An Exclusive Series

of

REVISION SESSIONS

on

CA Final DT

(PAPER-7)

Notes for ALL SESSIONS

BY

CA SATISH MANGAL

"FINANCE ACT, 2022"

ASSESSMENT YEAR: 2023-24

"INDEX FOR CONTENTS"

"TAX DEDUCTION AT SOURCE"

Section	TDS on -	Responsible Payer (Deductor)	Payee (Deductee)	Timing of Deduction	Rate of TDS	Limit for Non-Deduction	OTHER RELEVANT PROVISIONS
192	**Salaries**	**Employer**	Any **Employee** i.e. **Resident or NR**	**At the time of Payment**	**Average Rate of Income Tax** based on **Slab rates** as applicable to ***Estimated Income*** of employee	Basic Exemption Limit	☞ The Employer has an option to deposit **tax on the non-monetary perquisites**, out of his own pocket, on behalf of employees. Such tax shall be computed at the average rate of income tax and will be treated as an **exempted income** in hands of employee and **Deemed TDS for the employee**, but is **disallowable expenditure in the hands of employer.** ☞ Employer **shall consider** details (if furnished by employee) of salary from other employer and TDS thereon. ☞ Employee may furnish details of Income of other heads (including house property Loss) and TDS thereon, then that shall be considered by Employer, but *except the case of loss from house property,* ***resultant tax deductible can't be lower*** than the tax which would have been otherwise deductible. ☞ Employer **shall consider relief u/s 89(1)** **[if detailed by employee]**. ☞ Employer shall furnish statement of perquisites to employee. ☞ *Employee shall furnish to employer evidence / proof / particulars of the prescribed claim (including claim of setoff of house property loss) in the prescribed form and manner.* ☞ An eligible start-up as referred to in section 80-IAC shall deduct tax from perquisites income arising from ESOPs within 14 days of following (whichever is earlier):

							(a) After the expiry of 48 months from the end of assessment year in which shares are allotted; (b) From the date of which the assessee ceases to be the employee of the organization; or (c) From the date of sale of shares allotted under ESOP by the assessee. **Note:** For this purpose, the tax shall be deducted on the basis of rates in force for the financial year in which shares are allotted or transferred under ESOPs. **AS AMENDED BY F. A., 2020** ☞ **No TDS shall be deducted on tips** collected by Hotel from customers and paid to employees as it is not amount to salary from employer. **[ITC Ltd. - Supreme Court]** ☞ In a case **where foreign company seconded some employees to the assessee, an Indian collaborator to work in Indian project,** then, *Indian tax deductor assessee is duty bound to deduct,* from the portion of salary paid by it, *tax at source under section 192(1) on the entire salary paid to the employee,* ***including home salary/ special allowance paid abroad to the employee by the foreign company.*** **[CIT v/s Eli Lilly & Co. (India) P. Ltd. (SC)]**
Section	**TDS on -**	**Responsible Payer (Deductor)**	**Payee (Deductee)**	**Timing of Deduction**	**Rate of TDS**	**Limit for Non-Deduction**	**Other Relevant Provisions**
192A	**Accumu--lated balance of RPF due to an employee**	Trustees of Employees Provident Fund Scheme or any person authorised under the scheme	Any Person i.e. **Resident or NR**	**At the time of Payment**	**10%**	If payment or **aggregate** payments **less than ₹ 50,000**	☞ Tax shall be deducted ONLY in a case **where such receipt is liable to tax in the hands of employee** (i.e. employee has not rendered continuous service of 5 years and his case does not fall in exceptional cases as given in Schedule IV). ☞ If PAN is not furnished then tax shall be deducted at **MMR.**

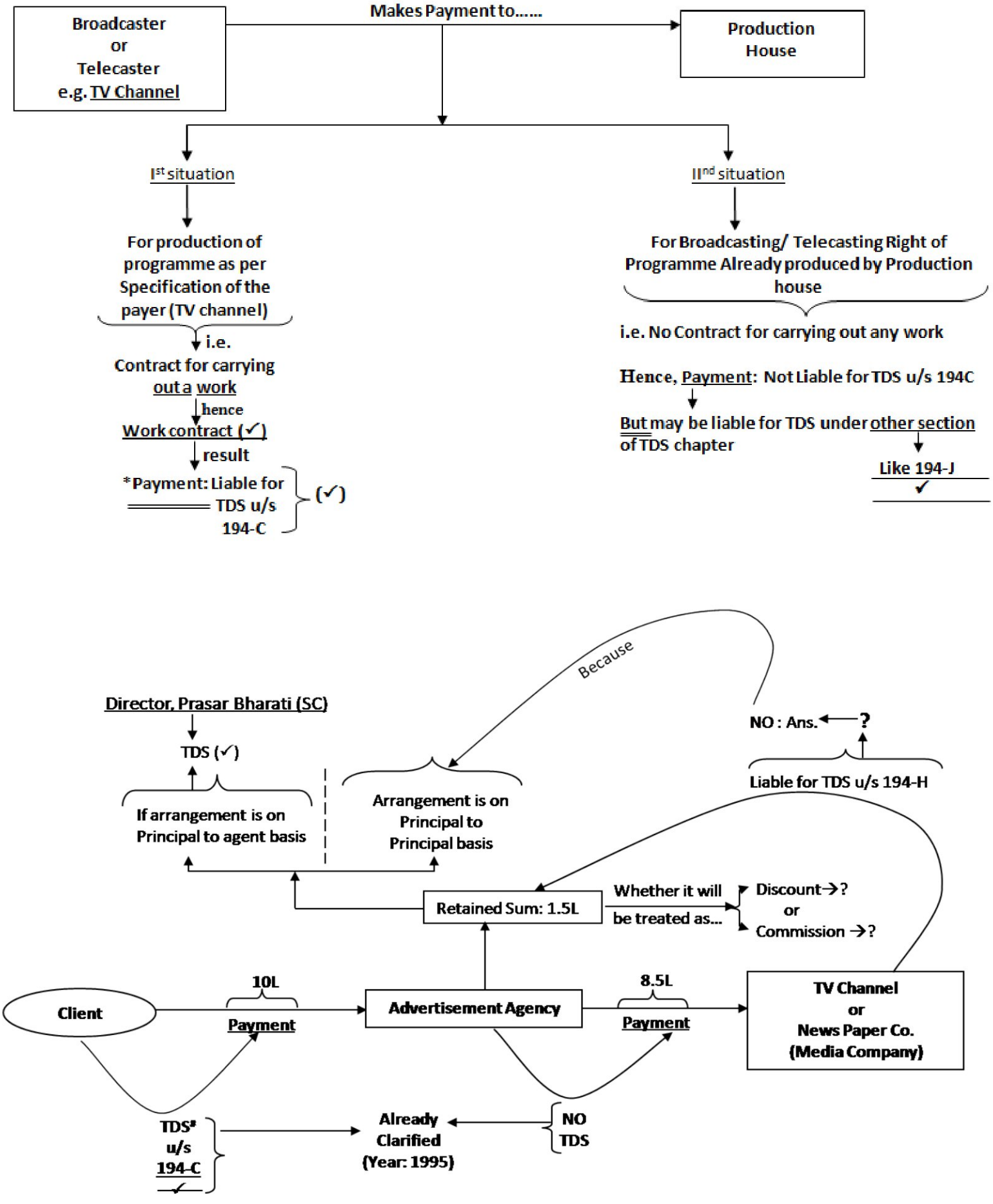
Section	TDS on -	Responsible Payer (Deductor)	Payee (Deductee)	Timing of Deduction	Rate of TDS	Limit for Non-Deduction	Other Relevant Provisions
193	**Interest on securities**	Any Person	**Resident**	**Credit** to the account of payee or Actual **Payment** (whichever is **earlier**)	**10%**	See Next Column	❖ If such income is credited to any account, whether called Interest payable account or suspense account or by any other name, by the Payer in its books, **such crediting shall be deemed to be credit of such income to the account of the payee.** (**i.e. Deeming fiction**). TDS shall not be deducted in the following cases: ☞ Interest on Debentures by Widely Held Company to Individual / HUF through account payee cheque if such interest does not exceed ₹ 5,000 during the financial year. ☞ Interest on Government Securities [***except** interest exceeding ₹10,000 on **7.5% Savings (Taxable) Bonds, 2018** or **8% Savings (Taxable) Bonds, 2003***]. ☞ Interest paid to LIC, GIC or any other insurance company. ☞ Interest on **any listed security** issued by a company held in **dematerialized form.**
194	**Dividend**	Principal officer of a domestic company	**Resident**	**At the time of distribution**	**10%**	See Next Column	TDS shall not be deducted in the following cases: ☞ If dividend is paid to an **individual** by any mode *other than cash* and aggregate amount of such dividend does not exceed ₹ 5,000 during the financial year. ☞ Dividend distributed to LIC, GIC, any other insurance company ***or any other person notified by the Central Govt.*** ☞ ***Dividend distributed by SPV to Business trust.***
194A	**Interest other than**	Any Person, [Except an individual or	**Resident**	**Credit** or **Payment**	**10%**	See Next Column	**TDS shall not be deducted in the following cases:** ❖ Where the amount or aggregate amounts of such income credited or paid during the financial year to the payee, **does not exceed:**

	Interest on securities	HUF whose total sales, turnover or gross receipts from the business or profession carried on by him do not exceed ₹ 1 Cr, in case of business (or ₹ 50 Lakhs in case of profession) during immediate preceding Financial Year]		(whichever is **earlier**) **[*Deeming Fiction available** i.e. Crediting to other account in Payer's books shall be deemed to be the credit of such income to the account of the payee]			➢ **₹40,000/- (₹50,000/-, in case of senior citizen)-** (i) where **payer is banking company/co-operative bank**; or (ii) such interest is on **deposit with post office in Notified Scheme.** ➢ **₹ 5,000/-** in any other case. ☞ In case of interest on time deposit (i.e. FDRs)/recurring deposit, **where core banking solution (CBS) has been adopted,** TDS shall be deducted on aggregate of interest paid by all the branches of the bank if exceeds **₹40,000** (in case of senior citizen, ₹50,000). In otherwise case, such limit will apply branchwise. ❖ Interest on **savings account** with bank (incl. co-op. bank). ❖ Where such income is credited or paid **to-** ➢ *Banking company, or Co-operative bank, or* ➢ *Any financial corporation established by or under a Central, State or Provincial Act, or* ➢ *LIC, UTI, or Insurance Company.* ❖ If interest is credited or paid **by a firm to its partner**. ❖ If interest is credited or paid **by a co-operative society (other than a Co-operative bank) to its member or to any other co-operative society.** ❖ After the amendment**, co-operative society will be liable for TDS in a case where its gross receipts in last year exceeds ₹ 50 crores, and** aggregate amounts of interest credited or paid during the financial year to the payee, **exceeds ₹40,000/- (₹50,000/-, in case of senior citizen).**

							❖ Interest on Post Office Time Deposits, Post Office Recurring Deposits, Post Office Monthly Income Account and NSC. ❖ Where interest is credited or paid by the Central Government under the I. T. Act **(i.e. interest on refund).** ❖ Interest on compensation awarded by the Motor Accident Claim Tribunal where the amount or aggregate amount **paid** during the financial year does not exceed ₹ 50,000. ❖ Income in relation to a *zero coupon bond.* ❖ *Intt. income of Business trust from Special Purpose Vehicle.* The CBDT has clarified that: **(1)** While calculating interest on time deposits on daily or monthly basis *in the CBS software used by banks* **for the purposes of macro monitoring only,** since no constructive credit to the depositor's/payee's account takes place, **tax need not be deducted on such provisioning of interest.** **(2)** **Interest on FDRs made in the name of Registrar General of the Court** or the depositor of the funds on the directions of the Court, will not be liable for TDS till the matter is decided by the Court. However, once the Court decides the ownership of the money lying in deposit, the provisions of section 194A will apply to the recipient of the income.
Section	**TDS on -**	**Responsible Payer (Deductor)**	**Payee (Deductee)**	**Timing of Deduction**	**Rate of TDS**	**Limit for Non-Deduction**	**Other Relevant Provisions**
194B	**Winning from**	Any Person	Any Person i.e.	**At the time of**	30%	Not Exceeding	☞ In a case where: - The **winnings are *wholly in kind***; or

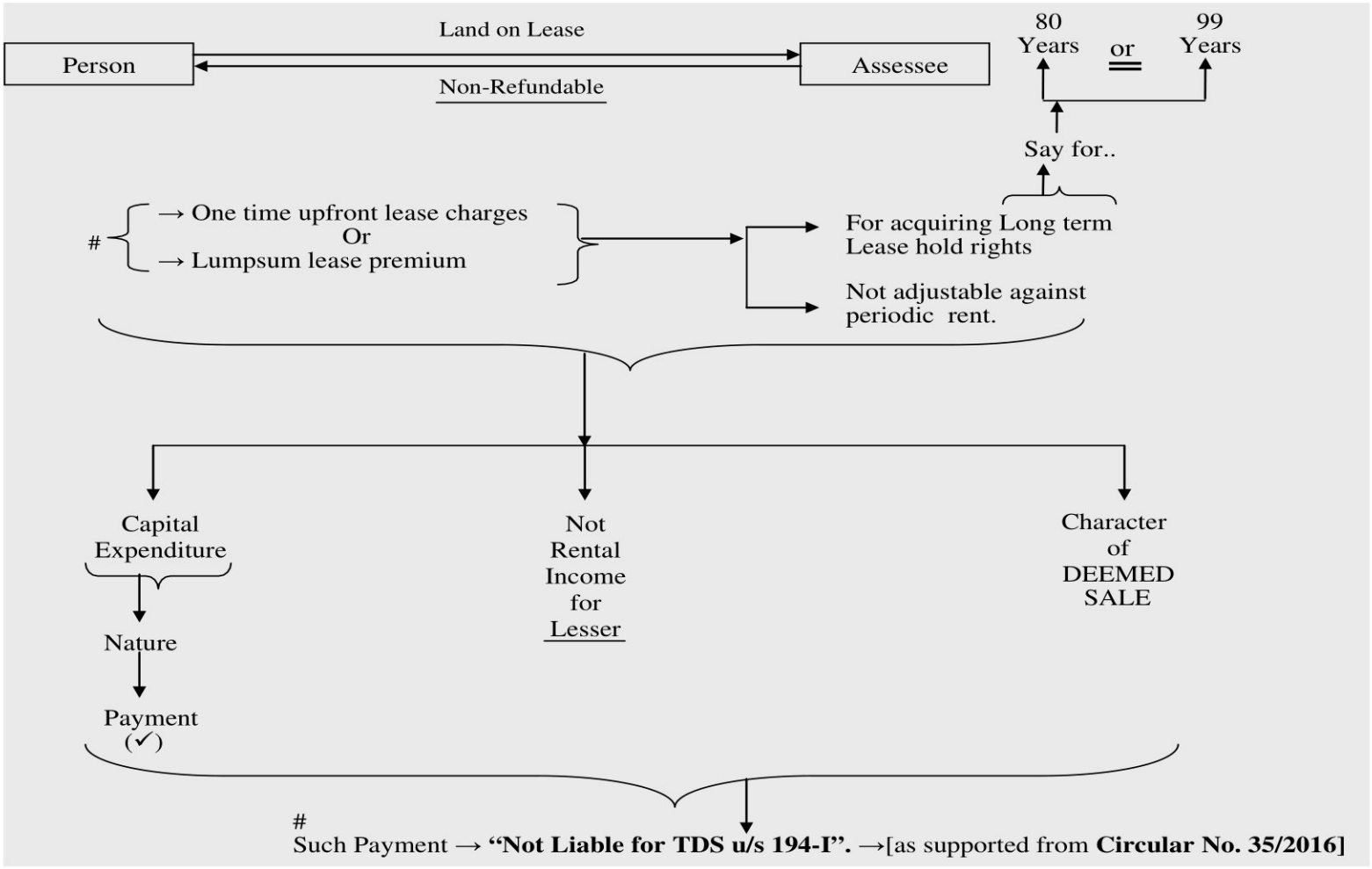
	lottery or crossword puzzle or card game & other game of any sort		**Resident or NR**	**Payment**		₹ 10,000	- Partly in cash and ***partly in kind*** *but the part in cash is not sufficient to meet the liability of deduction of tax in respect of whole of the winnings,* - The person responsible for paying **shall,** - *before releasing the winnings*, **ensure** that - **tax has been paid in respect of the winnings**. [Either Payee deposit TDS amount with Payer OR Submit proof of payment of Advance Tax on such winning with Undertaking].
Section	**TDS on -**	**Responsible Payer (Deductor)**	**Payee (Deductee)**	**Timing of Deduction**	**Rate of TDS**	**Limit for Non-Deduction**	**Other Relevant Provisions**
194BB	**Winning from Horse Race**	Any Person	Any Person i.e. **Resident or NR**	**At the time of Payment**	30%	Not Exceeding **₹ 10,000**	-
194C	Payment to contractor or Sub-contractor **for carrying out ANY WORK**	**Specified Person** i.e. ➢ Government ➢ Local authority ➢ Statutory corporation ➢ Company ➢ Co-operative society ➢ Housing development authority (like, DDA, etc.)	**Resident**	**Credit** or **payment** (whichever is **Earlier**) [*Deeming Fiction available i.e. Crediting to other account in Payer's	**1%** **If payee is individual or HUF** --- **2%** **In any other case** --- **NIL Rate** if the Transporter (i.e. payee) does **not**	See Next Column	☞ **No TDS shall be made** from payment/credit to a contractor or subcontractor if following **two conditions** are satisfied: ➢ The amount of **such payment / credit** *does not exceed* ***₹30,000/-;*** **AND** ➢ The **aggregate of such sums** during the financial year *does not exceed* ***₹1,00,000/-.*** ☞ No TDS is required to be deducted by individual or HUF (even if he was subject to tax audit in last year), where such sum is credited / paid **exclusively for his personal purpose.** ☞ **The definition of "work" shall also include-** ➢ Advertising, broadcasting or telecasting (including production of programmes), transportation, or catering; or ➢ Manufacturing or supplying a product - As per the requirement or specification of a customer

