(*e*) is applicable not only in case of loan or advance but any other payment *e.g.* payment for purchase of raw material etc. 4. Section 2(22)(*e*) is applicable even if the loan is repaid before the end of the previous year, because the liability is attracted at the moment the loan is given- *Tarulata Shyam* v. *CIT (SC)* 5. W.e.f. A.Y. 2019-20, 'accumulated profits' of amalgamated company to include 'accumulated profits' (whether capitalized or not) of amalgamating on the date of amalgamation.

2. Exclusions from dividend

As per section 2(22), dividend does not include the following—

1. *LOAN IN 'ORDINARY COURSE' OF BUSINESS :* Any advance or loan made in the ordinary course of the business of the company, where the lending of money is a substantial part of the business of the company. [Exception to clause (*e*)]
2. *ACTUAL DIVIDEND SET OFF AGAINST DEEMED DIVIDEND:* Any dividend paid by a company which is set off by the company against the whole or any part of any sum previously paid by it and treated as a dividend as per section 2(22)(*e*), to the extent to which it is so set off.

   E.g.— *X Ltd. gave a loan of Rs. 1,00,000 to Mr. S, a shareholder holding 10% shares of the company. While the loan is outstanding, X Ltd. declared a dividend of Rs. 5,00,000. The dividend of Rs. 50,000 (i.e.10% of Rs. 5,00,000), has been offset by the company against the above loan. Now, as per above section, Rs. 50,000 is not considered as dividend, and neither X Ltd. nor Mr. S would pay any tax on this amount.*
3. *BUY-BACK OF SHARES:* Any payment made by a company for purchase of its own shares from its shareholders in accordance with section 77A of Companies Act, 1956. Thus, no DDT is to be paid on such distribution. However, *w.e.f.* 1.6.2013, the distribution made by a company on buy-back of its own shares **(whether listed or unlisted)** shall be subject to tax under section 115QA in the hands of such company. [Current rate is 20%+12% of SC+4% of HEC = 23.296%]. As per section 10(34A), any consideration received by the shareholder on buy-back of shares will be exempt from tax in his hands. **[Amended by Finance Act, 2019]**
4. *DISTRIBUTION OF SHARES ON DEMERGER:* Any distribution of shares in the scheme of a demerger by the resulting company to the shareholders of demerged company (whether or not there is a reduction of capital in the demerged company).

23.2 Winnings from lotteries, crossword puzzles, horse races etc. [Section 56(2)(*ib*)]

Income by way of winnings from lotteries, crossword puzzles, races including horse races, card games and

other games of any sort or from gambling or betting of any form or nature whatsoever (these incomes are generally called as 'casual incomes).

As per section 58(4), no deduction in respect of any expenditure or allowance in connection with these incomes shall be allowed to the assessee.

Explanation—For the purpose of this section,—

- **"Lottery"** includes winnings from prizes awarded to any person by draw of lots or by chance or in any other manner, under any scheme or arrangement;
- **"Card game and other game of any sort"** includes any game show, an entertainment programme on television or electronic mode, in which people compete to win prizes or any other similar game.

23.3 Tax on casual incomes [Section 115B and 115BB]

1. Tax rates [Section 115B and 115BB]: In respect of incomes by way of winnings from any lottery or crossword puzzle or race including horse race (other than the income from the activity of owning and maintaining race horses) or card game and other game or from gambling or betting, the income-tax shall be payable, @ 30% (*plus* Surcharge (if any) *plus* HEC @ 4%).

2. Rate of TDS [Section 194B/194BB]: Rate of TDS in case of these incomes is 30%, **if** the income exceeds Rs.5,000 in case of winning from horse races and Rs.10,000 in case of other casual incomes.

3. Grossing up: If assessee receives the net amount (*i.e.* amount of total income *less* TDS) then, such net amount shall be grossed up, to find out the amount chargeable to tax :

$$\text{Grossing up} = \text{Net Amount} \times \frac{100}{100 - \text{Rate of TDS}}$$

23.4 Interest on securities [Section 56(2)(*id*)]

1. Taxability : Income by way of interest on securities is taxable under "income from other sources", if it is not taxable under the head "PGBP".

"interest on securities" means—

(i) interest on any security of the Central Government or a State Government ;

(ii) interest on debentures or other securities for money issued by or on behalf of a local authority or a company or a corporation established by a Central, State or Provincial Act.

The word **"Security"** has not been defined in this Act, but as per judicial pronouncements, the word "security" denotes a debt or claim, the payment of which is in some way secured. Since the equity shares or stock are not secured and does come under the preview of word "security", therefore, any income from equity shares shall not be taxable as interest on securities.

2. Chargeability of interest : The chargeability of interest depends upon the system of accounting adopted by the assessee, it may be taxable on 'due basis' if the assessee adopts mercantile system of accounting, or on 'receipt basis' when cash basis is followed by him. If no system of accounting is followed, then it will always be taxable on *due basis.*

3. Accrual of interest: Interest becomes accrue only on due date specified on the securities (generally yearly or half yearly), it does not accrue every day or according to period of its holding.

E.g.— *Mr. X owns debentures of S Ltd. for a period 1.02.09 to 31.03.09, and interest on these debentures become due on 21st January and 21st July every year. It cannot be said that interest of Feb. and March has been accrued to him.*

4. Grossing up of interest : The provision relating to grossing up is as under—

Type of security	*Rules for grossing-up*
▪ **Tax-free Government Securities**- These are the securities interest on which is fully exempt from tax under section 10(15).	***No grossing up*** is required on these securities as no tax is deducted on these securities.

▪ **Less-tax Government Securities**- These securities are issued by Central or State Government. These securities are although taxable but tax on these securities is not required to be deducted at source.	***No grossing up*** is required on these securities as no TDS is made.
▪ **Tax-free Commercial Securities**- These securities are issued by local authority or statutory corporation or company, in the form of debenture or bonds. Interest on these securities is not exempt from taxation. These are called tax-free because the assessee does not pay the tax on these securities out of his own pocket. Tax on these securities is paid by the corporation or company on behalf of the assessee. Therefore, the assessee receives the full amount of interest on these securities calculated at the rate prescribed for that security. While computing the total income of the assessee, the tax so paid by the company is also includible in addition to the amount of interest.	**Grossing-up is always required** *FORMULA* Interest so received $\times \frac{100}{100 - TDS}$
▪ **Less- tax Commercial Securities**- These securities are also called as "taxable securities". In case of these securities, tax is always deducted at source.	▪ ***If rate of interest is given:*** grossing up is not required as the interest rate is already grossed up. ▪ ***If amount is given:*** grossing up is required. Formula for this purpose is the same as is given under (*c*).

5. Interest exempt from tax [Section 10(15)]: Following interests are exempt from tax—

(i) Interest etc. on notified Government Securities or bonds (*vide notification given below*),

(ii) Interest received by any individual or HUF on Notified Capital Investment Bonds,

(iii) Interest received by any individual or HUF on Notified Relief Bonds,

(iv) Interest on notified Gold Deposit bonds,

(v) Interest on notified bonds of local authorities,

(vi) Interest on securities held by Welfare Commissioner, Bhopal Gas Victims,

(vii) Interest payable by IFCI or IDBI,

(viii) Interest payable by any scheduled bank to a non-resident on approved deposit of foreign currency.

Notification No. SO 607(E), *dated 9-6-1989: Notified bonds, certificates, etc.*

- 12-year National Savings Annuity Certificates
- Special Bearer Bonds, 1991
- Post Office Cash Certificates (5 years)
- National Plan Savings Certificates (12 years)
- Post Office Savings Bank Accounts. [Exemption of interest in case of single account is upto Rs. 3,500 and for joint account upto Rs.7,000]
- National Defence Gold Bonds, 1980
- Treasury Savings Deposit Certificates (10 years)
- National Plan Certificates (10 years)
- Post Office National Savings Certificates (12/7 years)
- Post Office Cumulative Time Deposits certificate

Problem—23.1 : *Danny has the following investments in the previous year ended 31st March, 2020:*

(i) Rs.7,160 received as interest on securities of Karnataka government.

(ii) Rs.9,000 received as interest on securities of a listed paper manufacturing company.

(iii) Rs.7,200 received as interest on the unlisted securities of a sugar company.

(iv) Rs.30,000, 11% securities (unlisted) of a textile company.

(v) Rs.20,000, 10% Tamil Nadu Government Securities.

(vi) Rs.50,000, 13.5% listed debentures of Dolly Ltd.

Interest on all securities is payable on 30th June, 31st December. The bank charges 1.5% commission on net realization of interest as collection charges. Danny also received Rs.15,000 as director's fee from a company. His other incomes includes :

(a) winnings from horse race, Rs.25,000 (gross), and

(b) interest on post office savings bank account Rs.1,500

Find out taxable income of Danny from other sources for the assessment year 2020-21.

[CS Executive–2009 (D), 5 Marks]

Solution :

Computation of Income from Other Sources of Danny for A.Y. 2020-21

Particulars	Computation	Amount (Rs.)
Interest on securities of Karnataka government	No tax is required to be deducted on Govt. Securities	7,160
Interest on securities of a listed paper manufacturing Company	Rs.9,000 ÷ 90%	10,000
Interest on the unlisted securities of a sugar company	Rs.7,200 ÷ 90%	8,000
11% securities (unlisted) of a textile company	Rs.30,000 × 11%	3,300
10% Tamil Nadu Government Securities	Rs.20,000 × 10%	2,000
13.5% listed debentures of Dolly	Rs.50,000 × 13.5%	6,750
		37,210
Less: Bank Charges	1.5% × Rs.(7,160 + 9,000 + 7,200 + 2,970 + 2,000 + 6,075)	(–)516
	Total	**36,694**
Add: Director's Sitting Fees		15,000
Add: Winning from horse race		25,000
Add: Interest on Post Office Saving Account [Exempt under section 10(15)		Nil
	Income from Other Sources	**76,694**

23.5 Avoidance of tax by certain transactions in securities (*i.e.* bond washing transactions) [Section 94(1)

In case of securities the assessee can avoid tax by entering into certain transactions. For example a person transfers securities to another person having no other income (or very little income) and re-acquires the same after the receipt of interest on these securities; the transferor would be able to avoid tax on such interest. To avoid such practice, section 94 has been introduced in income tax Act.

Section 94 (1): Sale and buy back of same/similar securities (*i.e.* Bond washing transactions)

- ✓ Where the owner of the securities, sells/transfers any securities and buys back the same securities,
- ✓ and the result of the transaction is that any interest on these securities is receivable otherwise than by the owner,
- ✓ such interest shall be deemed to be the income of the owner and not the income of such other person.

23.5 Dividend stripping [Section 94(7)]

Loss arising from purchase or sale of securities is not allowed in certain cases :

- Where any person buys any securities or units within a period of **3** months *prior to the record date*;
- such person sells or transfers—
  - ✓ such **securities** within a period of **3** months *after* such date; or
  - ✓ such **unit** within a period of **9** months *after* such date;
- and the *dividend* or *income* on such securities or unit received or receivable by such person ***is exempt***,

- then, the loss, if any, arising to him on account of such purchase and sale of securities or unit, to the extent of amount of such dividend or income, shall be ignored for the purpose of computing his taxable income.

23.6 Bonus stripping [Section 94(8)]

This section provides as under—

- Where any person buys any *units* within a period of 3 months prior to the record date;
- such person is allotted additional units without any payment on the basis of holding of such units;
- such person sells or transfers ***all or any*** of the units referred to in clause (*a*), within a period of 9 months after such date, and continue to hold ***all or any*** of the additional units given in clause (*b*),
- then, the loss, if any, arising to him on account of such purchase and sale of all or any of such units shall be ignored for the purpose of computing his income chargeable to tax.

Loss to be treated as COA: Notwithstanding anything contained in any other provision of this Act, the amount of loss so ignored shall be deemed to be the cost of purchase or acquisition of such additional units referred to in clause (*b*) as are held by him on the date of such sale or transfer.

Note : For the purpose of section 94**, "Record date"** means such date as may be fixed by—

(i) a company for the purposes of entitlement of the holder of the securities to receive dividend; or,

(ii) a Mutual Fund for the purposes of entitlement of the holder of the units to receive income or additional unit.

23.7 Incomes generally taxable under this head - Examples

Few more examples of incomes generally taxable under this head :

Note : This is an illustrative list
1. Director's sitting fees;
2. Income from sub-letting;
3. Income from royalties (if it not an income from business or profession);
4. Ground rent;
5. Agriculture income from any land outside India;
6. Examiner's fees received by a teacher from a person other than his employer;
7. Rent from a vacant plot of land (*i.e.* a land not appurtenant to any building);
8. Insurance commission;
9. Cause incomes;
10. Income from undisclosed sources (e.g. incomes referred to in section 68, 69, 69A, 69C, 69D);
11. Salary of MPs (Member of Parliament) or MLAs (Member of Legislative Assembly);
12. Interest on securities of co-operative societies;
13. Director's commission for giving bank guarantees to bank;
14. Director's commission for underwriting shares of new company;
15. Gratuity received by a director who is not an employees of his employer;
16. Interest on loans, interest on bank deposits, interest on deposits with companies;
17. Interest on delayed refunds from Government.

Problem—23.2 : *During the P.Y. 2019-20, Mr. Ram has received the following—*

Sr. No.	*Nature of receipts*	*Rs.*
1	*He has obtained a loan from a closely held company [in which he holds 12% equity shares] Accumulated profits of such company are Rs.2,00,000 (including*	*1,70,000*

	Rs.50,000 of capitalised profits)	
2	*Directors fee from a company*	*20,000*
3	*Gold chain at 40% discount from P.P. Jeweller under the cover of invoice. P.P. Jeweller is a registered dealer. [FMV of such chain is Rs. 2,00,000]*	*1,20,000*
4	*Interest on bank deposits*	*6,000*
5	*Income from undisclosed source*	*24,000*
6	*Winnings from lotteries (Net)*	*70,000*
7	*Royalty on a book written by him [He has incurred Rs.2,000 on typing it]*	*18,000*
8	*Lectures in seminars*	*10,000*
9	*Interest on loan given to a relative*	*14,000*
10	*Interest on debentures of a company (listed in a recognised stock exchange) net of taxes*	*7,200*
11	*Interest on Post Office Savings Bank Account*	*1,000*
12	*Interest on Government securities*	*4,400*
13	*Interest on Monthly Income Scheme (MIS) of post office*	*66,000*

You are required to calculate his income chargeable under the head 'income from other sources'.

Solution :

Taxability under the head 'income from other sources'

Nature of receipt	*Taxable amount (Rs.)*
1. Loan from closely held company : It is deemed dividend under section 2(22)(e) and hence exempt in the hands of shareholder as the company will pay DDT on it. [*W.e.f. A.Y. 2019-20*]	*Nil*
2. Directors fee from a company [Taxable under this head]	20,000
3. Purchase of Gold chain a price lower than its FMV [not chargeable to tax, as it is purchased from registered dealer; the FMV will be the 'invoice price']	Not taxable
4. Interest on bank deposits	6,000
5. Undisclosed income [Applicable tax rate is 30% (*i.e.* section 115BBE)]	24,000
6. Winnings from lotteries [Grossing up *i.e.* Rs.70,000 ÷ 70 × 100]	1,00,000
7. Royalty on a book written by him [He has incurred Rs.2,000 on typing such book]	16,000
8. Lectures in seminars	10,000
9. Interest on loan given to a relative	14,000
10. Interest on debentures of a company (listed in a recognised stock exchange) net of taxes [Grossing up *i.e.* Rs.7,200 ÷ 90 × 100]	8,000
11. Interest on Post Office Savings Account [Exempt under section 10(15)]	Exempt
12. Interest on Government securities [No grossing up required]	4,400
13. Interest on Monthly Income Scheme (MIS) of post office	66,000
Total	**4,18,400**

23.8 Permissible deductions under the head 'Income from other sources' [Section 57]

Following deductions are allowed under the head "Income from other sources"-

Nature of deduction	Detailed provision
Expenditure for realising dividend or interest on securities [Section 57(*i*)]	In the case of dividends, (other than dividends referred to in section 115-O), or interest on securities, any reasonable sum paid (or payable) by way of commission or remuneration to a banker or any other person for the purpose of realising such dividend or interest on behalf of the assessee, is deductible.
Employees' contribution towards relevant fund(s) [Section 57(*ia*)]	Any sum received by the assessee from any of his employees to which the provisions of section 2(24)(*x*) apply, if such sum is credited by the assessee to the employee's account in the relevant fund or funds on or before the due date, is deductible. **"Due date"** means the date by which the employer is required to credit contribution an employee's account under the provisions of that Act *i.e.* ✓ **For P.F.** - 15 days from the end of month + 5 days grace (*i.e.* **20 days**). ✓ **For E.S.I.** - **21 days** from the end of month.
Repair, depreciation, insurance of plant, machinery, furniture, building [Section 57(*ii*)]	In the case of income of the nature referred to in section 56(2)(*ii*) and (*iii*), the following expenses are allowed under this head: (a) Current repair and insurance of building, (b) Repair and insurance of machinery, plant and furniture, (c) Depreciation.
Standard deduction in case of family pension [Section 57(*iia*)]	In the case of family pension, a deduction of a sum equal to 1/3 rd of such pension or Rs. 15,000, *whichever is less*, is allowed.
Other deductions [Section 57(*iii*)]	Any other expenditure (not being in the nature of capital expenditure) laid out or expended wholly and exclusively for the purpose of making or earning such income, is deductible.
Deduction on interest on compensation [Section 57(*iv*)]	Amount equal to ***50%*** of the amount of interest referred to in section *56(2)(viii)*, shall be allowed as ***deduction*** and no other deduction will be allowed in respect of such interest under any other provision of this Act.

23.9 Amount not deductible [Section 58]

Following amounts shall not be deductible in computing the income chargeable under this head:

1. Any personal expenses of the assessee.
2. Any interest or salary payable outside India on which tax has not been paid or deducted.
3. Any sum paid on account of Wealth-Tax.
4. The provisions of section 40A shall apply *mutatis-mutandis,* under this head as well. It means, if assessee wants to claim deduction for an expenditure under section 57 and in respect of that expense, any payment is made to 'a relative' in violation of provisions of section 40(A)(2) or payment is made by any mode other than account payee cheque or account payee demand draft in violation of provisions of section 40(A)(3), then these expenses will also be disallowed under this head as well.
5. The provisions of section 40(a)(*ia*) [*i.e.* payment to residents which are made without deducting applicable TDS] and section 40(a)(*iia*) [*i.e.* payment of wealth tax] shall apply *mutatis-mutandis,* under this head as well. [Section 40(a)(*ia*) is inserted by Finance Act 2017, *w.e.f.* A.Y. 2018-19]
6. Any expenditure or allowance in connection with the income by way of any winnings from lotteries, crossword puzzles, races including horse races, card games and other games of any sort or from gambling or betting of any form or nature, whatsoever. [Section 58(4)]

Problem—23.3 : State, with reasons, in brief, whether the following expenses are admissible as deduction while computing the 'income from other sources':

(i) Interest of Rs.10,000 paid on money borrowed for purchasing shares to be held as investment.

(ii) Expenditure of Rs.20,000 incurred for purchase of lottery tickets.

(iii) An expenditure of Rs.40,000 incurred for the activity of owning and maintaining race horses.

[CS Executive–2012 (D), 2 Marks each]

Solution :

(i) Interest of Rs.10,000 shall be allowed as deduction while computing dividend income. However, it is to be noted that dividend covered under section 115-O is an exempted income.

(ii) No expenditure is allowed from winning from lottery.

(iii) Expenditure of Rs.40,000 shall be allowed while computing income from activity owning and maintaining race horses

MULTIPLE CHOICE QUESTIONS (MCQs)
(On all chapters of IFOS)

1 : An assessee is engaged in the business of selling and purchasing of lottery tickets; Out of unsold lottery tickets, he wins a lottery. This income will be taxable under the head :

(a) PGBP;
(b) Other sources;
(c) Capital Gain
(d) Not taxable, as this ticket was a stock in trade for him

2 : X LTD. has purchased 10 generators for non-stop working of its plant as there is electricity problem in that area. But one of these generators is given on rent to a nearby firm. This generator was NOT in use as 9 generators were enough. What would be tax treatment of rental income of such generator and where the expenses like depreciation, repair etc. will be claimed :

(a) Rental income will be taxable under other source and Expenses will be claimed under PGBP head;
(b) Rental income under PGBP and expenses under other source;
(c) Both under other source
(d) Both under PGBP

3 : Amount received from 'Keyman Insurance Policy' by the family of a deceased employee. This policy has been assigned by the company to the employee and his nominees. Such income will be taxable :

(a) Taxable in the hands of family under the head 'other source';
(b) Under the head 'Salary';
(c) Taxable in the hands of employer under the head PGBP
(d) Not taxable in terms of sec.10(10D)

4 : Which of the following dividend is taxable in the hands of shareholders :

(a) Dividend distributed by private company;
(b) Dividend distributed by a company in which public is substantially interested;
(c) Dividend distributed by a foreign company;
(d) None of the above;

5 : Dividend includes :

(a) Distribution of assets by a company to its shareholders;
(b) Allotment of bonus shares to preference share holders;
(c) Distribution at the time of liquidation of company
(d) All of the above

6 : Which of the following Deemed Dividend is taxable in the hands of shareholder:

(a) 2(22)(a);
(b) 2(22)(d);
(c) 2(22)(e);
(d) None of the above.

7 : A closely held company gives loan of Rs.2,00,000 to a shareholder having 12% equity shares of voting rights. What would be the treatment of this amount :

(a) Company will pay D.D.T on such amount and it will be exempt in the hands of shareholder
(c) Such loan will be deemed as dividend and will be taxable in the hands of such shareholder

under 'other source'.

(b) Interest on such loan will be treated as 'perquisite' in the hands of such shareholder

(d) No tax treatment

8 A closely held company gives loan of Rs.2,00,000 to a shareholder having 9% equity shares of voting rights. What would be the treatment of this amount :

(a) Company will pay D.D.T on such amount and it will be exempt in the hands of shareholder

(c) Such loan will be deemed as dividend and will be taxable in the hands of such shareholder under 'other source'.

(b) Interest on such loan will be treated as 'perquisite' in the hands of such shareholder

(d) No tax treatment

9 : A closely held company gives loan to a shareholder. Details are as under:

Amount of loan	**:**	**5,00,000**
Date of loan	**:**	**10.6.2019**
Shareholding of that shareholder		**9% equity share till 31.7.2019 and 3% purchased on 31.12.2019**

What would be the tax treatment?

(a) Company will pay D.D.T on such amount and it will be exempt in the hands of shareholder;

(c) Both company and the shareholder will pay taxes in this amount

(b) It is deemed dividend and shareholder will pay Income Tax on it;

(d) No tax treatment will be made in either of their hands

10 : A closely held company gives loan to a firm. Mr. A is a shareholder in company (holding 12% equity shares at the time of such loan). But while such loan was given, he was holding 16% profit share in the firm. However during the same P.Y. he has obtained further 5% profit share in such firm. What would be the treatment of such loan?

(a) Taxable in the hands of firm;

(c) Company will pay D.D.T on it

(b) Taxable in the hands of Mr. A

(d) No tax treatment

11 : Where a closely held company gives an loan /advance to a shareholder who has 10% voting power in the company or to a concern in which such shareholder has 20% profit share if such concern is a non-company assessee or has shares of 20% or more if it is a company then loan/advance so paid shall be deemed dividend to the maximum extent of :

(a) Accumulated profits whether capitalized or not;

(c) The loan or advance so paid

(b) Accumulated profits excluding capitalized profits;

(d) Not taxable.

12 : Loan & advance paid by the closely held company to its shareholder having 10% voting power in the ordinary course of money lending business shall :

(a) Be treated as deemed dividend and taxable in the hands of the recipients;

(b) Not be treated as deemed dividend

13 : Rate of DDT including HEC is :

(a) 20.56% of dividend distributed other than the deemed dividend referred to in section 2(22)(e)

(b) 34.944% on deemed dividend referred to in section 2(22)(e)

(c) Both (a) and (b) are correct, depending upon type of dividend

(d) Both (a) and (b) are incorrect

14 : Mr. Ram has received dividend of Rs. 7000. He holds 10% shares in that company. What amount of D.D.T (including HEC) has been paid by the company :

(a) (7,000 ÷ 10 × 100) ×15%

(b) [(7,000 ÷ 10 × 100) ÷ 85 ×100] ×15%

(c) (7,000 ÷ 10 × 100) × 17.30%

(d) (7,000 ÷ 10 × 100) × 20.56%

15 : X LTD. distributes assets of FMV of Rs. 11,00,000 to its shareholders. The balance sheet of company shows accumulated profits of Rs. 13,00,000 (including capitalised profits of Rs.4,00,000). Calculate amount of D.D.T:

(a) 2,64,680;

(b) 2,24,900;

(c) 2,26,160;

(d) 1,92,170

16 : Immovable property received by an individual from unrelated person without consideration shall be taxable to the extent of :

(a) market value of the immovable property;

(b) stamp duty value fixed by the stamp duty authority;

(c) stamp duty value fixed by the stamp duty authority provided it exceeds Rs.50,000;

(d) Not taxable in the hands of recipient but taxable in the hands of the person offering such property.

17 : Immovable property acquired by an individual for a price less than the stamp duty value shall:

(a) Be taxable to the extent stamp duty value exceeds the purchase price

(b) Be taxable to the extent stamp duty value exceeds the purchase price by more than Rs.50,000;

(c) Not be taxable;

18 : Tick the specified 'movable property' which is covered under section 56(2)

(a) Share and securities

(b) Furniture

(c) Cars

(d) Plant and Machinery

19 : Where a specified movable property is acquired during the previous year 2019-20 and its market value exceeds its purchase price by more than Rs.50,000, such excess amount shall be taxable in the hands of :

(a) All assessee;

(b) All assessee other than company;

(c) Individual or HUF only;

(d) None of the above.

20 : Gift, whether in cash or kind , received by an individual on the occasion of his/her marriage shall be:

(a) Fully exempt even if it exceeds Rs.50,000

(b) Fully taxable if it exceeds Rs.50,000;

(c) Exempt upto Rs.50,000 and balance taxable;

(d) Exempt in the hands of recipient but taxable in the hands of the person offering such gift.

21 : 'Gift' received by HUF from 'relative' of the member of HUF shall be :

(a) Fully taxable;
(b) Fully exempt;
(c) Taxable to the extent it exceeds Rs.50,000;
(d) Fully taxable if it exceeds Rs. 50,000;

22 : Gift received by HUF from its member shall be :

(a) Fully exempt;
(b) Fully taxable;
(c) Taxable to the extent it exceeds Rs.50,000;
(d) Taxable in excess of Rs.50,000;

23 : Gift of immovable property or specified movable property received by an individual from unrelated person or HUF shall be :

(a) Fully exempt whether the value of such gift is less than or more than Rs.50,000;
(b) Fully taxable;
(c) Fully taxable if the value of such gift exceeds Rs.50,000;
(d) Taxable to the extent it exceeds Rs.50,000.

24 : Where a firm or a company receives from any person any property being shares of another company without consideration :

(a) The whole of the fair market value (FMV) of these shares shall be taxable;
(b) The whole of the FMV shall be taxable if it exceeds Rs.50,000;
(c) The whole of FMV shall be exempt;
(d) The whole of the FMV shall be taxable if it exceeds Rs.10,00,000;

25 : Which of the following Gift will be taxable :

(a) Gifts received on marriage anniversary from father;
(b) Gifts received on B'Day from wife;
(c) Gift received from very close friend on assessee's marriage ;
(d) Gift received on New year from brother of grandfather;

26 : Mr. Ramesh receives a cash gift of Rs. 40,000 from his friend Mr.A and cash gift of Rs. 30,000 from his friend Mr. B on his B'Day. What amount will be taxable?

(a) 20,000;
(b) 70,000;
(c) NIL;
(d) 40,000;

27 : Mr. Ramesh receives a cash gift of Rs. 40,000 from his friend Mr.A and a gold chain of FMV of Rs. 30,000 from his friend Mr. B on his B'Day. What amount will be taxable?

(a) 20,000;
(b) 70,000;
(c) 40,000;
(d) NIL;

28 : Which of the following gift will be taxable in case of Mr. Sudhir:

(a) Maruti Car of FMV 3,00,000 received on his B'Day;
(b) LED TV of FMV of Rs. 70,000 on New year from a non-relative;
(c) Cash gift of Rs. 50,000 from his friend Mr. C for supporting him in KBC;
(d) None of the above;

29 : Which of the following is NOT treated as 'property':

(a) Share/Securities;
(b) Immovable properties;
(c) Sum of money;
(d) Bullions;

30 : Mr. Sandeep has purchased a Gold ring from a registered jeweller. Details are as under :

Invoice value (purchase consideration)	**:**	**3,00,000**
FMV	**:**	**3,80,000**
Mode of payment	**:**	**Cash**

What amount will be taxable?

(a) NIL;
(b) Rs. 80,000;
(c) Rs. 3,80,000;
(d) Rs. 3,00,000;

31 : Assume in the above question, that the jeweler is unregistered. Now what amount will be taxable?

(a) NIL;
(b) Rs. 80,000;
(c) Rs. 3,80,000;
(d) Rs. 3,00,000;

32 : Mr. Shyam has purchased a flat from his friend Mr. D. Details are as under:

Purchase consideration	**:**	**22,00,000**
Stamp Duty Valuation	**:**	**26,00,000**
FMV	**:**	**30,00,000**

What amount will be taxable?

(a) NIL;
(b) 4,00,000;
(c) 3,50,000
(d) 8,00,000

33 : What is the 'Rate of TDS' in case of 'lottery prize'?

(a) 10%;
(b) 30%;
(c) 10% (+ SC + HEC)
(d) 30% (+ SC + HEC);

34 : What is the "Income Tax" rate in case of lottery wins ?

(a) Normal rates;
(b) 30%. But benefit of slab will be available;
(c) 30% (+SC + HEC) (if any);
(d) 30% (+ SC + HEC) (if any) But benefit of slab will be available;

35 : Which of the following amount will be deducted from casual incomes :

(a) Slab limit;
(b) Expenditure incurred in earning them;
(c) Losses of other head;
(d) None of the above;

36 : Under a promotional scheme of Honda motors LTD., Mr. Rajesh wins a "Honda Brio" car of FMV of Rs. 6,00,000. What amount will be taxable in his hands :

(a) 7,80,000;
(b) 6,00,000;
(c) 8,57,143;
(d) 5,50,000;

37 : Winning from lotteries, cross word puzzles, horse races & other races, card games, etc. are casual income and hence:

(a) Fully exempt;
(b) Exempt upto Rs. 5,000;
(c) Fully taxable
(d) None of the above

38 : If no system of accounting is followed, interest on securities is taxable on :

(a) Due basis;
(b) Receipt basis;
(c) Due or receipt basis at the option of the assessee;
(d) None of the above

39 : The legal heir of the deceased who receives family pension is allowed a standard deduction from such family pension received of the amount of :

(a) 1/3rd of such pension subject to maximum of Rs.20,000;
(b) 1/3rd of such pension or Rs.15000 whichever is less;
(c) 1/3rd of such pension or Rs.12000 whichever is less;
(d) 1/3rd of such pension.

40 : During the P.Y. Mr. A (a resident) receives dividend of Rs.6,00,000 from X Ltd (a Delhi based company) and Rs.5,00,000 from Y Ltd (Mumbai based company). His taxable income and tax payable would be :

(a) 1,00,000 & Rs.10,400;
(b) Nil & Nil;
(c) 1,00,000 & Rs.11,845;
(d) 11,00,000 & Rs.1,30,295.

PAST EXAM (TRUE-FALSE/FILL IN THE BLANKS)

1. Marriage gift from a non-relative is_____ to tax.

[Answer = Not liable]

2. Rent received by original tenant from sub-tenant is taxable under the head_____.

[Answer = Income from other sources]

3. In the case of income in the nature of family pension, the amount deductible is 33.33% of such income or Rs. _____whichever is less.

[Answer = Rs.15,000]

4. The maximum amount of standard deduction in case of family pension is_____.

[Answer = Rs.15,000]

5. The entire amount of winning from lotteries is taxable at a special rate of income-tax.

Ans. True, The entire amount of winning from lotteries without deduction of any expenditure or allowance or even without giving slab benefit, will be taxable at a special rate of income tax *i.e.*, 30% + Applicable Surcharge + cess 3%.

6. Gift from an unrelated person is tax-free upto Rs.50,000.

Ans. True, Gifts from unrelated persons is taxable under the head other sources if aggregate amount exceeds Rs.50,000.

7. Expenses of purchasing lottery tickets are deducted out of winnings from lottery under the head income from other sources.

Ans. False, As per Section 58(4) of the Income-tax Act no deduction is allowed in respect of any expenditure or allowance in computing the income by way of lotteries, crossword puzzles, races, card games, of any sort or form gambling or betting of any form or nature whatsoever..

8. Family pension is taxable as income from other sources

Ans. True, As per section 56(1) any 'income' which is not taxable under the rest four heads (*i.e.* 'Salary', HP, PGBP, CG) that income will be taxable under this head. Thus, any payments received by the legal heirs of deceased employees by way of family pension are chargeable to tax under the head 'Income from other sources', as there does not exist any employer-employee relationship between payer and payee.

9. Money/property received on the occasion of the marriage of the individual is taxable under the head income from other sources.

Ans. False, Money/property received on the occasion of the marriage of the individual is exempt from tax under section 56(2)(*vii*) while computing income from other sources.

MULTIPLE CHOICE QUESTIONS (MCQs)

Question	Answer	Question	Answer	Question	Answer	Question	Answer	Question	Answer
1	B	2	C	3	A	4	C	5	D
6	D	7	A	8	A	9	A	10	C
11	B	12	B	13	C	14	D	15	C
16	C	17	B	18	A	19	A	20	A
21	D	22	A	23	C	24	B	25	D
26	B	27	D	28	D	29	C	30	A
31	B	32	B	33	B	34	C	35	D
36	C	37	C	38	A	39	B	40	A



CHAPTER 24
CLUBBING OF INCOME

Introduction

Generally assessee is liable to tax for the income earned by him. In order to avoid/reduce tax liability, incomes were transferred to the members of their families having no income or lower income. The provisions of section 64 are intended to check tax avoidance by persons through diversion of income to the members of their families. Thus, income earned by one individual is included in some other individual's income.

GENERAL CASES OF CLUBBING

24.1 Transfer of income without transferring the assets [Section 60]

All incomes arising to any person by virtue of a transfer, whether revocable or not shall be included in the total income of the *transferor*, if there is no *transfer of the assets* from which the income arises.

In other words, where incomes are transferred without transferring the asset, from which the income arises, shall be included in total income of the *transferor*.

E.g.—*A owns a house property (having a rental income of* Rs. *20,000 per month). On April 1, 2009, A transfers such rental income to B, his friend, without transferring ownership of the property. In this case, because there is transfer of income without transferring ownership of the property, the rental income will be taxable in the hands of the transferor i.e. Mr. A.*

24.3 Revocable transfer of assets [Section 61]

All incomes arising to any person by virtue of a *revocable transfer* of assets shall be included in the total income of the *transferor*.

Revocable transfer of asset [Section 63]: a transfer shall be deemed to be revocable if-

(i) it *contains any provision* for the re-transfer of the whole or any part of the income or assets to the transferor, or

(ii) it *gives* the transferor a *right to re-assume power* over the whole or any part of the income or assets.

No clubbing if transfer is revocable after the life time of the transferee [Section 62]: Provisions of section 61 shall not apply to a transfer which is revocable after the life time of the beneficiary.

Notes—

1. Income includes loss also. Therefore, losses are also to be clubbed.
2. The clubbed income shall be retained under the same head in which it is earned.
3. *Giving a loan/interest free loan is not a transfer of assets.* Clubbing provisions will not apply in this case.

SPECIFIC CASES OF CLUBBING

24.4 Income of an individual to include 'salary income' of his/her spouse [Section 64(1)(ii)]

Total income of any individual shall included income(s) of the spouse of such individual, subject to the following conditions:

Condition 1	Spouse is in receipt of income, being, salary, commission or any other form of remuneration.
Condition 2	Such income should arise from a concern in which such individual has a substantial interest
Condition 3	Spouse does not possess any technical or professional qualifications or experience.

Where both husband and wife are in receipt of remuneration and both have substantial interest–

- In such a case the individual whose total income (*excluding* this income) is greater, to include income of his/her spouse;
- in any succeeding year the Assessing Officer shall club income in the above manner only if he is satisfied that it is necessary so to do.

Meaning of substantial interest*:* An individual shall be deemed to have a substantial interest in a concern—

(i) **in a case where the concern is a company**, such individual (or along with his relative) owned *beneficially*, at any time during the previous year, shares (not being shares entitled to a fixed rate of dividend) not less than 20% of the voting power of the company;

(ii) **in any other case**, if such person (or along with his relatives) is entitled, at any time during the previous year, to not less than 20% of the profits of such concern.

'Relative' in relation to individual means the husband, wife, brother or sister or any lineal ascendant or descendant of that individual.

24.5 Income of an individual to include income from assets transferred to spouse [Section 64(1)(iv)]

Income of any individual to include incomes from the asset transferred to the spouse by such individual.

Exceptions : In the following cases, the 'transferee' will be liable to pay tax—

1. If the asset is transferred for *adequate consideration* or in connection with an agreement to live apart;
2. If the asset transferred is *a house property;*
3. If the *relation of husband and wife does not subsist either* at the time of transfer *or* at the time of accrual of income from such asset.

Notes—

a. *Change in shape:* Where the assets transferred has changed its shape and identification then, income from such changed assets is to be clubbed.

b. *Capital gain on sale of transferred asset:* Where the assets transferred is sold by the transferee, the capital gain arising to transferee, if any, is to be clubbed in the hands of transferor.

c. *Acquisition of asset out of pin money:* Provisions of clubbing will not apply when such assets is acquired by the spouse out of pin money (*i.e.* small allowances given by her husband for her personal expenses).

24.6 Income of an individual to include income from assets transferred to son's wife [Section 64(1)(vi)]

The total income of any individual shall include incomes from the asset transferred to the son's wife by such individual.

Exception : If the asset is transferred for *adequate consideration,* the son's wife will be liable to tax.

24.7 Where asset transferred is invested in business—How to club [Expl. to section 64(1)]

Investment in the business : Where the assets transferred to the spouse or son's wife (*i.e.* "the transferee") are invested in business (other than capital contribution in a firm), by such transferee then, the amount to be included in the total income of the individual in that previous year will be calculated as under—

Amount to be included in total income of individual	
Income from such *business* ×	Investment in the business (out of total assets transferred without adequate consideration) *as on the first day of the previous year* / Total investment in the business by the transferee as on *the first day of the previous year*

Investment in the firm: However where such asset is invested in the nature of contribution of capital as a partner in a firm then, the amount of ***interest*** to be included in the total income of the individual in that previous year will be calculated as under—

Amount to be included in total income of individual	
Interest from such *firm* ×	Investment in the partnership firm (out of total assets transferred without adequate consideration) *as on the first day of the previous year* / Total investment in the business by the transferee as on *the first day of the previous year*

Notes—

1. Any other income from the firm will not be clubbed in the hands of the transferor. For example, share in profits, remuneration from firm, since the former is exempt u/s 10(2A) and the latter has nothing to do with such contribution.
2. **"First day of the previous year",** means -

   (*i*) in case of previously *existing business or profession*, the 1st April of the previous year,

   (*ii*) in case of *business or profession newly set up,* the day of setting up the new business. **[Section 3]**

Problem—24.1 : (*Existing business*) : *Mr. Ram commences his business in 2009 by investing Rs. 4,00,000. He receives a gift of Rs. 8,00,000 from his wife on 11.7.2019 and then invested the same in his business. Profits from such business are as under-*

1. Financial year 2019-20 : Rs. 1,50,000

2. Financial year 2020-21 : Rs. 3,50,000

Compute the amount to be clubbed in the hands of Mrs. Ram. (Assume that the profits of the business are re-invested in the business).

Solution:

A.Y. 2020-21 (P.Y. 2019-20)

Nil, since on the first day of the previous year, *i.e.* 1st April 2019, investment in the business out of gift made by Mrs. Ram, was *nil*.

A.Y. 2021-22 (P.Y. 2020-21)

Amount to be clubbed in the hands of Mrs. Ram is as under-

$$3,50,000 \times \frac{8,00,000}{(4,00,000+8,00,000+1,50,000)} = \text{Rs.}2,07,407$$

Problem—24.2 *(Newly set up business) : Mr. Ram commences his business in 12.7.2019, by investing Rs. 4,00,000 from his own sources and Rs. 8,00,000, which is received as "gift" from his wife on 11.7.2019. Profits from such business are as under-*

1. *Financial year 2019-20 : Rs. 1,50,000*
2. *Financial year 2020-21 : Rs. 3,50,000*

Compute the amount to be clubbed the hands of Mrs. Ram. (Assume that the profits of the business are re-invested in the business).

Solution:

A.Y. 2020-21 (P.Y. 2019-20)

As per section 3, the first day of the previous year is 12.7.2019, therefore, clubbing in the hands of Mrs. Ram will be as under-

$$1,50,000 \times \frac{8,00,000}{(4,00,000+8,00,000)} = \text{Rs.}1,00,000$$

A.Y. 2021-22 (P.Y. 2020-21)

Amount to be clubbed in the hands of Mrs. Ram is as under-

$$3,50,000 \times \frac{8,00,000}{(4,00,000+8,00,000+1,50,000)} = \text{Rs.}2,07,407$$

24.8 Income of an individual to include income from assets transferred to any person for the benefit of spouse or son's wife [Section 64(1)(vii) and (viii)]

Total income of any individual shall include incomes from the asset transferred to any person or association of person (AOP) by such individual, subject to the following conditions—

1. The asset is transferred otherwise than for adequate consideration;
2. Such inclusion will be only to the extent to which the income from such assets is for the benefit of spouse or son's wife of the individual.

24.9. Clubbing of income of minor child [Section 64(1A)]

1. Clubbing provisions : The total income of any individual shall include incomes of his or her minor child subject to the following conditions—

Condition 1	Such minor child is NOT suffering from any disability specified in section 80U
Condition 2	Such income as arises or accrues to the minor child is NOT on account of any- *(a)* manual work done by him ; or *(b)* activity involving application of his skill, talent or specialised knowledge and experience.

2. Clubbing in the hands of father or mother? [Expl. to section 64(1A)]: For the purposes of this sub-section, the income of the minor child shall be included,—

(a) **where the marriage of his parents subsists**, in the income of that parent whose total income (excluding the income of the minor) *is greater* ; or

(b) **where the marriage of his parents does not subsist**, in the income of that parent *who maintains* the minor child in the previous year.

and where any such income is once included in the total income of either parent, any such income arising in any succeeding year shall not be included in the total income of the other parent, unless the Assessing Officer is satisfied, after giving that parent an opportunity of being heard, that it is necessary so to do.

3. Exemption from such income: section 10(32): Any income is once included in the total income of either parent, that parent shall be allowed *a deduction of to the extent of such income or Rs.1500, whichever is lower, in respect of each minor child* whose income is so includible.

Notes—

1. *Child includes step child :* Child for the above purpose includes a step-child and an adopted child.
2. *Minor child includes minor married daughter :* Provision of section 64(1A) shall apply in case of minor married daughter also.
3. *No clubbing after attaining majority :* Where the minor child become major during the previous year, provision of this section will apply till such date.

Problem—24.3 : *During previous year 2019-20, the following transactions occurred in respect of Mr. A.*

(a) Mr. A had a fixed deposit of Rs.5,00,000 in Bank of India. He instructed the bank to credit the interest on the deposit @ 9% from 1.4.2019 to 31.3.2020 to the savings bank account of Mr. B, son of his brother, to help him in his education.

(b) Mr. A holds 75% share in a partnership firm. Mrs. A received a commission of Rs. 25,000 from the firm for promoting the sales of the firm. Mrs. A possesses no technical or professional qualification.

(c) Mr. A gifted a flat to Mrs. A on April 1, 2019. During the previous year, the flat generated a net income of Rs. 52,000 to Mrs. A.

(d) Mr. A gifted Rs. 2,00,000 to his minor son who invested the same in a business and he derived income of Rs. 20,000 from the investment.

(e) Mr. A's minor son derived an income of Rs. 20,000 through a business activity involving application of his skill and talent.

During the year, Mr. A got a monthly pension of Rs. 10,000. He had no other income. Mrs. A received salary of Rs. 20,000 per month from a part time job. Discuss the tax implications of each transaction and compute the total income of Mr. A, Mrs. A and their minor child.

Solution:

Computation of Total Income of Mr. A, Mrs. A and their Minor Son for A.Y. 2020-21

Particulars	Notes	Mr. A	Mrs. A	Minor Son
1. INCOME FROM SALARY				
♦ Salary		–	2,40,000	–
♦ Pension		1,20,000	–	–
2. INCOME FROM HOUSE PROPERTY				
♦ Net income [Assuming that Rs. 52,000 is after standard deduction of 30%]	Mr.A is 'deemed owner' as per section 27. Further, provisions of section 56(2)(*vii*) (*i.e.* taxability of gifts) will not apply, as the property is received from a 'relatives'.	52,000	–	–
3. INCOME FROM OTHER SOURCES				
♦ Interest on FD	Rs.5,00,000 × 9% It falls in 'General cases of Clubbing' referred to in section 60 i.e. transfer of 'income' without transferring the ownership of 'assets'. Thus, taxable in the hands of 'transferor' *i.e.* Mr.A	45,000	–	–
♦ Commission from partnership firm	It falls in 'Specific cases of Clubbing' referred to in section 64(1)(ii), as— ✓ Mrs. A receives commission from the firm	25,000	–	–

	✓ She does not possess any technical/ professional qualification or experience, ✓ Mr. A has 'substantial interest' in such firm			
4. INCOME FROM BUSINESS				
♦Income from business activity	It falls in 'Specific cases of Clubbing' referred to in section 64(1A). Exemption of Rs.1,500 is allowed under section 10(32) out of such income	18,500	–	–
♦Income from business activity involving application of his skills	No clubbing	–	–	20,000
	Gross Total Income	**2,60,500**	**2,40,000**	**20,000**

24.10 Conversion of self-acquired property into joint property of the family [Section 64(2)]

1. Applicability of this section : Where any separate property of the individual being a member of a HUF, has been *converted* by him into HUF property through the act of impressing such separate property with the character of property belonging to the family, or has been *thrown* by him into the common stock of the family, or has been *transferred* by him to the family otherwise than for adequate consideration.

2. Provisions after applicability of this section : Where conditions given above are satisfied then, for the purpose of computation of the total income of the individual, the income derived from the converted property shall be deemed to arise to the individual and not to the family.

3. Where the converted property has been the subject-matter of a partition : Where the property so converted has been the subject-matter of a partition amongst the members of the family, the income derived from such converted property as is received by the spouse on partition shall be deemed to arise to the *spouse* from assets *transferred indirectly* by the individual to the spouse and the provisions of section 64(1)(*iv*) shall apply accordingly.

Notes—

1. *Income includes losses :* For the purposes of section 64, "income" includes loss.
2. *No clubbing in case of accumulated income :* It may be observed that, what is to be clubbed is the income arising from the property transferred, any income arising to the transferee from accretion of such property or from accumulated income of such property shall not be clubbed in the hands of the transferor.

   E.g. *Mr. Ram transfers 10,000 debentures to his wife Mrs. Ram. Mrs. Ram receives Rs. 25,000 interest on these debentures, which she invests in a bank at an interest rate of 8% p.a. So now Rs. 25,000 is to be clubbed in the hands of Mr. Ram. Amount of bank interest is not to be clubbed with the total income of Mr. Ram, but to be taxed in the hands of Mrs. Ram.*

24.11 Cross transfers

If two transfers are inter-connected and are indirectly adopted to evade the section, the clubbing provisions will apply – *CIT* v. *C.M. Kothari* 49 ITR 107 (SC) (1963).

E.g.— *Mr. Ram gifts debentures of Rs.10,00,000 to Mrs. Shyam and Mr. Shyam gifts one fixed deposit of Rs.10,00,000 to Mrs. Ram.*

As held judicially, two transactions are cross transfers and prima facie adopted to evade the clubbing section, hence clubbing provision will apply. Thus, income arising to Mrs. Ram from such FD will be clubbed in the hands of Mr. Ram and income arising to Mrs. Shyam from these debentures will be clubbed in the hands of Mr. Shyam.

24.12 Recovery of tax [Section 65]

Although by reason of the provisions of this Chapter or section 27(*i*), the income is included in the total income of the assessee (*i.e.* transferor), yet, the person to whom such asset is transferred (*i.e.* transferee) shall be liable, on the service of a notice of demand, to pay that portion of the tax levied on the assessee (*i.e.* transferor) which is attributable to the income so included.

E.g.— Mr. X files his return of income for the A.Y. 2020-21, declaring his total income as under:

Income under the head 'salaries' (Rs.)	10,00,000
Income from assets transferred without adequate consideration (to his wife) (Rs.)	50,000
Total income (Rs.)	10,50,000
Tax on above income (Rs.)	144,200

So now as per the provision of section 65, the recovery of tax can be made as under:

(i) Entire amount of tax (*i.e.* Rs. 144,200) from Mr. X, or

(ii) Rs. 137,333 [*i.e.* 144,200 × (10,00,000 ÷ 10,50,000)] from Mr. X

AND

Rs. 6,867 [*i.e.* 144,200 × (50,000 ÷ 10,50,000)] from Mrs. X

MULTIPLE CHOICE QUESTIONS (MCQs)

24.1 : Mr. A transfers 10% debentures of Rs.5,00,000 to his brother. Such transfer is NOT revocable. Discuss the taxability :

(a) Mr. A will be liable to pay tax on debenture interest;

(b) His brother will be liable to pay tax on Rs.50,000;

(c) His brother will be liable to pay tax on Rs.5,50,000

(d) None of the above

24.2 : Mr. A transfers 12% debenture of Rs.5,00,000 to his friend Mr. B on B'Day of Mr. B. Discuss the taxability :

(a) Mr. A will pay tax on Rs.60,000;

(b) Mr. B will be liable to pay tax on Rs.60,000;

(c) Mr. B will be liable to pay tax on Rs.5,60,000;

(d) Mr. B will be liable to pay tax on Rs.10,000;

24.3 : Where a transfer is made for the life time of the beneficiary, such transfer is treated as :

(a) Revocable transfer;

(b) Irrevocable transfer;

(c) Not treated as transfer;

24.4 : Where an 'income' is transferred without transferring the ownership of 'asset', such income will be taxable :

(a) in the hands of transferor;

(b) in the hands of transferee;

24.5 : Mrs. Ram receives salary of Rs.5,00,000 from a firm in which her husband holds 25% profit share. She does not possess any professional or technical qualification nor any experience. Apart from this she has income from house property (acquired by herself) of Rs.2,00,000. Taxability will be :

(a) Mrs. Ram 2,00,000
Mr. Ram 5,00,000;

(b) Mrs. Ram 7,00,000;

(c) Mr. Ram 7,00,000;

(d) Mrs. Ram 5,00,000
Mr. Ram 2,00,000;

24.6 : Mrs. Ram receives salary of Rs.5,00,000 from a firm in which her husband holds 15% profit share. She does not possess any professional or technical qualification nor any experience. Apart from this she has income from house property (acquired by herself) of Rs.2,00,000. Taxability will be :

(a) Mrs. Ram 2,00,000
Mr. Ram 5,00,000;

(b) Mrs. Ram 7,00,000;

(c) Mr. Ram 7,00,000;

(d) Mrs. Ram 5,00,000
Mr. Ram 2,00,000;

24.7 : If both husband and wife have 15% and 6% profit share respectively in a firm. Both are in receipt of remuneration of Rs.6,00,000 and Rs.5,00,000 respectively. Their separate incomes are Rs.3,00,000 and 4,00,000 respectively. Taxability will be:

(a) Husband = 18,00,000
Wife = NIL;

(b) Husband = 9,00,000
Wife = 9,00,000;

(c) Husband = 14,00,000
Wife = 4,00,000;

(d) Husband = 3,00,000
Wife = 15,00,000;

24.8 : If there is a transfer of income by a person to another person without the transfer of the asset from which the income arises, such income shall be included in the income of :

(a) transferor

(b) transferee

(c) transferor if transfer is revocable

(d) transferee if transfer is revocable

24.9 : If there is revocable transfer of an asset by any person to another person, any income arising from such asset shall be included in the income of :

(a) transferor

(b) transferee

(c) both transferor & transferee

(d) None of the above.

24.10 : If there is a transfer of asset which is not revocable during the life time of the transferee, income arising from such asset shall be included in the income of :

(a) transferor

(b) transferee

(c) transferee till his death and thereafter in the hands of the transferor

(d) both transferor & transferee

24.11 : Where an individual has substantial interest in a concern, there shall be included in his total income any remuneration paid by such concern to :

(a) the wife of such individual;

(b) the husband of such individual;

(c) the spouse of such individual

(d) any family member of the employee

24.12 : Relative for the purpose of section 64(1)(ii) shall include :

(a) spouse, brother and sister of the individual

(b) spouse, brother, sister or any lineal ascendant or descendent of that individual

(c) spouse, children and dependent brothers and sisters of the individual

(d) spouse, children, dependent parents, dependent brothers and sisters of the individual

24.13 : Where spouse of an individual gets any remuneration from a concern in which such individual has substantial interest, then such remuneration shall be included the hands of the individual :

(a) always

(b) only when such remuneration is received by the spouse due to his/her technical or professional qualification

(c) in all cases except when remuneration is received by the spouse due to his/her technical or professional qualification

(d) in case spouse of such individual does NOT possess any Degree recognised by Law.

24.14 : As per section 64(i)(iv), there shall be included in the income of an individual, any income arising from the gift to the spouse of :

(a) any capital asset

(b) any asset

(c) any asset other than house property

(d) any asset other including house property

24.15 : 'A' has sold 2000 14% debentures of Rs.100 each to his wife for Rs.90,000. The market value of debentures on the date of transfer was Rs. 1,80,000. In this case, interest income to be included in the total

income of R shall be:

(a) Rs. 28,000
(b) Rs. 14,000
(c) Rs.25,200
(d) Rs. 12,600

24.16 : Where an individual transfers the house property to his wife without adequate consideration, then income from such house property shall be subject to the provisions of :

(a) Income from such house property shall be clubbed in the hands of the transferor
(b) the transferor shall be the deemed owner of such house property and taxable under section 22
(c) no clubbing shall be made
(d) either (a) or (b), at the option of the individual.

24.17 : Clubbing provisions under section 64(1)(vi) are applicable where the asset is transferred by an individual without an adequate consideration to:

(a) daughter's husband;
(b) sons wife;
(c) major son
(d) major daughter

24.18 : Mr. A gifts Rs. 5,00,000 to his wife who invested the same in the partnership business. Mrs. A receives Rs. 3,05,000 as her share of profits from such firm. In this case amount to be clubbed in the income of R shall be:

(a) Rs. 3,05,000
(b) Balance remaining after giving maximum exemption to Mrs. A
(c) NIL as share of profit from firm is exempt
(d) Any amount received in excess of the amount provided in partnership deed.

24.19 : 2 years ago, Mr. A has gifted Rs. 10,00,000 to his wife. His wife invested the above sum as capital contribution to the firm where she is a partner and earned interest every year. The total capital of Mrs. A as on 1st day of the previous year (including 3 years interest) is Rs. 15,00,000. During the year she earned Rs.2,70,000 as interest on such capital balance. The income to be clubbed in the hands of Mr. A shall be :

(a) Rs. 2,70,000;
(b) Rs.1,80,000;
(c) NIL
(d) Rs. 90,000

24.20 : As per section 64(1A) income accruing to a minor shall be clubbed in the income of :

(a) father;
(b) mother;
(c) father or mother at their option
(d) a parent whose income before this clubbing is greater

24.21 : If the marriage of the parents does not subsist, the income of the minor child shall be clubbed in the income of:

(a) father
(b) parents who maintains the child
(c) father or mother whose income is higher
(d) in the hands of that parent which is mutually agreed between them.

24.22 : When income of minor child is clubbed in the income of the parent concerned, such parent will be allowed exemption of :

(a) Rs. 1,500 total
(c) Rs. 1,500 per minor child for maximum upto 2 children

(b) Rs. 1,500 per minor child

(d) to the extent of actual income clubbed or Rs. 1,500 per minor child whichever is less

24.23 Where a house property is transferred by an individual to his or her minor child other than a married minor daughter without an adequate consideration, income from such house property shall be subject to provisions of :

(a) section 64(1A) *i.e.* minor income to be clubbed in the income of the parent whose income other than such income is greater

(b) section 27 *i.e.* the transferor shall be the deemed owner of such house property and taxable under section 22

24.24 : Any income of a minor child who is a person with disability shall be:

(a) clubbed with the income of the parent whose income other than such income is greater

(b) taxable in the hands of the minor through his guardian/legal representative

(c) exempt

(d) None of the above

24.25 : Income of a minor child from the application of his talent/skill or from his manual work shall be:

(a) clubbed with the income of the parent whose income other than such income is greater;

(b) taxable in the hands of the minor/through his guardian/legal representative;

(c) exempt

(d) None of the above

24.26 : Income of a minor married daughter shall:

(a) be clubbed in the income of her husband

(b) be clubbed in the income of the parent whose income other than such income is greater

(c) not be clubbed and taxable in her hands

(d) None of the above

24.27 : If any income has to be clubbed under section 64, it will be clubbed under _____.

(a) income from other sources

(b) relevant head to which it belongs

24.28 : Mr. Ram has three daughters *viz* Anju, Manju and Sanju (all are minor unmarried). They have incomes of Rs. 4,500 (Anju), Rs. 2,200 (Manju), and Rs. 1,200 (Sanju). The income of Anju includes Rs. 1,200 from Times of India (news paper) on her poem writing. Her father has higher income than her mother. What amount will be taxable in the hands of their father :

(a) Rs. 7,900

(b) Rs. 6,700

(c) Rs. 2,200

(d) Rs. 2,500

PAST EXAM (TRUE-FALSE/FILL IN THE BLANKS)

1. For the purposes of clubbing of income of the specified person in the income of the individual under section 64, the word 'income' includes_____.

[Answer = Loss]

2. In case the income of an individual includes any income of his minor child in terms of section 64(1A), such individual shall be entitled to exemption of the amount of such income or Rs. _____ , whichever is less.

[Answer = Rs.1,500]

3. The income of minor child will always be included in the income of his/her parents.

Similar

4. Income of minor child is included in the income of his parents under the Income-tax Act, 1961 in all cases.

Ans. False, As per Section 64(1A) the clubbing provision is not applicable in following cases :

(a) If minor is suffering from disability referred to in section 80U.
(b) If income is earned by the minor on account of his manual work.
(c) If income is earned by the minor by applying his skill, talent or specialized knowledge.

5. All incomes that accrue to a minor child will be included in the total income of parent whose total income is greater.

Ans. True, Normally, income of minor is included in the income of that parent whose income (excluding the income of minor child) is greater. However, if marriage of his parents does NOT subsist, then income of minor will be included in the income of that parent who has maintained such minor during the P.Y.

ANSWERS TO MCQs

Question	Answer	Question	Answer	Question	Answer	Question	Answer	Question	Answer
24.1	B	24.2	C	24.3	B	24.4	A	24.5	A
24.6	B	24.7	D	24.8	A	24.9	A	24.10	C
24.11	C	24.12	B	24.13	C	24.14	C	24.15	B
24.16	B	24.17	B	24.18	C	24.19	B	24.20	D
24.21	B	24.22	D	24.23	B	24.24	B	24.25	B
24.26	B	24.27	B	24.28	D				



CHAPTER 25
SET OFF AND CARRY FORWARD OF LOSSES

25.1 Introduction

Set off of losses refers to adjustment of current year's losses against current year's income. The process of carry forward of loss is applied only when a loss cannot be set off during the P.Y.

SET OFF OF LOSSES

25.2 *First Step* : Set off between sources [Section 70]

Where the net result of any source falling under any head of income is a loss, the assessee shall be entitled to set off such loss against his income from any other source under the same head.

E.g.— *If an assessee has two houses and the net income from one house is Rs. 80,000 while from the other house there is a loss of Rs. 60,000 the loss shall be adjusted against the income (as both fall under the same head i.e. 'Income from house property) and after set off, the income under the head 'income from house property' shall be Rs. 20,000.This is 'Inter source adjustment'.*

EXCEPTIONS to the general rule—

♦ *Long term capital loss*	Long term capital loss can be set off only against long term capital gains, however short term capital losses can be set off against any capital gains;
♦ *Losses of speculative business*	Losses of a speculative business carried on by the assessee, cannot be set off against profits of non-speculative business. However, losses of non-speculative business can be set off against income of speculative business;
♦ *Losses of activity of owning and maintaining race horses*	The amount of loss incurred by the assessee in the activity of owning and maintaining race horses cannot be set off against income from any source other than the activity of owning and maintaining race horses.
♦ *Losses cannot be set off against winnings from lotteries, races etc.*	No deduction in respect of any expenditure or allowance shall be allowed against the income of winnings from lotteries, crossword puzzles, races including horse races, card games and other games.
♦ *Losses of exempt source*	Losses of the source the income of which is exempt, cannot be set off against any source the income of which is taxable- *CIT* v. *Tyagarajan*
♦ *Losses of 'specified business'*	Losses from the 'specified business' referred to in section 35AD cannot be set off against income of any other business.

25.3 *Second Step* : Set off between Heads [Section 71]

Where the net result of any head of income, is a loss, the assessee shall be entitled to set off such loss against his income, if any, under any other head.

E.g.— *If an assessee has two houses and there is a net Income of Rs.80,000 from one house and loss of Rs.1,20,000 from another, the net loss under this head will be (-) 40,000. Such a loss can be set off against any kind of income under any other head which is termed as 'Inter-head adjustment'.*

EXCEPTIONS to the general rule—

♦ *Losses of the head 'capital gains'*	Losses of the head 'capital gains', whether short-term or long-term, cannot be allowed to be set off against income under any other head.
♦ *Losses of the head 'PGBP': Normal business losses*	Losses of the head 'PGBP' cannot be set off against income under the head 'salaries'
♦ *Losses of the head 'PGBP': 'Speculative business'*	Losses of the head 'PGBP' in so far as relates to 'speculative business' cannot be set off against income under ANY head.
♦ *Losses of the head 'PGBP': 'Activity of owning and maintaining race horses'*	Losses of the head 'PGBP' in so far as relates to 'activity of owning and maintaining race horses' cannot be set off against income under ANY head.
♦ *Losses of the head 'PGBP': 'Specified business' referred to in section 35AD*	Losses of the head 'PGBP' in so far as relates to 'specified business' referred to in section 35AD, cannot be set off against income under ANY head.
♦ *Losses of any head cannot be set off against winnings from lottery etc.*	Losses of ANY head cannot be set off against winnings from lottery, crossword etc.
♦ *Limit of Rs.2,00,000 applies on setting off of losses of 'House Property' head [Section 71(3A)]*	Notwithstanding anything contained in sub-section (1), where in respect of any assessment year, the net result of the computation under the head "Income from house property" is a loss and the assessee has income assessable under any other head of income, the assessee shall not be entitled to set off such loss, to the extent the amount of the loss exceeds Rs.2,00,000. [Inserted by Finance Act, 2017 w.e.f. A.Y. 2018-19]

Notes—

a. **No order of priority is given in the Act:** The Act does not prescribed any order of priority for set off of losses, therefore, one should try to set off of those losses which cannot be set off in future or having shorter period for set off.

b. **Set off is compulsory, if permissible:** If there is income from one head and loss from another, the assessee has no option but to set off of loss against such income if it is permissible under section 71.

c. **Losses from a source income of which is exempt from tax:** Losses incurred by an assessee from a source, income of which is exempt from tax, cannot be set off against income from a taxable sources- *CIT* v. *Thyagarajan (S.S.) (Mad.)*

CARRY FORWARD OF LOSSES

25.4 Carry Forward and Set Off of Losses of House Property [Section 71B]

Where any loss under the head "Income from house property" cannot be set off against income from any other head under section 71,

- such loss shall be carried forward to the following assessment year(s) and
- be set off against the income, if any, from *house property* of that A.Y. and

- so on…. but NOT more than 8 A.Ys. immediately succeeding the A.Y. for which the loss was first computed.

Submission of return for losses [Section 80] : No loss shall be carried forward and set off under section 72 or section 73 or section 74 or section 74A unless a "loss return" under section 139(3) is filed [*i.e.* within due date]. But since,

(a) losses of house property are carried forward under section 71B, *similarly*

(b) losses of specified business of section 35AD are carried forward under section 73A, *similarly*

(c) unabsorbed depreciation of section 32(2) is carried forward under section 32(2)

and section 80 does not cover these sections, therefore, these losses and unabsorbed depreciation can be carried forward *even if the return is not filed within the due date of filing of ITR.*

25.5 Carry forward and set off of Business Losses [Section 72]

Where any loss under the head "PGBP" (other than a speculative business) cannot be set off against income of any head as per section 71,

- such loss shall be carried forward to the following assessment year(s) and
- be set off against income of that A.Y., if any, from *any business or profession* carried on by the assessee and
- so on.. but NOT more than 8 A.Ys. immediately succeeding the A.Y. for which the loss was first computed.

Notes—

1. The assessee who incurs the loss and the assessee, who is seeking its carry forward and set off, must be same. However, this rule has the following **exceptions:**

(a) **Amalgamation :** In case of amalgamation referred to in section 72A(1) the amalgamated company can carry forward *business losses AND unabsorbed depreciation* of amalgamating company. As per section 72A(1), the losses of amalgamating company will be deemed to be losses of amalgamated company *of the previous year in which amalgamation took place,* therefore, fresh 8/4 years will be allowed for their carry forward and set off.

(b) **Demerger :** In case of demerger referred to in section 72A(4), the resulting company can carry forward *business losses AND unabsorbed depreciation* of demerged company provided that these losses/unabsorbed depreciation are directly relatable to the undertaking transferred to the resulting company.

(c) **Business re-organisation :** In case of takeover referred to in section 72A(6) [*i.e.* takeover of a firm or proprietary business by a company referred to in section 47(*xiii*) or 47(*iv*)], the company (taking over such firm or sole proprietary business) can carry forward *business losses AND unabsorbed depreciation* of such firm or sole proprietary business. As per section 72A(6), the losses of firm or sole proprietary business will be deemed to be losses of such company *of the previous year in which such take over took place,* therefore, fresh 8/4 years will be allowed for their carry forward and set off.