		➢ Any registered society ➢ Trust ➢ University ➢ Firm ➢ An individual or HUF or AOP/BOI, whose total sales, turnover or gross receipts from the business or profession carried on by him exceeds ₹1 Cr, in case of business (or ₹ 50 lakhs in case of profession) during the immediate preceding Financial Year.		books shall be deemed to be the credit of such income to the account of the payee]	**own more than 10 goods carriages** at any time during the Previous Year [i.e. on the date of payment or credit (earlier) by the payer - Board Circular] And furnishes a **declaration to that effect along with his PAN detail**, to the Payer		- *by using material purchased from such customer **or its associate, being a person as referred to in section 40A(2) in relation to such customer.*** TDS shall be deducted: - If value of material is mentioned separately in invoice: On the invoice value **excluding the value of material**; or - If the value of material is not mentioned separately in the invoice: On the whole of the invoice value. *However,* **work does not include-** - Manufacturing or supplying a **product** - according to the requirement or specification of a customer - by using material purchased from a person, **other than such customer or associate of such customer** as referred above. The CBDT has issued clarifications about TDS liability on- ➢ Payment for production of content / programme **as per the specifications of the broadcaster / telecaster** and the copyright of the content/Programme **also gets transferred to the telecaster/broadcaster: such contract is covered by the definition of the term 'work' in section 194C and, therefore, subject to TDS under that section.** ☞ Payment for acquisition of broadcasting/telecasting rights of the content already produced by the production house: **There is no contract for 'carrying out any work', as required in section 194C. Therefore, such payments are not liable for TDS u/s 194C.** However, payments of this nature *may be liable* for TDS under other sections (like section 194-J) under Chapter of TDS.


Broadcaster
or
Telecaster
e.g. TV Channel
Makes Payment to.....
Production House
I st situation
II nd situation
For production of programme as per Specification of the payer (TV channel)
i.e.
Contract for carrying out a work
hence
Work contract (✓)
result
*Payment: Liable for TDS u/s 194-C
(✓)
For Broadcasting/ Telecasting Right of Programme Already produced by Production house
i.e. No Contract for carrying out any work
Hence, Payment: Not Liable for TDS u/s 194C
But may be liable for TDS under other section of TDS chapter
Like 194-J
✓
Director, Prasar Bharati (SC)
TDS (✓)
If arrangement is on Principal to agent basis
Arrangement is on Principal to Principal basis
Because
NO : Ans. ←?
Liable for TDS u/s 194-H
Retained Sum: 1.5L
Whether it will be treated as...
Discount →?
or
Commission →?
Client
10L
Payment
Advertisement Agency
8.5L
Payment
TV Channel
or
News Paper Co.
(Media Company)
TDS* u/s 194-C
✓
Already Clarified (Year: 1995)
NO TDS

Section	TDS on -	Responsible Payer (Deductor)	Payee (Deductee)	Timing of Deduction	Rate of TDS	Limit for Non-Deduction	Other Relevant Provisions
194D	Insurance Commission	Any Person	Resident	Credit or Payment (whichever is earlier)	If PAYEE is: Domestic Co. - **10%** / Other: **5%.**	See Next Column	☞ **No TDS** where the amount or aggregate amounts of such income credited or paid during the financial year to the payee, **does not exceed ₹ 15,000.** ☞ *Deeming Fiction NOT available.
194DA	**Payment** in respect of Life insurance policy**	Any Person	**Resident**	**At the time of Payment**	**5% On income component out of such payment****	**Payment** less than ₹ 1,00,000** during a Financial Year	➢ **No TDS on amount exempt under section 10(10D).** ➢ Amount received under LIP will be exempt u/s 10(10D) if: Annual Premium ≤ 20% of sum assured in case policy issued before 1/4/2012 Annual Premium ≤ 10%* of sum assured if policy issued on or after 1/4/2012 [*15 % in case of person covered u/s 80U/80DDB & if Policy issued after 31/3/2013].
194G	**Commission, etc. on sale of lottery tickets**	Any Person	Any Person i.e. **Resident or NR**	**Credit** or **Payment** whichever is **earlier.** [*Deeming Fiction available]	**5%**	Not exceeding **₹ 15,000**	❖ If an authorised lottery ticket agent purchases lottery tickets in bulk at a **discount** from the State Govt. and sells the same at a price of his choice, **section 194G is not applicable,** because the case of discount does not come with in the purview of this section. [Kerala – HC]
194H	**Other Commission or brokerage**	Any Person, [Except an individual or HUF whose gross receipts from the business or profession in last year do	Resident	Credit or payment, (whichever is Earlier) **[*Deeming Fiction available]**	**5%**	Not exceeding **₹ 15,000** during a Financial Year	☞ **No TDS** on commission or brokerage payable **by BSNL or MTNL** to their public call offices (PCO) franchisees. ☞ **No TDS** on brokerage and commission **on securities.** The CBDT has issued clarifications about TDS liability **on payments involved in the Advertising business,** as follows: ➢ Payment by client to advertising agency- **TDS u/s 194C (✓).** ➢ **No TDS** on Payment by advertising agency to the television channel / newspaper company. ➢ **No TDS** on Payments made by television channels or

		not exceed ₹ 1 Cr, in case of business (or ₹ 50 Lakhs in case of profession)					newspaper companies to the advertising agency for booking or procuring of or canvassing for advertisements, *because relationship between the media company and the advertising company is on a principal-to-principal basis, such payments are in the nature of trade discount and not commission and, therefore, outside the purview of TDS u/s 194H.*
Section	**TDS on -**	**Responsible Payer (Deductor)**	**Payee (Deductee)**	**Timing of Deduction**	**Rate of TDS**	**Limit for Non-Deduction**	**Other Relevant Provisions**
194-I	**Rent**	Any Person, [Except an individual or HUF whose total sales, turnover or gross receipts from the business or profession in last year do not exceed ₹ 1 Cr, in case of business (or ₹ 50 Lakhs in case of profession)	**Resident**	**Credit** or **payment,** (whichever is **Earlier) [*Deeming Fiction available** i.e. Crediting to other account in Payer's books shall be deemed to be the credit of such income to the account of the payee]	**2%** For use of **Plant, or Machinery or equipment** --- **10%** For use of **Land, Building, Furniture or fitting**	Not exceeding **₹ 2,40,000** during a Financial Year to the payee	**"Rent" means:** - any payment, *by whatever name called,* - **for the use of (either** separately or together) any, ➢ Land; or building (including factory building); or land appurtenant to a building (including factory building); or ➢ Machinery; or plant; or equipment; or ➢ Furniture; or fittings, - Whether or not any or all of above are owned by the payee. ☞ If rent is paid or credited to REIT - **No TDS.** ☞ Advance rent, non-refundable deposits and warehousing charges will be liable for TDS. But for the purpose of TDS, only income by way of rent shall be considered, Meaningthereby, if the municipal taxes etc. are borne by the tenent, no tax will be deducted on such sum. [Board Circular] The CBDT has also clarified that: **(1)** Lump sum lease premium or one-time upfront lease charges, which are not adjustable against periodic rent, paid or payable for acquisition of long-term leasehold rights* (like 99 years/ 80 years, etc.) over land or any other property **are**


Land on Lease
Person
Assessee
Non-Refundable
80 Years
or
99 Years
Say for..
→ One time upfront lease charges Or → Lumpsum lease premium
For acquiring Long term Lease hold rights
Not adjustable against periodic rent.
Capital Expenditure
Nature
Payment (✓)
Not Rental Income for Lesser
Character of DEEMED SALE
Such Payment → "Not Liable for TDS u/s 194-I". →[as supported from Circular No. 35/2016]

							not payments in the nature of rent hence not liable for TDS under this section. [*Such lease assumes deemed sale] **(2)** Section 194-I is not applicable to the cooling charges paid by the customers of the cold storage, **because the main function of the cold storage is to preserve perishable goods by means of a mechanical process,** and storage of such goods is only incidental in nature. However, since the arrangement between the customers and cold storage owners are basically contractual in nature, the provision of section 194C will be applicable. ☞ In the case of Japan Airlines Co. Ltd. The **Supreme Court** has held that -Landing and Parking charges payable Airlines in respect of aircrafts are not for the 'use of land' per se but the charges are in respect of number of facilities provided by the Airport Authority of India. Thus, **landing and parking charges payable by Airlines would attract TDS u/s 194C and not under section 194-I.**
Section	**TDS on -**	**Responsible Payer (Deductor)**	**Payee (Deductee)**	**Timing of Deduction**	**Rate of TDS**	**Limit for Non-Deduction**	**Other Relevant Provisions**
194LA	**compensation Or enhanced compensation** on compulsory acquisition of **immovable property**	Any Person	**Resident**	**At the time of Payment**	**10%**	**Not exceeding ₹ 2,50,000** during a Financial Year	❖ "Immovable property" means any land **(other than agricultural land)** or any building or part of a building. ❖ **No deduction** shall be made under this section - **where such payment is made in respect of any award or agreement** - *which has been exempted from levy of income-tax* - **under** the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 **(i.e. RFCTLARR Act, 2013).**

Section	TDS on -	Responsible Payer (Deductor)	Payee (Deductee)	Timing of Deduction	Rate of TDS	Limit for Non-Deduction	Other Relevant Provisions
194-IA (As amended by F.A. 2022)	**Consideration for transfer of immovable Property EXCEPT Rural agricultural land**	Any person being **transferee i.e. Purchaser (other than person referred to in section 194LA)**	**Resident (Seller)**	Credit or **payment,** (whichever is **Earlier)** **[*Deeming Fiction NOT available]**	**1%** of the **total consideration** for transfer of immovable property OR **1 % of Stamp Duty Value whichever is higher**	Where the **sale consideration** for the transfer of an immovable property **as well as its stamp duty value** is **less than fifty lakhs rupees**	☞ "Consideration for any immovable property" shall include **all charges of the nature of club membership fee, car parking fee, electricity and water facility fees, maintenance fee, advance fee or any other charges of similar nature, which are incidental to transfer of the immovable property.** ☞ **Section 203A** (relating to obtaining tax deduction and collection account number) **shall not apply** to a person(i.e. purchaser) required to deduct tax under this section. ☞ Though Limit of ₹ 50 Lakh is based on *consideration for an immovable property, still, **if sellers jointly own a property and sells for a total consideration of ₹ 50 Lakh or more,*** then, this section is **not** attracted **if each co-owner's consideration is less than ₹ 50 Lakhs.**
194-IB	**Rent of land or building or both**	**Individual or HUF** [Except whose total sales/gross receipts exceed the limit as specified u/s 44AB(a)/(b), in last year]	**Resident**	Credit or Payment (whichever is earlier) of rent, for the last month of previous year or tenancy, *if property is vacated in previous year*	**5%**	**Rent not exceeding ₹50,000/-** for a month or part of a month during the previous year	☞ **Section 203A** (relating to obtaining tax deduction & collection account number) **shall not apply** to a person (tenant) required to deduct tax under this section. ☞ **In a case** where the tax is required to be deducted as per the provisions of section 206AA (i.e. **payee does not furnish his PAN details to the payer) / ~~206AB,~~ such deduction shall not exceed the amount of rent payable for the last month of the previous year or the last month of the tenancy, as the case may be.** **As Amended By F. A., 2022** ☞ *Deeming Fiction NOT available.