(d) **Takeover of a company by a LLP :** In case of takeover referred to in section 72A(6A) [*i.e.* takeover of a company by a limited liability partnership (LLP) referred to in section 47(*xiiib*)], the LLP can carry forward *business losses AND unabsorbed depreciation* of such company. As per section 72A(6A), the losses of such company will be deemed to be losses of such LLP *of the previous year in which such take over took place,* therefore, fresh 8/4 years will be allowed for their carry forward and set off.

(e) **Inheritance :** Loss of business acquired under inheritance as per section 78(2). [Only business losses and NOT unabsorbed depreciation]

2. The business or profession in which such loss was originally incurred may or may not be carried on by the assessee during the year in which brought forward loss is sought to be set off.

3. Therefore priority of set off is as under:

(a) Current year depreciation,

(b) Current year expenditure on scientific research,

(c) Current year allowable expenditure on promotion of family planning,
(d) Brought forward business or profession loss,
(e) Unabsorbed depreciation,
(f) Unabsorbed capital expenditure on scientific research,
(g) Unabsorbed expenditure on promotion of family planning,

25.6 Carry forward and set off of Speculative Business Losses [Section 73]

If losses from a speculation business cannot be set off against income of any other speculation business as per section 70,

- such loss shall be carried forward to the following assessment year(s) and
- be set off against income of that A.Y., if any, from *any speculation business* carried on by the assessee and
- so on.. but NOT more than 4 A.Ys. immediately succeeding the A.Y. for which the loss was first computed.

25.7 Carry forward and set off of losses of Specified Business [Section 73A]

If losses from a specified business referred to in section 35AD, cannot be set off against income of any other specified business as per section 70,

- such loss shall be carried forward to the following assessment year(s) and
- be set off against income of that A.Y., if any, from *any specified business* carried on by the assessee and
- so on.. till such loss is fully set off (it means, these losses can be carried forward for infinite number of years)

25.8 Carry forward and set off of losses of the head 'Capital Gains' [Section 74]

If in any year, the net result under the head "Capital gains" is a loss to the assessee, the whole of such loss shall be carried forward to the following assessment year, and

- If it is short term capital loss, it shall be set off against ANY capital gains;
- If it is long term capital loss, it shall be set off against "long term capital gains"; and
- if the loss cannot be wholly so set off, it shall be carried forward to the following assessment year and
- so on… but NOT more than 8 A.Ys. immediately succeeding the A.Y. for which the loss was first computed.

25.9 Carry forward and set off of losses of 'activities of owning and maintaining race horses' [Section 74A]

If loss from 'activities of owning and maintaining race horses', cannot be set off against income of any other business of 'owning and maintaining race horses' as per section 70,

- such loss shall be carried forward to the following assessment year(s) and
- be set off against income of that A.Y., if any, from *activities of owning and maintaining race horses* carried on by the assessee and
- so on.. but NOT more than 4 A.Ys. immediately succeeding the A.Y. for which the loss was first computed.

Notes—

1. Losses from 'activities of owning and maintain race horses' means :

Stake Money	(*minus*)	Expenditure (other than capital nature) incurred in respect of such activity.

2. Stake money means, the gross amount of prize money received on a race horse(s) by the owner thereof on account of the horse(s) winning or being placed second or in any lower position in horse races.

25.10 Carry forward and set off of losses — at a glance

Type of loss to be carried forward	*Set-off under same head (Inter- source)*	*Set-off with another head (Inter- head)*	*Carry forward and set off*	
			Years	*Set-off against whom*
1. House property	Yes	Yes	8	Same head
2. Speculative business/specified business u/s 35AD	No, set-off is possible only against speculation profit/specified business profit	No, set-off is possible only against speculation profit/specified business profit	▪ Speculative – 4 ▪ Specified- Any	Same item
3. Unabsorbed— ▪ Depreciation ; ▪ Capital exp. on scientific research; ▪ Capital exp. on family planning.	Yes	Yes, except against 'Salary'	No limit	Any income except against 'Salary'
4. Non-speculative business	Yes	Yes except 'Salaries'	8	Same head
5. Long term capital loss	No	No	8	Same item
6. Short term capital loss	Yes	No	8	Same head
7. Owning maintaining race horses	No	No	4	Same item
8. Lotteries/crossword puzzles etc.	No	No	NA (Carry forward not allowed)	NA (Carry forward not allowed)
9. Losses from a source income of which is exempt from tax	No *CIT* v. *Thyagarajan*	No *CIT* v. *Thyagarajan*	Losses cannot be carried forward *Harprasad & Co. P. Ltd. (SC)*	Losses cannot be carried forward *Harprasad & Co. P. Ltd. (SC)*

25.11 Carry-forward and set-off of losses in case of change in constitution of firm [Section 78]

As per this section—

- Where a change has occurred in the constitution of a firm (like partners retired etc.),
- the firm cannot carry forward and set off the proportionate losses of retiring or deceased partner.
- These losses will be computed after deducting therefrom his profit share.

25.12 Carry-forward and set-off of losses in case of closely held companies whose shareholding structure gets change [Section 79]

(1) As per this section, the losses of a company [other the company in which public are substantially interest **and other than an eligible start-up company referred to in clause (b) of this section**] can be carried forward and set-off ONLY IF—

51% or more shares (of voting power) of the company were held (beneficially) by the same persons:
(a) *last day of loss year :* on the last day of the year(s) in which the loss was incurred, AND
(b) *last day of set off year :* on the last day of the previous year in which loss is to be adjusted.

Thus, where a change in voting power of more than 51 % of share-holding has occurred between these two dates, the assessee will not be entitled to the benefit of set-off.

Provided that even if the said condition is not satisfied in case of an eligible start-up as referred to in section 80-IAC, the loss incurred in any year prior to the previous year shall be carried forward and set off against the income of the previous year, if ALL the shareholders of such company who held shares carrying voting power on the last day of the year or years in which the loss was incurred,—

(i) continue to hold those shares on the last day of such previous year; and

(ii) such loss has been incurred during the period of 7 years beginning from the year in which such company is incorporated.

(2) EXCEPTIONS TO THIS RULE : In the following cases, even though the change has occurred, yet the benefit of set-off is not denied—

(a) Change due to gift or death of the shareholder : Where the change in voting power is due to

(i) the death of a shareholder or

(ii) on account of gift of shares to any relative of the shareholder.

(b) Change in shareholding of Indian subsidiary company : Where any change has occurred in the shareholding of an Indian company which is a subsidiary of a foreign company as a result of amalgamation or demerger of such foreign company (but condition is that 51% shareholders of the amalgamating or demerged foreign company will continue).

(c) Change due to resolution plan approved under IBC : Where a change in the shareholding takes place in a previous year pursuant to a resolution plan approved under the Insolvency and Bankruptcy Code, 2016, after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner.

(d) to a company, and its subsidiary and the subsidiary of such subsidiary, where,—

(i) the Tribunal, on an application moved by the Central Government under section 241 of the Companies Act, 2013, has suspended the Board of Directors of such company and has appointed new directors nominated by the Central Government, under section 242 of the said Act; and

(ii) a change in shareholding of such company, and its subsidiary and the subsidiary of such subsidiary, has taken place in a previous year pursuant to a resolution plan approved by the Tribunal under section 242 of the Companies Act, 2013 after affording a reasonable opportunity of being heard to the jurisdictional Principal Commissioner or Commissioner.

Explanation.—For the purposes of this section,—

(i) a company shall be a subsidiary of another company, if such other company holds more than half in nominal value of the equity share capital of the company;

(ii) "Tribunal" shall have the meaning assigned to it in section 2(90) of the Companies Act, 2013.'.

[Amended by Finance Act 2019, w.e.f. A.Y.2020-21]

MULTIPLE CHOICE QUESTIONS (MCQs)

25.1 : Loss from a speculation business of a particular assessment year can be set off in the same assessment year from:

(a) profits and gains from any business
(b) profits and gains from any business other than speculation business
(c) income of speculation business

25.2 : Loss on account of owning & maintaining the race horses of particular assessment year can be set off in the same assessment year from:

(a) any business income
(b) any income under the head other sources
(c) income from race horses

25.3 : Short – term capital loss of particular assessment year can be set off in the same assessment year from:

(a) short–term capital gain only
(b) long - term capital gain only
(c) long – term or short–term capital gain

25.4 : Long – term capital loss of particular assessment year can be set off in the same assessment year from:

(a) long – term or short–term capital gain
(b) long - term capital gain only
(c) short–term capital gain only

25.5 : Loss under the head capital gain in a particular assessment year can:

(a) be set off from any other head of income in the same assessment year
(b) be carried forward
(c) neither be set off nor carried forward

25.6 : During the previous year an assessee has incurred loss from his business amounting to Rs. 1,20,000 whereas his income from house property is Rs.1,10,000. The assessee in this case can carry forward:

(a) business loss of Rs.10,000 only
(b) business loss of Rs.1,10,000 and claim full exemption of other income in the current previous year
(c) at his option do any of these

25.7 : Loss under the head business and profession other than specified business referred to in section 35AD can be set off in the same assessment year from

(a) income under any other head
(b) income under any other head except salary
(c) income under any other head except house property

income

25.8 : Loss from a specified business referred to in section 35AD can be set off from:

(a) any head of income other than salary
(b) income under business or profession only
(c) profit of any other specified business only

25.9 : The loss other than loss from house property and loss of specified business referred to in section 35AD is allowed to be carried forward only when an assessee has furnished :

(a) return of loss
(b) return of loss before the due date mentioned under section 139(1)
(c) or not furnished the return of loss

25.10 : loss under the head income from house property can be carried forward:

(a) only if the return is furnished before the due date mentioned under section 139(1)
(b) even if the return is not furnished
(c) even if the return is furnished after the due date

25.11 : A business loss can be carried forward and set off in the subsequent assessment year when the business on account of which this loss has arisen:

(a) is continued in the assessment year in which the such loss is set off
(b) is continued or not
(c) is continued for any part of the previous year

25.12 : A business loss other than loss from a specified business referred to in section 35AD can be carried forward for a maximum of:

(a) 8 years but it should be set off in the subsequent assessment year(s) if there is any business income
(b) 4 years but it should be set off in the subsequent assessment year(s) if there is any business income
(c) indefinitely but it should be set off in the subsequent assessment year(s) if there is any business income

25.13 : loss from specified business referred in section 35AD can be carried forward and set off from:

(a) income of any business and profession
(b) income of a specified business only

25.14 : Loss from specified business referred in section 35AD can be carried forward:

(a) for 8 years
(b) for 4 years
(c) indefinitely

25.15 : Loss on account of owing & maintaining the race horse can be carried forward :

(a) for 8 years
(c) indefinitely

(b) for 4 years

25.16 : Loss from derivative trading in shares carried on in a recognised stock exchange is:

(a) a loss from speculative business

(b) a loss from non speculative business

25.17 : Loss from derivative trading in shares carried on in a recognised stock exchange can be set off:

(a) from the income from speculative business only

(b) from the income from non – speculative business only

(c) from the income of both, speculative and non – speculative business

25.18 : Loss from derivative trading in shares can be carried forward for:

(a) 8 years

(b) 10 years

(c) 4 years

25.19 : Loss from derivative trading in commodity exchange is a:

(a) loss from speculative business

(b) loss from non – speculative business

25.20 : Loss under the head house property:

(a) can be carried forward for 8 years

(b) cannot be carried forward

(c) can be carried forward for only 4 years

25.21 : Brought forward Loss :

(a) can be set off in any of the 8 succeeding years

(b) must be set off in the immediate succeeding year & balance in the immediately next succeeding year and so on

(c) as per (b) but within the time allowed

25.22 : In case of amalgamation, carry forward of business loss and unabsorbed depreciation in the hands of amalgamated company shall be allowed:

(a) of any amalgamating company

(b) of an amalgamating company which is owing an industrial undertaking or a ship

(c) of an amalgamating company which is owing an industrial undertaking or a ship or a hotel or a bank with a specified bank

(d) of an amalgamating company which is an Indian company and is owing industrial undertaking or a ship

25.23 : In case of amalgamation if the conditions mentioned under section 72A are satisfied, the amalgamated

company shall be allowed to carry forward the business loss and unabsorbed depreciation of amalgamated company for:

(a) 8 years
(b) 8 years minus the assessment years already expired in the hands of amalgamating company
(c) indefinitely
(d) fresh 8 years in case of business loss and indefinitely in case of unabsorbed depreciation

25.24 : Loss of a closely held company cannot be carried and set off unless on the last day of the previous year in which the loss was incurred and as on the last day of the previous year in which such loss is set off, at least:

(a) 51% of shares are beneficially held by the same persons
(b) 50% of the shares are beneficially held by the same persons
(c) 40% of the shares are beneficially held by the same persons

25.25 : Speculation loss can be carried forward for the maximum of:

(a) 8 years
(b) 10 years
(c) 4 years

25.26 : ABCD & Co. (a firm) consists of four partners having profit sharing ratio of 1 : 1 : 1 : 1. Mr. A retires from the firm on 31.3.2015. The brought forward losses and unabsorbed depreciation of the firm are Rs. 2,00,000 and 50,000 respectively. Profits of the firm for the year ended 31.3.2015 are Rs. 1,60,000. What amount of losses can be further carried forward by the firm :

(a) Business loss = Rs. 2,00,000
Unabsorbed Dep. = Rs. 50,000
(b) Business loss = Rs. 1,50,000
Unabsorbed Dep. = Rs. 37,500
(c) Business loss = Rs. 30,000
Unabsorbed Dep. = Rs. 50,000
(d) Business loss = Rs. 40,000
Unabsorbed Dep. = Rs. 50,000

PAST EXAM (TRUE-FALSE/FILL IN THE BLANKS)

1. Speculative business losses can be carried forward for _____ assessment years, immediately succeeding the assessment year for which the loss was first computed.

[Answer = Four]

2. Unabsorbed part of the loss from house property can be carried forward and set-off within the subsequent .

[Answer = Eight years]

3. Speculation losses may be set-off against non-speculative profits.

Ans. False. According to section 70, speculation losses cannot be set-off against non-speculative gains. However, the loss of non-speculation business can be set-off against the income from speculation business.

4. Loss on account of owning and maintaining race horses can be carried forward upto 8 years.

Ans. False. Loss on account of owning and maintaining race horses can be carried forward up to four years under section 74A.

5. Loss in speculation as well as non-speculation business can be carried forward to a maximum of four consecutive assessment years immediately succeeding the assessment year for which loss was first computed.

Ans. False. Loss in speculation business can be carried forward to a maximum of four consecutive assessment year immediately succeeding the assessment year for which the loss was first computed. But loss in non-speculation business can be carried forward to a maximum of eight consecutive years immediately succeeding the assessment year for which the loss was first computed.

ANSWERS TO MCQs

Question	Answer	Question	Answer	Question	Answer	Question	Answer	Question	Answer
25.1	C	25.2	C	25.3	C	25.4	B	25.5	B
25.6	A	25.7	B	25.8	C	25.9	B	25.10	C
25.11	B	25.12	A	25.13	B	25.14	C	25.15	B
25.16	B	25.17	C	25.18	A	25.19	A	25.20	A
25.21	C	25.22	C	25.23	D	25.24	A	25.25	C
25.26	C								



CHAPTER 26

DEDUCTIONS[1] FROM GROSS TOTAL INCOME

[[1]Selected sections only]

26.1 Introduction

Deduction of Chapter VI-A (i.e. from section 80C to 80U) shall be deducted from Gross Total Income (GTI) of the assessee. However, deductions cannot exceed the amount of GTI. Further, as per section 80AC, if a return of income is not filed by the due date specified under section 139(1), deduction under the Heading "C.- Deductions in respect of certain incomes" of Chapter VIA will not be allowed.

Deduction under this chapter CANNOT be allowed to be deducted from certain specified incomes like—

Section 111A	Short term capital gains on transfer of listed equity shares/equity oriented mutual funds.
Section 112	Long term capital gains.
Section 115A(1)	Incomes being interest, dividend, royalty etc. of a foreign company which is received from Government/Indian company/Indian concern etc.
Section 115AC	Income from bonds or Global Depository Receipt issued by an Indian company
Section 115AD	Income in respect of securities received by Foreign Institutional Investors (FIIs)
Section 115BB	Casual incomes like winning from lotteries, crossword, races including horse races.
Section 115BBA	Income of non-resident foreign citizens *sportsmen* from participating in any games or giving advertisements in India or income of non-resident foreign citizens *entertainers.*
Section 115BBC	Anonymous donations
Section 115BBD	Dividend income of an Indian company from a foreign company in which such Indian company holds 26% or more equity shares.
Section 115BBE	Undisclosed incomes (Section 68, 69, 69A, 69B, 69C and 69D)

26.2 Deduction in respect of Insurance Premium, P.F. etc. [SECTION 80C]

This section provides as under—

- *Eligible assessee* : Individual or HUF making payments towards qualified savings/investments.
- *Maximum Limit* : Combined limit for section 80C + 80CCC + 80CCD(1) is Rs. 1,50,000
- *Qualified savings/investments* : Qualifying savings/investments are (*selected cases only*)—

1	Life insurance premium on life of : Assessee, spouse, children; In case of HUF, any family member. Maximum limit : 10% of sum assured (normal case), 15% of sum assured (for disabled).
2	Contribution towards Recognised Provident Fund, Statutory Provident Fund, Public Provident Fund (for himself, spouse, children), Approved Superannuation Fund

3	NSS–1992, NSC VIIIth and IXth issue (plus interest accrued on NSCs).
4	Certain annuity plans like Jeevan Dhara, Jeevan Akshay.
5	Tuition fee for maximum 2 children for their full time education in any school, college in India.
6	Re-payment of housing loan (other than interest portion). Loan should have been obtained from Govt. LIC, National Housing Bank, Employer if employer is public company, university etc.
7	Subscription towards public issue of shares, debentures of a public company which is engaged in power sector.
8	Fixed Deposit (FD) for a minimum term of 5 years with a scheduled bank or post office.
9	Subscription towards bonds issued by NABARD.
10.	Amount deposited under Senior Citizen Saving Scheme.
11.	any sum paid or deposited during the previous year in 'Sukanya Samriddhi Account' in accordance with 'Sukanya Samriddhi Account Scheme', by an individual in the name of : (a) the *individual* himself or herself; (b) any *girl child* of the individual; or (c) any girl child for whom such individual is the *legal guardian.*

26.3 Deduction for contribution towards 'National Pension Scheme (NPS)' [Section 80CCD]

This section provides as under—

- *Eligible assessee* : Individual who is in employment or who is self-employed.
- *Contribution* : Deposit towards Notified Pension Scheme (NPS).
- *Deduction* : Deduction under this section is as under—

If assessee is employed	(i) His own contribution (but maximum up to 10% of salary); **PLUS** (ii) Contribution made by his employer : → **In case employer is Central Government : Maximum up to 14% of salary** → In any other case : Maximum up to 10% of salary Where, salary means : Basic + DA (under the terms of employment). **[Amended by Finance Act, 2019 w.e.f. A.Y. 2020-21]**
If assessee is self employed	Contribution made by him (but maximum up to 20% of his GTI).

- *Maximum Limit [Section 80CCE]* : Combined deduction limit for section 80C + 80CCC + 80CCD(1) is Rs. 1,50,000. Here, 80CCD(1) means, employees own contribution towards NPS.

- *Additional deduction of Rs. 50,000 [Section 80CCD(1B)]* : As per this sub-section, assessee can claim additional deduction of up to Rs.50,000. on this contribution, the ceiling of Rs.1,50,000 of section 80CCE, will not apply. further, this additional deduction will be available to the assessee whether (or not) he has claimed deduction under sub-section (1).

E.g. assessee whose investments which are eligible for deduction under section 80C are Rs.1,40,000; his own contribution towards NPS is Rs. 80,000, then he can claim deduction as under :

- *80C : Rs.1,40,000*
- *80CCD(1) : Rs.10,000*
- *80CCD(1B) : Rs.50,000*

♦ *Receipt of monies out of NPSF- Taxable* : Where assessee or his nominee receives any sum from NPSF (on closure thereof or as pension), the tax treatment will be as under :

Section	Tax treatment	Provision in brief
10(12A)	Closure or opting out of NPS exempt up to **60%**	Any payment from National Pension System Trust to an employee ✓ *on closure* of his account or ✓ *on his opting out* of the pension scheme referred to in section 80CCD, will be exempt to the extent it does not exceed **60%** of the amount payable to him at the time such closure or opting out of the scheme. **[Increased to 60% from earlier 40% by Finance Act, 2019 w.e.f. A.Y. 2020-21]**
10(12B)	Partial withdrawal of NPS exempt up to 25%	Any payment from National Pension System Trust to an employee ✓ *on partial withdrawal* made out of his account in accordance with the terms and conditions specified under PFRD Act, 2013 will be exempt to the extent it does not exceed 25% of the amount of contribution made by him.
80CCD(3)	Closure or opting out of NPS on the death of the assessee - Exempt	Any amount received by a nominee on the death of the assessee, will fully exempt from taxation.
80CCD(3)	Pension received out of NPS - Taxable	Any amount received by assessee from NPS fund as a pension, it will be fully taxable.

26.4 Deduction for medical insurance i.e. Medi-Claim' [Section 80D]

This section provides as under—

♦ *Eligible assessee* : Individual or HUF.

♦ *Deduction* : This deduction is allowed as under—

Nature of payments	Deduction in case of Individual		Deduction in case of HUF
	For family	For parents	For any family member
(a) Mediclaim : Payment towards medical insurance premium by any mode *other than cash*	Eligible	Eligible	Eligible
(b) CGHS : Payment as contribution towards CG Health Scheme (CGHS)/notified scheme by any mode other than cash	Eligible	-	-
(c) PHC[1] : Payment for preventive health check-up (PHC) by any mode including cash	Eligible	Eligible	-
Deduction i.e.			
▪ General Deduction [If (a), (b) or (c) are paid for any beneficiary other than senior citizen]	Rs.25,000	Rs.25,000	Rs.25,000
▪ Additional Deduction [If (a) is paid for a beneficiary being senior citizen]	Rs.25,000	Rs.25,000	Rs.25,000
(d) Medical expenditure : Medical expenditure incurred in respect of a **senior citizen** AND for whom no amount has been paid towards Medical insurance.	Eligible	Eligible	Eligible
Deduction i.e.			
▪ Deduction [If (d) is paid for any beneficiary]	Rs.50,000	Rs.50,000	Rs.50,000
Maximum deduction for [(a) + (b) + (c) + (d)]	Rs.50,000	Rs.50,000	Rs.50,000

Notes :

1. Within the above limit of Rs.25,000, the deduction for PHC cannot exceed Rs.5,000.

2. Parents does not include father-in-law/mother-in-law.

3. In case of single health insurance policies having cover of more than 1 year, the aforesaid deduction will be allowed on proportionate basis for the numbers of years for which health insurance cover is provided.

26.5 Deduction in respect of expenses on maintenance of disabled dependent [Section 80DD]

This section provides as under—

- *Eligible assessee* : Individual or HUF.
- *Conditions for deduction* : Following conditions has to be satisfied for claiming such deduction—

Condition 1	During the previous year, the assessee has, (a) incurred any expense for treatment, training etc. of a Disabled Dependent; or (b) deposited any sum into any approved scheme for the benefit of such Dependent.
Condition 2	Assessee nominates such dependent or any other person to receive payment on his behalf, for the benefit of such dependent.
Condition 3	Assessee furnishes a certificate in prescribed Form issued by the medical authority.

- *Amount of deduction* : Deduction shall be allowed of the following amount—

Disability of dependent	Amount of deduction
1. *Disability other than severe disability*	Rs. 75,000, irrespective of expenditure/deposit
2. *Sever disability*	Rs. 1,25,000, irrespective of expenditure/deposit

For the purposes of this section,—

(a) **"Dependent"** means—

(i) in the case of an individual, the spouse, children, parents, brothers and sisters of the individual;

(ii) in the case of a HUF, a member of the HUF,

dependent wholly or mainly on such individual or HUF.

(b) **"person with disability"** means a person suffering from 40% or more of any disability (like Blindness, low vision etc.) as certified by a medical authority.

(c) **"person with severe disability"** means, a person with more than 80% of one or more disabilities.

26.6 Deduction for medical treatment in respect of 'specified diseases' [Section 80DDB]

This section provides as under—

- *Eligible assessee* : Individual or HUF being resident.
- *Conditions for deduction* : Following conditions has to be satisfied for claiming such deduction—

Condition 1	During the P.Y., the assessee has, paid any amount for medical treatment of prescribed diseases, for medical treatment of: (a) assessee himself or a dependent, in case the assessee is an individual; or (b) any member of a HUF, in case the assessee is a HUF.
Condition 2	The assessee has obtained the prescription for such medical treatment from a neurologist, an oncologist, a urologist, a haematologist, an immunologist or such other prescribed specialist.

- *Amount of deduction* : Deduction shall be allowed of the following amount—

Dependent	Amount of deduction
Other than senior citizen	Amount so incurred or Rs. 40,000, whichever is LOWER
Senior citizen and Very Senior Citizens	Amount so incurred or Rs.1,00,000 whichever is LOWER

26.7 Deduction in respect of interest on educational loan [Section 80E]

This section provides as under—

- *Eligible assessee* : Individual.
- *Conditions for deduction* : Assessee pays any interest on educational loan which is taken for higher education of himself, spouse, children or the student of whom assessee is a legal guardian. Such loan should have been taken from any financial institution.
- *Amount of deduction* : Interest so paid will be allowed as deduction starting from the year in which assessee starts paying such interest and 7 subsequent years or until such interest is fully paid, whichever is earlier.

For this purpose, **"higher education"** means any course of study pursued after passing the Senior Secondary Examination, from any school, board or university recognised by the Centre or State Government or any other authorised authority.

26.8 Deduction in respect of interest on loan taken for 'first residential house property' [New Section 80EEA] (W.e.f. A.Y. 2020-21)

Currently deduction in respect of interest on housing loan is allowed under the head 'Income from house property'. In case of 'self-occupied' property' this deduction is restricted to Rs.2,00,000.

Considering the need for affordable housing, an additional benefit for first-home buyers is provided by Finance Act 2019, by inserting a new section 80EEA, which provides deduction in respect of interest on loan taken for residential house property.

- *Conditions of deduction* : Conditions for claiming this deduction are as under—

Condition 1	The assessee is an individual. Who is not eligible to claim deduction of section 80EE.
Condition 2	▪ **Housing loan :** He has obtained a 'housing loan' from any financial institution (*i.e.* Banking company/institution or housing finance company). ▪ **Sanction of loan :** Such loan is sanctioned by the said financial institution between 1.4.2019 to 31.3.2020.
Condition 3	Stamp Duty Value of such residential house property does not exceed Rs. 45,00,000.
Condition 4	Such individual does not own any residential house property on the date of sanction of said loan. (it means such residential house must be his first house)

- *Amount of deduction* : On fulfillment of above condition, the deduction shall be allowed up to Rs. 1,50,000 or interest on such loan whichever is lower. Deduction is available for the A.Y. 2020-21 or subsequent A.Y.s.

Note : Where a deduction under this section is allowed for any such interest, deduction shall not be allowed in respect of such interest under any other provisions of the Act for the same or any other assessment year.

[Inserted by Finance Act, 2019 w.e.f. A.Y. 2020-21]

26.9 Deduction in respect of purchase of electric vehicle [New Section 80EEB] (W.e.f. A.Y. 2020-21)

This new deduction is introduced by the Finance Act 2019, which gives deduction on purchase of environment friendly electrical vehicles. Deduction is as follows :

♦ *Conditions of deduction* : Conditions for claiming this deduction are as under—

Condition 1	The assessee is an individual.
Condition 2	Such individual purchases an Electric Vehicle. [Where : **"electric vehicle"** means a vehicle which is powered exclusively by an electric motor whose traction energy is supplied exclusively by traction battery installed in the vehicle and has such electric regenerative braking system, which during braking provides for the conversion of vehicle kinetic energy into electrical energy.]
Condition 3	▪ **Vehicle loan :** He has obtained a 'Vehicle loan' from any financial institution. ▪ **Sanction of loan :** Such loan is sanctioned by the said financial institution between 1.4.2019 to 31.3.2023.

♦ *Amount of deduction* : On fulfillment of above condition, the deduction shall be allowed up to Rs. 1,50,000 or interest on such vehicle loan, whichever is lower. Deduction is available for the A.Y. 2020-21 or subsequent A.Y.s.

[Inserted by Finance Act, 2019 w.e.f. A.Y. 2020-21]

26.10 Deduction in respect of donations [Section 80G]

♦ *Conditions for deduction* : Following conditions has to be satisfied for claiming such deduction—

Condition 1	Deduction under this section is allowed to *all assessees.*
Condition 2	During the previous year, the assessee has made any donation in form of sum of money. However, no deduction shall be allowed under this section in respect of donation exceeding Rs. 2,000 unless it made by any mode other than cash. Donation in kind is not qualified for deduction.
Condition 3	The donation should be made only to specified funds/institutions (*discussed later*).

♦ *Amount of deduction, how to compute* : Amount of deduction is based on the trust/institution to which donation is made. In some cases deduction is available after applying a *qualifying limit*, while in others, it allowed without applying such *qualifying limit*. In some cases deduction is available up to 100% of amount of donation, while in others, it available up to 50% of amount of donation.

♦ *Qualifying limit* : Qualifying limit is 10% of *adjusted gross total income* of the assessee

♦ *Adjusted gross total income* for this purpose mean, the gross total income as reduced by:

(a) Long term capital gain, if any;

(b) Short term capital gain taxable under section 111A, if any;

(c) Amount deductible under sections 80C to 80U, except section 80G;

♦ *The amount of deduction in respect of various kinds of donations is as under*—

Trust/institution to which donation is made	Qualifying limit applies or not	% of donation eligible for deduction
1. National Defence Fund set up by the Central Government	No	100
2. Prime Minister's National Relief Fund	No	100

3.	Prime Minister's Armenia Earthquake Relief Fund	No	100
4.	Africa (Public Contributions - India) Fund	No	100
5.	National Foundation for Communal Harmony	No	100
6.	University or any educational institution of national eminence	No	100
7.	Maharashtra Chief Minister's Relief Fund or Earthquake Relief Fund	No	100
8.	Fund set up by the Govt. of Gujarat for relief of the victims of earthquake	No	100
9.	Zila Saksharta Samiti	No	100
10.	National/State Blood Transfusion Council	No	100
11.	Any fund set up by a State Govt. to provide medical relief to the poor	No	100
12.	Army Central Welfare Fund or the Indian Naval Benevolent Fund or the Air Force Central Welfare Fund	No	100
13.	Andhra Pradesh Chief Minister's Cyclone Relief Fund, 1996	No	100
14.	National Illness Assistance Fund	No	100
15.	Chief Minister's Relief Fund or the Lieutenant Governor's Relief Fund	No	100
16.	National Sports Fund to be set up by the Central Government	No	100
17.	National Cultural Fund set up by the Central Government	No	100
18.	Fund for Technology Development/application set up by the Central Govt.	No	100
19.	National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities	No	100
20.	National Children's Fund	No	100
21.	National Fund for Control of Drug Abuse	No	100
22.	Swachh Bharat Kosh	No	100
23.	Clean Ganga Fund [deduction allowed in case of resident assessees]	No	100
24.	Jawaharlal Nehru Memorial Fund	No	50
25.	Prime Minister's Drought Relief Fund	No	50
26.	Indira Gandhi Memorial Trust	No	50
27.	Rajiv Gandhi Foundation	No	50
28.	The Government or any approved local authority, institution or association, to be utilised for the purpose of promoting family planning	Yes	100
29.	Any sums paid by the assessee, being a **company**, as donations to the Indian Olympic Association or to any other association notified by the Central Government for ♦ development of infrastructure for sports in India ♦ the sponsorship of sports and games, in India.	Yes	100
30.	Fund or any institution which satisfies the conditions given u/s 80G(5)	Yes	50
31.	The Government or any local authority, to be utilised for any charitable purpose other than the purpose of promoting family planning	Yes	50
32.	An authority constituted in India for satisfying the need for housing accommodation or for the purpose of planning, development or of cities, towns and villages, or for both	Yes	50
33.	Corporation referred in sec. 10(26BB) for promoting the minority community	Yes	50
34.	Any sums paid for the renovation or repair of any such temple, mosque, gurdwara, church or other notified place.	Yes	50

Manner of computation of this deduction : This deduction is calculated as under—

STEP 1 : Calculate the amount of 'Qualifying Limit' (QL) *i.e.* 10% of A.T.I.

STEP 2 : Take LOWER of 'QL' and "with limit 100% donations". If 'QL' > "with limit 100% donations" then, calculate surplus of 'QL' (*i.e.* QL — "with limit" 100% donations);

STEP 3 : Take LOWER of 'surplus of QL' and "with limit 50% donations". 50% of such 'LOWER' will be the eligible donation amount for "with limit 50% donations" category.

STEP 4 : *STEP 2* + *STEP 3* + 100% without limit donations + 50% without limit donations.

Amount arrived at in STEP 4 will be the amount of deduction.

26.11 deduction in respect of rent paid for rented house [Section 80GG]

♦ *Conditions for deduction* : following conditions has to be satisfied for claiming such deduction:

Condition 1	The assessee is an individual (whether self-employed or in employment)
Condition 2	If assessee is an employee, he is not in receipt of any HRA during the previous year.
Condition 3	(a) The assessee or his family does not own any residential house at ♦ the place where he ordinarily resides or ♦ performs his duties or ♦ carries on his business or profession, or (b) The assessee has not claimed concession of self-occupied property under H.P.