Section	TDS on -	Responsible Payer (Deductor)	Payee (Deductee)	Timing of Deduction	Rate of TDS	Limit for Non-Deduction	Other Relevant Provisions
194-IC	**Monetary Payment under Joint development agreement**	Any Person, [Practically, **Developer or Builder**]	**Resident**	**Credit** or **payment**, (whichever is **Earlier**)	**10%**	-	☞ **Deeming Fiction** [i.e. Crediting to other account in Payer's books shall be deemed to be the credit of such income to the account of the payee] **NOT available.** ☞ This section overrules section 194-IA.
194J	➢ **Fees for professional services,** or ➢ **Fees for technical services,** or ➢ **Royalty,** or ➢ Any sum referred to in section28(va) i.e., **Non-compete fees and Non-sharing fees** or ➢ **Payment to Director except chargeable under the**	Any Person, [Except an individual or HUF whose total sales, turnover or gross receipts from the business or profession carried on by him do not exceed ₹ 1 Cr, in case of business (or ₹ 50 Lakhs in case of profession) during immediate	Resident	Credit or payment, (whichever is Earlier) **[*Deeming Fiction available** i.e. Crediting to other account in Payer's books shall be deemed to be the credit of such income to the	10% --- But **2% on-** a) **Fees for Technical services; or** b) PAYEE is engaged only in business of operation of **call centre**; or c) **Royalty (in nature of payment for sale, distribution/ exhibition of** cinematographic films)	**No TDS** if the amount or the aggregate amounts of fees for professional **OR** technical services, **OR royalty, OR Non compete fees & non sharing fees** does not exceed ₹ **30000/-** in a	☞ No TDS is required to be deducted by individual or HUF (even if he/it was subject to tax audit in last year), where such fees for professional services is credited / paid **exclusively for his personal purpose.** ☞ The CBDT has clarified that the services rendered by following persons **in relation to the sports activities** will be treated as "Professional Services": (a) Sports Persons, (b) Umpires and Referees, (c) Coaches and Trainers, (d) Team Physicians and Physiotherapists, (e) Event Managers, (f) Anchors, and (g) Sports Columnists. ☞ Payments made by Third Party Administrators (TPAs) to hospitals on behalf of insurance companies for settlement of medical / insurance claims etc. with the hospitals, **will be liable for TDS under this section.** ☞ Payment against computer software will amount to Royalty, **But,** *where payment is made for hardware in which the software is embedded and the software does not have independent functional existence,* ***no amount could be attributed as royalty.*** **[Alcatal Lucent Canada (Del-HC)]**

	head "Salary"	preceding Financial Year]		account of the payee]		financial year.	☞ **No TDS** shall be made on payment by a transferee for acquisition of software **from resident transferor**, where- ➢ The software is acquired in a **subsequent transfer** and the transferor has transferred the software without any modification, ➢ Tax has been deducted by the transferor on payment for any previous transfer of such software, and ➢ The transferee obtains a declaration from the transferor that the tax has been deducted on previous transfer along with the Permanent Account Number of the transferor. ☞ Royalty shall also include *consideration for the sale, distribution or exhibition of cinematographic films.* **[F.A. 2020]** ☞ If under Bill/Invoice, Service tax / GST indicated separately, then TDS will be deducted on amount of Bill *except* such Service tax / GST component. **But** if Service tax / GST is **not** indicated separately, then *TDS will be deducted on whole amount of Bill.* **[APPLICABLE FOR OTHER SECTIONS ALSO]** ☞ If under Bill / Invoice, reimbursement of expense is claimed, then that **will not be excluded** while deducting TDS.
Section	**TDS on -**	**Responsible Payer (Deductor)**	**Payee (Deductee)**	**Timing of Deduction**	**Rate of TDS**	**Limit for Non-Deduction**	**Other Relevant Provisions**
194K	**Income on units of Mutual Fund or Administrator of the specified undertaking or specified Co.**	Any Person	**Resident**	Credit* or payment, (whichever is Earlier)	**10%**	See Next Column	TDS shall not be deducted in the following cases: ☞ If aggregate amount of such income credited or paid or likely to be credited or paid during the financial year to the payee does not exceed ₹ 5,000. ☞ If the income is of the nature of capital gains. ➢ *Deeming Fiction is available.

Section	TDS on -	Responsible Payer (Deductor)	Payee (Deductee)	Timing of Deduction	Rate of TDS	Limit for Non-Deduction	Other Relevant Provisions
194M	**Payment to** contractor **or** Sub-contractor **for carrying out ANY WORK** Or **Commission** or **Brokerage** Or **Fees for professional services**	An individual or HUF** **who is not required to deduct tax u/s 194C, 194H, or 194J**	Resident	Credit or payment, (whichever is Earlier) **[*Deeming Fiction NOT available]**	**5%**	**Not exceeding ₹ 50,00,000** during a Financial Year to the payee	☞ **Section 203A** (relating to obtaining tax deduction & collection account number) **shall not apply** to a person required to deduct tax under this section. ** An individual / HUF is required to deduct tax at source in respect of the following under this section- - Payment / credit to a resident contractor or resident professional, when such payment is for personal use. - Payment / credit to a resident contractor or resident professional or to a resident of commission or brokerage [where payer is an individual / HUF who carries on business or profession and whose total sales, turnover or gross receipts from the business or profession carried on by him does not exceed ₹ 1 Cr, in case of business (or ₹ 50 Lakhs in case of profession) in the immediately preceding financial year].
194N **(As amended by F.A. 2020)**	**Cash withdrawal from one or more accounts maintained with bank / Co-operative bank / Post office**	**Bank or Co-operative bank or Post office**	**Any Person**	**At the time of payment in cash**	**2%** (For proviso, as inserted by Finance Act 2020, see last column)	**Not exceeding ₹ 1 crore** during a financial year to the payee from one or more accounts as maintained with Payer	➢ In case of a payee who has not filed his ROI for all of the three preceding years, for which due date u/s 139(1) has expired, immediately preceding the current year in which the payment is made, TDS shall be deducted: @ **2%,** where the amount or aggregate of amounts, as the case may be, being paid in cash exceeds ₹ 20 lakhs during the previous year but does not exceed ₹ 1 crore; or @ **5%,** where the amount or aggregate of amounts, as the case may be, being paid in cash exceeds ₹ 1 crore during the previous year. ☞ **No TDS under this section shall be deducted** to any

						(For proviso, as inserted by Finance Act 2020, see last column)	payment made to: (i) Govt., banking company, co-operative bank, post office. (ii) Any business correspondent of a banking company or co-operative bank as per guideline issued in this regard by RBI. (iii) Any white label ATM operator of a banking company / co-operative bank as per the authorization issued by RBI under the Payment and Settlement Systems Act, 2007. (iv) Such other person or class of persons notified by the Central Government in consultation with RBI.
Section	**TDS on -**	**Responsible Payer (Deductor)**	**Payee (Deductee)**	**Timing of Deduction**	**Rate of TDS**	**Limit for Non-Deduction**	**Other Relevant Provisions**
194-O	**Sale of goods or provision of services** of an e-commerce participant	**e-commerce operator** who is facilitating sale of goods or provision of services of an e-commerce participant through its digital or electronic facility or platform	**e-commerce participant (Resident)**	*at the time of **credit** of amount of sale or services or both to the account of an e-commerce participant or at the time of **payment** by any mode thereof to such e-*	**1% of the gross amount of such sales or services or both** (For **Explanation,** See last column) In case the E-commerce participant does not furnish his PAN to the e-commerce	See Next Column	**Explanation:** For the purposes of this sub-section, *any payment made by a purchaser of goods or recipient of services **directly** to an e-commerce participant for the sale of goods or provision of services or both, facilitated by an e-commerce operator, **shall be deemed to be the amount credited or paid by the e-commerce operator to the e-commerce participant** **and shall be included in the gross amount for the purpose of TDS under this section.*** ➢ No deduction under this section shall be made from any sum credited or paid or likely to be credited or paid during the previous year to the account ***of an e-commerce participant, being an individual or Hindu undivided family, where the gross amount of such sale or services or both during the previous year does not exceed five lakh rupees and such e-commerce participant has furnished his PAN or Aadhaar Number to the e-commerce operator.***

				commerce participant, whichever is ***earlier***	operator, TDS shall be deducted at the rate *of* ***5%*** (instead 20%) u/s 206AA. **Part of Section 206AA**		➢ A transaction in respect of which tax has been deducted by the e- commerce operator under this section, or which is not liable to deduction under aforesaid point, shall not be liable to tax deduction at source under any other provision of this Chapter ➢ Provisions of this section shall not apply to any amount or aggregate of amounts received or receivable by an e-commerce operator for hosting advertisements or providing any other services which are not in connection with the sale or services referred to in this section.
Section	**TDS on -**	**Responsible Payer (Deductor)**	**Payee (Deductee)**	**Timing of Deduction**	**Rate of TDS**	**Limit for Non-Deduction**	**Other Relevant Provisions**
194-P	**TI of specified senior citizen as computed by the specified bank** (after considering deductions u/s 80C-80U and rebate u/s 87A)	**Specified bank** (**i.e.** Banking company as notified by the Central Government)	**Specified senior citizen**	-	**Tax payable on total income at the rate in force**	Basic Exemption Limit	**Specified senior citizen means:** ✓ **Resident individual;** (+) ✓ **Age ≥ 75 years;** (+) ✓ Having **income from pension** as credited in pension account with **Specified bank**; (+) ✓ **Not having any other income except interest income** from account with **Specified bank** in which he gets pension; (+) ✓ **Required to furnish a declaration** in prescribed form and manner **to the specified bank**. ☞ If the tax has been deducted under this section, then, specified person **need not to file his/her return** u/s 139(1).
194-Q	**Consideration for Purchase of any goods**	**Buyer**	**Resident seller**	Credit or payment,	**0.1% of amount paid or**	**Not exceeding ₹ 50,00,000**	TDS shall not be deducted in the following cases: (i) **If tax is deductible under any other provisions** of this Act;

				(whichever is Earlier)	**payable in excess of ₹ 50 Lakh** In case seller does not furnish his PAN to the Buyer, TDS shall be deducted at the rate *of 5%* u/s 206AA. **[Part of Sec. 206AA]**	during a Financial Year to the Seller	**(ii) If tax is collectible under the provisions of section 206C except section 206C(1H).** Meaning there by, **if a particular transaction is covered by section 194-Q *as well as* section 206C(1H),** then, **TDS u/s 194-Q shall apply, and not TCS u/s 206C)1H).** ☞ **Buyer means** any person whose total sales, turnover or gross receipts from the business carried on by him exceeds ₹10 Cr, during the financial year immediate preceding the financial year in which the purchase of goods is carried out, **Except** the person as notified by the Central Government. ☞ **Deeming Fiction** [i.e. Crediting to other account in Buyer's books shall be deemed to be the credit of such income to the account of the Seller] **is available.**

GUIDELINES UNDER SECTION 194Q OF THE INCOME-TAX ACT, 1961

(1)	**Applicability on transactions carried through various Exchanges:**
	In order to remove practical difficulties in implementing the provisions of this section as in case of certain exchanges and clearing corporations, sometime in these transactions, there is no one to one contract between the buyers and the sellers, it is provided that this section shall not be applicable in relation to,— (i) **transactions in securities and commodities which are traded through recognized stock exchanges** or cleared and settled by the recognized clearing corporation, including recognized stock exchanges or recognized clearing corporation located in International Financial Service Centre; (ii) **transactions in electricity, renewable energy certificates and energy saving certificates traded through power exchanges** registered in accordance with Regulation 21 of the CERC. **[Same Guideline is also applicable in case of TCS u/s 206C(1H)]**
(2)	**Adjustment for GST, purchase returns:**
	Although no adjustment on account of GST is required to be made for collection of tax u/s 206C(1H) since the collection is made with reference to receipt of amount of sate consideration. However, the situation is different so far as TDS is concerned. With respect to TDS u/s 194Q, clarified as follows:

	Condition	Amount on which tax is to be deducted u/s 194Q
(i)	**Where tax is deducted <u>at the time of credit of amount</u> in the account of the seller and in terms of the agreement or contract between the buyer and seller, component of GST is indicated separately in the invoice**	***Tax has to be deducted on the amount credited (without including such GST)***
(ii)	**<u>Where tax is deducted on payment basis</u> (if payment is earlier than the credit) *like* in case of advance payment**	***Tax has to be deducted on the whole amount (since it is not possible to identify the payment with the tax component to be invoiced in the future)***
(iii)	**In case of purchase returns, <u>where the money is refunded by the seller</u>**	***Tax deducted earlier u/s 194Q on such purchase (which is now returned) may be adjusted against the next purchase from the same seller***
(iv)	**In case of purchase returns, <u>where goods are replaced by the seller</u>**	***No adjustment is required.***

✓ **Same treatment as mentioned in aforesaid table will apply in case of purchase of goods which are not covered within the purview of GST, but which are subject to VAT/Sales tax/Excise duty/CST.**

(3) Whether non-resident can be buyer under section 194Q of the Act?

It is clarified that the provisions of section 194Q shall not apply to a non-resident whose purchase of goods from seller resident in India is not effectively connected with the permanent establishment of such non-resident in India.

(4) Whether tax is to be deducted when the seller is a person whose income is exempt?

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

Similarly, with respect to section 206C(1H), it is clarified that the provisions of this section shall not apply to sale of goods to a person, being a buyer, who as a person is exempt from income tax under the Act (like person exempt u/s 10) or under any other Act passed by the Parliament (Like RBI Act, ADB Act etc.).

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

(5) Whether provisions of section 194Q of the Act shall apply to buyer in the year of incorporation?

	It is clarified that u/s 194Q a buyer is required to have total sales or gross receipts or turnover from the business carried on by him exceeding ten crore rupees during the financial year immediately preceding the financial year in which the purchase of good is carried out. **Since this condition would not be satisfied in the year of incorporation, the provisions of section I94Q shall not apply in the year of incorporation.**
(6)	**Whether provisions of section 194Q of the Act shall apply to buyer if the turnover from business is 10 crore or less?**
	In case of a buyer whose turnover or gross receipt exceeding Rs. 10 crore but total sales or gross receipts or turnover from business is Rs. 10 crore or less, it is clarified that for section 194Q, a buyer is required to have total sales or gross receipts or turnover **from the business** carried on by him exceeding Rs. 10 crore during the financial year immediately preceding the financial year in which the purchase of good is carried out. Hence, the sales or gross receipts or turnover from business carried on by him must exceed Rs. 10 crore. **His turnover or receipts from non-business activity is not to be counted for this purpose.**
GUIDELINES UNDER SECTION 194-O, 194Q and 206C(1H) OF THE INCOME-TAX ACT, 1961	
(1)	**Cross application of section 194-O, section 206C(1H) and section 194Q of the Act.**
	It is requested to clarify how section 194-O, section 206C(1H) and section 194Q of the Act, apply on the same transaction. Under sub-section (3) of section 194-O, a transaction in respect of which tax has been deducted by the e-commerce operator under sub-section (1), or which is not liable to deduction under sub-section (2), **shall not be liable to tax deduction at source under any other provision of chapter of TDS.** Under second proviso to sub-section (IH) of section 206C, **provisions of this sub-section shall not apply,** ***if the buyer is liable to deduct tax at source under any other provisions of this Act on the goods purchased by him from the seller and has deducted such tax.*** Under sub-section (5) of section I94Q, the provision of **this section shall not apply** ***to a transaction on which-*** **(i)** ***tax is deductible under any of the provisions of this Act; and*** **(ii)** ***tax is collectible under the provisions of section 206C, other than a transactions on which section 206C(1H) applies.*** After conjoint reading of all these provisions the following is clarified: **(i)** **If tax has been deducted by the e-commerce operator on a transaction under section 194-O of the Act [including transactions on which tax is not deducted on account of sub-section (2) of section 194-O],** ***that transaction shall not be subjected to tax deduction under section 194Q.*** **(ii)** Though section 206C(1H) provides exemption from TCS if the buyer has deducted tax at source on goods purchased by him, to remove difficulties it is clarified that **this exemption would also cover a situation where instead of the buyer the e-commerce operator has deducted tax at source on that transaction of sale of goods by seller to buyer through e-commerce operator.**

	(iii) If a transaction is both within the purview of section 194-O as well as section 194Qt, ***tax is required to be deducted u/s 194-O and not u/s 194Q.***
	(iv) Similarly, if a transaction is both within the purview of section 194-O of the Act as well as section 206C(1H) of the Act ***tax is required to be deducted under section 194-O of the Act.*** The transaction shall come out of the purview of section 206C(1H) of the Act after tax has been deducted by the e-commerce operator on that transaction. **Once the e-commerce operator has deducted the tax on a transaction, the seller is not required to collect the tax under section 206C(1H) of the Act on the same transaction.** *It is clarified that here primary responsibility is on e-commerce operator to deduct the tax under section 194-O of the Act and that responsibility cannot be condoned if the seller has collected the tax under section 206C(1H) of the Act.* This is for the reason that the rate of TDS under section 194-O is higher than rate of TCS under section 206C(1H)
	(v) If a transaction is both within the purview of section 194-Q of the Act as well as section 206C(1H) of the Act, **the tax is required to be deducted under section 194-Q of the Act.** The transaction shall come out of the purview of section 206C(1H) of the Act after tax has been deducted by the buyer on that transaction. **Once the buyer has deducted the tax on a transaction, the seller is not required to collect the tax under section 206C(1H) of the Act on the same transaction.** However, if, for any reason, tax has been collected by the seller under section 206C(1H) of the Act, before the buyer could deduct tax u/s 194-Q of the Act on the same transaction, ***such transaction would not be subjected to tax deduction again by the buyer.*** *This concession is provided to remove difficulty, since tax rate of deduction and collection are same in section 194Q and section 206C(1H).*
(2)	**E-auction services carried out through electronic portal:**
	Section 194-O would not apply in relation to e-auction activities carried out by e-auctioneers, if all the facts listed in (a) to (f) below are satisfied: (a) The e-auctioneer conducts e-auction services for its clients in its electronic portal and is responsible for the price discovery only which is reported to the client. (b) The price so discovered through e-auction process is not necessarily the price at which the transaction takes place and it is up to the discretion of the client to accept the price or to directly negotiate with the counter-party. (c) The transaction of purchase/sale takes place directly between the buyer and the seller party outside the electronic portal maintained by the e-auctioneer and price discovery only acts as the starting point for negotiation and conclusion of purchase/sale. (d) The e-auctioneer is not responsible for facilitating the purchase and sale of goods for which e-auction was conducted on its electronic portal except to the extent of price discovery. (e) Payments for the transactions are carried out directly between the buyer and the seller outside the electronic portal and the e-auctioneer does not have any information about the quantum and the schedule of payment which is decided mutually by the client and the counterparty. (f) For payment made to e-auctioneer for providing e-auction services, the client deducts tax under the relevant provisions of the Act other u/s 194 -O.