♦ *Amount of deduction* : The amount of deduction will be the *least of the following amounts-*

(a) Rs. 5,000 per month;

(b) 25% of his *adjusted total income;*

(c) Excess rent paid over 10% of his *adjusted total income.*

'*Adjusted total income'* for this purpose, means the *gross total income* as reduced by-

(a) Long term capital gain, if any;

(b) Short term capital gain taxable under section 111A, if any;

(c) Amount deductible under sections 80C to 80U, except section 80GG;

26.12 Other deductions

Following other deductions are as under—

Deduction for donations for scientific research [Sec. 80GGA]	▪ This deduction is allowed to any person other than those who have income under the head PGBP; ▪ This deduction will be allowed if any sum is paid to any approved institution referred to in section 35(ii) and (iii) ▪ Deduction will be 100% of such donation. ▪ No deduction will be allowed if such donation exceeds Rs. 10,000 and is paid by any mode other than cheque.
Deduction for donations made to political party by a company [Sec. 80GGB]	▪ This deduction is allowed to an Indian company; ▪ Deduction will be allowed if any sum is paid to a registered political party; ▪ Deduction will be 100% of such donation. ▪ No deduction will be allowed if donation (any amount) is paid by cash.
Deduction for donations made to political party by any other person [Sec. 80GGC]	▪ This deduction is allowed to any person (except local authority and every artificial juridical person wholly or partly funded by the Government); ▪ Deduction will be allowed if any sum is paid to a registered political party; ▪ Deduction will be 100% of such donation. ▪ No deduction will be allowed if donation (any amount) is paid by cash.
Profits and gains from industrial undertaking engaged in infrastructure development [Sec. 80-IA]	▪ This deduction is allowed to any industrial undertaking or Indian company which is engaged in infrastructure development like, ✓ Developing/operating/maintaining an **infrastructure facilities** (road, toll, bridges, highways projects, railway system etc.) [*upto 1.4.2017*] ✓ Provision of **'telecommunication'** services (including **internet**) [*upto 1.4.2005*] ✓ Developing/operating/maintaining **SEZ, IP**s [*upto 1.4.2006 and 1.4.2011 for SEZ and IP respectively*] ✓ Generation/Distribution/transmission of **power** [*upto 1.4.2017*] ✓ Laying and operating cross-country natural **gas pipelines** ▪ Deduction will be allowed at the rate of 100% of profits of such business for 10 years. For telecommunication business, 100% for 5 years and 30% for next 5 years. These 10 years should consecutive and should be selected out of 15 years beginning from the year in which it starts operating these businesses. ▪ Such undertaking is not formed by splitting up on an existing one and to have new plant and machinery. ▪ Business of undertaking must be commenced within the prescribed dates. ▪ For the purpose of this section **'infrastructure facility'** means— (a) a road, toll road, bridge or a rail system; (b) a highway project including activities integral part of the highway project; (c) a water supply/treatment system, (d) a port, airport, inland waterway/port.
Deduction in respect of profit and gains of enterprises engaged in development of SEZ [Section 80-IAB]	**This deduction is allowed as under :** *1. Eligible assessee* : an assessee who is engaged developing of notified Special Economic Zones (SEZ); *2. Amount and period of deduction* : deduction will be 100% of the profits and gains derived from such business for 10 consecutive assessment years (out of 15 years beginning from the year in which a SEZ has been notified by the Central Government). **Provided that** the provisions of this section shall apply only if such SEZ is notified on or after 1.4.2005 and its development begins on or before 31.3.2017.

	3. Deduction to 'transferee' : Where after development of SEZ, its operation and maintenance is transferred to other eligible enterprise, the deduction for unexpired period will be allowed to such transferee enterprise. **Note :** The provisions of sub-section (5), (7) and (12) of section 80-IA shall *mutatis-mutandis* apply to the SEZ under this section.
Deduction to 'eligible startups' [Section 80-IAC]	This section is inserted by Finance Act, 2016 *w.e.f.* A.Y. 2017-18. Deduction under this section is allowed as under : **1. Eligible assessee :** This deduction is allowed to an 'eligible start-up' which is engaged in 'eligible business'. Where– ♦ **'eligible business'** means a business which involves innovation, development or improvement of products or processes or services or a scalable business model with a high potential of employment generation or wealth creation; ♦ **'eligible start-up'** means a company or a LLP engaged in eligible business which fulfils the following conditions : ✓ it is incorporated on or after 1.4.2016 but before 1.4.2021; ✓ the total turnover of its business does not exceed Rs.25 crore in any of P.Ys 2016-17 to 2020-21; and ✓ it holds a certificate of eligible business from the Inter-Ministerial Board of Certification as notified in the Official Gazette by the Central Government; **2. Amount and period of deduction :** deduction will be 100% of the profits and gains derived from such business for 3 consecutive assessment years out of 7 years beginning from the year in which the eligible start-up is incorporated). **3. Conditions of this section :** This section applies to a start-up which fulfils the following conditions— (i) it is not formed by splitting up, or the reconstruction, of a business already in existence (except in the circumstances referred to in section 33B); (ii) it is not formed by the transfer to a new business of machinery or plant previously used for any purpose. **Note :** For the purpose of (ii) above, any old machinery or plant which is imported into India for this business, is eligible for deduction under this section; similarly, any old machinery or plant which is previously used in India may also be transferred to such business but maximum upto 20% of total value of plant used in such business. **4. Other :** The provisions of sub-section (5) and sub-sections (7) to (11) of section 80-IA shall *mutatis-mutandis* apply to this section.
Profits and gains of other industrial undertaking [Sec. 80-IB]	▪ This deduction is allowed to any industrial undertaking or Indian company which is engaged in certain specified businesses, like ✓ Industrial undertaking engaged in manufacture of article or things (other than those specified in 11th Schedule) in backward states and backward districts; ✓ Scientific research and development in any part of India; ✓ Developing/operating/maintaining SEZ, IPs; ✓ Refining of mineral oils, production of natural gas anywhere in India ✓ Certain approved housing projects of minimum one acre area; ✓ Hospital (of at least 100 beds) in any area other than excluded area; ✓ Business of preservation, packing or processing of vegetable, food grains, meat, poultry and dairy products anywhere in India; ▪ Deduction will be 100% of profits of such business for 5 years and 30% or 25% for next 5 years depending upon the nature of business. ▪ Such undertaking is not formed by splitting up on an existing one and to have new plant and machinery.

	▪ Business of undertaking must be commenced within the prescribed dates.
Deduction in respect of profit and gains from 'housing projects' [New section 80-IBA] **[Amended by Finance Act, 2019]**	**1. Eligible assessee :** Assessee is engaged in the business of developing and building housing projects and the approval for this project is obtained on or after 1.9.2019. **2. Conditions :** Eligibility conditions for the housing projects are below– ♦ Such project is completed within 5 years from the date of such approval, ♦ Commercial area does not exceed 3% of total built up area of project, ♦ Total project size : ✓ 1000 sq. meter or more in Delhi/NCR, Mumbai/MMR, Bangaluru, Chennai, Hyderabad, Kolkata (*i.e.* specified cities) and ✓ 2000 sq. meter or more in other place, ♦ Size of carpet area of residential units 60 sq. meter specified cities and 90 sq. meter in other area ♦ the stamp duty value of a residential unit in the housing project does not exceed Rs.45 lakh ♦ Separate books of accounts are maintained for the project, ♦ If a residential unit allotted to an individual, no other unit shall be allotted to the individual or the spouse or the minor children of such individual. **3. Amount and period of deduction :** deduction will be 100% of the profits and gains derived from such business.
Profits and gains of undertaking or enterprise which is engaged in manufacture in certain specified states **[Sec. 80-IC]**	▪ This deduction is allowed to any undertaking or enterprise which is engaged in manufacture of production of any article or things other than those specified in 13th Schedule in 'specified zone' of Sikkim, Himachal Pradesh or Uttaranchal. ▪ Deduction will be 100% of profits of such business for 5 years and 30% or 25% for next 5 years depending upon the nature of business. ▪ Such undertaking is not formed by splitting up on an existing one and to have new plant and machinery. ▪ Business of undertaking must be commenced within the prescribed dates.
Deduction in case of business of collecting and processing of 'bio-degradable waste' **[Sec. 80JJA]**	▪ This deduction is allowed to any assessee who is engaged in business or collecting and processing of bio-degradable waste for generating power, fertilizer etc. ▪ Deduction will be 100% of profits of such business for 5 years.
Deduction in respect of employment of new workmen **[Sec. 80JJAA]**	▪ This deduction is allowed to *an assessee engaged in any business to whom provision of section 44AB.* ▪ Such *business* is not formed by splitting up on an existing one. ▪ Deduction will be 30% of "additional employee cost" incurred in the P.Y. ▪ This deduction is allowed for 3 years starting from the year in which such employment is provided. ▪ **Explanation** : For the purpose of this section : (i) **"additional employee cost"** means total emoluments paid or payable to additional employees employed during the previous year: **Provided that** in the case of an existing business, the additional employee cost shall be nil, if— (a) there is no increase in the number of employees during the previous year; (b) emoluments are paid other than account payee cheque/DD/E-payment: **Provided further** that in the first year of a new business, emoluments paid or payable to employees employed during that previous year shall be deemed to be the additional employee cost; (ii) **"additional employee"** means an employee who has been employed during the previous year and whose employment has the effect of increasing the total

number of employees employed by the employer as on the last day of the preceding year, but does not include,—

(a) an employee whose total emoluments are more than Rs.25,000 pm; or

(b) an employee employed for a period of < 240* days during the P.Y.; or

(c) an employee who does not participate in the recognised provident fund;

(iii) **"emoluments"** means any sum paid or payable to an employee, other than —

(a) employer's contribution towards any pension fund/provident fund; and

(b) any sum paid to an employee at the time of termination of his service *e.g.* gratuity, leave encashment etc.

[* In case of apparel, footwear and leather industry, 150 days]

Deduction in respect of income of co-operative societies [Section 80P]

(1) This section is allowed in case of an assessee being a co-operative society. Deduction will allowed up to the amounts specified in sub-section (2) below.

(2) Amount of deduction is as under :

Deduction	Nature of business/income
Column (1)	Column (2)
100% of the profits from these activities	**A.** In the case of a co-operative society engaged in— (i) Business of banking or providing credit facilities to its members, or (ii) Cottage industry, or (iii) Marketing of agricultural produce grown by its members, or (iv) Purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to its members, or (v) Processing (without the aid of power) of the agricultural produce of its members, or (vi) Collective disposal of the labour of its members, or (vii) Fishing or allied activities for its members, **Provided** that in the case of (*vi*) or (*vii*) above, the rules and bye-laws of the society restrict the voting rights to the following members— (*1*) the individuals who contribute their labour or, as the case may be, carry on the fishing or allied activities; (*2*) the co-operative credit societies which provide financial assistance to the society; (*3*) the State Government;
100% of the profits from these activities	**B.** In the case of a co-operative society, being a primary society engaged in supplying milk, oilseeds, fruits or vegetables raised or grown by its members to— (i) a federal co-operative society, being a society engaged in the business of supplying milk, oilseeds, fruits, or vegetables; or (ii) the Government or a local authority; or (iii) a Government company as defined in section 617 of the Companies Act, 1956 which is engaged in supplying milk, oilseeds, fruits or vegetables to the public.
▪ **In case of consumer's cooperative society** : Rs. 1,00,000 or profits	**C.** in the case of a co-operative society engaged in activities other than those specified in **A** or **B** above (either independently of, or in addition to, all or any of the activities so specified).

<table>
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<table>
<tr><td>of such society, whichever is lower
▪ In any other case : Rs. 50,000 or profits of such society, whichever is lower</td><td>Explanation.— "Consumer's co-operative society" means a society for the benefit of the consumers.</td></tr>
<tr><td>100% of incomes specified in Column (2)</td><td>D. Interest/Dividend : Any income by way of interest or dividends derived by the co-operative society from its investments with any other co-operative society;
E. Rental Income : Any income derived by the co-operative society from the letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities;</td></tr>
</table>
(3) In a case where the assessee is also entitled to the deductions of section 80-I or section 80-IA or section 80J or section 80JJ, the deduction under this section for the sums specified in A, B and C above, shall be allowed with reference to the GTI calculated after deducting deduction of 80-I, 80-IA or 80J or 80JJ.
</td></tr>
<tr><td>Deduction in respect of certain incomes of producer company [Sec.80PA] (New section inserted w.e.f. A.Y. 2019-20)</td><td>
▪ This section is allowed to a Producer Company having a total turnover of less than Rs.100 crore in any previous year.
▪ It is allowed if such company is engaged in eligible business
▪ Deduction will be equal to the 100% of the profits and gains of such business of the P.Ys. relevant to A.Y. 2019-20 to A.Y. 2024-25.
▪ Where the assessee is also entitled to other deduction(s) of Chapter VI-A, then deduction under this section will be allowed to him from the GTI calculated after deducting those other deductions.
▪ Explanation.—For the purposes of this section,—
(i) "eligible business" means—
(a) the marketing of agricultural produce grown by the members; or
(b) the purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to the members; or
(c) the processing of the agricultural produce of the members;
(ii) "member" shall have the meaning assigned to it in clause (d) of section 581A of the Companies Act, 1956.
(iii) "Producer Company" shall have the meaning assigned to it in clause (l) of section 581A of the Companies Act, 1956.
</td></tr>
<tr><td>Deduction for royalty income of authors [Sec. 80QQB]</td><td>
▪ This deduction is allowed to a resident individual who is an author of literary, artistic or scientific nature book. [Text book for schools do not qualify for deduction under this section]
▪ Deduction will be calculated by following the below Steps
Step 1 : Calculate the LOWER of the following :
(a) Amount of royalty received by him in respect of such book, whether lump-sum or otherwise. [Note : If royalty is received in foreign currency, then only so much of the royalty will be considered which is received in India within 6 months from the end of the P.Y.], or
(b) 15% of the value of the books sold during the P.Y.
Step 2 : From such LOWER deduct the amount of expenses incurred in earning such royalty except those expenses which relate to the royalty which is not received in India within said 6 months.
Step 3 : Amount of deduction will be LOWER of the following amount :
</td></tr>
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	(i) Amount in *Step 2*, or (ii) Rs.3,00,000.
Deduction for royalty on patents etc. **[Sec. 80RRB]**	▪ This deduction is allowed to a resident individual who is a patentee. ▪ Deduction will be calculated in the same manner as is given for Section 80QQB.

26.13 Deduction in respect of interest on saving account [Section 80TTA]

This section provides as under—

- *Eligible assessee* : Individual (other than the senior citizen who is eligible to claim deduction of section 80TTB) or HUF
- *Conditions for deduction* : Assessee should have any interest income on his saving account (not being fixed deposit account) with any bank or post office.
- *Amount of deduction* : Such interest income or Rs. 10,000 whichever is LOWER.

26.14 Deduction in respect of interest on saving account in case of senior citizens [Section 80TTB]

This section provides as under—

- *Eligible assessee* : Individual who is a senior citizen
- *Conditions for deduction* : Assessee should have any interest income on his saving account (including interest on fixed deposits) with any bank or post office.
- *Amount of deduction* : Such interest income or Rs. 50,000 whichever is LOWER.

[Inserted by Finance Act, 2018 w.e.f. A.Y. 2019-20]

26.15 Deduction to a 'person with disability' [Section 80U]

This section provides as under—

- *Eligible assessee* : An individual who is suffering from disability.
- *Conditions for deduction* : Assessee should furnish a certificate in prescribed form (obtained from a medical authority) along with his ROI.
- *Amount of deduction* : Deduction shall be allowed of the following amount—

Disability of dependent	Amount of deduction
1. *Disability other than severe disability*	Rs. 75,000
2. *Sever disability*	Rs. 1,25,000

MULTIPLE CHOICE QUESTIONS (MCQs)

26.1 : Deduction under section 80C in respect of LIP, contribution to PF, etc. is allowed to :

(a) any assessee;
(b) individual assessee only;
(c) individual or HUF
(d) individual or HUF who is resident in India.

26.2 : For P.Y. 2019-20, deduction under section 80C is allowed to the maximum of :

(a) Rs. 70,000;
(b) Rs. 1,50,000
(c) Rs. 1,40,000;
(d) Rs. 1,00,000

26.3 : Deduction under section 80C is allowed from :

(a) gross total income
(b) gross total income exclusive of LTCG, STCG of section 111A and casual incomes
(c) taxable income
(d) income from salary

26.4 : For claiming deduction under section 80C in respect of life insurance, premium can be paid by assessee for :

(a) himself only;
(b) himself or the spouse;
(c) himself, spouse and minor children
(d) himself, spouse and children.

26.5 : For claiming deduction under section 80C, for life insurance premium, if the payment is made by the assessee for his child, then the child :

(a) should not be dependent on assessee
(b) should not be married
(c) should not be major
(d) may be dependent, independent, minor, major, married, unmarried.

26.6 : In case of HUF, deduction under section 80C in respect of life insurance premium shall be allowed for :

(a) Any coparcener of the HUF;
(b) Karta of HUF;
(c) Any member of the HUF
(d) No such deduction is allowed to HUF.

26.7 : An assessee has paid life insurance premium of Rs. 35,000 during the previous year for a policy of Rs.3,00,000 taken on 1.4.2019. He shall :

(a) not be allowed any deduction under section 80C;
(b) be allowed deduction under section 80C to the extent of 10% of the sum assured *i.e.* Rs.30,000;
(c) be allowed deduction for the entire premium as per the provisions of section 80C
(b) be allowed deduction under section 80C to the extent of 15% of the sum assured *i.e.* Rs.45,000 or premium amount, whichever is lower;

26.8 : For claiming deduction under section 80C in respect of P.P.F., the contribution must be paid by the individual in the P.P.F. account of:

(a) himself only;
(b) himself and spouse;
(c) himself, spouse or any child
(c) himself, spouse, any child or parents

26.9 : Which of the following contribution is NOT covered under section 80C :

(a) Contribution towards S.P.F.
(b) Contribution towards R.P.F.
(c) Contribution towards U.R.P.F.
(d) Contribution towards P.P.F.

26.10 : For claiming deduction under section 80C by an individual in respect of ULIP, the contribution can be paid by the individual for :

(a) himself only;
(b) himself and spouse;
(c) himself, spouse or any child
(d) himself, spouse, child or parents.

26.11 : For claiming deduction under section 80C in respect of National Saving Certificates of VIII/IX, the NSC should be acquired by the individual in:

(a) his name only;
(b) his name or any spouse name;
(c) in his name or spouse name or the name of any child;
(d) in his name or spouse or the name of minor child;

26.12 : For amount subscribed to National Saving Scheme 1992, the individual shall be allowed deduction under section 80C for amount deposited:

(a) in his name only
(b) in his name or in the name of the spouse
(c) in his name, in the name of spouse or in the name of any child
(d) in the name of parents only.

26.13 : For claiming deduction under section 80C, the individual shall make the payment for Jeevan Dhara or Jeevan Akshay Scheme in:

(a) his own name;
(b) his own name or in the name of his spouse;
(c) in his own name, in the name of spouse or in the name of any child
(d) in the name of child only.

26.14 : If an assessee discontinues the life policy before the premium of 2 years have been paid then:

(a) no deduction shall be allowed in respect of the payment made in the year of termination

(b) besides (a) the aggregate amount of the deduction from income so allowed in respect of the previous year or years preceding such previous year, shall be deemed to be the income of the assessee of such previous year and shall be liable to tax in the assessment year relevant to such previous year.

26.15 : If a member, participating in the ULIP plan, terminates his participation or ceases to participate by reason of non-payment of his contribution, before making deduction for 5 years, then :

(a) no deduction shall be allowed in respect of the amount paid in the previous year of termination;
(b) besides what is mentioned in (a), the aggregate deduction allowed in the past years shall be deemed to be the income in the previous year
(c) besides what is mentioned in (a), the case of the past years in which deduction was allowed shall be reopened and tax shall be recomputed and the balance tax payable shall be so payable for these relevant years
(d) No withdrawal of deduction already allowed will be made after expiry of 4 years.

in which membership is terminated;

26.16 : The annual interest accrued on NSCs VIII or NSC IX issue shall be:

(a) Exempt;
(b) Taxable;
(c) Besides (b), the interest so accrued shall also be eligible for deduction under section 80C
(d) No provision given in this regard.

26.17 : For claiming deduction under section 80C, payment or deposit should be made :

(a) out of any income;
(b) out of any income chargeable to income tax;
(c) during the current year out of any source
(d) out of income from salary only.

26.18 : Deduction under section 80C shall be allowed for :

(a) any education fee;
(b) tuition fee exclusive of any payment towards any development fee or donation or payment of similar nature;
(c) tuition fee and annual charges
(d) tuition fees including home tuition fees

26.19 : Deduction under section 80C for tuition fee shall be allowed if such fee is paid to:

(a) any university, college, school or other educational institution situated within India or outside;
(b) any university, college, school, or other educational institution situated within India;
(c) Private tuition center fees;
(d) No such deduction is allowed.

26.20 : Deduction under section 80C for tuition fee shall be allowed for the purposes of :

(a) any full time education;
(b) any full or part time education;
(c) full time education in a college;
(d) full time education in a school.

26.21 : Deduction under section 80C in respect of tuition fee is allowed to :

(a) an individual only
(b) an individual or HUF
(c) any assessee
(d) an individual who is resident

26.22 : Deduction under section 80C in respect of tuition fee is allowed to an individual for :

(a) any of his children;
(b) any two children of such individual;
(c) any two minor children of such individual
(d) any two dependent children of such individual.

26.23 : Deduction under section 80C in respect of tuition fee is allowed to the maximum extent of:

(a) Rs.12,000 per child for maximum of 2 children
(b) Rs.12,000 p.m per child for maximum of 2 children;
(c) Rs.1,50,000 per child
(d) Rs.1,50,000 for two children

26.24 : Deduction under section 80C in respect of term deposit with a scheduled bank is allowed if the term deposit is for a period :

(a) not less than 3 years
(b) not less than 5 years
(c) not less than 6 years
(d) not less than 7 years

26.25 : Deduction under section 80C in respect of time deposit in post office is allowed if the deposit is for a period of :

(a) 3 years;
(b) 5 years;
(c) 7 years
(d) 10 years

26.26 : Deduction under section 80CCD is available :

(a) to an individual who is in employment
(b) to an individual who is self employed
(c) Both (a) and (b)
(d) Both (a) and (b) other than those individuals who have income exceeding Rs. 10,00,000.

26.27 : Deduction under section 80CCD is available :

(a) to an individual who has not claimed deduction under section 80C
(b) to an individual who does not have any income under the head PGBP.
(c) to an individual who is resident and ordinary resident in India.
(d) to an employee of Central Government or any other employer or even self-employed person.

26.28 : Contribution made by the employer towards N.P.S. for the benefit of employee :

(a) Will be directly allowed as deduction to that employee
(b) Will first, be added to the salary of the employees and then deduction will be allowed of it.
(c) will not be taxable in the hands of the employees if it does not exceed 12% of salary of the employee
(d) None of the above.

26.29 : Deduction under section 80CCD in respect of contribution to pension scheme is allowed to :

(a) Central Government employees only;
(b) Central and State Government employees;
(c) any employee
(d) any employee or self-employed individual

26.30 : Deduction under section 80CCD is allowed to extent of :

(a) employee's contribution up to 10% of salary;
(b) employee's contribution up to 15% of salary;
(c) employee's and employer's contribution each up to 10% of salary and in case of self-employed person up to 20% of his gross total income;
(d) employee's and employer's contribution each up to 10% of salary and in case of self-employed person up to 10% of his gross total income.

26.31 : For A.Y. 2019-20 as per section 80CCE deduction under section 80C, 80CCC and 80CCD cannot exceed :

(a) Rs.1,50,000 including employers contribution to notified pension scheme referred to in section 80CCD(2);
(c) Rs. 1,00,000

(b) Rs.1,50,000 inclusive of employees contribution to notified pension scheme referred to in section 80CCD(1);

(d) No such limit.

26.32 : Deduction under section 80QQB is allowed :

(a) For any books;

(b) Books of Scientific nature, Literature, Artistic nature

(c) Books of Scientific nature, Literature, Artistic nature except text books for schools

(d) W.e.f. A.Y. 2019-20, this deduction is discontinued.

26.33 : What will be the amount of deduction under section 80QQB in case of Mr. Ram who has authored a book of which during the P.Y. 2019-20, total 10,000 copies were sold at a price of Rs.150 each. He receives royalty @25% of the price of the book :

(a) Rs.3,00,000

(b) Rs.2,25,000

(c) Rs.3,75,000

(d) Rs.75,000

26.34: In which of the following case, deduction under section 80P is restricted to Rs.1,00,000 :

(a) Consumers' co-operative society

(b) Society engaged in fishing

(c) Society engaged in collection and disposal of labour

(d) Society engaged in processing of agriculture produce without the aid of power

26.35 : Deduction under section 80D is allowed on account of payment of preventive health check-up of :

(a) assessee only;

(b) assessee or his family only;

(c) assessee or his family or his parent or parents;

(d) his parents only.

26.36 : Deduction under section 80D on account of preventive health check-up is allowed only when payment is made by:

(a) cheque;

(b) any mode other than cash;

(c) any mode including cash;

26.37 : Deduction under section 80D on account of preventive health check-up is allowed maximum to the extent of:

(a) Rs.25,000;

(b) Rs.5,000;

(c) Rs.5,000 which is in addition to Rs.25,000

(d) Rs.5,000 which is part of Rs.25,000

26.38 : Deduction under section 80D in respect of medical insurance premia is allowed to :

(a) any assessee;

(b) an individual or HUF;

(c) individual or HUF who is resident in India

(d) individual only

26.39 : Deduction under section 80D is allowed if the premium is paid to :

(a) Life Insurance Corporation;

(b) General Insurance Corporation or any other

(c) Life Insurance or General Insurance corporation

(d) Life Insurance or any other insurer.

insurer;

26.40 : Deduction under section 80D is allowed to an individual for premium paid to insure the health of :

(a) individual himself;
(b) individual himself or his family;
(c) individual himself or his family and dependent parent or parents of individual
(d) individual himself or his family and parent or parents of the individual.

26.41: For the purpose of section 80D, the family in relation to an individual shall mean:

(a) the spouse and the dependent children;
(b) the dependent spouse and the dependent children;
(c) the spouse and the children
(d) the spouse, children and parents

26.42: Deduction under section 80D is allowed to HUF for premium paid to insure the health of :

(a) Karta of the HUF only;
(b) any coparcener of HUF;
(c) any member of HUF
(d) any male member of HUF

26.43: The payment for health insurance premium under section 80D should be paid :

(a) in cash;
(b) by cheque;
(c) by any mode other than cash

26.44: The quantum of deduction allowed under section 80D in case of an individual shall be limited to:

(a) Rs.25,000 for individual himself, his family and parents;
(b) Rs.25,000 for individual himself or his family and Rs.25,000 for parents.
(c) Rs.25,000 for individual himself or his family and Rs.15,000 for parents.
(d) Rs.25,000 for individual himself or his family and Rs.25,000 for parents. But any beneficiary is senior citizen, then replace 'Rs.25,000' with 'Rs.50,000'.

26.45 : The quantum of deduction allowed under section 80D in case of HUF shall be limited to :

(a) Rs.20,000
(b) Rs.25,000
(c) Rs.50,000
(d) Rs.55,000

26.46 : Where the individual or his family or his parents or a member of HUF in case of HUF is a senior citizen and the medical insurance premium is paid to effect or keep in force an insurance in relation to such senior citizen, the limit of Rs.25,000 shall be substituted by:

(a) Rs.50,000;
(b) Rs.30,000;
(c) Rs.40,000
(d) limit will remain same

26.47 : Deduction under section 80DD in respect of maintenance including medical treatment of dependant being a person with disability shall be allowed to :

(a) any assessee;
(b) an individual or HUF;
(c) an individual or HUF who is resident in India

26.48 (i) : Deduction under section 80DD shall be allowed :

(a) to the extent of actual expenditure/deposit or
(c) for a sum of Rs.60,000 irrespective of any

Rs.60,000 whichever is less

(b) for a sum of Rs.75,000 irrespective of actual expenditure or deposit

expenditure incurred or actual amount deposited

(d) for a sum of Rs.75,000 or Rs.1,25,000 depending upon level of disability and irrespective of actual expenditure or deposit.

26.48(ii) : Deduction under section 80DD in case of dependant with severe disability shall be allowed :

(a) to the extent of actual expenditure/deposit or Rs.75,000 whichever is less

(b) for a sum of Rs.1,25,000 irrespective of actual expenditure or deposit

(c) for a sum of Rs.75,000 irrespective of actual expenditure incurred or actual amount deposited

26.49: Deduction under section 80DDB in respect of medical treatment for specified ailment or disease is allowed to:

(a) any assessee;

(b) individual or HUF;

(c) individual or HUF who is resident in India

(d) individual or HUF who are resident and ordinary resident in India.

26.50: Deduction under section 80DDB shall be allowed for medical treatment of specified ailment or disease of :

(a) any dependent relative;

(b) any dependent handicapped relative;

(c) the assessee himself or any dependent relative

26.51: In normal case, deduction under section 80DDB shall be allowed for a sum of :

(a) Rs.40,000 irrespective of any expenditure;

(b) Rs.40,000 or actual expenditure whichever is less;

(c) Rs.50,000

(d) Rs.60,000

26.52: In case the assessee or dependant relative is a senior citizen then the deduction under section 80DDB shall be allowed for a sum of :

(a) Rs.40,000 or actual expenditure whichever is less

(b) Rs.60,000 or actual expenditure whichever is less

(c) Rs.60,000 irrespective of actual expenditure

(d) Rs. 1,00,000 or actual expenditure whichever is less

26.53: Deduction under section 80E is allowed on account of :

(a) repayment of loan taken from certain specific institutions

(b) repayment of loan and interest on loan taken from certain specified institutions

(c) interest on loan taken from certain specified institutions

(d) repayment of loan and interest on loan taken from anyone.

26.54: Deduction under section 80E in respect of interest on loan taken for higher education shall be allowed to :

(a) an individual assessee only;

(c) an individual or HUF

(b) an individual who is resident in India;
(d) an individual or HUF who is resident in India

26.55: Deduction under section 80E shall be allowed in respect of amount paid by way of interest on loan taken from :

(a) any person;
(b) financial institutions;
(c) financial institutions or approved charitable institution
(d) Nationalized banks only.

26.56: For claiming deduction of interest under section 80E loan should be taken for doing:

(a) any post graduate course;
(b) any graduate or post graduate course in engineering, medicine, management and post graduate course in applied science or pure sciences including mathematics and pure sciences;
(c) for any course of study after passing the recognized senior secondary examination or its equivalent
(d) for pre-school education only.

26.57: Deduction under section 80E is allowed for payment by way of interest on loan to the extent of :

(a) Rs.25,000;
(b) Rs.40,000;
(c) any amount
(d) 10% of adjusted total income of the assessee

26.58: Deduction under section 80E for payment by way of interest on loan is allowed for :

(a) 5 years;
(b) 8 years or till the interest is paid whichever is earlier;
(c) 10 years
(d) 8 years

26.59 : Deduction under section 80E shall be allowed for the higher education of :

(a) the assessee himself;
(b) the assessee himself and his/her spouse;
(c) the assessee himself, his/her spouse and his/her children or the student for whom the individual is a legal guardian
(d) the assessee himself, his/her spouse and his/her children

26.60 : Deduction under section 80G on account of donation is allowed to :

(a) a business assessee only
(b) any assessee
(c) individual or HUF only
(d) individual or HUF being residents.