If any of these facts are not satisfied, then, the clarification given above will not apply. Further, the buyer and seller would still be liable to deduct/collect tax as per the provisions of section 194Q and 206C(1H), as the case may be.

(3) Applicability of section 194Q in cases where exemption has been provided under section 206C(1A):

Section 194Q does not apply in respect of transactions where tax is collectible u/s 206C [except sale of goods under section 206C(1H)]. Section 206C(1H) requires collection of tax at source in respect of sale of goods other than goods which have been covered u/s 206C(1)/(1F)/(1G).

In accordance with section 206C(1A), tax is not required to be collected in the case of a resident buyer who furnishes declaration to the effect that the goods u/s 206C(1) are to be utilised for the purposes of manufacturing, processing or producing articles or things or for the purposes of generation of power and not for trading purposes.

In case of goods which are covered u/s 206C(1) but exempted u/s 206C(1A), tax would not be collectible u/s 206C(1)/(1H).

It is clarified that **the provisions of section 194Q will apply in such cases covered under section 206C(1A) and the buyer is to be liable to deduct tax u/s 194Q, if the conditions specified therein are fulfilled.**

(4) Applicability of the provisions of section 194Q in case of department of Government not being a public sector undertaking or corporation:

To be considered as a buyer for the purposes of 194Q, **such person should be carrying out a business/commercial activity;** and the total sales, gross receipts or turnover from such business/commercial activity should be more than ₹ 10 crore during the financial year immediately preceding the financial year in which goods are being purchased by such person.

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

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

Section	TDS on -	Responsible Payer (Deductor)	Payee (Deductee)	Timing of Deduction	Rate of TDS	Limit for Non-Deduction	Other Relevant Provisions
194-R	***Any benefit or perquisite,*** *whether convertible into money or not*	Any person [Except **Individual or HUF** whose total sales/gross receipts doesn't exceed ₹1 Cr. in case of business, and ₹50 lacs in case of profession), in last year]	**Resident**	Before providing such benefit or perquisite	**10%** of the value or aggregate of value of such benefit or perquisite	If value or **aggregate** of value of such benefit or perquisite **does not exceed ₹ 20,000** during the Financial Year	☞ Such benefit/perquisite must arise from business or profession, by the resident who have availed the same. **Proviso to Section 194-R:** - In a case where - The benefit or perquisite is ***wholly in kind***; or - Partly in cash and ***partly in kind*** *but the part in cash is not sufficient to meet the liability of deduction of tax in respect of whole of such benefit or perquisite,* - the person responsible providing such benefit or perquisite - **shall,** - *before releasing the winnings*, **ensure** that - **required tax has been paid** in respect of benefit / perquisite.

Circular No. 12/2022 Dated 16-6-2022 Read with Circular No. 18/2022 Dated 13-9-2022: GUIDELINES u/s 194R:

Q-1	**Is it necessary that the person providing benefit or perquisite needs to check if the amount is taxable u/s 28(iv), before deducting tax u/s 194R?**
Ans.	**No.** The deductor is not required to check whether the amount of benefit or perquisite that he is providing would be taxable in the hands of the recipient u/s 28(iv). The amount could be taxable under any other section like section 41(1) etc. Section 194R casts an obligation on the person responsible for providing any benefit or perquisite to a resident, to deduct tax at source @10%. **There is no further requirement to check whether the amount is taxable in the hands of the recipient or under which section it is taxable.**
Q-2	**Is it necessary that the benefit or perquisite must be in kind for section 194R to operate?**
Ans.	**The Proviso to section 194-R clearly indicates the intent of legislature that there could also be situations where benefit or perquisite is in cash or the benefit or perquisite is in kind or partly in cash and partly in kind.** ***Thus, section 194R clearly brings in its scope the situation where the benefit or perquisite is in cash or in kind or partly in cash or partly in kind.***
Q-3	**Is there any requirement to deduct tax under section 194R, when the benefit or perquisite is in the form of capital asset?**

Ans.	It can be seen that the ***asset given as benefit or perquisite may be like car, plot, etc. but in the hands of the recipient it is benefit or perquisite and various Courts have accordingly been held to be taxable.*** *In any case, as stated earlier in question no. 1, the deductor is not required to check if the benefit or perquisite is taxable in the hands of recipient.* ***Thus, the deductor is required to deduct tax u/s 194R in all cases where benefit or perquisite (of whatever nature) is provided.***
Q-3A	**If loan settlement/waiver by a bank is to be treated as benefit/perquisite, it would lead to hardship as the bank would need to incur the additional cost of tax deduction in addition to the haircut that he has taken. Will section 194R apply in such a situation?**
Ans.	It is true that waiver or settlement of loan by the bank may be an income to the person who had taken the loan. It is also true that subjecting such a transaction to tax deduction u/s 194R would put extra cost on such bank, as this would require payment of tax by the deductor in addition to him taking a haircut already. Hence, to remove difficulty, it is clarified that **one-time loan settlement/waiver of loan granted** by the **Public Financial Institution** or **Scheduled Bank** or **Cooperative bank** or **State Financial Corporation** or **State Industrial Investment Corporation** or **Non-Banking Financial Company** or **Housing Finance Company** or **Asset Reconstruction Companies would not be subjected to tax deduction at source u/s 194R**
Q-4	**Whether sales discount, cash discount and rebates are benefit or perquisite?**
Ans.	Sales discounts, cash discount or rebates allowed to customers are also benefits though related to sales/purchase. **Since TDS u/s 194R is applicable on all forms of benefit/perquisite, tax is required to be deducted.** However, it is seen that subjecting these to tax deduction would put seller to difficulty. *To remove such difficulty it is clarified that* ***no tax is required to be deducted u/s 194R on sales discount, cash discount and rebates allowed to customers.*** There could be another situation, where a seller is selling its items from its stock in trade to a buyer. The seller offers two items free with purchase of 10 items. **In substance, the seller is actually selling 12 items at a price of 10 items.** In such a situation, again there could be difficulty in applying section 194R provision. Hence, to remove difficulty it is clarified that on the above facts no tax is required to be deducted under section 194R. ***It is clarified that situation is different when free samples are given and the above relaxation would not apply to a situation of free samples.*** Similarly, this relaxation should not be extended to other benefits provided by the seller in connection with its sale. To illustrate, **the following are some of the examples of benefits/perquisites on which tax is required to be deducted under section 194R (the list is not exhaustive):** ✓ ***When a person gives incentives (other than discount, rebate) in the form of cash or kind such as car, TV, computers, gold coin, mobile phone etc.*** ✓ ***When a person sponsors a trip for the recipient and his/her relatives upon achieving certain targets*** ✓ ***When a person provides free ticket for an event*** ✓ ***When a person gives medicine samples free to medical practitioners.***

	➢ It is of no consequence that *these benefits/perquisites may be actually used by owner/director/employee of the recipient entity or their relatives who in their individual capacity may not be carrying on business or exercising a profession.* ➢ To illustrate, the **free medicine sample** may be provided by a company to a doctor who is an **employee** of a hospital. The TDS u/s 194R is required to be deducted by the company in the hands of hospital *as the benefit/perquisite is provided to the doctor* ***on account of him being the employee of the hospital.*** Thus, in substance, the benefit/perquisite is provided to the hospital. The hospital may subsequently treat this benefit/perquisite as the perquisite given to its employees (if the person who used it is his employee) u/s 17 and deduct tax u/s 192. ➢ Similarly, the tax is required to be deducted u/s 194R if the benefit or perquisite is provided to a doctor who is working as a **consultant** in the hospital. In this case the benefit or perquisite provider may deduct tax u/s 194R with hospital as recipient and then hospital may again deduct tax u/s 194R for providing the same benefit or perquisite to the consultant. **To remove difficulty, as an alternative, the original benefit or perquisite provider may directly deduct tax u/s 194R in the case of the consultant as a recipient.** ➢ The provision of section 194R ***shall not apply*** if the benefit or perquisite is being provided to a Government entity, like **Government hospital,** not carrying on business or profession.
Q-5	**How is the valuation of benefit/perquisite required to be carried out?**
Ans.	The valuation would be **based on fair market value** of the benefit or perquisite except in following cases: (i) The benefit/perquisite provider has *purchased* such benefit/perquisite, in that case the **purchase price** shall be the value for such benefit/perquisite (ii) The benefit/perquisite provider *manufactures* such benefit/perquisite, then, **price that it charges to its customers for such items** shall be considered. It is further clarified that **GST will not be included for the purposes of valuation** of benefit/perquisite for TDS under section 194R.
Q-6	**Many a times, a social media influencer is given a product of a manufacturing company so that he can use that product and make audio/video to speak about that product in social media. Is this product given to such influencer a benefit or perquisite?**
Ans.	If such product is **returned** to the manufacturing company after using for the purpose of rendering service, then, **it will not be treated as a benefit / perquisite**. However, if the product is ***retained,*** *then,* ***it will be in the nature of benefit/perquisite*** **and tax is required to be deducted** u/s 194R.
Q-7	**Whether reimbursement of out of pocket expense incurred by service provider in the course of rendering service is benefit/perquisite?**
Ans.	Let us understand this with a situation assume that a service provider is rendering service to his client "X". In the course of rendering that service, he pays for boarding and lodging expense incurred exclusively for the purposes of rendering the service to his client "X". Now, we need to check that **invoice in whose**

	name is obtained which will decide that who is liable to pay this (or from whom hotel can recover this). ➢ **If such invoice is in the name of client "X" and directly paid by client "X" to hotel or if paid by the service provider, is reimbursed by his client "X",** in this case, **in substance, this expense is the liability of client "X"** and not of service provider. **It is client "X" who gets input credit of GST included in the expenses incurred.** ***Therefore, direct payment by client "X" to hotel or reimbursement of such an expense by client "X" to the service provider will not be considered as benefit/perquisite provided by client "X" to the service provider for the purposes of section 194R.*** ➢ **If such invoice is in the name of service provider (and the payment is made by client "X" directly to hotel or reimbursed to service provider),** then, **in substance** (irrespective of the terms of the agreement under which the expense incurred by the service provider is the cost of service recipient and such cost is reimbursed by the service recipient to service provider), **this expense is the liability of the service provider** and not of client "X". **It is service provider who gets input credit of GST included in the expenses incurred by him. If it was the liability of the client "X",** then, **GST input credit would have been allowed to him (client "X") and not to service provider.** ***Therefore, such direct payment by client "X" to hotel or reimbursement of such an expense by client "X" to the service provider will be considered as benefit/perquisite provided by client "X" to the service provider for which deduction is required to be made under section 194R.*** **Exceptions:** **(1)** Since in GST, if service provider incurs an expense as **"pure agent", then, GST input credit is allowed to service recipient and not to service provider, therefore,** it is clarified that ***amount incurred by "pure agent" for which he is reimbursed by the recipient would not be treated as benefit/perquisite for the purpose of section 194R.*** **(2)** If out of pocket expenses (reimbursement) are already part of the consideration in the bill on which tax is deducted under the relevant provisions (like, u/s 194-C or 194-J which refer to *any sum* paid) of the Act, other than section 194R, **it is clarified that there will not be further liability for tax deduction under section 194R.**
Q-8	**If there is a dealer conference to educate the dealers about the products of the company - Is it benefit/perquisite?**
Ans.	The expenditure pertaining to dealer/business conference *would not be considered as benefit/perquisite* for the purposes of section 194R **in a case where dealer/business conference is held with the prime object to educate dealers/customers about any of the following or similar aspects:** (i)*new product being launched* (ii) *discussion as to how the product is better than others* (iii) *obtaining orders from dealers/customers* (iv) *teaching sales techniques to dealers/customers*

	(v) *addressing queries of the dealers/customers* (vi) *reconciliation of accounts with dealers/customers* ➢ **It is not necessary that all dealers are required to be invited in a dealer/business conference** for the expenses to be not considered as benefit/perquisite for the purposes of tax deduction under section 194R. ➢ Further, in the following cases the expenditure would be considered as benefit or perquisite for the purposes of section 194R: (i)Expense attributable to **leisure trip** or leisure component, *even if it is incidental to the dealer/business conference.* (ii) Expenditure incurred for **family members** accompanying the person attending dealer/business conference (iii) Expenditure on participants of dealer/business conference **for days which are on account of prior stay or overstay beyond the dates of such conference.** It has been further clarified that **a day immediately prior to actual start date of conference and a day immediately following the actual end date of conference would not be considered as over stay.** ☞ **If benefit/perquisite is provided in a group activity** during such dealer/business conference, **there may be practical difficulties in identifying such benefit/perquisite to each participant due to the fact that it is a group activity and reasonable allocation is not possible.** *Non-compliance of the provision of section 194R, in such a case, would not only result in disallowance u/s 40(a)(ia) but may also result in treating the benefit/perquisite provider as assessee in default u/s 201 with all other consequences.* ✓ In order to remove these practical difficulties, it is clarified that *if benefit/perquisite is provided in a group activity in a manner that it is difficult to match such benefit/perquisite to each participant using a reasonable allocation key,* ***the benefit/perquisite provider may at his option NOT CLAIM THE EXPENSE, representing such benefit/perquisite, as deductible expenditure for calculating his total income.*** **If he decides to opt so, he will not be required to deduct tax u/s 194R on such benefit/perquisite** and therefore ***he will not be treated as assessee in default u/s 201.***
Q-9	**Section 194R provides that if the benefit/perquisite is in kind or partly in kind (and cash is not sufficient to meet TDS) then the person responsible for providing such benefit or perquisite is required to ensure that tax required to be deducted has been paid in respect of the benefit or perquisite, before releasing the benefit or perquisite. How can such person be satisfied that tax has been deposited?** **And if Company "A" gifts a car to its dealer "B" which has been considered as benefit under section 194R. Dealer "B" uses this car in his business. Will he get deduction for depreciation in calculating his income under the head "profits and gains of business or profession"?**
Ans.	The requirement of law is that if a person is providing benefit in kind to a recipient and tax is required to be deducted under section 194R, the person is required to ensure that tax required to be deducted has been paid by the recipient. **Such recipient would pay tax in the form of advance tax. The tax**

	deductor may rely on a declaration along with a copy of the advance tax payment challan provided by the recipient confirming that the tax required to be deducted on the benefit/perquisite has been deposited. Once gifting of car by Company "A" has been considered as benefit under section 194R and dealer "B" has included this benefit as income in his income tax return, **it would be deemed that the "actual cost" of the car for the purposes of section 32** of the Act shall be the amount of benefit included by dealer "B" as income in his income-tax return. Hence, dealer "B" **can get depreciation** on fulfillment of other conditions for claiming depreciation.
Q-10	**Section 194R would come into effect from the 1st July, 2022. Second proviso to sub-section (1) of section 194R provides that the provision of this section does not apply where the value or aggregate of value of the benefit or perquisite provided or likely to be provided to a resident during the financial year does not exceed ₹ 20,000/-. It is not clear how this limit of twenty thousand is to be computed for the Financial Year 2022-23?**
Ans.	It is hereby clarified that, — (i) Since the threshold of twenty thousand rupees is with respect to the financial year, **calculation of value or aggregate of value of the benefit or perquisite triggering deduction under section 194R shall be counted from 1st April, 2022.** Hence, if the value or aggregate value of the benefit or perquisite provided or likely to be provided to a resident exceeds ₹ 20,000/- during the financial year 2022-23 (including the period up to 30th June, 2022), the provision of section 194R shall apply on any benefit or perquisite provided on or after 1st July 2022. (ii) **The benefit or perquisite which has been provided on or before 30th June 2022, would not be subjected to tax deduction** under section 194R.
Q-11	**Whether Embassy, High Commissions, Legation, Commission, Consulate and the Trade representation of a foreign state are required to deduct tax u/s 194R?**
Ans.	No.
Q-12	**Whether issuance of bonus share/right share is a benefit or perquisite if issued by a company in which the public are substantially interested as defined in clause (18) of section 2 of the Act and whether tax is required to be deducted under section 194R?**
Ans.	In case of bonus shares which are issued to all shareholders by a company, it has been represented that **this does not result in any benefit to shareholders as the overall value and ownership of their holding does not change.** *Further cost of acquisition of bonus share is taken as nil for capital gains computation when this share is sold.* ***Similar representations have been received seeking clarity on issuance of right shares.*** It is clarified that the **tax u/s 194R is not required to be deducted on issuance of bonus / right shares** by a company in which the public are substantially interested, where bonus shares are issued to all shareholders by such a company or right shares are offered to all shareholders by such a company.