26.61 : In case the donation is made in cash the deduction under section 80G shall be allowed to the maximum extent of :

(a) Rs.15,000;
(b) Rs.10,000;
(c) Rs.2,000
(d) Rs.50,000

26.62 : Deduction in respect of rent paid under section 80GG shall be allowed to :

(a) an individual ;
(b) an individual or HUF;
(c) any assessee

26.63 : Deduction in respect of rent paid under section 80GG is allowed to :

(a) any individual ;
(b) any individual who is self-employed;
(c) any individual who is self-employed or who is an employee but not entitled to H.R.A. or rent free accommodation
(d) same as (c) and who pays rent for his residential accommodation

26.64 : The maximum deduction under section 80GG shall be limited to :

(a) Rs.1,000 p.m.
(b) Rs.5,000 p.m.
(c) Rs.3,000 p.m.
(d) Rs. 1,00,000

ANSWERs TO MCQs

Question	Answer	Question	Answer	Question	Answer	Question	Answer	Question	Answer
26.1	C	26.2	B	26.3	B	26.4	D	26.5	D
26.6	C	26.7	B	26.8	C	26.9	C	26.10	C
26.11	A	26.12	A	26.13	A	26.14	B	26.15	B
26.16	C	26.17	C	26.18	B	26.19	B	26.20	A
26.21	A	26.22	B	26.23	D	26.24	B	26.25	B
26.26	C	26.27	D	26.28	B	26.29	D	26.30	C
26.31	B	26.32	C	26.33	B	26.34	A	26.35	C
26.36	C	26.37	D	26.38	B	26.39	B	26.40	D
26.41	A	26.42	C	26.43	C	26.44	D	26.45	D
26.46	A	26.47	C	26.48(i)	D	26.48(ii)	B	26.49	C
26.50	C	26.51	B	26.52	D	26.53	C	26.54	A
26.55	C	26.56	C	26.57	C	26.58	B	26.59	C
26.60	B	26.61	C	26.62	A	26.63	D	26.64	B



CHAPTER 27
FILING OF INCOME TAX RETURN AND ASSESSMENTS

27.1 Compulsory filing of return of income [Section 139(1) / 139(4D)]

Provisions relating to compulsory filing of income tax return are as under—

1. In case of company	Compulsory
2. In case of firm, LLP	Compulsory
3. A person who is ordinary resident in India and has assets or any account outside India or he is beneficiary of any asset located outside India	Compulsory
4. Every university, college or other institution referred to in section 35(1)(ii)/(iii) [*i.e.* 'donee']	Compulsory
5. A person (other than company or firm/LLP) who enters the following transaction during the PY : **(i) CURRENT A/C DEPOSIT : has deposited an amount or aggregate of the amounts exceeding Rs. 1 crore or more current accounts maintained with a banking company or a co-operative bank, or** **(ii) FOREIGN TRAVEL EXPENSE : has incurred expenditure of an amount or aggregate of the amounts exceeding Rs. 2 lakh for himself or any other person for travel to a foreign country, or** **(iii) ELECTRICITY CONSUMPTION : has incurred expenditure of an amount or aggregate of the amounts exceeding Rs. 1 lakh towards consumption of electricity, or** **(iv) fulfils such other conditions as may be prescribed.**	Compulsory
6. In case of any other person	If his *taxable income* > slab limit (*i.e.* 2,50,000/3,00,000/5,00,000). Taxable income will be calculated without giving effect to exemptions and deductions of section(s) 10A, 10B, 10BA, Chapter VI-A **and 54, 54B, 54D, 54EC, 54F, 54G, 54GA, 54GB**

[Inserted by Finance Act, 2019, w.e.f. AY 2020-21]

27.2 What is the 'due date' for filing of income tax return [Expl. to Section 139(1)]

'Due dates' for filing of income tax return are as under—

1. In case of company	
▪ **If transfer pricing report under section 92E, required**	30th November of A.Y.
▪ **If any other case**	30th September of A.Y.
2. In case of a person other than a company whose accounts required to be audit under any law	30th September of A.Y.
3. In case of working partner of a firm, if accounts of the firm are required to be audit under any law	30th September of A.Y.
4. In any other case	31st July of A.Y.

Note : If return was required to be filed, but assessee did not file it, he shall be liable pay :

(*i*) **Interest** under section 234A @ 1% p.m. from the next day after such 'due date' and

(*ii*) **Penalty** of Rs. 5,000 under section 271F but only if the failure continues even after the expiry of A.Y. However, provisions of this section will ceased to have any effect on the assessment year commencing on or after the 1st day of April, 2018.

***(iii)* Late fee under section 234F :** This section is inserted by Finance Act, 2017 w.e.f. A.Y. 2018-19. The late fees provided by this section is as under :

(1) Without prejudice to the provisions of this Act, where a person required to furnish a return of income under section 139, fails to do so within the time prescribed in sub-section (*1*) of said section, he shall pay the following sum as late fees—

Situation 1 : Total income exceeds Rs.5,00,000	♦ If the return is furnished on or before the 31st Dec of the relevant A.Y	Rs.5,000
	♦ In any other case	Rs.10,000
Situation 1 : Total income does NOT exceed Rs.5,00,000	-	Rs.1,000

(2) The provisions of this section shall apply in respect of return of income required to be furnished for the assessment year commencing on or after the 1st day of April, 2018.

27.3 Return of loss [Section 139(3)]

This section provides as under—

- If a person sustains any loss under the head **capital gain or PGBP**,
- and wants to carry forward it under section 72, 73, **73A**, 74, 74A then,
- he **MAY** furnish the return within the time limits of section 139(1)
- and this return shall be treated as a return filed under section 139(1).

Submission of return for losses [Section 80] : No loss shall be carried forward and set off under section 72 or section 73 or **section 73A** or section 74 or section 74A unless a "loss return" under section 139(3) is filed [*i.e.* within due date].

27.4 Late filing of return *i.e.* belated return [Section 139(4)]

This section provides as under—

- Where a person has not filed his ROI, within the time allowed under section 139(1)
- he may furnish it :
  (a) before the end of the relevant A.Y., (Amended by Finance Act, 2016; earlier 'within 1 year from the end of the relevant A.Y.) or
  (b) Before completion of the assessment (*i.e.* assessment under section **144**),

  whichever is earlier.

27.5 Filing of return of various other persons

Provisions relating to filing of income tax return in case of few other persons are as under—

1. Return of trust	If total income (before claiming exemptions of section 11) > slab limit. (*i.e.* Rs.2,50,000) [Section 139(4A)]
2. Return of political party	If total income (before claiming exemptions of section 13A) > slab limit. (*i.e.* Rs.2,50,000) [Section 139(4B)]
3. Specified institutions, news agencies, hospitals etc. referred to in section : ✓ **10(21)** ✓ **10(22B),** ✓ **10(23A/AAA/B/C/D/DA/EC/ED/EE/FB)** ✓ **10(24)(a)/(b)** ✓ **10(29A)** ✓ **10(46)** ✓ **10(47)**	If their total income (before claiming exemptions of section 10) > the maximum amount not chargeable to tax. [Section 139(4C)]

Note : Returns filed under section 139(4A)/(4B)/(4C)/(4D) are treated as the return which is filed u/s 139(1).

27.6 Revised return [Section 139(5)]

This section provides as under—

- Where a person discovers any omission or misstatement in his return filed under section 139(1) or filed under section 139(4)
- he may revise his return it :
  (a) before the end of the relevant A.Y., or
  (b) Before completion of the assessment [*i.e.* assessment under section 143(3) or 144],

  whichever is earlier.

Notes—

1. Revised return replaces the original return from the "date of original return"- *Dhampur Sugar Mills Ltd.*
2. Various returns, which can be revised under section 139(5), are as under :

Return filed under section 139(1), 139(4)	Section 139(5) directly applies to these sections.
Return filed under section 139(3), (4A), (4B), (4C) and (4D)	Since return filed under these sections are deemed as the return filed under section 139(1), therefore, these returns can also be revised under this section.

27.7 Whom should apply for allotment of 'PAN' [Section 139A]

Following persons should apply for allotment of Permanent Account Number (PAN)—

1. Every person whose total income exceeded the basic exemption limit *i.e.* slabs; or
2. Every person carrying on any business or profession whose total sales, turnover or gross receipts exceeds or is likely to exceed Rs. 5,00,000 in any previous year; or
3. Every person who is required to furnish a return of income under section 139(4A) [*i.e.* Trusts]
4. Every person being a resident (other than an individual) which enters into a financial transaction of an amount aggregating to Rs. 2,50,000 or more in a financial year; or
5. A person who is the managing director, director, partner, trustee, author, founder, karta, chief executive officer, principal officer or office bearer of the person referred to in 4 above or any person competent to act on behalf of the person referred to in 4 above.

TYPES OF ASSESSMENTS

Every taxation system requires assessment. Assessment simply means determination of tax. This tax is determined as per the provisions of relevant assessment year. Assessment is generally of the following types—

1. Self-assessment by assessee himself **[Sec.140A]**	The assessee is required to make a self-assessment and pay self-assessment tax before filing of ROI. Tax under self-assessment will be deducted by the following— *a.* Advance tax, TDS/TCS *b.* DTAA relief **and relief of section 89 (Inserted by Finance Act, 2019 w.r.e.f. AY 2007-08)** *c.* MAT credit, AMT credit; If an assessee fails to pay, he shall be deemed to be an assessee in default
2. Summary assessment or intimation **[Sec. 143(1)]**	♦ **Manner :** Returns filed under section 139/142(1), shall be processed by the Assessing Officer in the following manner— (a) income shall be computed after ✓ correcting arithmetical errors or incorrect claims, ✓ disallowance of losses or deductions of section 10AA, 80-IA/B/C/D/E claimed in a belated return, *Note* : These adjustments can be made if these are intimated to the assessee. (b) then revised tax and interest shall be computed; (d) an intimation shall be sent to the assessee specifying such sum; and (e) if the amount computed is refund, it shall be granted to the assessee. ♦ **No summary assessment in certain cases :** Processing of return under section 143(1) is not necessary if a scrutiny notice under section 143(2) has been issued to the assessee. ♦ **Time limit for sending intimation :** Intimation under this section cannot be sent after the expiry of 1 year from the end of the financial year in which return is filed by the assessee. ♦ **Opportunity to rectify :** Before making the above adjustments, an opportunity shall be provided to the assessee to explain and rectify the same within 30 days of such intimation. If assessee rectifies the same, it shall be considered by the A.O. if assessee does not rectify the same within said 30 days, then A.O. can make these adjustments.

3. Scrutiny assessment **[Sec. 143(3)]**	♦ **Notice for scrutiny [section 143(2)] :** A.O. shall serve scrutiny notice if he considers it necessary to ensure— (a) that the assessee has not understated the income; or (b) that has not computed excessive loss; or (c) that has not under-paid the tax in any manner. By serving such notice he shall require the assessee to attend his office or to produce evidence in support of the return. ♦ **Time limit :** Scrutiny notice cannot be issued after the expiry of 6 months from the end of the financial year in which return is furnished. ♦ **Scrutiny assessment [section 143(3)] :** On the day specified in the notice as above, after hearing evidences of the assessee and after considering all the material which he has gathered, the A.O. shall make assessment of the total income or loss of the assessee, and determine the **sum payable or refund.** ♦ **New scheme of Scrutiny Assessment [Section 143(3A)] :** The Central Government may make a scheme, by notification in the Official Gazette, for the purposes of making assessment of total income or loss of the assessee under sub-section (3) so as to impart greater efficiency, transparency and accountability by— (a) eliminating the interface between the Assessing Officer and the assessee in the course of proceedings to the extent technologically feasible; (b) optimising utilisation of the resources through economies of scale and functional specialisation; (c) introducing a team-based assessment with dynamic jurisdiction. (3B) The Central Government may, for the purpose of giving effect to the scheme made under sub-section (3A), by notification in the Official Gazette, direct that any of the provisions of this Act relating to assessment of total income or loss shall not apply or shall apply with such exceptions, modifications and adaptations as may be specified in the notification: Provided that no direction shall be issued after the 31st day of March, 2020. (3C) Every notification issued under sub-section (3A) and sub-section (3B) shall, as soon as may be after the notification is issued, be laid before each House of Parliament.]
4. Best judgement assessment (BJA) **[Sec. 144]**	In BJA the A.O. base the assessment on his best judgement. There are two types of best judgement assessments— 1. **Compulsory BJA [section 144] :** A.O. shall make the assessment to the best of his judgment in the following cases— (a) If a person fails to furnish the return of income; (b) If a person fails reply to the notice issued under section 142(1); (c) If a person fails to get special audit referred to in section 142(2A); (d) If a person fails to comply with the notice issued u/s 143(2). Before making BJA, A.O., shall consider all the material which he has gathered. Further, he shall give an opportunity of being heard to the assessee by issuing a 'Show Cause Notice". 2. **Discretionary BJA :** As per section 145(3), if the A.O. is not satisfied about the correctness or the completeness of the accounts of the assessee or where no method of accounting has been regularly employed by the assessee, he may make an assessment *in the manner* provided in section 144.
5. Income escaping assessment **[Sec.147]**	If the A.O. has REASON TO BELIEVE that any income chargeable to tax has escaped assessment, he shall assess or reassess such income and also any other income which comes to his notice in course of the proceedings.

	Before making the assessment under section 147, the A.O. shall serve a notice under section 148, for requiring the assessee to furnish return of income. Such notice can be issued within the following time period—

Situation	*Time limit for issuance of notice*
1. If the escaped income is any amount	4 years from the end of the relevant A.Y.
2. If the escaped income is Rs. 1,00,000 or more	Even beyond 4 years but up to 6 years from the end of the relevant A.Y.
3. If escaped income is in relation to any asset located outside India.	Even beyond 4 years but up to 16 years from the end of the relevant A.Y.

27.8 Time limit for completion of assessment [Section 153]

Time limits for completion of assessment is summarised as under—

Type of assessment	Time limit for completion of assessment
Assessment referred to in Section 143(3)/144	♦ **From A.Y. 2019-20 onwards :** The assessment order must be passed within **12 months** from the end of the relevant assessment year.
Assessment referred to in Section 147	♦ **If notice under section 148 is issued on or after 1.4.2019 :** The assessment order must be passed within **12 months** from the end of the financial year in which notice under section 148 is served to the assessee.

27.9 Return of income by whom to be signed [Section 140]

The return under section 139 is to be signed as under :

Different situations	Authorised signatory
FOR INDIVIDUAL :	
In normal case	The individual himself.
If he is absent from India	Any person duly authorised by him.
If he is mentally incapacitated	His guardian.
If, for any other reason, he cannot sign the return	Any person duly authorised by him.
FOR HUF :	
In normal case	The 'karta' of HUF.
If 'karta' is absent from India	Any other adult member of the HUF.
If 'karta' is mentally incapacitated	Any other adult member of the HUF.
FOR COMPANY :	
In normal case	The M.D. of the company.
If M.D. is not able to sign or there is no M.D.	Any other director of the company.
In case of foreign company	A person holding power of attorney of such co.
Company in liquidation	The liquidator
If company is taken over by the Government	Any Principal Officer of the Government.
FOR FIRM :	
In normal case	The managing partner of the firm.
If managing partner is not able to sign	Any partner of the firm not being minor.
FOR LOCAL AUTHORITY	The Principal Officer thereof

FOR POLITICAL PARTY	Chief Executive Officer of such party
FOR LLP	Designated partner; if no designated partner, any other partner
FOR ANY OTHER PERSON	That person or any other competent person.

MULTIPLE CHOICE QUESTIONS (MCQs)

27.1 : As per section 139(1) , a company shall have to file return of income :

(a) when its total income exceeds Rs. 2,50,000

(b) when its total income exceeds the maximum amount which is not chargeable to income tax.

(c) in all cases irrespective of any income or loss earned by it.

27.2 : As per section 139(1), a firm shall have to file return of income :

(a) when its total income exceeds Rs. 2,50,000

(b) when its total income exceeds the maximum amount which is not chargeable to income tax.

(c) in all cases irrespective of any income or loss earned by it.

27.3 : As per section 139(1), an individual shall have to file return of income if :

(a) his total income exceeds the minimum amount not chargeable to tax.

(b) his gross total income exceeds the minimum amount not chargeable to tax.

(c) his total income or total income of any other person in respect of whom he assessable, exceeds the minimum amount not chargeable to tax.

(d) his gross total income or gross total income of any other person in respect of whom he assessable, exceeds the minimum amount not chargeable to tax.

27.4 : The total income of a trust before claiming exemption under section 11 is Rs. 3,00,000. It is eligible for exemption under section 11 to the extent of Rs. 50,000. Such trust shall :

(a) have to file a return of income

(b) not be required to file return of income as its taxable income is Rs. 2,50,000

27.5 : A dies on 15.11.2019 and his total income till 15.11.2019 was Rs. 2,60,000. Thereafter, the business of A was inherited by his son R & his total income from such business was Rs.2,45,000. The son does not have any other income, in this case the son :

(a) has to file consolidated return of income amounting to Rs. 5,05,000

(b) has to file two returns of income, one on behalf of his father for Rs. 2,60,000 & other in his own capacity for Rs. 2,45,000

(c) has to file one return of income on behalf of his father for Rs. 5,05,000

(d) has to file only one return of income on behalf of his father for Rs. 2,60,000.

27.6 : The last date of filing the return of income under section 139(1) for assessment year 2020-21 in case of a company assessee is :

(a) 30th September, 2020

(b) 31st July, 2020

(c) 31st March, 2020

(d) 30th November, 2020 in case it is required to furnish report referred to in section 92E and 30th September, 2020, in any other case.

27.7 : The last date of filing the return of income under section 139(1) for assessment year 2020-21 in case of non-corporate business assessee whose accounts are not liable to be audited shall be :

(a) 31st March, 2020

(b) 31st July, 2020

(c) 30th September, 2020

(d) 30th Nov, 2020

27.8 : The due date of filing the return of income for assessment year 2020-21 in case of a working partner of a firm whose accounts are liable to be audited shall be :

(a) 31st March, 2020

(b) 31st July, 2020

(c) 30th September, 2020

(d) 30th Nov, 2020

27.9 : All companies other than those claiming exemption under section 11 are required to file return of income in :

(a) Form ITR6

(b) Form ITR5

(c) Form ITR4

(d) Form ITR7

27.10 : An individual or HUF having income u/h profits or gain from Business & Profession is required to file the return in :

(a) Form ITR6

(b) Form ITR5

(c) Form ITR4

(d) Form ITR7

27.11 : E-filing of return in case of an office of the government/company and a firm whose accounts are liable to be audited assessee is :

(a) Mandatory

(b) Optional

27.12 : The filing of return of loss in case of a person other than a company or firm is :

(a) Mandatory

(b) Optional

(c) Mandatory if the assessee wants to carry forward these losses

27.13 : If the assessee has to carry forward the loss , the return of loss must be submitted :

(a) on or before the due date mentioned in section 139(1)

(b) at any time before the end of the relevant assessment year

(c) at any time before the expiry of one year form the end of the relevant assessment year

27.14 : For carry forward of losses of house property head, assessee :

(a) has submit the ITR of loss before the due date mentioned under section 139(1)

(b) need not submit the ITR

(c) must submit the ITR but it can be a belated return submitted as per section 139(4).

27.15 : Belated return can be filed at any time :

(a) before the expiry of the relevant assessment year

(b) before the expiry of the one year from the end of the relevant assessment year

(c) before the expiry of the relevant assessment year or before completion of assessment, whichever is earlier.

(d) before the expiry of the one year from the end of the relevant assessment year or before completion of assessment, whichever is earlier.

27.16 : An assessee was required to furnish his return of income (taxable income Rs.6,00,000), failed to file it within the due date of section 139(1), but it was filed on 15th Dec of the assessment year, he shall pay, by way of fees, a sum of _____

(a) Rs.1,000

(b) Rs.5,000

(c) Rs.10,000

27.17 : The assessee could not file his return of income for assessment year 2018-19 within the time allowed under section 139(1). No assessment has so far been made. The assessee in this case can file his return of income till :

(a) 31.3.2019

(b) 31.3.2020

(c) 31.3.2021

27.18 : Assessment under section 143(3) can be where Assessing Officer

(a) If he considers it necessary to ensure that assessee has not understated the income

(b) If he considers it necessary to ensure that assessee has not computed excessive loss

(c) If he considers it necessary to ensure that assessee has not under paid the tax in any manner

(d) All of the above

27.19 : During the previous year 2019-20 assessee has suffered a business loss of Rs. 2,50,000. His income from other sources is Rs.1,80,000. The due date of filing return was 31.7.2020. But he submitted the return on 9.9.2020. The assessee in this case :

(a) shall be allowed to carry forward the loss of Rs. 2,50,000

(b) shall not be allowed to carry forward any loss

(c) shall be allowed to set off current year business loss to the extent of Rs.1,80,000 but shall not be allowed to carry forward the balance loss of Rs.70,000

27.20 : An assessee was required to furnish his return of income (taxable income Rs.4,00,000), failed to file it within the due date of section 139(1), but it was filed on 15th Jan of the assessment year, he shall pay, by way of fees, a sum of _____

(a) Rs.1,000

(b) Rs.5,000

(c) Rs.10,000

27.21 : An assessee was required to furnish his return of income (taxable income Rs.4,00,000), failed to file it within the due date of section 139(1), but it was filed on 15th Dec of the assessment year, he shall pay, by way of fees, a sum of _____

(a) Rs.1,000

(b) Rs.5,000

(c) Rs.10,000

27.22 : For the A.Y. 2020-21, an assessee was required to furnish his return of income (taxable income Rs.4,00,000), failed to file it within the due date of section 139(1). Now, after 31.3.2021, he wants to file a belated return, advise him.

(a) He cannot file belated return

(b) He can file it up to 31.3.2022 or before completion of his assessment, whichever is earlier.

27.23 : Suresh finds some mistake in the return of income submitted by him on 5.6.2020 for Assessment year 2020-21. He wishes to revise such return. No assessment has been made in this case. He can revise such return till :

(a) 31.3.2021

(b) 31.7.2021

(c) 31.9.2021

(d) None of the above

1.24 : The due date of furnishing the return of income in case of charitable trust is (assume such trust claims exemption of Section 11) :

(a) 30th June of the assessment year

(b) 31st July of the assessment year

(c) 30th September of the assessment year

27.25 : Time limit for sending Intimation under section 143(1)

(a) End of the financial year in which return is filed

(b) End of the relevant assessment year

(c) 1 year from the end of the financial year in which return is filed

(d) 6 months from the end of the financial year in which return is filed

27.26(*i*) : Time limit for sending the Notice under section 143(2) is

(a) End of the financial year in which return is filed

(b) End of the relevant assessment year

(c) 1 year from the end of the financial year in which return is filed

(d) 6 months from the end of the financial year in which return is filed

27.26(*ii*) : Time limit for completion of the assessment under section 143(3) is

(a) End of the financial year in which return is filed

(b) 12 months from the end of the relevant assessment year

(c) 1 year from the end of the financial year in which return is filed

(d) 6 months from the end of the financial year in which return is filed

27.26(*iii*) : While passing the order under section 143(3), the A.O. shall make assessment of the total income or loss of the assessee, and determine

(a) The sum payable only

(b) The sum payable or refundable

(c) The sum refundable only

27.27 : For AY 2020-21, which of the following returns can be revised :

(a) Return filed under section 139(1)/(3)

(b) Return filed under section 139(4)

(c) Return filed under section 139(4A)/(4B)/(4C)/(4D)

(d) All of them.

27.28 : Mr. Sumit has submitted his return of income for assessment year 2020-21 on 31.7.2020 by showing income of Rs.3,70,000. Later on he finds that instead of income he actually has suffered a loss of Rs.4,00,000 and revised the 'return of income' to 'return of loss' on 1.12.2020. Will he be able to carry forward these losses ?

(a) Yes

(b) No

(c) Depends upon AO's discretion

(d) Depends upon CIT's discretion

27.29 : Which of the following is not a manner of processing return under section 143(1) :

(a) Adjusting the arithmetical errors

(b) Adjusting the incorrect claims

(c) Disallowing the set off of losses claimed in belated return

(d) Disallowing deductions of chapter VIA

27.30 : Intimation under section 143(1) cannot be sent after the expiry of :

(a) 4 years from the end of the month in which return of income was furnished

(b) 2 years from the end of the month in which return of income was furnished

(c) 2 years from the end of the assessment year in which the income was so assessable

(d) 1 year from the end of the financial year in which the return is made.

27.31 : The last date for issue of notice under section 148 was 31.3.2020. The Assessing Officer issued the notice on 31.3.2016 which was received by the assessee on 4.4.2020. In this case, the notice:

(a) is not a valid notice

(b) is a valid notice

27.32 : Assessment under section 143(3) for assessment year 2015-16 was completed on 28.12.2016. On 28.12.2019 the Assessing Officer notices that income of Rs.90,000 has escaped assessment. The notice under section 148 in this case can be issued till:

(a) 31.3.2020

(b) 31.3.2021

(c) 31.3.2022

27.33 : For A.Y. 2020-21, the time limit for completion of assessment under section 143/144 shall be:

(a) 31.3.2022 *i.e.* 12 months from the end of the relevant A.Y.

(b) 30.9.2022 *i.e.* 18 months from the end of the relevant A.Y.

(c) 31.12.2022 *i.e.* 21 months from the end of the relevant A.Y.

27.34 : If for an assessment year, after completing the assessment under section 143(3), AO has power to

(a) Make the assessment under section 143(3) again

(b) Make the assessment under section 144

(c) Make the assessment under section 147

27.35 : The time limit for completion of assessment/reassessment under section 147 shall be:

(a) 1 year from the end of the F.Y. in which notice under section 148 was served on the assessee

(b) 2 years from the end of the F.Y. in which notice under section 148 was served on the assessee

(c) 4 years from the end of the F.Y. in which notice under section 148 was served on the assessee

27.36 : Filing of return of income by a person having assets/account outside India will be compulsory :

(a) if he is OR

(b) if he is OR/NOR

(c) NR

(d) All of the above

27.37 : Return of income by the donee referred to in section 35 shall be filed:

(a) If amount of donations exceeds Rs.5,00,000

(b) If amount of donations exceeds Rs.10,00,000

(c) Any amount

(d) Maximum amount not chargeable to tax

27.38 : Return of income by non-working partner of a firm will be filed if:

(a) Audit is required in case of his firm

(b) His total income exceeds the taxable limit

(c) His GTI exceeds the taxable limit

(d) None of the above

27.39 : Return of income by working partner of a firm will be filed if:

(a) Audit is required in case of his firm

(b) His total income exceeds the taxable limit

(c) His total income exceeds the taxable limit

(d) None of the above

27.40 : Due date for filing of return in case of a company who is not required to submit report under section 92E, but is required to have Audit of its books of accounts will be:

(a) 30th Nov of the A.Y.

(b) 30th Sept of the A.Y.

(c) 31st July of the A.Y.

27.41 : An assessee filed his return by showing income of Rs.2,00,000 within the due date of filing of return of income. He later on revised it within 2 months and shows a loss of Rs. 3,10,000 which was omitted earlier.

Can this loss be allowed to be carried forward?:

(a) Yes

(b) No

27.42 : Which of the following is correct?

(a) After assessment of section143(3), assessment under section 143(3) is again possible

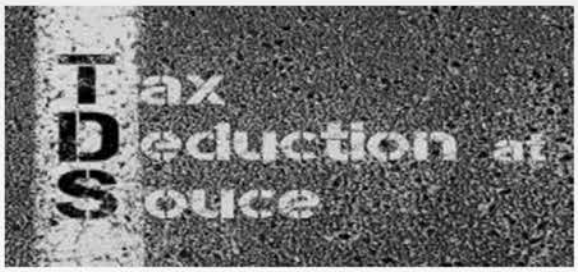
(b) After assessment under section 143(3), assessment under section 144 is possible

(c) After assessment under section 143(3), assessment under section147 is possible

(d) All of the above

ANSWERs TO MCQs

Question	Answer	Question	Answer	Question	Answer	Question	Answer	Question	Answer
27.1	C	27.2	C	27.3	D	27.4	A	27.5	D
27.6	D	27.7	A	27.8	C	27.9	A	27.10	C
27.11	A	27.12	C	27.13	A	27.14	C	27.15	C
27.16	B	27.17	A	27.18	D	27.19	C	27.20	A
27.21	A	27.22	A	27.23	A	27.24	C	27.25	C
27.26(*i*)	D	27.26(*ii*)	B	27.26(*iii*)	B	27.27	D	27.28	A
27.29	D	27.30	D	27.31	B	27.32	A	27.33	A
27.34	C	27.35	A	27.36	A	27.37	C	27.38	C
27.39	C	27.40	B	27.41	A	27.42	C		



CHAPTER 28
TDS, TCS AND ADVANCE TAX

28.1 What is TDS

The person responsible for making payment of certain incomes to the income earners deducts the income tax at the prescribed rates on such incomes before payment is made to them. The tax so deducted is called deduction of tax at source.

28.2 No TDS in certain cases [Section 196]

Tax is not deducted at Source on the following payments—

a. the Government, or

b. the Reserve Bank of India, or

c. a corporation established under a Central Act which is exempt from income-tax, or

d. a Mutual Fund specified under section 10(23D).

28.3 Lower deduction "certificate" and "self-declaration" [Section 197/197A]

If a person (i.e. 'payee') proves that his income tax liability to be 'nil' or 'lower' than the amount of TDS, no TDS will be made while paying sums to that person. This is possible, when such 'payee' gives a 'certificate' [section 197] obtained by him from his jurisdictional Assessing Officer or in certain cases, by merely furnishing a 'declaration' [section 197A] self-attested by him. Difference between these two is as under—

Basis of difference	Lower/no deduction 'certificate'	'Self-declaration' for no deduction
1. Nature	It is a 'certificate'	It is a 'declaration'
2. Issued by him	It is obtained from A.O.	It is issued by the payee himself
3. Form	No form is prescribed for it	Prescribed Form are 15G and 15H.
4. Receipts covered	It can be issued when payee is in receipt of incomes covered under section 192, 193, 194, 194A, 194D, 194G, 194H, 194-I, 194J, 194LA, **194M** and 195 **(Inserted by Finance Act, 2019 w.e.f. 1.9.2019)**	It can be issued when payee is in receipt of interest (193/194A), rent (194-I), dividend (194), payment of NSS (194EE), insurance commission (194D) or insurance receipts (194DA).
5. Who is eligible	Even company, firm can obtain it.	Company, firm cannot issue it.

28.4 Higher rate of TDS in certain cases [Section 206AA]

Every 'payee' is required to give his PAN to the 'payer' of any sum on which TDS is to be made. If PAN is not furnished or incorrect PAN is furnished, the rate of TDS will be HIGHER of the following—

(a) rate provided by the relevant section; or
(b) rates in force; or
(c) at the rate of 20%

TDS SUMMARY

Nature of payment	Deductee	Deductor	Criteria of TDS	Rates of TDS
Salary **Sec. 192**	Employee	Employer	**Nature of payment :** Salary **TDS when :** At the time of payment. **Exemption :** No TDS if the 'estimated total income' is upto the minimum taxable limit, i.e. – Rs.5,00,000- Resident very senior citizen Rs.3,00,000- Resident senior citizen Rs.2,50,000- Other individuals	**Slab rates** **Important notes—** 1. Employee to give details of salary from other employer in *Form 12B.* 2. In calculating the *'estimated total income,'* the employer has to consider income of the other heads and also the permissible deduction.
Interest on securities **Sec. 193**	The payee of such interest being a **resident**	The payer of such interest	**Nature of payment :** Interest on securities **TDS when :** Payment or credit, whichever is earlier. **Exemption :** No TDS in the following cases- *a.* Interest on debentures, issued by notified entities (co-operative society etc.); *b.* Interest on Govt. securities, except the interest payable on 8% Saving Bonds, 2003, which exceeds Rs. 10,000 in a F.Y. *c.* Interest on securities owned by LIC or GIC *d.* Interest on debentures (listed or not) of a widely held company, paid to individual/HUF being resident through an account payee cheque but maximum upto Rs.5,000. *e.* Interest on other securities referred to in proviso to section 193.	@ 10% in case of all deductees (As per section 206AA, rates of TDS will be 20% if payee fails to furnishes his PAN)
Deemed Dividend **Sec. 194**	Shareholder being a **resident**	Principal officer of domestic company	**Nature of payment :** Deemed dividend referred to in section 2(22)(*e*) **TDS when :** Payment or credit, whichever is earlier. **Exemption :** Dividend referred to in sec. 115-O	@ 10% in case of all deductees (As per section 206AA, rates of TDS will be 20% if payee fails to furnishes his PAN)
Winnings of lottery, etc. or horse races **Sec. 194B & 194BB**	Any person	The payer of such sum	**Nature of payment :** winning from lotteries/ crossword puzzles/ card games/ other games – Sec. 194B. Winning from horses race Sec.-194BB **TDS when :** At the time of payment. **Exemption :** ♦ *In case of lotteries etc.*: upto Rs.10,000 per win	@30% in case of all deductees

Nature of payment	Deductee	Deductor	Criteria of TDS	Rates of TDS
			♦ *In case of horse races* : upto Rs.10,000 per win **Note :** Where the winnings are wholly or partly in kind, the payer shall ensure that tax has been paid in respect of the winnings.	
Insurance comm. **Sec. 194D**	Any Resident	The payer of such sum	**TDS when :** Payment or credit, whichever is earlier. **Exemption :** No TDS if payment does not exceed Rs. 15,000 in a financial year.	@5% in case of all deductees (20%, if payee fails to furnishes his PAN)
Interest other than interest on securities **Sec. 194A**	Any Resident	**1.** Any person, other than individual, HUF **2.** Individual, HUF, only if its accounts were subject to audit u/s 44AB in the preceding F.Y.	**Nature of payment :** Interest other than interest on securities. **TDS when :** Payment or credit, whichever is earlier. **Exemption :** *Exemption is as under—* *a.* Interest on deposits paid by any bank/post office upto Rs. 10,000/Rs.50,000 if recipient is a senior citizen *b.* Interest on deposits paid by any other payer upto Rs. 5,000 *c.* Interest paid to any banking co./co-op. society in banking or insurance business *d.* Interest paid to any financial corporation *e.* Interest paid to LIC or UTI *f.* Interest payment by a firm to its partner(s) *g.* Interest payment by the co-op. society to its members or other co-op. society *h.* Interest on MIS, NSC-VIII, KVP, IVP, PO -RD; *i.* Payment of interest by CBDT to assessees *j.* Interest, on compensation awarded by Motor Accident Claims Tribunal, upto Rs. 50,000; *k.* Interest on *zero coupon bonds.* *l.* Interest credited to National Skill Development Fund (NSDF) *m.* Interest payable by 'special purpose vehicle' to 'business trust' given in section 10(23FC)	@10% in case of all deductees (20%, if payee fails to furnishes his PAN)
Payment to Contractor **Sec. 194-C**	Any resident	1. Any person, other than individual, HUF **2.** Individual, HUF, only if its accounts were subject to audit u/s 44AB in the preceding F.Y.	**Nature of payment :** Payment for carrying out any work including supply of labour. **TDS when :** Payment or credit, whichever is earlier. **Exemption :** No TDS in the following cases— *1.* If such sum does not exceed Rs. 30,000 *and* the aggregate of such sums during the F.Y. does not exceed Rs. 1,00,000. *2.* If PAN is furnished by the contractor (carrying the business of plying, hiring or leasing of goods carriage) to the payer provided that such contractor does not own more than 10 vehicles at any time during the P.Y. *3.* Individual or HUF are not required to deduct tax at source if payment is *for personal use.*	▪ If payee is Individual or HUF- @ 1% ▪ In other case- @ 2% (20%, if payee fails to furnishes his PAN) **Note** : TDS will be deducted on the invoice value excluding the value of material *if such value is separately mentioned* in the invoice; if no, then TDS will be deducted on full invoice amount.