Section	TDS on -	Responsible Payer (Deductor)	Payee (Deductee)	Timing of Deduction	Rate of TDS	Limit for Non-Deduction	Other Relevant Provisions
194-S	**Consideration for transfer of a virtual digital asset**	Any person	**Resident**	Credit or payment, (whichever is earlier) [***Deeming Fiction available** i.e. Crediting to other A/C in Payer's books shall be deemed to be the credit to the account of the payee]	**1%**	See Next Column	☞ In a case where: - Such consideration is ***wholly in kind*** */ in exchange of another virtual digital asset,* where there is no part in cash; or; - Partly in cash and ***partly in kind*** *but the part in cash is not sufficient to meet the liability of deduction of tax in respect of whole of such transfer,* - the person responsible paying such consideration **shall,** - *before releasing the consideration,* **ensure** that - **required tax has been paid** in respect of such consideration. ☞ *Section 203A & 206AB shall not apply to a specified person.* ☞ **No tax shall be deducted in a case,** where — **(a)** *consideration is payable by a specified person* and the **value or aggregate value of such consideration does not exceed ₹ 50,000/-** during the financial year; or **(b)** *consideration is payable by any person other than a specified person* and **value or aggregate value of such consideration does not exceed ₹ 10,000/-** during the financial year.

"Specified person" means:

(a) an **individual or a HUF** *whose total sales / gross receipts doesn't exceed ₹1 Cr. in case of business, and ₹50 lacs in case of profession), in last year,*

(b) an **individual or a HUF,** *not having any income under the head "Profits and gains of business or profession.*

❖ **In case of a transaction to which section 194-O is also applicable along with this section,** then, ***tax shall be deducted under this section.***

Circular No. 13/2022 Dated 22-6-2022 Read with Circular No. 14/2022 Dated 28-6-2022: GUIDELINES u/s 194S:-

Guidelines where transfer of VDA is taking place *on or through an Exchange:*

Q-1	**Who is required to deduct tax when the transfer of VDA is taking place on or through an Exchange and payment is made by the purchaser to the Exchange (directly or through broker) and then from the Exchange it goes to seller directly or through the broker?**	
Ans.	(i)	*In a case where the transfer of VDA takes place on or through an Exchange and VDA being transferred is* ***owned by a person other than Exchange:*** (1) Tax may be deducted u/s 194S **only by the Exchange** which is crediting or making payment to the seller (owner of the VDA being transferred). *In a case where broker owns the VDA, it is the broker who is the seller.* (2) **In a case where the credit/payment between Exchange and the seller is through a broker (and the broker is not seller),** the responsibility to deduct tax u/s 194S shall be on both the Exchange and the broker. *However, if there is a written agreement between the Exchange and the broker that broker shall be deducting tax on such credit/payment, then broker alone may deduct the tax u/s 194S.*
	(ii)	*In a case where the transfer of VDA takes place on or through an Exchange and the VDA being transferred is* ***owned by such Exchange:*** In this case there are no multiple players. **The buyer is required to deduct tax u/s 194S.**
	For the purpose of this circular, — **(i)** The term **"Exchange" means** any person that operates an application or platform for transferring of VDAs, which matches buy and sell trades and executes the same on its application or platform. **(ii)** The term **"Broker" means** any person that operates an application or platform for transferring of VDAs and holds brokerage account/accounts with an Exchange for execution of such trades.	
Q-2	**Question no. 1 was with respect to transactions where the consideration for transfer of VDA is not in kind. How will this operate in a situation where it is in kind or in exchange of another VDA?**	
Ans.	According to proviso to sub-section (1) of section 194S, there could be situations where the consideration is in kind or in exchange of another VDA or partly in kind and cash is not sufficient to meet the TDS liability. In these situations, the person responsible for paying such consideration is required to ensure that tax required to be deducted has been paid in respect of such consideration, before releasing the consideration. In the above situation, the buyer will release the consideration in kind after seller provides proof of payment of such tax (e.g. Challan details etc.). In a situation where VDA "A" is being exchanged with another VDA "B", both the persons are buyer as well as seller. One is buyer for "A" and seller for "B" and another is buyer for "B" and seller for "A". Thus both need to pay tax with respect to transfer of VDA and show the evidence to other so that VDAs can then be exchanged. [This guideline is also applicable where transfer of VDA is taking place other than through an Exchange]	

Q-3	**Whether the provision of section 194Q of the Act is also applicable on transfer of VDA?**
Ans.	Without going into the merit whether VDA is goods or not, it is clarified that once tax is deducted u/s 194S, ***tax would not be required to be deducted under section 194Q of the Act.*** [This guideline is also applicable where transfer of VDA is taking place other than through an Exchange]
Q-4	**Whether the consideration for transfer of VDA shall be on Gross basis after including GST/commission or it shall be on "net basis" after exclusion of these items?**
Ans.	In order to remove difficulty, it is clarified that the tax required to be withheld u/s 194S shall be **on the "net" consideration after excluding GST/charges** levied by the deductor for rendering service. [This guideline is also applicable where transfer of VDA is taking place other than through an Exchange]
Q-5	**In transactions where payment is being carried out through payment gateways, there may be tax deduction twice. To illustrate that a person 'XYZ' is required to make payment to the seller for transfer of VDA. He makes payment of one lakh rupees through digital platform of "ABC". On these facts liability to deduct tax u/s 194S may fall on both "XYZ" and "ABC. Is tax required to be deducted by both?**
Ans.	In order to remove this difficulty, it is provided that in the above example, the payment gateway ("ABC") will not be required to deduct tax u/s 194S on a transaction, if the tax has been deducted by the person ('XYZ') required to make deduction u/s 194S. To facilitate proper implementation, "ABC" may take an undertaking from "XYZ" regarding deduction of tax.
Guidelines where transfer of VDA is taking place *other than through an Exchange and all other transactions:*	
Q.	**Section 194S shall come into effect from the 1st July, 2022. The liability to deduct tax u/s 194S applies only when the value or aggregate value of the consideration for transfer of VDA exceeds fifty thousand rupees during the financial year in case of consideration being paid by specified person and ten thousand rupees in other cases. It is not clear how this limit of fifty thousand (or ten thousand) is to be computed?**
Ans.	It is clarified that, — (i) Since the threshold of fifty thousand rupees (or ten thousand rupees) is with respect to the financial year, calculation of consideration for transfer of VDA triggering deduction u/s 194S shall be counted from 1st April, 2022. Hence, if the value or aggregate value of the consideration for transfer of VDA payable by a person exceeds fifty thousand rupees (or ten thousand rupees) during the financial year 2022-23 (including the period up to 30th June, 2022), the provision of section 194S shall apply on any sum, representing consideration for transfer of VDA, credited or paid on or after 1st July, 2022. (ii) Since the provision of section 194S of the Act applies at the time of credit or payment (whichever is earlier) of any sum, representing consideration for transfer of VDA, such sum which has been credited or paid before 1st July, 2022 would not be liable for TDS u/s 194S.

EFFECT OF SURCHARGE ON TDS RATES [IMPORTANT NOTE (w.r.t. SECTION 192 TO 196D)]:

(A) IN CASE OF SALARY:

Where payment is being made to a RESIDENT or a NON-RESIDENT:

Situation	Rate of surcharge
50 Lacs < Amount liable for TDS during the financial year ≯ 1 CRORE	10 %
1 CRORE < Amount liable for TDS during the financial year ≯ 2 CRORE	15 %
2 CRORE < Amount liable for TDS during the financial year ≯ 5 CRORE	25 %
Amount liable for TDS during the financial year > 5 CRORE	37 %

(B) IN CASE OF ANY OTHER SUM:

(1) Where payment / credit is being made to a NON-RESIDENT Individual/HUF/AOP/BOI/AJP:

Situation	Rate of surcharge
50 Lacs < Amount liable for TDS during the financial year ≯ 1 CRORE	10 %
1 CRORE < Amount liable for TDS during the financial year ≯ 2 CRORE	15 %
2 CRORE < Amount liable for TDS during the financial year ≯ 5 CRORE	25 %
Amount liable for TDS during the financial year > 5 CRORE	37 %

Note: If tax is deductible on STCG as referred to in section 111A, LTCG u/s 112/112A or dividend income, then, **surcharge on such income shall not exceed 15% in any case.**

- **If deductee is an AOP (having only companies as its members), surcharge can not exceed 15%.**

(2) Where payment / credit is being made to any other NR (except FOREIGN COMPANY):

Surcharge is applicable @ 12% of tax *if amount liable for TDS during the financial year 2021-22 exceeds ₹1 cr.*

(3) Where payment / credit is being made to a FOREIGN COMPANY:

Situation	Rate of surcharge
1 CRORE < Amount liable for TDS during the financial year ≤ 10 CRORES	2 %
Amount liable for TDS during the financial year > 10 CRORES	5 %

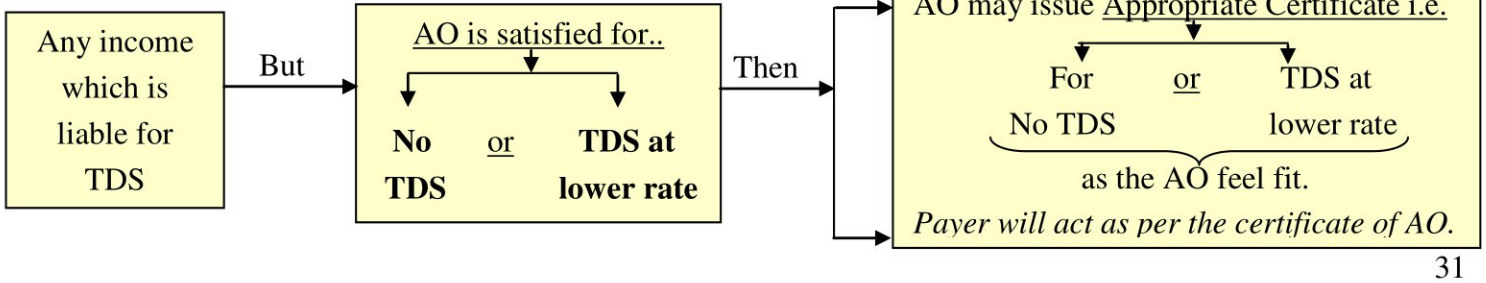
(4) IN OTHER CASE: NO SURCHARGE WILL BE APPLICABLE FOR TDS.

EFFECT OF HEALTH & EDUCATION CESS ON TDS RATES:

The rates of TDS shall be increased by Health and Education cess @ 4% only in the following cases:

IN CASE OF SALARY	Where payment is being made to a RESIDENT or a NON-RESIDENT.
IN CASE OF ANY OTHER SUM	Where payment/credit is being made to a NON-RESIDENT or a FOREIGN Co.

Section 197: *Certificate for deduction at lower rate: -*



Section 197A: *No deduction to be made in certain cases:* -

Any income which is liable for TDS u/s **192A 193, 194A, 194D, 194DA, 194-I**

AND

Payee i.e. Assessee **except** Co./ Firm → **Furnishes a declaration** [in Form 15G or Form 15H (if assessee is senior citizen)] → Payer

to the effect that **tax on his total income will be Nil**

then

Payer is duty bound for **No TDS** and forward a copy of such declaration to the I.T. Department.

But

Payee can't furnish such declaration if aggregate of such income, *as liable for TDS under the aforesaid sections,* **exceeds the basic exemption limit.**

This restriction SHALL NOT APPLY **in case of senior citizen.**

Under this section, CG has the power… to specify → Payee and his payment → on which tax will NOT be deducted which are given below:

(1) Payment under *subsequent transfer of software* ***without any modification***, where TDS has been made on its previous transfer, and **payer obtains a declaration from the payee to this effect along with the PAN of payee.** **[as already discussed with section 194-J]**

(2) Certain payment *like*, **bank guarantee commission,** cash management service charges, clearing charges (MICR Charges) and debit / credit card commission etc. **to schedule banks or to any payment systems company as authorised by the RBI.**

Section	Subject Matter
200	**(1) Payer will deposit TDS** with in the prescribed time, broadly, viz.: ➢ **7 days from the end of month of TDS;** If month of TDS is March, then, **upto 30th April.** ➢ If TDS is of section 194-IA/194-IB/194M/194S: **30 days from the end of month of TDS.**
	(2) Payer will furnish quarterly return with in the following time limit: ➢ For first 3 Quarters: **with in one month from the end of the quarter.** ➢ For last quarter: **Upto 31st May.** ☞ **In the case of TDS u/s 194-IA/194-IB/194M/194S,** challan of depositing TDS (Form 26QB / 26QC/26QD/26QE) is itself taken as quarterly statement of TDS, and must be submitted within 30 days from the end of the month in which TDS is made. ***No separate TDS statement is required.***
234E	If payer fails to furnish quarterly return with in due time: ✓ **He will be liable to pay fee @ 200/- per day for period of delay.** ✓ Such fee will not exceed the amount of TDS.

201

(1) If any person liable for TDS….

- **Fails to deduct** such TDS **OR** After deduction **fails to deposit such TDS**
  - As required under the Act.

Then, he will be treated as assessee in default.

EXCEPTION

Tax is **deductible** on the aforesaid sum but it is not deducted	**AND**	☞ **Payee has furnished his return of income** u/s 139. ☞ **Payee has disclosed such income in his return.** ☞ **Payee has paid tax due on his returned income.** ☞ **Payer furnishes a certificate to this effect from the C.A.**

(1A) Any person liable for TDS
- Fails to deduct such TDS → as required under the Act.
- **OR**
- Fails to deposit such TDS → as required under the Act.