Nature of payment	Deductee	Deductor	Criteria of TDS	Rates of TDS
Payment to non-resident sportsmen **Sec. 194E**	(*i*) Non-resident non-citizen sportsmen (including athletes) or (*ii*) an entertainer, or (*iii*) sports associations	Payer of such sum	**Nature of income:** Any income referred to in section 115BBA *i.e.* income earned by way of— ♦ participating in India in any game or sports ♦ advertisement or giving articles in India. **TDS when**- Payment or credit, whichever is earlier. *Note*— *1.* The word **'entertainer'** may include television, radio or theatre artists and musicians. *2.* This section does not cover payment in the nature of lotteries, crossword puzzles, races etc. *3.* If the payee does not furnish his PAN, the tax will be deducted @ 20% as per section 206AA.	**@ 20%** **+ applicable SC (if such income > Rs.50 lakh)** **+ applicable EC and SHEC**
Comm. on sale of lottery tickets **Sec. 194G**	Any person	Payer of such sum	**Nature of payment :** The payment (commission, remuneration etc.) to any lottery agent. **TDS when :** Payment or credit, whichever is earlier. **Exemption :** If such payment is upto Rs. 15,000.	@ 5% in case of all deductees (As per section 206AA, rates of TDS will be 20% if payee fails to furnishes his PAN)
Comm. or brokerage **Sec. 194H**	Any Resident	Same as in case of Sec. 194C	**Nature of payment :** Any payment by way of commission (other than insurance commission) or brokerage. **TDS when :** Payment or credit, whichever is earlier. **Exemption :** *a.* Payment to PCO franchisees by BSNL/MTNL. *b.* If such payment is upto Rs.15,000	@ 5% in case of all deductees (As per section 206AA, rates of TDS will be 20% if payee fails to furnishes his PAN)
Rent **Sec. 194-I**	Any Resident	Same as in case of Sec. 194C	**Nature of payment : 'Rent'** on lease of Land, building, land appurtenant to such building, machinery, plant, equipment, furniture, fittings. **TDS when :** Payment or credit, whichever is earlier. **Exemption :** If rent is upto Rs. 1,80,000 during the financial year.	*a.* If rent is for use of *machinery, plant or equipment*- **@ 2%** *b.* If rent is for use of *land, building, furniture, or fitting* - **@ 10%**
Rent **Sec.194-IB**	Any Resident	Any Individual or HUF other than those referred to in above mentioned Sec.194-I	**Nature of payment :** 'Rent' on lease or sub-lease of Land or building or both which exceeds Rs.50,000 per month (or part of month). **TDS when :** Payment or credit in respect of the last month of the previous year or last month of the vacancy if property is vacated during the previous year (as the case may be), whichever is earlier. **Exemption :** If rent does not exceed Rs. 50,000 per month (or part of month) during the previous year.	@ 5% in case of all deductees (As per section 206AA, rates of TDS will be 20% if payee fails to furnishes his PAN)
Payment of any sum as per Joint Develop-ment	Any Resident	Any person responsible for paying any sum	**Nature of payment :** Consideration (not being in kind) under a Joint Development Agreement referred to in Sec. 45(5A).	

Nature of payment	Deductee	Deductor	Criteria of TDS	Rates of TDS
Agreement (JDA) **Sec.194-IC**		under an agreement referred to in Sec.45(5A)	**TDS when :** Payment or credit, whichever is earlier. **Exemption :** Nil	@ 10% in case of all deductees (As per section 206AA, rates of TDS will be 20% if payee fails to furnishes his PAN)
Fee for services **Sec. 194-J**	**-do-**	Same as in case of Sec. 194C	**Nature of payment :** The payment should be on account of— (*a*) Fees for professional services; (*b*) Technical services; (*c*) Royalty; (*d*) any remuneration or fee or commission etc. (other than those covered by section 192), to a director of a company. **TDS when :** Payment or credit, whichever is earlier. **Exemption :** *1.* If payment during the financial year does not exceed Rs. 30,000 for each item separately. No threshold limit is provided for clause (*d*). *2.* No tax deduction is required if such sum is paid by an individual or HUF for personal purposes.	▪ @ 10% in case of all deductees ▪ @ 2% in case of deductees engaged only in the business of operation of *call centre.* (As per section 206AA, rates of TDS will be 20% if payee fails to furnishes his PAN)
Payment on acquisition of immovable property **Sec. 194LA**	Any person transferring his immovable property	*Normally Govt.*	**Nature of payment :** Payment of compensation on account of compulsory acquisition of any immovable property (other than agriculture land whether rural or urban). **TDS when :** Payment or credit, whichever is earlier. **Exemption :** No TDS in the following cases : (a) If payment during the financial year does not exceed Rs. 2,50,000; (b) If such 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.	@ 10% in case of all deductees (As per section 206AA, rates of TDS will be 20% if payee fails to furnishes his PAN)
Payment on acquisition of immovable property **Sec. 194-IA**	Any person being resident who is transferring his immovable property	Any person responsible for paying such money	**Nature of payment :** The payment should be in the nature of consideration for transfer any immovable property (other than agriculture land in rural area). **TDS when :** Payment or credit, whichever is earlier. **Exemption :** If amount does not exceed Rs. 50,00,000.	@ 1% in case of all deductees (As per section 206AA, rates of TDS will be 20% if payee fails to furnishes his PAN)
Income by way of interest from Indian company **Sec. 194LC**	(*i*) Foreign company, or (*ii*) other non-residents	Any Indian company	**Nature of payment :** Interest on monies borrowed (by issuing *any* long term bonds) in foreign currency between 1.7.2012 to 30.6.2020 **TDS when :** Payment or credit, whichever is earlier. **Exemption :** No threshold limit is provided for this section.	@ 5% + applicable SC + applicable EC and SHEC (Rates will be as above, even if the payee fails to furnishes his PAN)

Nature of payment	Deductee	Deductor	Criteria of TDS	Rates of TDS
Income by way of interest on Rupee Denomination Bonds of Indian company **Sec. 194LD**	Specified: (*i*) Foreign Institutional Investors (FIIs), or (*ii*) Qualified Foreign Investors (QFIs).	Any payer	**Nature of payment :** Interest on Rupee Denomination Bonds of Indian company or Govt. Security which is payable between 1.6.2013 to **30.6.2020**. **TDS when :** Payment or credit, whichever is earlier. **Exemption :** No threshold limit is provided for this section.	@ 5% + applicable SC + applicable EC and SHEC (Rates will be as above, even if the payee fails to furnishes his PAN)
Any sum under a life insurance policy **Sec. 194DA**	Any resident	Any payer	**Nature of payment :** Any sum under a life insurance policy (including bonus if any) other than the sum which is exempt under section 10(10D). **TDS when :** Payment or credit, whichever is earlier. **Exemption :** No TDS if aggregate of such payment(s) during the financial year is **less** than Rs.1,00,000	**@ 5% (Amended by Finance Act, 2019 w.e.f. 1.9.2019, earlier 1%)**
Any sum under a contract New Sec. 194M **[Inserted by FA, 2019 w.e.f. 1.9.2019]**	Any resident contractor	Any person, being an individual or a HUF (other than those who are making TDS u/s 194C or 194J)	**Nature of payment :** Payment for carrying out any work (including supply of labour) in pursuance of a contract or by way of fees for professional services. **TDS when :** Payment or credit, whichever is earlier. **Exemption :** No TDS if aggregate of such payment(s) during the financial year does not exceed Rs. 50,00,000. **Note :** This section may cover the cases where TDS is not made under section 194C or 194J. Thus it may cover the cases like where payer being Individual/HUF is making such payment for his person purpose, or where payer is not subject to tax audit in the preceding FY.	**@ 5%**
TDS on cash withdrawal by banks New Sec. 194N **[Inserted by FA, 2019 w.e.f. 1.9.2019]**	Any accountholder	Any bank or post office	**Nature of payment :** Cash payment from the account of the accountholder. **TDS when :** At the time of making payment. **Exemption :** No TDS in the following cases : ♦ If such cash withdrawal or aggregate of cash withdrawals during the financial year does not exceed Rs. 1 crore. ♦ If such cash withdrawal is made by certain person like Govt, banking company, post office etc. ♦ Other recipients as notified by the CG. **Note :** TDS will be deducted on cash withdrawal exceeding Rs. 1 crore. *E.g.* If cash withdrawal is Rs.1.25 crore then TDS will be deducted on Rs.25 lakh i.e. Rs.50,000.	**@ 2%**

28.5 Due date for deposit of TDS [Section 200 read with Rule 30]

The amount of TDS should be deposited upto the following 'due dates'—

Particulars	Type of deductor	Time limit for deposit of TDS
All sums deducted under this chapter	GOVERNMENT ▪ If tax is paid without production of an income-tax challan ▪ If tax is paid accompanied by an income-tax challan	 ▪ On the same day on which such tax is deducted at source. ▪ Within 7 days from the end of the month in which deduction is made.
All sums deducted under this chapter	NON-GOVERNMENT ▪ If income is credited or paid in the month of March ▪ In any other case	 ▪ On or before 30th April ▪ Within 7 days from the end of the month in which deduction is made.

28.6 Consequences for late deposit of TDS [Section 201]

If the amount of TDS is not deposited within the said time limits, the 'deductor' shall be liable to—

Consequence	*Calculation of interest*
Interest	1. LOWER INTEREST RATE ▪ *Period of interest* : From the date when such tax was deductible till the date when such tax is actually deducted. (*i.e.* "deductible" to "deduction"). Part of month* will be considered as full month [*e.g.* TDS was deductible on 26th June, 2017 but was deducted on 23rd July, 2017, in this case failure will be of 1 month] ▪ *Rate of interest* = 1% p.m. 2. HIGHER INTEREST RATE ▪ *Period of interest* : From the date when such tax is actually deducted till the date such TDS is deposited to the credit of Central Government. (*i.e.* "deduction" to "deposit"). Part of month* will be considered as full month. [*e.g.* TDS was deductible on 26th June 2017 but was deducted on 10th July 2017 and it was deposited on 7th August 2017, in this case interest @1% p.m. will be paid for deduction delay *i.e.* 1 month; and interest @1.5% p.m. will be paid for deposit delay *i.e.* 1 month] ▪ *Rate of interest* = 1.5% p.m. ***Note :** In case of *Navayuga Quazigund Expressway (P) Ltd* v. *CIT* [2015] (Hyd.), it was held that "month" must be given ordinary meaning of term of 30 days period and not British calendar.
Penalty	Such person shall also be subject to penalty for being assessee in default.

28.6 TDS returns and due date for filing thereof [Section 200(3) and Rule 31A]

The person deducting tax at source shall, after depositing the TDS, prepare and furnish the TDS Return in the following manner :

Forms :

❒ *Form 24Q*	TDS of salary
❒ *Form 26Q*	TDS of non-salary (other than the cases given below)
❒ *Form 27Q*	TDS of non-resident.
❒ *Form 26QB*	Tax deducted under section 194-IA (TDS on purchase of immovable property).
❒ *Form 26QC*	Tax deducted under section 194-IB (TDS by tenant if rent exceeds Rs.50,000 pm.)

Due dates for filing of the TDS Return—

24Q, 26Q and 27Q – Quarterly	
❒ *Q 1 (Apr—Jun)*	On or before **31st Jul** of the financial year.
❒ *Q 2 (Jul—Sep)*	On or before **31st Oct** of the financial year.
❒ *Q 3 (Oct—Dec)*	On or before **31st Jan** of the financial year.
❒ *Q 4 (Jan—Mar)*	On or before **31st May** of the financial year immediately following the financial year in which deduction is made.

26QB and 26QC – For each TDS	
❒ *26QB*	Within 30 days from the end of the month in deduction is made.
❒ *26QC*	Within 30 days from the end of the month in deduction is made.

28.7 TDS Certificates and their issuance [Section 203 and Rule 31]

The person deducting tax at source shall, issue the TDS certificates within the following time limits—

▫ *Form 16*	**Annual :** By 15th day of June of the next financial year.
▫ *Form 16A*	**Quarterly :** within 15 days from the 'due date' for furnishing of the TDS return.
▫ *Form 16B*	**For each TDS :** Every person responsible for deduction of tax under section 194-IA shall furnish the TDS certificate in Form No.16B to the payee within 15 days from the due date for furnishing the challan-cum-statement in Form No. 26QB under rule 31A.
▫ *Form 16C*	**For each TDS :** Every person responsible for deduction of tax under section 194-IB shall furnish the TDS certificate in Form No.16C to the payee within 15 days from the due date for furnishing the challan-cum-statement in Form No.26QC under rule 31A.

28.8 Consequences for late furnishing of TDS return

Consequences for late deposit of TSD Return are as under—

Consequence	*Amount*
Late fees [Sec. 234E]	Rs. 200 per day during which the failure continues.
Penalty [Sec. 271H]	From minimum of Rs. 10,000 to maximum of Rs. 1,00,000. But it shall be levied only if the failure continues even after the expiry of ONE YEAR from its due date.

TAX COLLECTED AT SOURCE (TCS) [SECTION 206C]- SUMMARY

28.9 TCS in case of sale of 'specified goods'

Every seller, who is selling 'specified goods' (given below) shall, at the time of debiting the account of the buyer or at the time of receipt of amount from him, whichever is earlier, collect TCS at the following percentage—

Sr. No.	*Name of Goods*	*Rate of TCS (% of the amount payable)*
1.	Alcoholic liquor for human consumption	1
2.	Tendu leaves	5
3.	Timber under forest lease (or otherwise) or any other forest produce	2.5
4.	Scrap (arises from manufacture of material; It does not include old machinery scrapped, newspaper, packing material etc.)	1
5.	Minerals, being coal or lignite or iron ore	1
6.	Motor vehicle of a value exceeding Rs.10,00,000 except when buyer is : (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 as defined in Explanation to section 10(20); or (c) a public sector company which is engaged in the business of carrying passengers.	1

However, no TCS, if—

(a) the said goods (*except 6*) are purchased by a resident buyer, to be used in manufacturing, processing or producing articles or things or in generation of power and not for trading purposes, AND

(b) the buyer furnishes a declaration in duplicate in Form No. 27C.

28.10 TCS in certain case on sale of 'jewellery, bullion or goods/services'

Sub-section (1D) and (1E) of section 206C omitted by Finance Act, 2017 w.e.f. A.Y. 2018-19]

28.11 TCS in case of 'lease'

1. *Who is liable to collect TCS* : Every person, who grants lease or a license or transfers any right either in whole or in part in :

(i) any parking lot or

(ii) toll plaza or

(iii) mine or quarry

to another person (other than a public sector company) for business purposes shall, at the time of debit of such in the account of the licensee or lessee, or receipt of such amount whichever is earlier, also collect tax at source.

2. Rate of TCS **:** 2% in all such cases.

28.12 Collectee to furnish PAN [New section 206CC]

Statuary provisions for deduction of tax at source (TDS) at higher rate of 20% or the applicable rate whichever is higher) in case of non-quoting of Permanent Account Number (PAN) is provided under section 206AA of the Act and it exist since April, 2010. PAN acts as a common thread for linking the information in the departmental data base. It may also be noted that the process of allotment of PAN is made simple and robust. PAN application can be made online and PAN gets allotted in less than a week.

In order to strengthen the PAN mechanism, Finance Act, 2017 has inserted a new section 206CC which provides as under :

- *Consequences for non-furnishing of PAN* : any person paying any sum or amount, on which tax is collectable at source under Chapter XVIIBB (hereafter referred to as collectee) shall furnish his PAN to the person responsible for collecting such tax (hereafter referred to as collector), failing which tax shall be collected
  - ✓ at the twice the rate mentioned in the relevant section under Chapter XVIIBB, or
  - ✓ at the rate of 5%

  whichever is higher.
- *Without PAN - no declaration for non-collection of TCS* : the declaration filed under sub section (1A) of section 206C shall not be valid unless the person filing the declaration furnishes his PAN in such declaration.
- *Without PAN - no Lower Collection Certificate (LCC)* : no certificate under sub section (9) of section 206C shall be granted unless it contains the PAN of the applicant.
- *Using PAN in all correspondences* : it is mandatory to quote PAN of collectee on all correspondences between collector and collectee.
- *Invalid PAN* : where the PAN provided by the collectee is invalid or it does not belong to the collectee, then it shall be deemed that PAN has not been furnished to the collector.
- *Non-residents exempt from this requirement* : non-resident who does not have permanent establishment in India, are exempt from the provisions of this proposed section 206CC of the Act.

ADVANCE PAYMENT OF TAX 'PAY AS YOU EARN'

28.13 Liability to pay advance tax [Section 209]

Advance tax shall be payable during any financial year in respect of the total income of the assessee which *would be* chargeable to tax for the assessment year immediately following that financial year, and it shall be called 'Current Income'. However, no advance tax is required to be paid in the following cases—

1. Senior Citizens	A senior citizen [*i.e.* of the age of 60 years or more at any time during the P.Y.] who is a resident in India and who does not have any income under the head PGBP.
2. Other cases	Any other person, if his advance tax liability is LESS THAN Rs. 10,000.

28.14 How to compute advance tax [Section 210]

Advance tax shall be calculated as under—

1. Computation by assessee	The assessee himself shall compute the advance tax payable on his estimated current income at the rates in force in the financial year and deposit the same in accordance with section 211. **Note :** The income tax so calculated shall be reduced by the amount of TDS/TCS. So, the advance tax to be paid will calculated and paid as under : ♦ **First** instalment = (Estimated tax for the whole year – TDS so far) × 15% ♦ **Second** instalment = [(Estimated tax for the whole year – TDS so far) × 45%] – amount paid in first instalment. ♦ **Third** instalment = [(Estimated tax for the whole year – TDS so far) × 75%] – amount paid in first and second instalments. ♦ **Fourth** instalment = [(Estimated tax for the whole year – TDS so far) × 100%] – amount paid in first, second and third instalments.
2. Computation by A.O.	Where the assessee has not paid any advance tax, the Assessing Officer will take the total income to be the HIGHER of the following amount : (a) total income of the latest assessed P.Y. for which regular assessment has been made; or (b) the total income returned in any subsequent P.Y. [*i.e.* the year subsequent to the year for which regular assessment has been made *i.e.* the year given in (a) above] On such income, income tax will be calculated at the rates in force in the F.Y.

28.15 Installments of advance tax and their 'due dates' [Section 211]

(*a*) Advance tax in case of all assessees other than 'eligible assessee' of section 44AD or 44ADA :

Due date of the instalment	*Amount payable*
1. On or before 15th Jun of the P.Y.	Not less than 15% of such advance tax
2. On or before 15th Sep of the P.Y.	Not less than 45% of such advance tax (*i.e.* 45% of advance tax *less* amount paid in earlier instalments)
3. On or before 15th Dec of the P.Y.	Not less than 75% of such advance tax (*i.e.* 75% of advance tax *less* amount paid in earlier instalments)
4. On or before 15th Mar of the P.Y.	Not less than 100% of such advance tax (*i.e.* 100% of advance tax *less* amount paid in earlier instalments)

(*b*) In case of 'eligible assessee' referred to in section 44AD or 44ADA

Due date of the instalment	*Amount payable*
1. On or before 15th Mar of the P.Y.	Not less than 100% of such advance tax

Note : Tax deposited between 16th March to 31st March is also considered as advance tax. But interest under section 234C, will be payable on such amount.

INTERESTs [SECTION 234A, 234B, 234C]

28.16 Interest for delay in filing return of income [Section 234A]

This section provides as under—

Particulars	Detailed provisions
Chargeability	Interest under this section is imposed for default in furnishing of the ITR.
Rate of interest	1% per month or part of a month (simple interest). It means part of month will be considered as full month.
Period	Commencing from the day immediately following the due date and ending on— (a) if return has (ultimately) been furnished, the date of furnishing such return; or (b) if no return is furnished, the date of completion of assessment under section 144. **Note :** Part of the month will be considered as full month.
Amount on which interest is calculated	Tax determined under section 143(1) or 143(3) or if re-assessment is made under section 147 or 153A, tax determined under such re-assessment ××× *Less* : amount of TDS/TCS/advance tax ××× *Less* : amount of relief allowed under section 90/90A/91 ××× *Less* : amount of MAT/AMT credit. ××× *Amount on which interest is to be calculated* ××× **Note :** No deduction shall be made for the amount of tax paid under self-assessment under section 140A. As per *Dr. Prannoy Roy* v. *CIT* [2009] (SC), no interest would be payable, if the tax has been deposited before the 'due date' of filing of income tax return, even if the return is filed after the 'due date' of such return.

Notes—

1. For making payment under section 140A, compute interest under this section by substituting the word "Tax determined under section 143(1)/143(3)/147/153A" with the words "the tax declared in ROI of the relevant F.Y."
2. In computing interest under section 234A, 234B, 234C, the amount of "income tax", shall be rounded-off to Rs.100 and any fraction of Rs.100 shall be ignored. *e.g.* Rs.2,30,870 shall be treated as Rs.2,30,800.

28.17 Interest for default in payment of advance tax [Section 234B]

This section provides as under—

Particulars	Detailed provisions
Chargeability	This interest is charged, if the assessee, who is liable to pay advance tax : (a) has failed to pay such tax, or (b) 'advance tax' paid by him is less than 90% of the 'assessed tax'. **'Assessed tax'** means, the tax determined under section 143(1)/143(3)/147/153A, as reduced by— (a) amount of relief allowed under section 90/90A/91 (b) amount of MAT/AMT credit (c) amount of TDS, TCS **Note :** No deduction will be made for 'advance tax' paid by the assessee.
Rate of interest	1% per month or part of a month (simple interest). It means part of month will be considered as full month.
Period	**1. If no tax has been paid under section 140A after the expiry of 31st March** *Period :* Starting from the 1st April of the A.Y. and ending on— (a) the date of determination of income under section 143(1); or (b) where the assessment is made under section 143(3) /144/147 or 153A, the date of completion of such assessment. **2. If tax has been paid after 31st March under section 140A** *Period–1* : Starting from the 1st April of the A.Y. and ending on the date of payment of tax under section 140A, *Period–2* : Starting from the day next following the date of payment of tax under section 140A and ending on— (a) the date of determination of income under section 143(1); or (b) where the assessment is made under section 143(3) /144 /147 or 153A, the date of completion of such assessment.
Amount on which interest is calculated	**1. If no tax has been paid under section 140A after the expiry of 31st March** Tax determined under section 143(1) or 143(3) or if re-assessment is made under section 147 or 153A, tax determined under such re-assessment ××× *Less* : amount of TDS/ TCS/advance tax ××× *Less* : amount of relief allowed under section 90/90A/91 ××× *Less* : amount of MAT/AMT credit. ××× *Amount on which interest is to be calculated* ××× **2. If tax has been paid under section 140A after the expiry of 31st March** **Amount–1 :** Tax determined under section 143(1) or 143(3) or if re-assessment is made under section 147 or 153A, tax determined under such re-assessment ××× *Less* : amount of TDS/ TCS/advance tax ××× *Less* : amount of relief allowed under section 90/90A/91 ××× *Less* : amount of MAT/AMT credit. ××× *Amount on which interest for 'Period–1', is to be calculated* ××× **Amount–2 :** Tax determined under section 143(1) or 143(3) or if re-assessment is made under section 147 or 153A, tax determined under such re-assessment ×××

	Less : amount of TDS/ TCS/advance tax	×××
	Less : amount of relief allowed under section 90/90A/91	×××
	Less : amount of MAT/AMT credit	×××
	Less : amount of advance tax.	×××
	Amount on which interest for 'Period–2', is to be calculated	×××

28.18 Interest for default in payment of advance tax installments [Section 234C]

FOR CORPORATE AND NON-CORPORATE ASSESSEES : This section provides as under—

Particulars	Detailed provisions
Chargeability	Interest is payable if— (a) Advance tax paid upto 15th June is < 12% of "tax due on returned income"; or (b) Advance tax paid upto 15th Sep. is < 36% of "tax due on returned income"; or (c) Advance tax paid upto 15th Dec. is < 75% of "tax due on returned income" ; or (d) Advance tax paid upto 15th Mar. is < 100% of "tax due on returned income"; or (e) No advance tax has been paid by the assessee Where **"tax due on returned income"** means, the tax declared in ROI of the relevant F.Y. as reduced by— (i) amount of relief allowed under section 90/90A/91 (ii) amount of MAT/AMT credit (iii) amount of TDS, TCS **Note :** No deduction will be made for 'advance tax' paid by the assessee.
Rate of interest	1% per month (simple interest).
Period	♦ *Failure of Q–1 (even by a single day)* : 3 months ♦ *Failure of Q–2 (even by a single day)* : 3 months ♦ *Failure of Q–3 (even by a single day)* : 3 months ♦ *Failure of Q–4 (even by a single day)* : 1 month
Amount on which interest is calculated	(a) *For Q–1* = 15% of "tax due on returned income"(–) advance tax paid upto 15th Jun. (b) *For Q–2* = 45% of "tax due on returned income"(–) advance tax paid upto 15th Sep. (c) *For Q–3* = 75% of "tax due on returned income"(–) advance tax paid upto 15th Dec. (d) *For Q–4* = Entire "tax due on returned income"(–) advance tax paid upto 15th Mar.

28.19 Short payment of advance tax due to 'capital gains' or 'casual incomes' [1st proviso to section 234C]

As the advance tax is paid on 'estimated income', but it not possible for an assessee to estimate his 'capital gains' or 'casual income' (like lottery, horse races winnings etc.) **or new business (*w.e.f.* 1.6.2016)**, therefore, 1st proviso to section 234C provides that no interest shall be levied in respect of short fall in payment of advance tax if—

(a) the short fall of advance tax in PRIOR installment(s) is on account of arisen of incomes being

- ♦ capital gains or
- ♦ casual income **or**
- ♦ **business income** for the first time
- ♦ **dividend income referred to in section 115BBDA**

AFTER payment of those prior installment(s), **AND**

(b) the assessee pays the whole of income tax in respect of these incomes *as a part of remaining installments* or if no installment is due, then such tax is paid on or before 31st March of the P.Y.

MULTIPLE CHOICE QUESTIONS (MCQs)

TDS

28.1 : While deducting TDS on salary the employer has to consider :

(a) Deductions to be given to the employee
(b) Salary from previous employer if any
(c) Applicable slab rates
(d) All of the above

28.2 : TDS on salary is deducted :

(a) @ 10%
(b) @ 15%
(c) at slab rates
(d) @ 20%

28.3 : Deduction at source in case of salary will be made in respect of :

(a) Tax only
(b) Tax + Surcharge (if any)
(c) Tax + Surcharge (if any) + HEC
(d) Tax + Surcharge (if any) + HEC

28.4 : TDS of interest on securities is made at the rate :

(a) 10%
(b) 10.3%
(c) 11.33%
(d) No TDS is deducted

28.5 : TDS on interest on debentures of a company paid by account payee cheque, will not be deducted:

(a) if such payment does not exceed Rs.5,000
(b) if such payment does not exceed Rs.10,000
(c) if such payment does not exceed Rs.2,500
(d) if such payment does not exceed Rs.10,000

28.6 : No TDS will be deducted on interest paid by bank if :

(a) if such interest does not exceed Rs.10,000
(b) if such interest does not exceed Rs.50,000
(c) if such interest does not exceed Rs.5,000
(d) if such interest does not exceed Rs.35,000

28.7 : No TDS is deducted :

(a) interest paid by firm to its partners
(b) CBDT to assesses
(c) on Kissan Vikas Patra
(d) all of the above

28.8 : Rate of TDS in case of payments to contractors under section 194-C is :

(a) 10%
(b) 2%
(c) 1%
(d) 1% for individual, HUF & 2% for other payees

28.9 : Under section 194C, where the payer is an individual or HUF, the TDS is deducted:

(a) If payee is a company
(c) if accounts of the payer were subject to Tax Audit in the preceding F.Y

(b) if accounts of the payee were subject to Tax Audit in the preceding F.Y

(d) if aggregate payment during the F.Y exceed Rs.10,000

28.10 : No TDS under section 194C is deducted in case payment is to be made to a person engaged in plying, hiring of goods carriage if:

(a) such payment does not exceed Rs.10,000

(b) his accounts were not subjected to Tax Audit in the preceding F.Y.

(c) if he is individual or HUF

(d) he furnishes his PAN

28.11: The deduction of tax at source from the salary shall be made at the time of :

(a) accrual of salary;

(b) payment of salary

(c) credit or payment of the salary, whichever is earlier

(d) annual basis *i.e.* in March month only.

28.12 : The deduction of tax from salary as per section 192 shall be :

(a) @ 10% of salary;

(b) at the average rate of income tax computed on the basis of rates in force for the financial year in which the payment is made

(c) at the maximum marginal rate of 30%

(d) at the average rate of tax calculated on the basis of TDS of preceding financial year.

28.13: The salary for the purpose of deduction of tax at source shall be rounded off to nearest:

(a) Rupee one;

(b) Rupee ten

(c) Rupee hundred

(d) Rupee thousand

28.14: Liability to deduct tax at source in case of income from interest on securities arises at the time of :

(a) payment of interest;

(b) accrual of interest

(c) credit of interest to the account of the payee/interest payable account or payment thereof whichever is earlier

28.15: No deduction of tax at source on interest on listed debentures is to be done by the widely held company :

(a) if the interest is paid by cheque;

(b) if the interest is paid by account payee cheque and the amount of interest paid or payable during the financial year does not exceed Rs.5,000

(c) same as (b), but interest is paid or payable to an individual who is resident in India

28.16: The rate of T.D.S in case of listed debentures for the financial year 2018-19 is :

(a) 20%

(b) 21%

(c) 10% + HEC @ 4%

(d) 10%

28.17 : Hariom has deposited a sum of Rs.2,00,000 on 1.4.2014 with a schedule bank for one year at the interest

rate of 10% p.a. The bank should deduct tax at source amounting to :

(a) Rs.2,060;
(b) Rs.2,000
(c) Rs.4,000
(d) Rs.4,120

28.18 : Hariom buys 'Kisan Vikas Patra' of Rs.2,00,00,000 which will yield an interest of 9% p.a. Such investment is made for a year. What amount of tax will be deducted at source on their maturity ?

(a) Rs.2,03,940
(b) Rs.1,85,400
(c) Nil
(d) Rs.1,80,000

28.19 : Hari has won a State Government Lottery of Rs.1,00,000 on 11.10.2017. The State Government should deduct tax on such winning amounting to :

(a) Rs.30,000;
(b) Rs.33,000;
(c) Rs.33,990;
(d) Rs.30,900;

28.20: Hari has won a horse race on 11.10.2017 and is entitled to a prize of Rs.2,00,000. The race club should deduct tax at source amounting to :

(a) Rs.66,000;
(b) Rs.60,000
(c) Rs.67,980;
(d) Rs.61,800;

28.21: Hari has won a horse race 11.10.2019 and is entitled to a prize of Rs.9,000. On 12.12.2019 he won one more horse race with a prize of Rs.18,000. The race club should deduct tax at source amounting to :

(a) Rs.8,100;
(b) Rs.2,700;
(c) Rs.5,400;
(d) Rs.2,400;

28.22: Rajesh, an individual, whose turnover of the business for the preceding year exceeded Rs.1crore, has engaged a contractor for building his residential house. During the P.Y., he has made a payment of Rs.1,00,000 to the contractor being an individual. Rajesh should deduct the tax at source amounting to :

(a) Rs.2,060;
(b) Rs.1,000
(c) Rs.10,000;
(d) Nil;

28.23: A company has given an advertising contract to an advertising agency which is also a company. During the P.Y., it has paid a sum of Rs.2,40,000 to the advertising agency a firm. The company should deduct tax amounting to :

(a) Rs.4,800
(b) Rs.4,944
(c) Rs.2,720
(d) Rs.2,640

28.24 : Anand and Co. a firm of contractors has given some works contract to Babu Lal and Associates a firm of sub-contractors. During the P.Y., it has made a payment of Rs.4,00,000 to Babu Lal and Associates. Anand and Co., should deduct tax amounting to :

(a) Rs.8,000
(b) Rs.4,120
(c) Rs.4,000
(d) Rs.8,240

28.25 : Lower deduction certificate :

(a) is issued by assessee himself
(b) is issued by concerned A.O.
(c) concerned C.I.T.
(d) none of the above

28.26 : Self declaration under section 197A :

(a) is to be made by assessee himself
(b) is issued by concerned A.O
(c) concerned C.I.T.
(d) none of the above

ADVANCE TAX

28.27 : The scheme of advance payment of tax is commonly known as :

(a) "earn more pay more"
(b) "a step towards national building"
(c) "pay as you earn scheme"
(d) None of the above

28.28 : Advance tax is paid :

(a) during the previous year;
(b) during the assessment year
(c) partly during the previous year and partly during the assessment year
(d) None of the above

28.29 : Advance tax paid by the assessee will be :

(a) added to the amount of 'self-assessment tax'
(b) deducted from 'self-assessment tax'
(c) no adjustment will be made

28.30 : The first installment of advance tax in case of a non-company assessee should be made :

(a) on or before 15th September of the relevant financial year
(b) on or before 15th July of the relevant financial year
(c) on or before 15th June of the relevant financial year
(d) Advance tax is not paid by non-corporate assessees.