Shall be liable to pay the following interest:

From date of deductible **TO** *actual date of deduction of such TDS:* Intt. @ **1%** P.M. or part of month

From actual date of deduction **TO** *Actual date of deposit of such TDS:* Interest @**1.5%** per month…..

Exception

If Tax is deductible but not deducted **(+)** Payer is not deemed as assessee in default u/s 201(1)

He will be liable to pay Interest @ 1% for *date of deductible* **TO** *the date of filing of ROI by payee.*

Amendment made by Finance Act, 2022:

Provided further that **where an order is made by the Assessing Officer for the default u/s 201(1)**, ***the interest shall be paid by the person in accordance with such order.***

❖ *Similar amendment has been brought under TCS Chapter.*

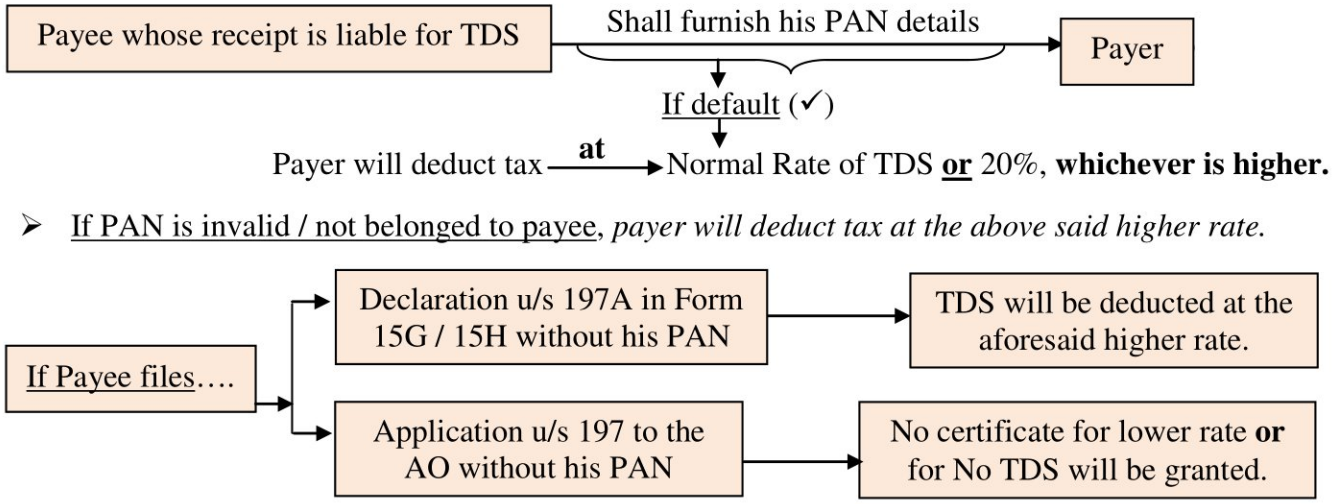
203

Payer will issue TDS certificate to the payee with in the prescribed time limit.

FORM	PERIODICITY	DUE DATE
16 (TDS u/s 192/194P)	**Annual**	***Upto 15st June after the end of the relevant financial year.***
16A (In residual case)	**Quarterly**	***Within 15 days from the time limit as has been prescribed for furnishing of quarterly return.***
16B/16C/16D/16E (TDS u/s 194-IA /IB/M/S)	**Monthly**	***Within 15 days from the due date of furnishing of challan in Form 26QB/26QC/26QD/26QE.***

203A — Any person liable for TDS/TCS, is required to apply for tax deduction and collection account number. After allotment, **must quote in:** TDS/TCS Challan, TDS/TCS Quarterly return, TDS/TCS Certificate.

206AA



Non-applicability of this section (means, Payee is not required to give his PAN to the Payer):

- **Eligible Payee: Non-resident (including a foreign company).**
- **Eligible Payments (i.e. incomes):**
  - (1) Interest on infrastructure bonds / bonds of business trust as covered for TDS u/s 194LC.
  - (2) **Interest, royalty, fees for technical services, and consideration for transfer of an asset, provided the payee (i.e. Non-resident) furnishes the following details to the payer:**
    - (i) Name, email ID, Phone No., Address in foreign country (i.e. home country).
    - (ii) Certificate of being residence in that foreign country.
    - (iii) Tax identification Number / other unique identification number in that foreign country.

Insertion made by Finance Act, 2021 as further amended by Finance Act, 2022:

Section 206AB: *Special provision for TDS for non-filers of income-tax return:-*

(1) - Notwithstanding anything contained in any other provisions of this Act,
- where tax is required to be deducted at source under the provisions of Chapter of TDS, other than section 192, 192A, 194B, 194BB, **194-IA, 194-IB,** 194LBC, **194M** or 194N
- on any sum or income or amount paid, or payable or credited, by a person
- **to a specified person,** the tax shall be deducted at the higher of the following rates, namely:
  - (i) **at twice the normal rate of TDS (As otherwise applicable); or**
  - (ii) **at the rate of 5 per cent.**

(2) - If the provisions of section 206AA is applicable to a specified person (i.e. no PAN is furnished to payer),
- the tax *shall be deducted* at **higher of the two rates provided in this section and in section 206AA.**

(3) For the purposes of this section **"specified person" means**
- a person **who has not furnished the return** of income

- **for ~~both of the two~~ assessment year** relevant to the ~~two~~ previous year immediately preceding the financial year in which tax is required to be deducted,
- **for which the time limit of furnishing the return of income u/s 139(1) has expired;** and
- the **aggregate of tax deducted at source and tax collected at source in his case is rupees fifty thousand or more in ~~each of these two~~ said previous year:**

Provided that the specified person shall not include **a non-resident who does not have a permanent establishment in India.**

Explanation: *"permanent establishment" includes a fixed place of business through which the business of the enterprise is wholly or partly carried on.*

Amendments highlighted:

- *The requirement of two assessment years as provided under the section to treat a person as a specified person* ***has been reduced to one assessment year.***
- Individuals or HUFs covered under the simplified TDS scheme of Sections 194-IA, 194-IB, and 194M are required to deduct and deposit TDS *without obtaining a Tax Deduction/Collection Account Number (TAN).*
  To reduce the burden of such individuals and HUF, this section has been amended to provide that ***the provisions will not apply to transactions on which tax is to be deducted u/s 194-IA, 194-IB and 194M.***

Section 206CCA of TCS: *Special provision for TCS for non-filers of ROI:-*

(1) - Notwithstanding anything contained in any other provisions of this Act,
- where tax is required to be collected at source under the provisions of Chapter of TCS,
- on any sum or amount received by a person
- **from a specified person,**
- the tax shall be collected at the higher of the following rates, namely:
  (i) **at twice the normal rate of TCS (As otherwise applicable); or**
  (ii) **at the rate of 5 per cent.**

(2) - If the provisions of section 206CC is applicable to a specified person (i.e. no PAN is furnished to the seller),
- the tax *shall be collected* at **higher of the two rates provided in this section and in section 206CC.**

(3) For the purposes of this section **"specified person" means**
- a person **who has not furnished the returns** of income
- **for ~~both of the two~~ assessment year** relevant to the ~~two~~ previous year immediately preceding the financial year in which tax is required to be collected,
- **for which the time limit of furnishing return of income under section 139(1) has expired;** and
- the **aggregate of tax deducted at source and tax collected at source in his case is rupees fifty thousand or more in ~~each of these two~~ said previous year:**

Provided that the specified person shall not include **a non-resident who does not have a permanent establishment in India.**

Explanation: *"permanent establishment" includes a fixed place of business through which the business of the enterprise is wholly or partly carried on.*

"TAX COLLECTION AT SOURCE (TCS)"

SECTION 206C:

TCS on	Rate of TCS	TCS by whom...	TCS of whom...	Timing of collection
(1) Sale of –		**Seller** Government; Local authority; Statutory corporation; Company; Firm; Co-operative society; Individual or HUF, whose turnover from the business exceed ₹1 Cr, during last year	**Buyer** **Any Buyer** except ➢ Public sector Co. ➢ Government. ➢ Club. ➢ Office of foreign Govt. / State (e.g. embassy, High Commission, etc.) ➢ **Retail Buyer.**	Receipt of consideration or debit to the account of buyer, lessee or licensee, (whichever is earlier)
(i) Liquor	**1%**			
(ii) Tendu leaves	**5%**			
(iii) Timber & other forest produce	**2.5%**			
(iv) Scrap	**1%**			
(v) Minerals (being coal, lignite, Iron-ore)	**1%**			
(2) Lease / License of – ➢ **Parking lot,** ➢ **Toll plaza,** ➢ **Mine,** ➢ **Quarry.**	**2%**	Lessor or Licensor	Lessee or Licensee (**Except** Public Sector Co.)	
(3) Sale of motor vehicle of the value exceeding ₹ 10 lacs. **Note*: If consideration (i.e. sale price) is received in parts,** then, TCS will be collected @ **1% on each collection** (instead 1% of sale price at beginning).	**1%**	Seller (as above)	**Buyer** **in Retail transaction only** Except ➢ Government. ➢ Office of foreign Govt. ➢ Local authority. ➢ Public sector company which is engaged in the business of carrying passengers.	At the time of Receipt

CIT v/s Priya blue Industries (P.) Ltd.[2016](Gujarat-HC):

The assessee was engaged in ship breaking activity, sold certain items (old and used plates, wood, etc.) obtained by carrying such activity. Since those items were finished products **and usable as such,** hence, no TCS on sale of such items was collected and deposited to the credit of the Central Government.

On these facts, the **High court** observed that *though such products may be commercially known as 'scrap', **they were definitely not 'waste and scrap'** because, scrap liable for TCS mean waste and scrap from manufacture or mechanical working of materials which is definitely **not usable as such** because of breakage, cutting up, wear and other reasons as envisaged under section 206C.*

Accordingly, the Court has held that *it is evident that any material which is usable as such would not fall within the ambit of the expression 'scrap' , therefore,* ***no question of TCS arise in the given case.***

Section 206C(1G):

(a) TCS on foreign remittance through Liberalised Remittance Scheme (LRS):

- An **authorised dealer** receiving an amount or an aggregate of amounts of **seven lakh** rupees or more *in a financial year*
- for remittance out of India under the LRS of RBI,
- shall be liable to collect TCS,
- *on sum in excess of said amount from a buyer being a person remitting such amount out of India,*
- *at the* ***rate of 5%****.*

  Provided *that the authorised dealer shall collect a sum equal to 0.5% of the amount or aggregate of the amounts in excess of seven lakh rupees remitted by the buyer in a financial year, if the amount being remitted out is a loan* obtained from any financial institution as defined in section 80E, for the purpose of pursuing any education.*

➢ In **non-PAN/Aadhaar cases** the rate shall be **10% (5% in case of remittance out of education loan*).**

This section will not be applicable in the following cases:

✓ If the buyer is liable to deduct TDS under any other provisions and has deducted.

✓ If a buyer is CG, SG, an embassy, a high commission, a legation, a commission, a consulate, the trade representation of a foreign state, a local authority or any other person as notified by CG.

➢ The Central Government vide Notification No. 99/2022, Dated 17-8-2022 hereby notifies that the provisions of sub-section (1G) of section 206C of the Act ***shall not apply*** *to a person (being a buyer)* ***who is a non-resident and who does not have a permanent establishment in India.***

"**Authorised dealer**" is proposed to be defined to mean a person authorised by the Reserve Bank of India u/s 10(1) of Foreign Exchange Management Act, 1999 **to deal in foreign exchange or foreign security.**

(b) TCS on selling of overseas tour package:

➢ A **seller of an overseas tour program package** *who receives any amount from any buyer, being a person who purchases such package,* shall be liable to collect TCS at the **rate of 5%**.

➢ In **non-PAN/ Aadhaar** cases the rate shall be **10%**.

❖ There is **no monetary limit** for this transaction, irrespective of any amount TCS must be collected by seller of that package.

"**Overseas tour program package**" is proposed to be defined to mean any tour package which offers visit to a country or countries or territory or territories outside India and includes expenses for travel or hotel stay or boarding or lodging or any other expense of similar nature or in relation thereto.

☞ Student may kindly note that ****exceptions of buyer (along with notification of CG), as discussed in part (a) of section 206C(1G) are also applicable in this part (b) of sub-section (1G) of section 206C.**

Section 206C(1H): TCS on sale of any goods (except goods on which TCS applicable under other provisions of this section):-

- A seller of goods is liable to collect TCS at the **rate of 0.1 %** on consideration received from a buyer in a previous year **in excess of fifty lakh rupees**.
- In **non-PAN/ Aadhaar** cases the **rate** shall be **1%**.
- ✓ *Only those **sellers** whose total sales, gross receipts or turnover from the business carried on by it **exceed ten crore rupees** during the financial year immediately preceding the financial year, shall be liable to collect such TCS.*
- ✓ **Central Government may notify person, subject to conditions contained in such notification, who shall not be liable to collect such TCS.**
- ✓ No TCS is to be collected from the Central Government, a State Government and an embassy, a High Commission, legation, commission, consulate, the trade representation of a foreign State, a local authority or any other person as the Central Government may, by notification in the Official Gazette, specify for this purpose, subject to conditions as prescribed in such notification.
- ✓ *No such TCS is to be collected,*
  - *if the seller is liable to collect TCS under other provision of section 206C such as Section 206C(1), 206C(1F) and 206C(1G) or*
  - *the buyer is liable to deduct TDS under any provision of the Act and has deducted such amount.*

CIRCULAR NO. 17 OF 2020, DATED 29-9-2020: *GUIDELINES u/s 194-O and section 206C:-*

Applicability on payment gateway:

In e-commerce transactions, the payments are generally facilitated by payment gateways. It is represented that in these transactions, there may be applicability of section 194-O twice *i.e.* once on e-main commerce operator who is facilitating sell of goods or provision of services or both and once on payment gateway who also happen to qualify as e-commerce operator for facilitating service. To illustrate a buyer buys goods worth one lakh rupees on e-commerce website "XYZ". He makes payment of one lakh rupees through digital platform of "ABC". On these facts liability to deduct tax u/s 194-O may fall on both "XYZ" and "ABC".

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

Applicability of on insurance agent or insurance aggregator:

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

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

Applicability to sale of motor vehicle:

The provisions of section 206C(1F) apply to sale of motor vehicle of the value exceeding ten lakh rupees. Section 206C(1H) exclude from its applicability goods covered u/s 206C(1F). It has been requested to clarify that whether all motor vehicles are excluded from the applicability of section 206C(1H).

In this regard it may be noted that the scope of sub-sections (1H) and (1F) are different. While sub-section (1F) is based on single sale of motor vehicle, sub-section (1H) is for receipt above 50 lakh rupee during the previous year against aggregate sale of goods. While sub-section (1F) is for sale to consumer only and not to dealers, sub-section (1H) is for all sale above the threshold. Hence, it is clarified that,—

(i) Receipt of sale consideration from a dealer would be subjected to TCS under sub-section (1H) of the Act, if such sales are not subjected to TCS under sub-section (1F) of section 206C of the Act.

(ii) In case of sale to consumer, receipt of sale consideration for sale of motor vehicle of the value often ten lakh rupees or less to a buyer would be subjected to TCS u/s 206C(1H), if the receipt of sale consideration for such vehicles during the previous year exceeds fifty lakh rupees during the previous year.

(iii) In case of sale to consumer, receipt of sale consideration for sale of motor vehicle of the value exceeding ten lakh rupees would not be subjected to TCS u/s 206C(1H) *if such sales are liable for TCS u/s 206C(1F)*

EFFECT OF SURCHARGE ON TCS RATES:

(A) If buyer / lessee / licensee is NON-RESIDENT Individual/HUF/AOP/BOI/AJP:

Situation	Rate of surcharge
50 Lacs < Amount liable for TCS during the financial year ≯ 1 CRORE	10 %
1 CRORE < Amount liable for TCS during the financial year ≯ 2 CRORE	15 %
2 CRORE < Amount liable for TCS during the financial year ≯ 5 CRORE	25 %
Amount liable for TCS during the financial year > 5 CRORE	37 %

(B) If buyer / lessee / licensee is any other NR (except FOREIGN COMPANY):

Surcharge @ 12% is applicable for TCS purposes only when the amount/aggregate amount liable for TCS exceeds 1 crore.

(C) If buyer / lessee / licensee is FOREIGN COMPANY:

	Rate of surcharge
1 CRORE < If amount liable for TCS during the financial year ≤ 10 CRORE	2 %
If amount liable for TCS during the financial year > 10 CRORE	5 %

(D) IN OTHER CASE: NO SURCHARGE WILL BE APPLICABLE FOR TCS.

EFFECT OF HEALTH & EDUCATION CESS ON TCS RATES:

☞ HEC@4% is applicable only when the buyer/lessee/licensee is NON-RESIDENT or FOREIGN COMPANY.

OTHER RELEVANT POINTS:-

(1)

Any sum which is liable for TCS → But → On application of assessee, AO is satisfied for TCS at a rate lower than the rate specified in this section for that case, → Then → AO may issue certificate of TCS at lower rate. / Seller will collect tax accordingly (as per the certificate of AO).

(2)

Seller ⟷ **Sale of specified goods (like, Liquor, etc.)** ⟷ Resident buyer

Declaration (form 27C) to the effect that such goods are being purchased…

- **For utilization in manufacturing of articles/things, or**
- **For generation of power.**

Not for trading purpose

then

Seller shall

Not collect TCS. **&** Forward a copy of such declaration to the I.T. Department.

Section 206CC: *Requirement to furnish permanent account number by Collectee:-*

Buyer / Lessee / Licensee whose payment is liable for TCS → Shall furnish his PAN details to… → Seller/Lessor or Licensor

If default (✓)

Seller / Lessor / Licensor will collect at → **Twice of Normal Rate of TCS OR 5%, (whichever is higher).**

☞ If PAN is invalid / not belonged to payer (buyer), *payee will collect tax at the above said higher rate.*

If Buyer or lessee or licensee files…

- Declaration in From 27C **without his PAN** → **TCS will be collected at aforesaid higher rate.**
- Application to the AO for lower rate of TCS **without his PAN** → **No certificate for lower rate will be granted.**

☞ **This section shall not apply to a non-resident not having permanent establishment in India.**

For Section 206CCA, *Kindly Refer to TDS Chapter (Given with Section 206AB)*

"TAXATION OF FOREIGN COMPANIES & NON-RESIDENTS IN INDIA"

Section 115A: *Tax on interest, royalty and technical service fees in case of Non-Residents:-*

Applicability	Income Covered	Tax Rate	Other Relevant Provisions
(1)(a) Foreign company, or Other non-resident	(i) **Dividends**	20%	**Applicable for both clauses (a) & (b) of section 115A(1):** ➢ ***No deduction*** *under the head PGBP or I/O/S.* ➢ **Chapter VI (i.e. Provisions relating to Setoff of loss) shall apply as usual.** (It's implied here that unabsorbed depreciation can't be setoff as it is covered u/s 32 which falls in 28 to 44C). ❖ **Procedural Relief (i.e. No need of ROI u/s 139)** (a) *if total income consists only as* referred to in clause (*a*) *or* ***clause (b)*** of sub-section (1); ***and*** (b) *TDS has been deducted from such income* ***and rate of such deduction is not less than the rate specified under clause (a) or, as the case may be, clause (b) of sub-section (1).***
	(ii) **Interest** from Government or Indian concern **on money borrowed in foreign currency.**	20%	
	(iia) **Interest received from** ***Infrastructure debt fund.***	5%	
	(iiaa) Part-1: **Interest received from Indian Company or Business Trust on:** **Money borrowed* from a source outside India** (upto **30/06/2023)** **(a) In foreign currency:** ➢ **Through loan; or** ➢ **by way of issue of any long-term bond; or** **(b) Through rupee denominated bond.**	5%	
	(iiaa) Part-2: **Interest received from Indian Company or Business Trust on:** ***Money borrowed* from a source outside India*** ***(a) by way of issue of any long-term bond; or*** ***(b) Through rupee denominated bond*** ***on or after 1st April, 2020 but before 1st July, 2023, which is listed only on a recognised***	4%	**Applicable for only clause (a) of sec. 115A(1):** ❖ **No deduction u/s 80C to 80U against such interest or dividend income** ***(except u/s 80LA in case of unit of an IFSC).***

Special TDS Provisions:

Income covered	Liable for TDS u/s
115A(1)(a)(iia)	194LB
115A(1)(a)(iiaa) - I	194LC
115A(1)(a)(iiaa) - II	194LC
115A(1)(a)(iiab)	194LD

	stock exchange located in any International Financial Services Centre	
FII & Qualified Foreign Investor	**(iiab) - Interest income on Govt. security upto 30/06/2023** **- Interest income *in respect of the investment made by the payee in municipal debt securities on or after 01/04/2020 but upto 30/06/2023.***	**5%**
Non-resident Unit holder	**(iiac) Proportionate Share in Interest from SPV** out of distributed income by Business Trust	**5%**
	(iii) Income on units, purchased in foreign currency of a Mutual Fund or of UTI	**20%**
(1)(b) Foreign company, or other non-resident	**Royalty or Fees for Technical Services (other than covered u/s 44DA)** in pursuance of agreement with Government or Indian concern	**10%**

115A(1)(a)(iiac)	**194LBA**
115A(1)(a)(iii)	**196A**
Rate of TDS : 5%/4%/20% (as the case may be)	
Timing of deduction: Credit or Payment **(whichever is earlier)**	

➢ For surcharge & cess (wherever occur under this Chapter), Please refer Chapter of TDS.

Section 44DA: *Special provisions for computing income by way of royalties etc. in case of non-residents and foreign companies:-*

APPLICABILITY	INCOME COVERED	TAX RATE	OTHER RELEVANT PROVISIONS
Foreign company or other non-resident	**Royalty or fees for technical services *earned through its permanent establishment or fixed place of profession situated in India***	**at normal rate**	**Such income shall be computed under the head "Profits and gains of business or profession" <u>as per the normal provisions</u>** (i.e. after deductions and allowance under the head "PGBP"). **<u>But, no deduction in respect of the following:</u>** **(i)** Any expenditure which is **not exclusively related** from such PE; or **(ii) Any payment to its head office** (other than re-imbursement of actual expense). ➢ Maintenance of **books** of accounts and **audit is compulsory.**

Exams oriented approach for sections 115AB and 115AC:-

Section	Applicability	Assets Covered	Income Covered	Tax Rate	Restriction On Proviso To Sec. 48	Other Relevant Provisions
115AB	**Overseas Financial Organisation** (i.e. Off–Shore Fund)	**Units of UTI or MF** (Purchased in Foreign currency)	**Dividend or LTCG**	**10%**	**IInd** (i.e. Indexation provisions) shall not apply	☞ Chapter VI **(i.e. Setoff provisions…)** shall apply as usual. ☞ **No deduction u/s 28-44C, 57 and u/s 80C to 80U.** ☞ **Payer will deduct TDS u/s 196B @ 10% on such income at the time of its credit or payment (whichever is earlier).**
115AC	**Non – Residents**	**(i) Bonds of Public Sector company sold by the Govt.** **(ii) Bonds (i.e. Euro bonds) Or GDRs of Indian Co.** (Purchased in Foreign currency)	**Interest, Dividend & LTCG**	**10%**	**Ist & IInd** (i.e. Conversion and Indexation Provisions) shall not apply	➢ **No deduction under the head "PGBP" or "I/O/S" and u/s 80 C to 80 U.** ➢ **Chapter VI (i.e. Setoff provisions…) shall apply as usual.** ➢ **Procedural Relief [i.e. No need of ROI u/s 139 (1)]** *if total income consists only dividend or/and interest income as referred to in this section* ***and*** *TDS has been deducted on such income.* ➢ In case of Amalgamation / Demerger, **Benefit continued** in respect of bonds / GDRs of amalgamated / resulting company. ➢ If non-resident transferred security of section 115AC **to another non-resident outside India**, then, ***no capital gain tax implications will arise.*** **Section 47(viia)** ➢ **Payer will deduct TDS u/s 196C @ 10% on income taxable u/s 115AC** at the time of its credit or payment (whichever is earlier).

Section 115AD: *Tax on income of foreign institutional investors from securities or capital gains arising from their transfer :-*

Applicability	Assets Covered	Income Covered	Tax Rate	Restriction on Proviso to Sec. 48	Other Relevant Provisions
Foreign Institutional Investors (FII) or Specified Fund (SF) as referred to in section 10(4D) i.e. Category III AIF located in IFSC in which All units are held by NR except held by sponsor / manager, or investment division of an offshore banking unit	**Any Security (other than units covered u/s 115AB)**	**Dividend/Interest income** (other than interest liable to tax u/s 115A @ 5%)	**20% for FII**	**Ist & IInd** (i.e. Conversion and Indexation Provisions) shall not apply	➢ **No deduction u/h "PGBP" or "I/O/S", and u/s 80C to 80U.** ➢ Chapter VI (i.e. Provisions of Setoff….) shall apply as usual. ➢ **Income of Specified fund as attributable to units held by NR (except PE of NR in India), will only be covered under this section.** ➢ If specified fund is investment division of an offshore banking unit, the provisions of this section shall apply to the extent of income **that is attributable to the investment division of such banking units.** ➢ **In case of applicability of section 115AC** (like, transfer of euro-bonds / GDRs by the FII), **that special section shall prevail** over the provisions of this section 115AD. ➢ **Payer will deduct TDS u/s 196D @ 20% / 10% (SF) on interest/dividend income** @ its credit or payment (whichever is earlier). **[No TDS on capital gain as referred to in this section].**
			10% for SF		
		LTCG	**10%**		
		LTCG covered u/s 112A in excess of exemption limit as given under that section (i.e. ₹ 1,00,000/-)	**10%**		
		STCG covered u/s 111A	**15%**		
		Other STCG	**30%**		

Section 10(4D): *Exemption of certain income received by a specified fund:-*

Exemption is available to a **SPECIFIED FUND** in respect of the following:

- Any income accrued or arisen or received
  - as a result of transfer of **capital asset referred to in section 47(viiab),** 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* or
  - as a result of **transfer of securities (other than shares in a company resident in India)** or
- Any income from **securities issued by a non-resident** (not being a permanent establishment of a non-resident in India) and *where such income otherwise does not accrue or arise in India* or

- any **income from a securitisation trust** which is chargeable under the head "Profits and gains of business or profession",
- to the extent such income accrued or arisen to, or is received, is attributable to **units held by non-resident (not being the permanent establishment of a non-resident in India)** or
- **is attributable to the investment division of offshore banking unit,** as the case may be, computed in the prescribed manner (which is given at last of this section).

Explanation: For the purposes of this clause, the expression-

(1) **"Specified fund" means** **AS AMENDED BY F. A., 2022**

(i) *a fund which satisfies the following conditions-*

- It is 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.
- It has a certificate of registration as a **Category III Alternatives Investment Fund** and is regulated under SEBI (Alternative Investment Fund) Regulations, 2012 or **under International Financial Services Centre Authority Act, 2019.**
- It is **located in any International Financial Services Centre.**
- **All units of the fund** (other than held by a sponsor/manager) **are held by non-residents**:

Provided that ***this condition shall not apply*** where any unit holder or holders, being non-resident during the previous year when such unit or units were issued, **becomes resident u/s 6(1)/(1A) in any previous year subsequent to that year,** ***if the aggregate value and number of the units held by such resident unit holder or unit holders do not exceed 5% of the total units issued*** *and fulfil such other conditions as may be prescribed, which is as follows.*

the unit holder of the specified fund, other than the sponsor or manager of such fund, who becomes a resident u/s 6(1) or (1A) during any previous year subsequent to the previous year in which such unit or units were issued, shall cease to be a unit holder of such specified fund within 3 months from the end of the previous year in which he becomes a resident.

(ii) *an* ***investment division of an offshore banking unit,*** *which satisfies the following conditions-*

- It has a certificate of registration as **a Category-I foreign portfolio investor** under the Securities and Exchange Board of India (Foreign Portfolio Investors) Regulations, 2019;
- **located in an International Financial Services** Centre, as referred to section 80LA(1A);
- It has **commenced its operations on or before the 31st March, 2024**; and
- *It fulfils such conditions including maintenance of separate accounts for its investment division, as may be prescribed.*

Accordingly, an investment division of an offshore banking unit has to fulfill the following prescribed conditions to claim exemption:

a) **it has to maintain separate accounts for the registered investment division reflecting the true and fair accounts of all transactions relating to the investment division and which would ensure**

that direct and indirect expenses relating to the incomes are properly recorded, accounted for, and apportioned to these activities;

b) **it has to get the accounts audited by a Chartered accountant before the specified date i.e., one month prior to the due date u/s 139(1). Such accountant has to furnish by that date the report of such audit in the prescribed form (viz. Form 10-IL) electronically under digital signature;**

c) **it has to maintain proper documentation in respect of, —**
   1. **inbound remittance for buying and selling the investments; and**
   2. **the use of inward remittance made to India;**

d) **it has to maintain bank statement of all accounts of the registered investment division;**

e) **it has to maintain contract notes relating to purchase and sale of securities by the registered investment division; and**

f) **it has to maintain a statement of securities issued by the custodian.**

Manner of computation of exempt income of specified fund, attributable to units held by non-resident (not being the permanent establishment of a non-resident in India) in a specified fund:

As per Rule 21AI, the income attributable to units held by non-resident (not being the permanent establishment of a non-resident in India) in a specified fund shall be computed as follows –

Capital Gain on transfer of **capital asset* referred to in section 47(viiab)** **OR** **Capital Gain** on transfer of **security** (other than shares in a company resident in India)**	×	**Aggregate of daily "AUM" i.e. closing balance of the value of assets or investments of the specified fund held by NR unit holders (not being PE of a non-resident in India),** ***from the date of acquisition of such capital asset* or security**, as the case may be, to the date of transfer of such capital asset or security, as the case may be.*** / **Aggregate of daily total "AUM" i.e. total closing balance of the value of assets or investments of the specified fund,** ***from the date of acquisition of such capital asset* or security**, as the case may be, to the date of transfer of such capital asset or security, as the case may be.***
Income from **securities[#] issued by a non-resident (not being PE of a non-resident in India)** **OR** **Business Income from a securitisation trust**	×	**"AUM" i.e. closing balance of the value of assets or investments of the specified fund held by NR unit holders (not being PE of a non-resident in India),** ***as on the date of receipt of such income from securities[#], or Business Income from a securitisation trust, as the case may be.*** / **Total "AUM" i.e. total closing balance of the value of assets or investments of the specified fund,** ***as on the date of receipt of such income from securities[#], or Business Income from a securitisation trust, as the case may be.***

➢ **The specified fund has to furnish an annual statement of exempt income in the prescribed form (viz. Form No. 10-IG) electronically under digital signature on or before the due date u/s 139(1).**