28.31 : The first installment of advance tax in case of a company assessee should be made :

(a) on or before 15th July of the relevant financial year
(b) on or before 15th June of the relevant financial year
(c) on or before 15th September of the relevant financial year

28.32 : The advance tax is payable by the assessee if the advance tax payable during the financial year :

(a) exceeds Rs.5,000;
(b) is Rs.10,000 or more ;
(c) is Rs.5,000 or more
(d) exceeds Rs.10,000

28.33 : The first installment of advance tax in case of a firm should be made :

(a) on or before 15th September of the relevant financial year

(b) on or before 15th July of the relevant financial year

(c) on or before 15th June of the relevant financial year

(d) on or before 15th October of the relevant financial year

28.34 : The first installment of advance tax in case of a foreign company should be made:

(a) on or before 15th June of the relevant financial year;

(b) on or before 15th October of the relevant financial year

(c) on or before 15th September of the relevant financial year

(d) on or before 15th July of the relevant financial year

28.35 : The amount of advance tax payable by the company assessee on or before 15th June shall be :

(a) 30% of the advance tax payable;

(b) 12% of the advance tax payable;

(c) 15% of the advance tax payable;

(d) 45% of the advance tax payable;

28.36 : A senior citizen will pay advance tax if :

(a) he has any income other than income under the head PGBP

(b) his advance tax is Rs. 10,000 or more.

(c) he has *any* income under the head PGBP

(d) his advance tax is Rs. 50,000 or more.

28.37 : Which of the following is not required to pay advance tax :

(a) assessee claiming presumptive taxation under section 44AE;

(b) assessee carrying 'specified business' referred to in section 35AD;

(c) assessee claiming presumptive taxation under section 44AD.

(d) None of the above.

28.38 : For the financial year 2019-20, estimated tax (before TDS) of Mr. Ram is Rs. 50,000. TDS so far is Rs. 20,000. He has not paid any advance tax in Q1. So for Q-2, what amount he should pay as advance tax :

(a) Rs. 15,000;

(b) Rs. 22,500

(c) Rs. 13,500

(d) Rs. 9,000

28.39 : The estimated annual income for P.Y. 2019-20 of X Ltd. is Rs. 2,00,000 (during Q-1), Rs. 6,00,000 (during Q-2), Rs. 4,50,000 (during Q-3) and Rs. 8,00,000 (during Q-4). What amount will be paid as advance tax :

(a) Q-1 Rs. 9,270
Q-2 Rs. 83,430
Q-3 Rs. 1,04,288
Q-4 Rs. 2,47,200

(b) Q-1 Nil
Q-2 Rs. 83,430
Q-3 Rs. 1,04,288
Q-4 Rs. 2,47,200

(c) Q-1 Nil
Q-2 Rs. 84,240
Q-3 Rs. 21,060
Q-4 Rs. 1,44,300

(d) Q-1 Nil
Q-2 Rs. 83,430
Q-3 Rs. 20,858
Q-4 Rs. 1,42,912

28.40 : Assessing Officer (A.O.) wants to issue a notice requiring the assessee to pay his advance tax for P.Y. 2019-20. From the following information, determine the amount of advance tax to be asked by the A.O. in his notice :

P.Y.	Income under regular assessment	Returned income
2015-16	Rs. 6,00,000	Rs. 5,50,000
2016-17	No regular assessment made has been made	Rs. 10,50,000
2017-18	Rs.9,00,000	Rs. 9,50,000
2018-19	No regular assessment made has been made	Rs. 8,00,000

(a) Rs. 9,00,000
(b) Rs. 9,50,000
(c) Rs. 10,50,000
(d) Rs. 8,00,000

28.41 : The tax deposited on 16th March is treated as:

(a) Self-assessment tax
(b) Advance tax
(c) Advance tax but will be subject to interest
(d) None of the above

28.42 : While calculating advance tax the assessee should take into account:

(a) TDS;
(b) Advance tax deposited in earlier installment
(c) TCS
(d) All of the above

28.43 : Advance tax deposited on 16th Sept. as against the due date of 15th Sept. will have consequence of:

(a) Interest for one day
(b) Interest for one month
(c) Interest for 3 months
(d) 7 day delay is condoned

TCS

28.44 : What is the rate of TCS in case of 'scrap' :

(a) 2.5%
(b) 1%
(c) 1.5%
(d) No TCS on sale of 'scrap'

28.45 : What is the rate of TCS in case of 'alcoholic liquor for human consumption' :

(a) 2.5%
(b) 1%
(c) 1.5%
(d) 5%

28.46 : What is the rate of TCS in case of 'coal' :

(a) 2.5%
(b) 1%
(c) 1.5%
(d) No TCS on sale of 'scrap'

28.47 : What is the rate of TCS in case of 'tendu leaves' :

(a) 2.5%
(c) 1.5%

(b) 1% (d) 5%

28.48 : When TCS is collected in case of sale of 'jewellery' :

(a) Sale price of such jewellery exceeds Rs. 5,00,000 (c) Both (a) and (b)

(b) Consideration is paid in cash (whether wholly or partly) (d) No TCS in case of Jewellery

28.49 : Which of the following lease will be subject to TCS :

(a) Lease of mines (c) Lease of parking lot

(b) Lease of toll plaza (d) All of the above

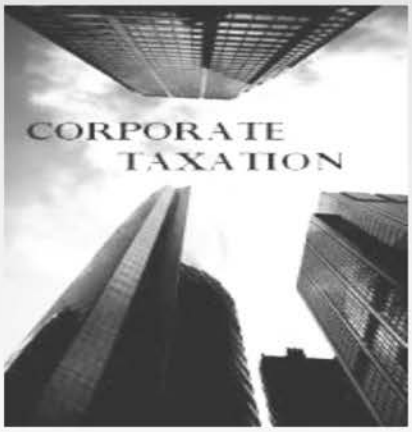
28.50 : Total sale consideration of jewellery items is Rs. 6,00,000. Entire sale consideration is paid in cash. What amount of TCS will be collected in this case :

(a) Rs. 6,000; (c) Rs. 1,000

(b) Rs.60,000; (d) *Nil*. W.e.f. A.Y. 2018-19, no TCS in case of jewellery and bullion

ANSWERs TO MCQs

Question	Answer	Question	Answer	Question	Answer	Question	Answer	Question	Answer
28.1	D	28.2	C	28.3	D	28.4	A	28.5	C
28.6	A	28.7	D	28.8	D	28.9	C	28.10	D
28.11	B	28.12	B	28.13	B	28.14	C	28.15	C
28.16	D	28.17	B	28.18	C	28.19	A	28.20	B
28.21	C	28.22	B	28.23	A	28.24	A	28.25	B
28.26	A	28.27	C	28.28	A	28.29	B	28.30	C
28.31	B	28.32	B	28.33	C	28.34	C	28.35	C
28.36	C	28.37	D	28.38	C	28.39	C	28.40	A
28.41	C	28.42	D	28.43	C	28.44	B	28.45	B
28.46	B	28.47	D	28.48	D	28.49	D	28.50	D



CHAPTER 29
TAXATION OF COMPANIES

29.1 Meaning and categories of companies

1. Meaning of 'Company' [Section 2(17)] : As per this section, 'company' means :

(i) any Indian company, or

(ii) any body corporate incorporated under the laws of a foreign country, or

(iii) any institution, association or body which is/was assessed as a company under Income Tax Act, 1922/1961; or

(iv) any institution, association or body, whether incorporated or not and whether Indian or non-Indian, which is declared by general or special order of the CBDT to be a company.

2. Categories of 'Companies': Income tax act prescribes the following types of companies :

♦ **Indian company [Sec.2(26)]**	'Indian Company' means as a company formed and registered under the Companies Act, 1956 AND INCLUDES— (a) a company formed and registered under any law relating to companies: ♦ In force in the State of Jammu and Kashmir; ♦ In force in the Union Territories of Dadra and Nagar Haveli, Goa, Daman and Diu and Pondicherry; ♦ In force in any other part of India; (b) any corporation established by or under a Central, State or Provincial Act; (c) any institution, association or body which is declared by the Board to be a company under Section 2(17) of the Income Tax Act, 1961; Provided that the registered or, as the case may be, principal office of the company, corporation, institution, association or body in all cases is in India.
♦ **Domestic company [Sec.2(22A)]**	Domestic company means: ♦ an Indian company; or ♦ any other company which, has made the prescribed arrangements for the declaration and payment of dividend within India. These arrangements are as follows: ■ Its share register is regularly kept at its principal place of business in India. ■ Its GMs for passing the accounts are held only at a place within India. ■ Its dividends is payable within India to all shareholders.

♦ **Foreign company**	Foreign company means as a company, which, is not a domestic company.
♦ **Widely held company** **[Sec.2(18)]**	A company is said to be "Company in which the public are substantially interested" in the following cases, namely – (*i*) *Govt. company:* If it is owned by the Government or RBI. (*ii*) *Non-profit company:* If it is a company which is registered under section 25 of the Companies Act, 1956; or (*iii*) *Declared company:* If it is declared by CBDT to be a company in which the public are substantially interested; or (*iv*) *Company accepting deposits [i.e. Nidhi Co.]:* If it is a company which carries on the business of acceptance of deposits from its members. (*v*) *Shares held by co-operative societies:* If its 50% or more shares (equity) have been allotted to or acquired by, one or more cooperative societies; or (*vi*) *Public limited company–Listed company:* If it is a company (which is not a private company) the shares of which are listed as on the last day of the relevant P.Y. (*vii*) *Public limited company–Govt. shares :* If its 50% (40% in case of an industrial company) or more equity shares were beneficially held (throughout the relevant P.Y.) by : (a) the Government, or (b) a corporation established by a Central or State or Provincial Act, or (c) any company in which the public are substantially interested.
♦ **Closely held company**	A Company in which the public is not substantially interested is known as a closely held company.

MINIMUM ALTERNATE TAX (MAT)

29.2 Minimum Alternate Tax (MAT)

1. Meaning of MAT : Minimum Alternate Tax is a minimum tax amount which a company is required to pay. MAT is computed as per section 115JB. It was introduced *w.e.f.* 1.4.1988.

2. Why MAT : The Indian Income Tax Act contains large number of exemptions (*e.g.* 10A, 10AA etc.) and deductions from gross total income (*e.g.* 80-IA, 80-IB, 80-IC etc.). Further, depreciation allowable under the Income Tax Act is not the same as required under the Companies Act. The result of such exemptions, deductions, and other incentives under the Income tax Act was the emergence of 'Zero Tax Companies' which inspite of having high book profit were able to reduce their taxable income to nil, and thereby no tax liability.

3. Tax liability under MAT : Tax liability under MAT [Section 115JB]: As per this section, where normal income tax payable by a COMPANY is less than 18.5% (*plus* Surcharge *minus* Marginal relief *plus* HEC) of book profit, then such 'book profit' will be deemed to be total income of the company and 18.5% (*plus* Surcharge *minus* Marginal relief *plus* HEC) of such book profit will be the tax liability of such company.

Thus, tax liability will be as under—

	Rs.
♦ *First* compute the normal income tax	.....
Add : **SC** (if any)	.....
Less : **MR** (if any)	.....
Add : **HEC**@ 4% of (Tax + SC−MR)	.....
Normal income tax (A)	.....
♦ *Then* calculate MAT [*i.e.* Book Profit × 18.5%]	.....
Add : **SC**(if any)	.....
Less : **MR** (if any)	.....
Add : **HEC**@ 4% of (Tax + SC−MR)	.....
MAT (B)	.....
Tax payable will be HIGHER of (A) and (B)	.....
Where—	.....
SC : Surcharge	.....
MR : Marginal Relief	
HEC : Health and Education Cess	

29.3 Preparation of 'profit and loss account'

As per section 115JB(2) every company shall prepare its profit and loss account in accordance with provisions of Companies Act. However, a company which is not required to prepare its profit and loss accounts in accordance with Companies Act, has, an option to prepare its profit and loss account for the relevant previous year

- either in accordance with the provisions of Companies Act ;
- or in accordance with the provisions of the Act governing such company.

29.4 How to compute 'book profit' [Explanation to section 115JB]

Profit/loss as per Profit and Loss Account prepared as per SCHEDULE-III of Companies Act, is to be adjusted with the following amounts if debited/credited to such profit and loss account—

ADDITIONS TO BE MADE
1. **Amounts of income tax paid or payable, and provisions therefor** *Notes*— *1.* For the purposes of this clause, income-tax shall include— ♦ Dividend distribution tax [sections 115-O] or income distribution tax [section 115R]; ♦ Any interest charged under this Act; ♦ Surcharge, education cess, secondary and higher education cess on income tax, if any. *2.* Wealth tax, FBT, Securities transaction tax, gift tax, indirect taxes, and banking cash transaction tax are allowed in MAT, therefore, not to be added back to the book profit.
2. Amounts transferred to any reserves (other than a reserve specified under section 33AC).
3. Amounts of provisions made for UNASCERTAINED liabilities. *Note: Following are NOT unascertained liabilities, therefore not to be added back—*

1. Provision for 'gratuity' which is made as per actuarial valuation.
2. Provision for 'leave encashment' which is made on scientific basis.
3. Provision for 'bad debts'.

4. Amount of provisions made for loss of subsidiary company(s).

5. Amounts of dividend paid/payable/proposed.

6. Amount of expenditures relating to any income which is exempt u/s section 10 or 11 or 12. [Other than expenditures relating to long term capital gain exempt under section 10(38)]

7. Amount of Depreciation (as per P&L) INCLUDING depreciation on revalued amount of assets.

8. Amount of deferred tax and the provision therefor.

9. Amount of provision made for diminution in the value of any asset.

10. Credit balance of revaluation reserve relating to the revalued assets which are disposed/retired

DEDUCTIONS TO BE MADE

1. Amount credited to P&L account which is withdrawn from reserves/provisions provided that—

- If such reserve/provision was created before 1.4.1997, it was created by debiting the P&L account; or
- If such reserve/provision was created *on or after* 1.4.1997, it was subjected to MAT.

2. Amount of incomes which are exempt under section 10 or 11 or 12. [Other than LTCG which is exempt under section 10(38) *i.e.* long term capital gains on transfer of listed equity shares]

3. Amount of depreciation debited to the profit and loss account (excluding the depreciation on account of revaluation of assets).

4. Amount withdrawn from revaluation reserve and credited to the P&L account, to the extent it does not exceed the amount of depreciation on account of revaluation of assets.

5. Amount of brought forward loss OR unabsorbed depreciation, whichever is less as per books of account.

5A. Amount of unabsorbed depreciation AND loss brought forward in case of a

- **company against whom an application for corporate insolvency resolution process has been admitted by the Adjudicating Authority under section 7 or section 9 or section 10 of the Insolvency and Bankruptcy Code, 2016.**
- **company, and its subsidiary and the subsidiary of such subsidiary, where, the Tribunal, on an application moved by the Central Government under section 241 of the Companies Act, 2013 has suspended the Board of Directors of such company and has appointed new directors who are nominated by the Central Government under section 242 of the said Act;**

[Inserted by Finance Act 2019, w.e.f. A.Y. 2020-21]

6. Amount of profits of sick industrial company during its sickness. [sickness will end when its net worth becomes equal to or exceeds the accumulated losses thereof]

7. Amount of deferred tax, if any such amount is credited to the P&L account.

8. Royalty income of patent chargeable to tax under section 115BBF

29.5 Rationalization of provisions of section 115JB in line with Ind-AS [New sub-sections (2A), (2B) and (2C) introduced to section 115JB

Central Government notified the Indian Accounting Standards (Ind AS) which are converged with International Financial Reporting Standards(IFRS) and prescribed the Companies (Indian Accounting Standards) Rules, 2015 which laid down a roadmap for implementation of these Ind AS.

Globally, different approaches have been adopted to deal with the tax issues arising from adoption of IFRS. For ensuring horizontal equity across the companies irrespective of the fact that whether they follow Ind AS or the existing Indian GAAP, the Central Government has issued Income Computation and Disclosure Standards (ICDS) for computation of taxable income for specified heads of income.

As the book profit based on Ind AS compliant financial statement is likely to be different from the book profit based on existing Indian GAAP, the Central Board of Direct Taxes (CBDT) constituted a committee in June, 2015 for suggesting the framework for computation of minimum alternate tax (MAT) liability under section 115JB for Ind AS compliant companies in the year of adoption and thereafter.

The Committee submitted first interim report on 18th March, 2016 which was placed in public domain by the CBDT for wider public consultations. The Committee submitted the second interim report on 5th August, 2016 which was also placed in public domain. The comments/ suggestions received in respect of the first and second interim report were examined by the Committee. After taking into account all the suggestions/ comments received, the Committee submitted its final report on 22nd December, 2016.

Based on the recommendations of this committee, section 115JB is amended to provide the framework for computation of book profit for Ind AS compliant companies in the year of adoption and thereafter.

For computation of book profit of Ind AS Compliant Companies (IASCC), following steps need to be followed—

Step 1	*NET PROFIT* - Find out net profit [before other comprehensive income (OCI)] as per statement of profit and loss of the company.
Step 2	*ADJUSTMENTS OF SEC 115JB* - Make adjustments which are given under the existing provisions under section 115JB(2).
Step 3	*ADJUSTMENTS RELATING TO OCI [SECTIO 115JB(2A)]* - Make further adjustment pertaining to OCI items that will be permanently recorded in reserves (*i.e.* never to be reclassified to the statement of profit and loss).
Step 4	*ADJUSTMENTS RELATING TO DEMERGER [SECTIO 115JB(2B)]* - Make specific adjustments in the case of demerger as given by new sub-section (2B) to section 115JB.
Step 5	*MAT ON FIRST TIME ADOPTATION [SECTIO 115JB(2C)]* - Make specific adjustments to the book profit in the year of convergence and each of the following 4 previous years in the manner provided by new sub-section (2C) to section 115JB.

New sub-sections introduced by Finance Act, 2017 are as follows :

New Sub-section (*2A*) to section 115JB : For a company whose financial statements are drawn up in compliance to the Indian Accounting Standards specified in Annexure to the Companies (Indian Accounting Standards) Rules, 2015, the book profit as computed in accordance with *Explanation* 1 to sub-section (*2*) shall be further—

(a) Increased by	all amounts CREDITED to other comprehensive income (OCI) in the statement of profit and loss under the head "Items that will not be re-classified to profit or loss
(b) Decreased by	all amounts DEBITED to OCI in the statement of profit and loss under the head "Items that will not be re-classified to profit or loss
(c) Increased by	amounts or aggregate of the amounts debited to the statement of profit and loss on distribution of non-cash assets to shareholders in a demerger in accordance with Appendix A of the Indian Accounting Standards 10
(d) Decreased by	all amounts or aggregate of the amounts credited to the statement of profit and loss on distribution of non-cash assets to shareholders in a demerger in accordance with Appendix A of the Indian Accounting Standards 10

Provided that nothing contained in clause (*a*) or clause (*b*) shall apply to the amount credited or debited to other comprehensive income under the head "Items that will not be re-classified to profit or loss" in respect of—

(i) Revaluation surplus	revaluation surplus for assets in accordance with the Indian Accounting Standards 16 and Indian Accounting Standards 38
(ii) Gain or loss from equity investments	gains or losses from investments in equity instruments designated at fair value through other comprehensive income in accordance with the Indian Accounting Standards 109

Provided further that the book profit of the previous year shall be increased or decreased by the amount referred to in (i) and (ii) above, if during the previous the asset or investment referred to in (i) and (ii) above is

- ✓ retired,
- ✓ disposed,
- ✓ realised,
- ✓ or otherwise transferred.

Analysis of Section 115JB(2A) : The other comprehensive income includes certain items that will *permanently* be recorded in reserves and hence shall never be reclassified to the statement of profit and loss included in the computation of book profit. These items shall be included in book profit for MAT purposes at the point of time as specified in the table (*infra*)—

Different items	*Point of time*
1. **Revaluation surplus [Ind AS 16 and Ind AS 38] :** Changes in revaluation surplus of PPE (property, plant or equipment) and intangible assets	✓ Revaluation reserve credited/debited to other comprehensive income shall NOT be adjusted in the book profit in the year in which it is debited or credited [first proviso to section 115JB(2A)] ✓ It shall be included in book profit of the year in which the asset/ investment is retired, disposed, realised or otherwise transferred [second proviso to section 115JB(2A)]
2. **Gain/loss in equity instruments [Ind AS 109] :** Gains and losses from investments in equity instruments designated at fair value through other comprehensive income.	✓ Gain or loss from such investments debited/credited to other comprehensive income shall not be adjusted in the book profit in the year in which it is credited/debited [first proviso to section 115JB(2A)] ✓ It shall be added in book profit in the year in which the investment retired/disposed/realised [second proviso to section 115JB(2A)]
3. **Re-measurements of defined benefit plans [Ind AS 19]**	To be included in book profits every year as the re-measurements gains and losses arise.
4. **Any other item**	To be included in book profits every year as the gains and losses arise.

New Sub-section (*2B*) to section 115JB : In the case of a resulting company, where the property and the liabilities of the undertaking or undertakings being received by it are recorded at values different from values appearing in the books of account of the demerged company immediately before the demerger, any change in such value shall be ignored for the purpose of computation of book profit of the resulting company under this section.

Analysis of Section 115JB(2B) : Appendix A of Ind AS 10 provides that any distributions of non-cash assets to shareholders (for example, in a demerger) shall be accounted for at fair value. The difference between the carrying value (*i.e.* Book Value) of the assets and the fair value is recorded in the profit and loss account (as gain or loss on disposal).

Correspondingly, the reserves are debited at fair value to record the distribution as a 'deemed dividend' to the shareholders. As there is a corresponding adjustment in retained earnings, this difference arising on demerger shall be excluded from the book profits. *[Adjustment in MAT calculation of demerged company : Deduction]*

However, in the case of a resulting company, where the property and the liabilities of the undertaking being received by it are recorded at values different from values appearing in the books of account of the demerged company immediately before the demerger, any change in such value shall be ignored for the purpose of computing of book profit of the resulting company. *[Adjustment in MAT calculation of resulting company : Nil]*

New Sub-section (*2C*) to section 115JB : For a company referred to in sub-section (*2A*), the book profit of the year of convergence and each of the following four previous years, shall be further increased or decreased, as the case may be, by one-fifth of the transition amount:

Provided that the book profit of the previous year in which the asset or investment referred to in sub-clauses (*B*) to (*E*) of clause (*iii*) of the *Explanation* is retired, disposed, realised or otherwise transferred, shall be increased or decreased, as the case may be, by the amount or the aggregate of the amounts referred to in the said sub-clause relatable to such asset or investment:

Provided further that the book profit of the previous year in which the foreign operation referred to in sub-clause (*F*) of clause (*iii*) of the *Explanation* is disposed or otherwise transferred, shall be increased or decreased, as the case may be, by the amount or the aggregate of the amounts referred to in the said sub-clause relatable to such foreign operations.

Explanation.—For the purposes of this sub-section, the expression—

(*i*) "year of convergence" means the previous year within which the convergence date falls;

(*ii*) "convergence date" means the first day of the first Indian Accounting Standards reporting period as defined in the Indian Accounting Standards 101;

(*iii*) "transition amount" means the amount or the aggregate of the amounts adjusted in the other equity (excluding equity component of compound financial instruments, capital reserve, and securities premium reserve) on the convergence date but not including the following,—

(*A*) amount or aggregate of the amounts adjusted in the other comprehensive income on the convergence date which shall be subsequently re-classified to the profit or loss;

(*B*) revaluation surplus for assets in accordance with the Indian Accounting Standards 16 and Indian Accounting Standards 38 adjusted on the convergence date;

(*C*) gains or losses from investments in equity instruments designated at fair value through other comprehensive income in accordance with the Indian Accounting Standards 109 adjusted on the convergence date;

(*D*) adjustments relating to items of property, plant and equipment and intangible assets recorded at fair value as deemed cost in accordance with paragraphs D5 and D7 of the Indian Accounting Standards 101 on the convergence date;

(*E*) adjustments relating to investments in subsidiaries, joint ventures and associates recorded at fair value as deemed cost in accordance with paragraph D15 of the Indian Accounting Standards 101 on the convergence date; and

(*F*) adjustments relating to cumulative translation differences of a foreign operation in accordance with paragraph D13 of the Indian Accounting Standards 101 on the convergence date.';

Analysis of Section 115JB(2C) *i.e. MAT ON FIRST TIME ADOPTION [SECTIO 115JB(2C)]* : The book profit of the year of convergence and each of the following four years should be further increased or decreased, as the case may be, by $1/5^{th}$ of the transition amount. The transition amount would be calculated as an amount adjusted in the other equity (excluding capital reserve, and securities premium reserve) on the convergence date but not including the following—

Different items	Adjustments
1. Items adjusted in OCI that will subsequently be reclassified to profit or loss	No adjustment
2. Changes in revaluation surplus of PPE and intangible assets (Ind AS 16 and Ind AS 38)	To be included in book profits at the time of realisation/disposal/retirement or otherwise transferred
3. Gains and losses from investments in equity instruments designated at fair value through OCI (Ind AS 109)	To be included in book profits at the time of realisation/ disposal/retirement or otherwise transferred
4. Adjustments relating to items of PPE and intangible assets recorded at fair value as deemed cost as per Ind AS 101	(a) To be ignored for the purposes of computation of book profits (b) Depreciation should be computed ignoring the amount of adjustment (c) Gain/loss on realization/disposal/retirement of such assets should be computed ignoring the adjustment
5. Adjustments relating to investments in subsidiaries, joint ventures and associates recorded at fair value as deemed cost as per Ind AS 101	To be included in book profits at the time of realisation
6. Adjustments relating to cumulative translation differences of a foreign operation as per Ind AS 101. An entity may elect a choice whereby the cumulative translation differences for all foreign operations are deemed to be zero at the date of transition to Ind AS.	To be included in book profits at the time of disposal or otherwise transferred

Notes—

1. **Applicability of MAT to the foreign companies will be as under :**

(a) If DTAA exists between India and foreign country	♦ If foreign company has a PE in India – MAT applies. ♦ If foreign company has NO PE in India – MAT does NOT apply
(b) If DTAA does not exist	♦ Such foreign company do not require any registration under any law for the time being in force – MAT does NOT apply. ♦ Such foreign company require any registration under any law for the time being in force – MAT applies.

2. **Explanation 4A of Section 115JB.—** For the removal of doubts, it is hereby clarified that the provisions of this section shall not be applicable and shall be deemed never to have been applicable to an assessee, being a foreign company, where its total income comprises solely of profits and gains from business referred to in section 44B or section 44BB or section 44BBA or section 44BBB and such income has been offered to tax at the rates specified in those sections. [Inserted by Finance Act, 2018 w.r.e.f. A.Y. 2001-02]

3. The adjustments specified in the explanation (*i.e.* additions and deductions) are exhaustive. Thus, even if an expense which is disallowed under section 37 while computing normal income, will not be added back here in MAT.

4. MAT provisions also apply to Developer or a Unit located in S.E.Z.

5. Provisions of MAT shall also apply were the normal income is computed on presumptive basis applies. (*e.g.* section 44AD, 44AE etc.). However, book profit shall be calculated in accordance with the provision of section 115JB read with explanation to section 115JB.

6. While calculating advance tax liability, provision of section 115JB shall be followed. It means, HIGHER, of 'estimated MAT' or 'estimated normal income tax' will be taken to be the advance tax liability.

7. As per section 115JB(5A), provision of section 115JB shall NOT apply to any income accruing or arising to a company from life insurance business.

8. Authority for Advanced Ruling in case of *Timken Co., In re* [2010] 193 Taxman 20 (New Delhi), held that since the applicant (*i.e.* Foreign company) *did not have any physical presence* in India in the form of an office or branch or a PE, the provisions of Minimum Alternate Tax (MAT) are not applicable.

29.6 MAT Credit : Meaning and provisions [Section 115JAA]

1. Meaning : MAT credit means the excess of tax payable under 115JB (herein after called as "MAT") over normal tax liability which is allowed to be set off against payment of normal tax in subsequent years. MAT credit is calculated as under—

- **Step 1 :** Calculating MAT Credit ignoring Foreign Tax Credit (FTC)

	Rs.
MAT [*i.e.* Book Profit × 18.5% (+SC, if any, –MR, if any, + HEC)]	…….
Less: Normal income tax (+SC, if any –MR, if any, + HEC)]	…….
MAT credit ignoring FTC	…….

- **Step 2 (w.e.f. A.Y. 2018-19) : Calculating MAT Credit NOT allowed to be carried forward :**

	Rs.
FTC *allowed* against MAT	…….
***Less :* FTC *allowable* against normal tax**	…….
MAT credit NOT allowed to be carried forward	…….

- **Step 3 (w.e.f. A.Y. 2018-19) : MAT Credit allowed to be carried forward = Step 1 (minus) Step 2.**

2. Utilisation of MAT credit : MAT credit is utilised in the subsequent year in which normal income tax exceeds the amount of MAT. The normal income tax of subsequent year will be reduced by the amount of MAT credit. However, credit utilisation will be restricted to LOWER of the following amount—

- ♦ Tax difference [*i.e.* normal income tax of that subsequent year *minus* MAT of that subsequent year];
- ♦ Amount of credit available;

3. No interest on MAT credit : No interest will be paid on amount of MAT credit to the assessee.

4. Carry forward of MAT credit : MAT credit can be carried forward for 15 years immediately succeeding the relevant assessment year.

29.7 Dividend Distribution Tax (DDT) [Section 115-O]

Provisions relating to Dividend Distribution Tax are as under—

1. Who is liable to pay DDT : Every domestic company is liable to pay tax on dividend:

- ♦ distributed,
- ♦ declared or
- ♦ paid

It shall be payable @15% of *dividend grossed-up* plus* surcharge @12% *plus* HEC @4%. Thus, total DDT rate is as under :

DDT Rate	As a % of dividend grossed up* (i.e. on gross)	As a % of dividend distributed (i.e. on net)
1. Applicable in case of actual dividend and deemed dividends referred to in Section 2(22)(a)/(b)/(c)/(d)	15	17.65 (*i.e.* 15/85*100)
Add : Surcharge @12% (of DDT Rate)	1.8	2.12
Add : HEC @4% (of DDT Rate + SC)	0.672	0.7908
Total	17.47	20.56
Dividend grossed up = Total dividend distributed to shareholders /85 15		
2. Applicable in case of deemed dividends referred to in Section 2(22)(e)		**30**
Add : Surcharge @12% (of DDT Rate)		**3.6**
Add : HEC @4% (of DDT Rate + SC)		**1.344**
Total		**34.944**

It should be noted that DDT is paid in addition to the income tax payable by the company.

2. Amount on which DDT is to be paid : The amount on which DDT is to be paid is as under—

The amount on which DDT is to paid	Amount on which DDT is NOT paid
♦ Actual dividend (declared/distributed etc.) ♦ Deemed dividend referred to in section: → 2(22)(*a*) [*i.e.* distribution of assets] → 2(22)(*b*) [*i.e.* issuance of debentures etc.] → 2(22)(*c*) [*i.e.* distribution on liquidation] → 2(22)(*d*) [*i.e.* re-payment of excess capital] → 2(22)(*e*) [*i.e.* loan and advance given by a closely held company to its beneficial shareholder or his concern]	♦ Dividend received by a domestic company : (a) from a foreign company in which such domestic company holds **26% or more shares.** Since on this dividend, the domestic company is required to pay income tax under section 115BBD @ 17.47%. (b) from its domestic subsidiary company in which such domestic company (*i.e. recipient company*) holds **51% or more shares.** Since on this dividend such subsidiary company is required to pay DDT.

3. DDT applicable to SEZ units : Finance Act, 2011 made applicable section 115-O to an enterprise or undertaking engaged in developing, operating and maintaining a SEZ.

4. Due date for deposit of DDT : DDT shall be deposited within 14 days from the date of—

(*a*) declaration of dividend, or
(*b*) distribution of dividend, or
(*c*) payment of dividend,

Whichever is earlier.

5. Taxability of foreign dividends [Section 115BBD] : Finance Act, 2011 has inserted this section for taxing foreign dividends received from a foreign company (in which the Indian Company holds 26% or more of equity share capital) at the rate of 15% *plus* surcharge @12% *plus* HEC 4%. Thus, total foreign dividend tax (FDT) rate comes to **17.47%**. No expenditure in respect of such dividends shall be allowed under the Act.

6. No DDT in case of company located in International Financial Services Centre : On or after 1.4.2017, DDT is not required to be paid by a company as a unit of International Financial Services Centre if it distributes dividend out of its current income or accumulated income. [Inserted retrospectively by Finance Act, 2019]

MULTIPLE CHOICE QUESTIONS (MCQs)

29.1 : Company means:

(a) any Indian Company;
(b) any institution, association which was assessed as company under Income Tax Act, 1922;
(c) Any body corporate incorporated under the laws of a foreign country
(d) All of the above

29.2 : Indian company means a company formed and registered under Companies Act,1956 (Companies Act, 2013) and includes:

(a) A company formed and registered under law relating to companies in force in Jammu and Kashmir;
(b) A company formed and registered under law relating to companies in force in Daman, Diu and Pondicherry;
(c) Both of the above
(d) None of the above

29.3 : Domestic Company means:

(a) An Indian Company;
(b) A Non-Indian company which has made prescribed arrangements for declaration and payment of dividend in India;
(c) Both of the above
(d) None of the above

29.4 : All non-Indian companies will be treated as "Foreign Company":

(a) True;
(b) False

29.5 : As per section 6(3), a company will be "Resident" if :

(a) it is an Indian Company;
(b) its management and control during the P.Y is "wholly" situated in India;
(c) (a) OR (b)
(d) (a) AND (b)

29.6 : Long Term Capital Gain on Listed Equity shares of an Indian Company in the hands of a Foreign Company will be taxable:

(a) @ 40%;
(b) Exempt upto Rs.1,00,000, any excess will be taxable under section 112A;
(c) @ 20%
(d) @ 15%.

29.7 : Short Term Capital Gain on Listed Equity shares of an Indian Company in the hands of a Foreign Company will be taxable:

(a) @ 40%;
(b) Fully Exempt;
(c) @ 20%
(d) @ 15%.

29.8 : Consider the following data :

Income = Rs. 10,00,000
Source of such income = A business located and wholly controlled from outside India
Place of receipt thereof = Outside India
This income will be taxable in the hands of

(a) Domestic Company
(b) Foreign Company
(c) Both (a) and (b)
(d) Not taxable at all

29.9 : X LTD. (a Domestic Company) received dividend of Rs. 6,00,000 from a foreign company in which such domestic company holds 26% shares; such dividend will be:

(a) Taxable @ 15% (+SC+HEC)
(b) Fully Exempt
(c) Taxable @ 30% (+SC+HEC)
(d) Taxable @ 40% (+SC+HEC)

29.10 : Assume in the above case, the shareholding is 24% instead of 26% :

(a) Taxable @ 15% (+SC+HEC)
(b) Fully Exempt
(c) Taxable @ 30% (+SC+HEC)
(d) Taxable @ 40% (+SC+HEC)

29.11 : Dividend Distribution Tax Rate (including SC and HEC) on Gross Dividend is :

(a) 15%
(b) 17.47%
(c) 30.9%
(d) 31.2%

29.12 : Dividend to be distributed by a Domestic company is Rs.7,00,000 which includes Dividend of Rs.2,00,000 received by such company from his subsidiary company (holding company holds 51% shares of it). D.D.T payable by such Domestic Company will be :

(a) 5,00,000 × 20.56%
(b) 7,00,000 × 16.995%
(c) 5,00,000 × 17.47%
(d) 5,00,000 × 31.2%

29.13 : Dividend to be distributed by a Domestic company is Rs.7,00,000 which includes Dividend of Rs.2,00,000 received by such company from a foreign company in which such domestic company holds 26% shares. D.D.T payable by such Domestic Company will be :

(a) 5,00,000 × 20.56%
(b) 7,00,000 × 16.995%
(c) 5,00,000 × 17.47%
(d) 5,00,000 × 31.2%

29.14 : Within how many days D.D.T will be deposited :

(a) 7 days from the date of distribution of dividend

(b) 14 days from the date of distribution of dividend

(c) 14 days from the date of declaration, distribution or payment of dividend, whichever is earlier

(d) 5th day of upcoming month.

MAT

29.15 : Provisions of section 115JB applies to :

(a) Company assessee

(b) Company, LLPs

(c) Company, LLPs, Firm

(d) All assessees having income exceeding Rs.1crore

29.16 : Which of following is NOT deducted from profit while computing "Book Profit":

(a) Agriculture income

(b) Dividend from domestic company

(c) Long Term Capital Gain on listed equity share referred to in section 10(38)

(d) Short Term Capital Gain on listed equity share referred to in section 111A

29.17 : Profit as shown by profit and loss account is Rs.15,00,000 after debiting/crediting the following items :

(i) Income tax shown in P/L A/C = Rs.1,50,000

(ii) Wealth tax shown in P/L A/C = Rs.15,000

(iii) Depreciation shown in P/L A/C = Rs.70,000

(iv) Long Term Capital Gain on listed equity shares (STT paid) = Rs.80,000

Calculate tax payable by X LTD. Assume depreciation as per Income Tax Act is Rs.1,00,000 :

(a) Rs.5,19,121

(b) Rs.4,66,500

(c) Rs.3,39,682

(d) Rs.3,05,250

29.18 : Profit as shown by profit and loss account is Rs.9,00,000 after debiting/crediting the following items:

(i) Income tax shown in P/L A/C = Rs.1,50,000

(ii) Wealth tax shown in P/L A/C = Rs.15,000

(iii) Depreciation shown in P/L A/C = Rs.70,000

(iv) Long Term Capital Gain on listed equity shares (STT paid) = Rs.6,80,000

Calculate tax payable by X LTD. Assume depreciation as per Income Tax Act is Rs.1,00,000 :

(a) Rs.1,94,250

(b) Rs.2,16,161

(c) Rs.1,06,500

(d) Rs.118,513

29.19 : While calculating "Book Profit" which of the following is admissible:

(a) Depreciation as per Income Tax Act
(b) Depreciation as per Companies Act
(c) Higher of the above
(d) Lower of the above

29.20 : What is MAT Credit :

(a) MAT – Normal Income Tax (Ignoring foreign tax credit)
(b) Normal Income Tax – MAT
(c) Amount in (a) or tax actually paid by the company, whichever is LOWER.
(d) Amount in (a) or amount in (b), whichever is LOWER.

29.21 : MAT Credit can be carried forward for:

(a) 15 years
(b) 10 years
(c) Infinite number of years
(d) cannot be carried forward as per sec.115JAA

29.22 : Interest rate on MAT credit :

(a) 10% p.a.
(b) 6% p.a.
(c) 9% p.a.
(d) no interest is paid on MAT credit.

ANSWERs TO MCQs

Question	Answer	Question	Answer	Question	Answer	Question	Answer	Question	Answer
29.1	D	29.2	C	29.3	C	29.4	B	29.5	C
29.6	B	29.7	D	29.8	A	29.9	A	29.10	C
29.11	B	29.12	C	29.13	C	29.14	C	29.15	A
29.16	C	29.17	A	29.18	B	29.19	B	29.20	C
29.21	A	29.22	D						



CHAPTER 30

ALTERNATE MINIMUM TAX (AMT)

30.1 Charging section of AMT [Section 115-JC]

As per this section—

- Where regular income tax payable by a person other than a company,
- is less than 18.5% (or 9% in case of a unit located in Financial Service Centre) PLUS applicable SC and HEC of Adjusted Total Income (ATI),

THEN,

- such ATI shall be deemed to be total income of that person and
- 18.5% or 9% (+SC+HEC) of adjusted total income will be the tax liability of such person.

Thus, tax liability will be calculated as under—

	Rs.
♦ *First* compute the regular income tax (including SC + HEC) **(A)**	…….
♦ *Then* calculate AMT [*i.e.* Adjusted total income × 18.5% or 9%] (including SC + HEC) **(B)**	…….
Tax payable will be HIGHER of (A) and (B)	…….
Where—	
SC : Surcharge	
HEC : Health and Education Cess	

30.2 Applicability and non-applicability of AMT [Section 115-JEE]

Applicability and non-applicability of AMT provisions is as under—

Cases where AMT provisions are applicable	*Cases where AMT provisions are not applicable*
(1)	*(2)*
AMT will apply ONLY in the following cases— ♦ Where assessee has claimed deductions under section 80H to 80RRB (other than section 80P); ♦ Where assessee has claimed exemption under section 10AA.	In the following cases, even though the assessee has claimed deduction/exemption mentioned in column (*1*), AMT provisions will not apply— ♦ Assessee being an individual or HUF or AOP or BOI or other artificial juridical person (*i.e.* other than firm, LLP and company); ♦ Whose ATI does not exceed Rs. 20,00,000.

30.3 Adjusted total income — how to compute [Section 115-JC(2)]

Adjusted total income means the '**total income**' *as increased by*—

(i) deductions claimed under sections 80H to 80RRB (except section 80P); and

(ii) exemption claimed under section 10AA.

(iii) deduction claimed under section 35AD (*as reduced by depreciation allowance under section 32 as if no deduction was allowed under section 35AD on such asset*)

30.4 Difference between 'MAT' and 'AMT'

The following Table shows the differences between MAT and AMT—

Points of comparison	*MAT*	*AMT*
Applicability	Applicable if income-tax payable on total income is less than 18.5% or 9% of "book profit"	Applicable where the regular income-tax payable is less than 18.5% or 9% of "adjusted total income"
Assessees to whom applicable	Companies	All non-company assessees.
Whether accounting-profit-based	Yes. Accounting profit with specified adjustments for working out "book profits"	No. Total income before claiming Chapter VI-A-C deductions and section 10AA deduction is the base.
Pre-condition for applicability	Existence of Positive "book-profit" If book profit is zero or negative, MAT will not apply.	Claiming of Chapter VI-A-C deductions and for section 10AA deduction and in case if individuals/HUF/AOP/BOI and artificial juridical persons if their adjusted total income exceeds Rs. 20,00,000.

30.5 AMT Credit — Meaning and provisions [Section 115JAD]

1. Meaning : AMT credit means the excess of tax payable under 115JC (herein after called as "AMT") over normal tax liability which is allowed to be set off against payment of normal tax in subsequent years. AMT credit is calculated as under—

- **Step 1 :** Calculating AMT Credit ignoring Foreign Tax Credit (FTC)

	Rs.
AMT [*i.e.* ATI × 18.5% or 9% (SC+HEC)]	.....
Less: Normal income tax (+SC, if any –MR, if any, + HEC)]	.....
AMT credit ignoring FTC	.....

- **Step 2 (w.e.f. A.Y. 2018-19) : Calculating AMT Credit NOT allowed to be carried forward :**

	Rs.
FTC *allowed* against AMT	.....
***Less :* FTC *allowable* against normal tax**	.....
AMT credit NOT allowed to be carried forward	.....

- **Step 3 (w.e.f. A.Y. 2018-19) : AMT Credit allowed to be carried forward = Step 1 (minus) Step 2.**

2. Utilisation of AMT credit : MAT credit is utilised in the subsequent year in which normal income tax exceeds the amount of AMT. The normal income tax of subsequent year will be reduced by the amount of AMT credit. However, credit utilisation will be restricted to LOWER of the following amount—

♦ Tax difference [*i.e.* normal income tax of that subsequent year *minus* AMT of that subsequent year];

♦ Amount of credit available;

3. No interest on AMT credit : No interest will be paid on amount of AMT credit to the assessee.

4. Carry forward of AMT credit : AMT credit can be carried forward for **15 years** immediately succeeding the relevant assessment year.

MULTIPLE CHOICE QUESTIONS (MCQs)

30.1 : Provisions of Alternate Minimum Tax applies to:

(a) Domestic company, LLP Firms
(b) LLP, firm engaged in speculative business
(c) any person other than company
(d) any person other than company who have claimed certain exemptions/deductions

30.2 : Rate of AMT (other than a unit located in International Financial Center) is :

(a) 20%
(b) 16.995%
(c) 18.5%
(d) Normal Income Tax Rates

30.3 : While calculating AMT, depreciation:

(a) of Income Tax Act is allowed
(b) of Companies Act is allowed
(c) is NOT allowed
(d) being higher of (a) and (b) is allowed

30.4 : AMT is based on:

(a) Accounting profit
(b) Total income
(c) Adjusted Total income
(d) Adjusted Gross Total income

30.5 : AMT applies to individual or HUF only if they have claimed deductions of section 80-H to 80RRB or exemption under section 10AA :

(a) If their ATI does not exceed Rs. 20,00,000
(b) If their ATI exceeds Rs. 20,00,000
(c) If their ATI does not exceed Rs. 50,00,000
(d) irrespective of limit of A.T.I

30.6 : AMT applies to a firm only if it has claimed deductions of section 80-H to 80RRB or exemption under section 10AA :

(a) If its ATI does not exceed Rs. 20,00,000
(b) If its ATI exceeds Rs. 20,00,000
(c) If its ATI does not exceed Rs. 50,00,000
(d) irrespective of limit of A.T.I

30.7 : During the previous year 2019-20, Mr. Ashok has income of Rs. 48,00,000 under the head PGBP. Among other businesses, one of his business is eligible for deduction of 100% profits under section 80-IB. Profit from such business is Rs. 22,00,000 which is already included in above stated income. You are required to calculate his tax liability for the A.Y. 2020-21. Assume he has no other income :

(a) Rs.6,77,820
(b) Rs.10,15,872
(c) Rs. 5,92,500
(d) Rs. 8,88,000

ANSWERs TO MCQs

Question	Answer	Question	Answer	Question	Answer	Question	Answer	Question	Answer
30.1	D	30.2	C	30.3	A	30.4	C	30.5	B
30.6	D	30.7	B						



CHAPTER 31
APPEAL REVISION & PENALTIES

31.1 Summary of Appeals

PARTICULARS	*CIT(A)* *[Section 246 to 251]*	*TRIBUNAL* *[Section 252 to 255]*	*HIGH COURT* *[Section 260A & 260B]*
Appealable Orders	Referred to in section 246A	Referred to in section 253.	Referred to in section 260A
Time Limit of Filing the Appeal.	Within 30 Days from the date of Receipt of Notice of Demand.	Within 60 Days from the date of Service of order of the CIT(A).	Within 120 days from the date of Communication of order of the ITAT.
Prescribed Form No.	Form No. 35.	Form No. 36.	*See* HC original side rules.
Who can file Appeal	Aggrieved Assessee	Aggrieved Assessee or Commissioner.	Aggrieved Assessee or Commissioner.
Fees Payable	*If the assessed income:* ▪ is upto Rs.1 lakh- Rs.250; ▪ is more than Rs.1 lakh but less than Rs.2 lakh-Rs.500; ▪ is more than Rs.2 lakh-Rs.1000	*If the assessed income:* ▪ is upto Rs.1 lakh: Rs.500 ▪ > Rs.1 lakh but < Rs. 2lakh : Rs.1,500; ▪ is more than 2 lakh : 1% of assessed income, subject to maximum of Rs.10,000.	The difference between the amount of tax actually assessed and the amount of tax admitted by the assessee as payable by him, subject to a maximum of Rs.10,000.
Documents to be Filed	- Form No.35, - Grounds of Appeal, - Statement of Facts, - Copy of Order against which appeal is preferred, - Notice of Demand - Challan of filing fees.	- Form No.36, - Grounds of Appeal, - Copy of Order against which appeal is preferred, - Documents filed before the CIT(A).	- Memo of Appeal, - Statement of facts, - Orders of the lower authorities; - Documents relied upon the Tribunal and lower authorities.
Place of Filing.	CIT(A) as mentioned in the Notice of Demand.	Registrar of the Appellate Tribunal.	Respective High Court.
CROSS OBJECTION			
Prescribed Form No.	-	- Form No. 36 A.	- Rule 22 of XLI of CPC
Time Limit for filing the Cross Objection.	-	- Within 30 days of the receipt of the notice of appeal filed by other party.	- Within 30 days from date of service of the appeal.
Fees Payable.	-	- No Fees Payable.	- -
STAY APPLICATION			

Fees Payable	-	- Rs.500 per application	-
Documents to be filed.	-	- Stay Petition, - Rejection order for stay by CIT and Assessing Officer - Affidavit, orders of CIT/AO & documents furnished.	-

31.2 Revision by CIT of the order which is 'prejudicial to the interest of "revenue" [Section 263]

1. This section provides as under—

(a) The Commissioner may examine any order passed by the Assessing Officer (including any order passed by AC or DC or JC)

(b) and if he considers that such order is erroneous and prejudicial to the interest of revenue,

(c) he may, after giving an opportunity of being heard to the assessee and after making any further inquiry,

(d) pass an order thereon including :

- order enhancing, or
- modifying the assessment, or
- cancelling the assessment and directing a fresh assessment.

Where any order passed by the Assessing Officer had been the subject-matter of an appeal the Commissioner can revise such matters which had not been considered and decided in such appeal. [*i.e. Doctrine of partial merger*]

2. Procedure adopted by Commissioner : While dealing with his powers under section 263, Commissioner proceeds as under—

a. *Calling for 'records' :* The commissioner can call for and examine the records of any proceedings under the Act.

b. *Examination of 'records' :* It is essential for Commissioner to examine the records and to record his finding that the order sought to be revised is erroneous as well as prejudicial to the interests of the revenue.

c. *Reason to be disclosed :* The commissioner must disclose, in his notice to the assessee, the grounds on which he desires to revise.

d. *Notice to show cause must be served reasonably ahead :* Notice to the assessee to show cause must be served upon him reasonably ahead of the date fixed for hearing.

e. *Enquiries by Commissioner :* Commissioner can make his own enquiries for the purpose of revising an order.

f. *Revision on different grounds would not hold :* If Commissioner disclosed one or more ground in the notice, but revise the order on an entirely different ground, not disclosed to the assessee, that order cannot be sustained. In revision proceeding, the Commissioner cannot travel beyond the reason given by him for the revision in show cause notice- *Geometric Software Solutions Co. Ltd.* v. *CIT* [2009] (Mum.)

3. Time limit for passing such order : The Commissioner cannot make such an order after the expiry of 2 years from the end of the financial year in which the order sought to be revised was passed by the Assessing Officer.

31.3 Revision by CIT of the order which is 'prejudicial to the interest of "assessee" [Section 264]

1. This section provides as under—

(a) In case of an order, passed by an authority subordinate to him,

(b) the Commissioner may, either of his own motion or on an application by the assessee,

(c) call for the record of such order

(d) and he may pass such an order thereon as he thinks fit after making the necessary inquiry.

(e) However, such order should not be prejudicial to the assessee.

2. Revision for orders passed within one year previously : The Commissioner cannot, of his own motion, revise any order made more than one year previously. In the case of an application for revision by the assessee; the application must be made within one year from the date on which the order in question was communicated to him.

3. Fees : Every application by an assessee for revision shall be accompanied by a fee of Rs. **500.**

4. Time limit for passing order under section 264 : Where the assessee makes an application for revision an order shall be passed within one year from the end of the financial year in which such application is made. It may be noted that an order in revision may be passed at any time in consequence of or to give effect to any finding or direction contained in an order of the Appellate Tribunal, the National Tax Tribunal, the High Court or the Supreme Court.

31.4 Mode of taking or accepting certain loans, deposits and specified sum [Section 269SS]

No person shall take or accept from any other person (herein referred to as the depositor), any **loan or deposit or any specified sum**, otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account, if,—

(*a*) the amount of such loan or deposit or specified sum or the aggregate amount of such loan, deposit and specified sum; or

(*b*) on the date of taking or accepting such loan or deposit or specified sum, any loan or deposit or specified sum taken or accepted earlier by such person from the depositor is remaining unpaid (whether repayment has fallen due or not), the amount or the aggregate amount remaining unpaid; or

(*c*) the amount or the aggregate amount referred to in clause (*a*) together with the amount or the aggregate amount referred to in clause (*b*),

is Rs.20,000 or more:

Provided that the provisions of this section shall not apply to any loan or deposit or specified sum taken or accepted from, or any loan or deposit or specified sum taken or accepted by,—

(*a*) the Government;

(*b*) any banking company, post office savings bank or co-operative bank;

(*c*) any corporation established by a Central, State or Provincial Act;

(*d*) any Government company as defined in clause (*45*) of section 2 of the Companies Act, 2013;

(*e*) such other institution, association or body or class of institutions, associations or bodies which the Central Government may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette:

Provided further that the provisions of this section shall not apply to any loan or deposit or specified sum, where the person from whom the loan or deposit or specified sum is taken or accepted and the person by whom the loan or deposit or specified sum is taken or accepted, are both having agricultural income and neither of them has any income chargeable to tax under this Act.

Explanation.— "specified sum" means any sum of money receivable, whether as advance or otherwise, in relation to transfer of an immovable property, whether or not the transfer takes place.

31.5 Mode of repayment of certain loans or deposits [Section 269T]

No branch of a banking company or a co-operative bank and no other company or co-operative society and no firm or other person shall repay any loan or deposit made with it or any specified advance

received by it, otherwise than by an account payee cheque or account payee bank draft drawn in the name of the person who has made the loan or deposit or paid the specified advance, or by use of electronic clearing system through a bank account if—

(*a*) the amount of the loan or deposit or specified advance together with the interest, if any, payable thereon, or

(*b*) the aggregate amount of the loans or deposits held by such person with the branch of the banking company or co-operative bank or, as the case may be, the other company or co-operative society or the firm, or other person either in his own name or jointly with any other person on the date of such repayment together with the interest, if any, payable on such loans or deposits, or

(*c*) the aggregate amount of the specified advances received by such person either in his own name or jointly with any other person on the date of such repayment together with the interest, if any, payable on such specified advances,

is Rs. 20,000 or more:

Provided that where the repayment is by a branch of a banking company or co-operative bank, such repayment may also be made by crediting the amount of such loan or deposit to the savings bank account or the current account (if any) with such branch of the person to whom such loan or deposit has to be repaid :

Provided further that nothing contained in this section shall apply to repayment of any loan or deposit or specified advance taken or accepted from—

(*i*) Government;

(*ii*) any banking company, post office savings bank or co-operative bank;

(*iii*) any corporation established by a Central, State or Provincial Act;

(*iv*) any Government company as defined in section 617 of the Companies Act, 1956;

(*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.

31.6 Mode of undertaking transactions [New Section 269ST inserted w.e.f. A.Y. 2017-18]

No person shall receive an amount of Rs.2 lakh or more—

(a) in aggregate from a person in a day; or

(b) in respect of a single transaction; or

(c) in respect of transactions relating to one event or occasion from a person,

otherwise than by an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account:

Provided that the provisions of this section shall not apply to—

(i) any receipt by—

(a) Government;

(b) any banking company, post office savings bank or co-operative bank;

(ii) transactions of the nature referred to in section 269SS;

(iii) such other persons or class of persons or receipts, which the Central Government may, by notification in the Official Gazette, specify.

31.7 Penalties at a glance

Section	Nature of default	Penalty
140A(3)	Failure to pay wholly or partly— (*a*) self-assessment tax, or (*b*) interest, or (*c*) both under section 140A(1)	Such amount as A.O. may impose but not exceeding tax in arrears
158 BFA(2)	Determination of undisclosed income of block period	Minimum penalty 100% of tax sought to be evaded. Maximum penalty 300% of tax sought to be evaded.
221(1)	Default in payment of tax within prescribed time.	Amount as determined by A.O. but not exceeding tax in arrears.
234E	Failure to file statement within time prescribed in section 200(3) or in proviso to section 206C(3)	Rs. 200 for every day during which failure continues but not exceeding tax deductible or collectible.
271(4)	Distribution of profits of a registered firm otherwise than in accordance with the share shown in the partnership deed, the penalty payable by such partner	Upto 150% of the tax sought to be evaded.
271A	Failure to keep, maintain, books of accounts, documents etc., as required by section 44AA.	Rs. 25,000.
271AA	(*1*) Failure to keep and maintain information and documents required by section 92D(1) or 92D(2) (*2*) Failure to report such transaction (*3*) Maintaining/furnishing incorrect information or document	2% of value of each international transaction or specified domestic transaction
271AAA	Undisclosed income where search is initiated on or after 1.6.2007 but before 1.7.2012.	10% of undisclosed income.
271AAB	Where search has been initiated on or after 1-7-2012 and undisclosed income is found	*(a) 10% of undisclosed income of the specified previous year if—* ♦ assessee admits undisclosed income; ♦ substantiates the manner in which it was derived; and ♦ on or before the specified date pays the tax, together with interest and ♦ furnishes the ROI for the specified previous year declaring such income *(b) 20% of undisclosed income of the specified previous year if—* ♦ assessee does not admit the undisclosed income, and ♦ on or before the specified date declare such income in the ROI furnished for the specified previous year and ♦ pays the tax, together with interest thereon; *(c) In any other case minimum 60% of undisclosed income of the specified previous year.*
271B	Failure to get accounts audited or obtain audit report or furnish such report as required by section 44AB.	½% of sales, turnover, gross receipts, etc., or Rs. 1,50,000, whichever is less.
271BA	Failure to furnish a report from an accountant as required by section 92E	Rs. 1,00,000
271C	Failure to deduct tax at source.	100% of tax not so deducted.
271CA	Failure to collect tax at source.	100% of tax not so collected.

271D	*Acceptance* of loans or deposits without account payee cheque or draft as required by section 269SS.	100% of amount of such deposit or loan.
271DA	If a person receives any sum in contravention of the provisions of section 269ST. Provided that no penalty shall be imposable if such person proves that there were good and sufficient reasons for the contravention.	100% of amount of such receipt.
271E	*Repayment* of deposits or loans without account payee cheque or draft as required by section 269T.	100% of amount of such deposit or loan.
271F	*Failure to furnish return of Income under section 139(1) before the end of the relevant assessment year.*	Rs. 5,000.
271FA	*Failure to furnish annual information return within the time limits of section 285BA(1).*	Rs. 500 per day during which the failure continues.
271FAA	Furnishing inaccurate information in the statement referred to in section 285BA(1).	Rs. 50,000
271FB	*Failure to file return of fringe benefits.*	Rs. 100 per day during which the failure continues.
271G	*Failure to furnish information or documents u/s 92D.*	2% of value of each international or specified domestic transaction for each such failure.
271H	*Failure to deliver/cause to be delivered TDS/TCS return within the time prescribed in section 200(3) or the proviso to section 206C(3), or furnishes incorrect information therein.*	Minimum: Rs. 10,000 Maximum: Rs. 1,00,000
272A(1)	*If any person-* (a) *being legally bound to answer, fails to answer questions put to him by any Income Tax Authority;* (b) *being legally required to sign statements, fails to sign;* (c) *Fails to comply with summons issued u/s 131(1),* (d) Fails to comply with notices issued u/s 142(1), 143(2) and 142(2A)	Rs. 10,000 for each default or failure.
272A(2)	*Failure-* *(a)* to comply with notice issued under section 94(6), *(b)* to give notice of discontinuance of business or profession; *(c)* to furnish in time, statement or particulars mentioned in section 133 or section 206 or 206C or 285B; *(d)* to allow inspection or copy etc. of any register referred to in Sec.134 *(e)* to furnish return of income under section 139(4A), (4C), (4D); *(f)* to deliver in time a copy of declaration referred to in section 197A; *(g)* to furnish a certificate as required by section 203 or 206C; *(h)* to deliver declaration referred to in section 206C(1A); *(i)* to deliver a statement within the time specified under Sec. 206A(1)	Rs. 10,000 for each failure.
272AA(1)	*Failure to furnish information required u/s 133(B).*	Upto Rs. 1,000.
272B	*Failure to comply section 139A (i.e. failure regarding PAN)*	Rs. 10,000 **for each such default. (Inserted by Finance Act, 2019 *w.e.f.* 1.9.2019)**
272BB	*Failure to apply for allotment of Tax Deduction and Tax Collection Account Number u/s 203A.*	Rs. 10,000.
272BBB	*Failure to comply section 206CA (i.e. failure regarding Tax Collection Account Number)*	Rs. 10,000.

270A (*w.e.f. A.Y. 17-18*)	The AO or CIT (Appeals) or PCIT or CIT may direct that any person who has *under-reported his income** shall be liable to pay a penalty in addition to tax, if any, on the under-reported income. [**see* Section 270A(2)]	50% of the amount of tax payable on such under reported amount. [*Note* : As per section 270AA, an assessee can claim immunity from imposition of penalty u/s 270A]

MULTIPLE CHOICE QUESTIONS (MCQs)

31.1 : The first appeal against the order of the Assessing Officer lies with :

(a) Deputy Commissioner (Appeals)
(b) Commissioner (Appeals)
(c) Appellate Tribunal
(d) Assistant Commissioner

31.2 : The first appeal can be filed by :

(a) the assessee only
(b) Assessing Officer only
(c) either the assessee or the Assessing Officer
(d) It depends upon case

31.3 : If the assessee is not satisfied with any order passed by the Assessing Officer, he can:

(a) file appeal to Commissioner (Appeal)
(b) apply for revision to the CIT under section 264
(c) either file appeal or apply for revision under section 264
(d) file appeal and if time expires, may apply for revision.

31.4 : The appeal against the order of Commissioner (Appeal) can be filed by :

(a) an assessee only
(b) an Assessing Officer only subject to approval of CIT
(c) either by the assessee or by the Assessing Officer subject to approval of CIT
(d) assessee or his Jurisdictional Commissioner.

31.5 : If the assessee or the Assessing Officer is not satisfied with the order of Commissioner (Appeals), the second appeal lies to:

(a) High court directly
(b) Appellate Tribunal
(c) High court on a reference by the Appellate Tribunal
(d) None of the above.

31.6 : If the assessee or the CIT is not satisfied with the order of Appellate Tribunal, then either of them can :

(a) request the Appellate Tribunal to refer the matter to the High Court
(b) file the appeal direct to High Court
(c) file the appeal either to High Court or Supreme Court if there are conflicting decisions by the various High Courts
(d) either (a) or (b).

31.7 : The appeal against the order of Appellate Tribunal can be filed to High Court:

(a) for any matter in the order
(b) only if any question of fact is involved
(c) only if any question of law is involved
(d) either (b) or (c).

31.8 : The first appeal to Commissioner (Appeals) must be filed in :

(a) Form No. 35
(b) Form No. 36
(c) Form No. 36A
(d) Form No.1

31.9 : The first appeal against the order of the Assessing Officer can be filed within a period of :

(a) 30 days from the date of the order
(b) 30 days from the date of service of the order to the assessee
(c) one month from the date of the service of the order to the assessee
(d) 15 days from the date of passing of such order.

31.10 : If the appeal against the order of the Assessing Officer was not filed within 30 days as required, then the assessee :

(a) has no option left with him
(b) can apply for condonation of delay
(c) can either apply for condonation of delay or apply for revision under section 264
(d) can only apply for revision under section 264

31.11 : The order passed by the Commissioner (Appeals) should be communicated to :

(a) assessee
(b) CIT who has jurisdiction over the case
(c) both to the assessee and CIT
(d) the assessee through CIT

31.12 : The Commissioner (Appeals) should decide the appeal:

(a) within one year from the date of filing of the appeal
(b) one year from the end of the financial year in which appeal is filed before him
(c) as far as possible within one year from the end of the financial year in which appeal is filed before him
(d) No any time frame is fixed.

31.13 : An assessee who submitted a return declaring an income of Rs.90,000 was assessed by the Assessing Officer at Rs.1,60,000. He wishes to file an appeal. The fee for filing appeal should be :

(a) Rs.250
(b) Rs.500
(c) Non - judicial stamp of 50 paise
(d) Rs.1000

31.14 : The assessee wishes to file an appeal against the order of ITO for levying a penalty for TDS default. The fee for filing such appeal shall be :

(a) Rs.250
(b) Rs.500
(c) Rs.1000
(d) Rs. 1500.

31.15 : The time limit for filing an appeal to the Appellate Tribunal is :

(a) 30 days from the receipt of the order to be appealed against
(b) 30 days from the passing of the order to be appealed against
(c) 60 days from the receipt of the order to be appealed against
(d) 60 days from the passing of the order to be appealed against

31.16 : The appeal to the Appellate Tribunal should be made in:

(a) Form No. 35
(b) Form No. 36
(c) Form No. 36A
(d) Form No. 2

31.17 : The time limit for filing memorandum of cross objection to Appellate Tribunal shall be:

(a) 60 days from the receipt of notice that appeal has been filed by the other party
(b) 30 days from the receipt of notice that appeal has been filed by the other party
(c) 90 days from the receipt of such notice
(d) 120 days from the receipt of such notice

31.18 : The memorandum of cross objection must be filed in:

(a) Form No. 36
(b) Form No. 36A
(c) Form No. 37
(d) Form No. 2A

31.19 : The total income assessed by the Assessing Officer was Rs.4,50,000. The assessee wishes to file an appeal to Appellate Tribunal as he was not satisfied with the order of Commissioner (Appeals). The fee for filing such appeal shall be:

(a) Rs.1,500
(b) Rs.2,500
(c) Rs.4,500
(d) Rs.10,000

31.20 : The maximum fee for filing an appeal to Appellate Tribunal is:

(a) Rs.5,000
(b) 1% of the assessed income
(c) 1% of the assessed income subject to maximum of Rs.10,000
(d) Rs.10,000

31.21 : Revision under section 263 is to be done by the Commissioner :

(a) on his own motion
(b) on the request of the Assessee
(c) on the request of the Assessing Officer
(d) on his own motion or on the request of the Assessee or the Assessing Officer

31.22 : The Commissioner cannot revise the order of the Assessing Officer under section 263 after the expiry of :

(a) one year from the end of the financial year in which order sought to be revised was passed
(b) 2 years from the end of the financial year in which order sought to be revised was passed
(c) 2 years from the date of such order
(d) None of the above.

31.23 : Revision of order not covered by section 263 can be done by the Commissioner:

(a) on his own motion

(b) on the request of the assessee

(c) on the request of the Assessing Officer

(d) on his own motion or on the request of the assessee

31.24 : The Commissioner shall not revise the order under section 264:

(a) where an order has been made more than one year previously

(b) where an order has been made more than 2 years previously

(c) where an order has been made more than 4 years previously

(d) None of the above.

ANSWERS TO MCQs

Question	Answer	Question	Answer	Question	Answer	Question	Answer	Question	Answer
31.1	B	31.2	A	31.3	C	31.4	C	31.5	B
31.6	B	31.7	C	31.8	A	31.9	B	31.10	C
31.11	C	31.12	C	31.13	B	31.14	A	31.15	C
31.16	B	31.17	B	31.18	B	31.19	C	31.20	C
31.21	A	31.22	B	31.23	D	31.24	A		