- **As per Rule 21AJA,** income of specified fund attributable to the investment division of an offshore banking unit shall be:
  - ✓ **Capital gain accrued or arisen to, or received by the eligible investment division**
    - on transfer of **capital asset referred to in section 47(viiab)** ***held by it,*** **or**
    - on transfer of **security (other than shares in a company resident in India)** ***held by it.***
  - ✓ **Any income accrued or arisen to, or received by the eligible investment division**
    - **from securities** ***held by it*** **and issued by a non-resident (not being PE of a non-resident in India), or**
    - **from a securitisation trust which is chargeable under the head "PGBP".**

- **The eligible investment division has to furnish an annual statement of exempt income in the prescribed form (viz. Form No. 10-IK) electronically under digital signature on or before the due date u/s 139(1).**

❖ **Students may kindly note that, for the purpose of section 115AD, same manner has been prescribed in Rule 21AJ and 21AJAA, as given above in Rule 21AI and 21AJA.**

CHAPTER XII-A

"SPECIAL PROVISIONS RELATING TO CERTAIN INCOMES OF NRIs"

SECTION	APPLICABILITY	ASSETS COVERED	INCOME COVERED	TAX RATE	RESTRICTION ON PROVISO TO SEC. 48	OTHER RELEVANT PROVISIONS
Chapter XII–A Section 115-C To 115 -I]	**Non – resident Indian (NRIs)**	**Foreign Exchange Assets [i.e. Specified assets** (viz. shares in an Indian company, debenture / deposits in an public limited company, security of CG) **as purchased in foreign currency]**	**Investment Income & LTCG**	**20%** **10%**	**II[nd] (only)** (i.e. Indexation provisions) shall not apply	✓ No deduction/allowance under **any** provision of the Act in computing the investment income. ✓ **Capital gain will be exempt** if net consideration invested within 6 months in any specified asset **(for which there is lock-in-period of 3 years,** *and if violation, then,* ***earlier allowed exemption will be withdrawn prospectively).*** ✓ **Benefit can be continued** even after become resident **by filing a declaration with ROI** (of the year of becoming resident). ✓ **Procedural Relief [i.e. No need of ROI u/s 139 (1)]** *if total income consists only Investment income or/and LTCG& TDS has been deducted on such income.* ✓ **Chapter is optional.**

Exam Oriented Approach for Section 195 : *Deduction of tax from other sums :-*

TDS on..	Responsible Payer	Payee (Deductee)	Timing of Deduction	TDS Rate	OTHER RELEVANT PROVISIONS
Any sum chargeable under this Act other than covered under any other specific provision like, 194LB, 194LC, etc.	**Any person** *whether resident or non-resident* In case of **non-resident person (i.e. deductor) whether or not he has—** **(i) a residence or place of business or business connection in India; or** **(ii) any other presence in any manner whatsoever in India.**	**Foreign company or other non-resident**	Credit or payment, (whichever is Earlier) **[*Deeming Fiction available** i.e. Crediting to other account in Payer's books shall be deemed to be the credit of such income to the account of the payee]	at the rates in force	☞ TDS liability will arise **only if the income is chargeable to tax in India.** ☞ Where the responsible payer considers that the *whole of such sum would not be income chargeable in the case of recipient,* he **may** make an application **in prescribed form and manner** to the AO **to determine in prescribed manner** the appropriate chargeable proportion of such sum, *and upon such determination*, tax shall be deducted only on that proportion of the sum which is so chargeable. **But, the aforesaid finding (as given by AO on application of payer) will not restrict the AO from taking a contrary view in the assessment proceeding.** **[CIT v/s Elbee services P. Ltd. (Bom.]** ☞ The Board may specify a class of persons or cases in which person responsible for paying any sum, whether or not chargeable under the provisions of this Act, **shall** make an application **in prescribed form and manner** to the AO **to determine in prescribed manner** the appropriate chargeable proportion, and upon such determination, tax shall be deducted on that proportion of the sum which is so chargeable. ☞ The person responsible for paying to a foreign company or other non-resident, any sum, whether or not chargeable under the provisions of this Act, **shall furnish the information relating to payment of such sum, in prescribed form and manner.** **Section 195(6)**

"CORRESPONDING PROVISION RELATING TO PENALTY"		
Section 271-I	**Failure to furnish information or furnishing inaccurate informations under section 195(6)**	**₹ 1,00,000/-**

"CHAPTER XII" - "OTHER PROVISIONS RELATING TO NON-RESIDENTS"

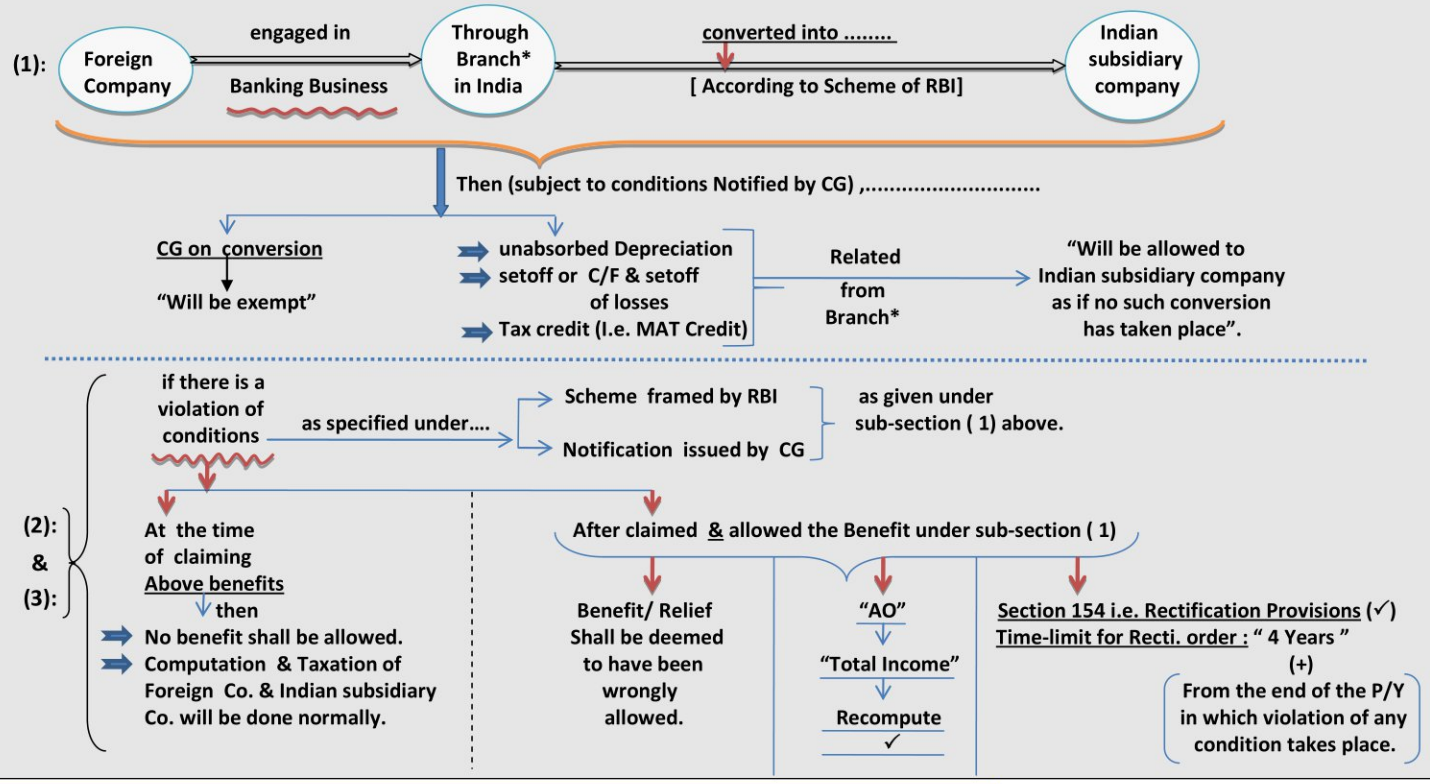
Section 115BBA:- *Tax on Non-resident sportsman or sports association: -*

SECTION	APPLICABILITY	INCOME COVERED	TAX RATE	OTHER RELEVANT PROVISIONS
115BBA	Non-resident Non – Indian citizen sports man	Income by way of - ✓ Participation in any game except 115BB; ✓ Advertisement; or ✓ Contribution of articles.	20%	❖ No deduction under ANY provision of this Act. ❖ No need of ROI u/s 139 (1) *if total income consists only income referred to in section and TDS has been deducted on such income.* ❖ Payer will deduct TDS u/s 194E @ 20% on such income at the time of its credit or payment (whichever is earlier).
	NR Sports association	Guarantee money	20%	
	NR Non – Indian citizen Entertainer	Income from performance in India	20%	

Indcom v/s Commissioner of Income tax (TDS)(2011)(Calcutta-HC):

The umpires and the match referees can be described as professionals or technical persons who render professional or technical services, but they cannot be said to be either non-resident sportsmen / sports association so as to attract the provisions of section 115BBA and consequently, the provisions of tax deduction at source under section 194E are also not attracted in this case.

Section 115JG: *Conversion of Indian branch of Foreign Co. into subsidiary Indian company:-*



Section 115JH: *Special provisions relating to foreign company held to be resident in India:-*

(1) If a foreign company **has never been resident in India,**

- *becomes resident in India in the relevant previous year* ***first time due to its POEM in India,*** then,
- **for the said previous year,** benefit, exemption or relief, as may be specified in the notification of Central Government (subject to conditions specified therein), will be allowed in relation to the following:
  - ► **computation of total income,**
  - ► **treatment of unabsorbed depreciation,**
  - ► **set off or carry forward and set off of losses,**
  - ► collection and recovery and special provisions relating to avoidance of tax.

➢ **If POEM of a foreign company for any previous year has been determined in assessment proceedings,** then, *in addition such previous year, any other previous year which ends on or before such assessment completion date,* ***aforesaid benefit, exemption, relief will be allowed.***

☞ **If benefit of this section has been allowed and subsequently there is violation of notified conditions,** then, provisions relating to withdrawn of benefit as discussed given u/s 115JG will also apply here.

Exemptions under Sections 10(48), 10(48A), & 10(48B):-

	Section 10(48)	Section 10(48A)	Section 10(48B)
Eligible Assessee	Foreign Company	Foreign Company	Foreign Company
Eligible Income	Income from: (i) **Sale of crude oil;** (ii) **Sale of any other notified goods;** (iii) **Rendering of notified services,** To any person in India.	Income from: **Indian storage and sale of crude oil** to any person resident in India.	Income from: **Sale of left over stock of crude oil, as stored in India, after the expiry of agreement or on termination of the said agreement** as referred to in section 10(48A).
Relative Conditions	(1) Such income must be received in India **in Indian currency.**	—	—
	(2) Such receipt (sale) must be **in pursuance of agreement entered / approved by the CG.**		**Conditions (as may be notified by the CG) must be satisfied**
	(3) **Not engaged in any other activity** in India.		

Section 10(6D): *Exemption to NR on royalty or fees for technical services from NTRO:-*

Any income arising to a foreign company or other non-resident **by way of royalty from, or fees for technical services rendered in or outside India to, the National Technical Research Organisation** will be exempt.

Section 10(15): *Exemption to NR on interest income from unit located in IFSC:-*

With a view to facilitate external borrowing by the units located in IFSC, this insertion has been made-

(1) **Assessee** (i.e., Recipient of interest) **is a non-resident.**

(2) **Interest is payable by a unit located in an International Financial Service Centre.**

(3) ***Interest pertains to money borrowed by it on or after 1st September, 2019.***

☞ If all aforesaid conditions are satisfied, **interest income of such NR will be exempt under section 10(15).**

Section 10(4E): *Exemption in respect of the transfer of non-deliverable forward contracts entered into with an offshore banking unit of IFSC:-*

This section has been inserted to exempt the income of a **non-resident** which fulfils the following conditions:

(i)	the income arises as a result of **transfer of non-deliverable forward contracts or offshore derivative instruments or over-the-counter derivatives,**
(ii)	the contract is entered into with **an offshore banking unit of an IFSC** as referred to in section 80LA(1A),
(iii)	the conditions as may be provided by rules are fulfilled.

Rule 21AK: *Conditions for the purpose of clause (4E) of section 10:-*

(a)	Such offshore banking unit of an IFSC **must holds a valid certificate of registration granted under IFSC Authority (Banking) Regulations, 2020 by the IFSC Authority;** and
(b)	**such contract, instrument or derivative is *not entered into by the non-resident through or on behalf of its permanent establishment in India.***

(i) **"non-deliverable forward contract" shall mean** a contract for the **difference between an exchange rate agreed before and the actual spot rate at maturity,** with the spot rate being taken as the domestic rate or a market determined rate and such contract being settled with a single payment in a foreign currency;

(ii) **"offshore derivative instrument" shall have the same meaning** as assigned to it in clause (o) of sub-regulation (1) of regulation 2 of the SEBI Foreign Portfolio Investor Regulations, 2019;

(iii) **"over-the-counter derivatives" shall mean** a derivative contract that is not traded on an exchange but instead is privately negotiated between a purchaser and a seller.

Section 10(4F): *Exemption to NR on leasing of aircraft or a ship to an IFSC unit:-*

This section has been inserted to exempt the income of a **non-resident** which fulfils the following conditions:

(i) The income is **by way of royalty or interest.**

(ii) Royalty or interest should be **on account of lease of an aircraft or a ship** in the previous year.

(iii) The royalty or interest is **paid by a unit of an IFSC** referred to section 80LA(1A).

(iv) The **unit has commenced its operations on or before 31st March, 2024.**

For the above purposes:

- "aircraft" means an aircraft / helicopter, or an engine or any part of an aircraft / helicopter;
- **"ship" means a ship or an ocean vessel, engine of a ship or ocean vessel, or any part thereof.**

Section 10(4G): *Exemption to a non-resident in respect of income arising from portfolio managed through IFSC-*

Income earned by a non-resident from its portfolio shall be exempt subject to the following conditions:

(i) The income is received by a **non-resident**

(ii) The income is received **from the portfolio of securities or financial products or funds;**

(iii) The **portfolio is managed or administered by any portfolio manager** on behalf of such non-resident;

(iv) The **income is received in an account maintained with an Offshore Banking Unit in any IFSC**; and

(v) The **income accrues or arises outside India and is not deemed to accrue or arise in India.**

Section 10(23FF): *Exemption to capital gains arising to a non-resident or a specified fund on account of relocation of offshore funds to IFSC:-*

In order to encourage offshore funds to shift to IFSC, this section has been inserted **to exempt income of specified fund** being Resultant Fund *which satisfies the following conditions:*

(i) The income is **on account of transfer of share;**

(ii) *The share is in a company resident in India;*

(iii) The **transfer is made by the specified fund** being resultant fund *to the extent attributable to units held by non-resident* (not being PE of a non-resident in India) in such manner as may be prescribed;

(iv) **Such shares were transferred from the original fund to the resultant fund in relocation** or such shares were transferred from wholly owned SPV of the original fund to the resultant fund in relocation; or

(v) **Capital gain on such shares was not chargeable to tax *if that relocation had not taken place.***

➢ For the above purposes, the expressions "original fund", "relocation", "resultant fund" and 'specified fund' have the meanings respectively assigned to them in the section 47(viiac), section 47(viiad) and section 10(4D).

Rule 2DD: Income of the nature of capital gains, attributable to units held by non-resident (not being PE of a non-resident in India) in a specified fund shall be computed as follows:

Capital Gain on transfer of shares of a company resident in India, by the specified fund and where such shares were received by the specified fund, being resultant fund, in relocation from the original fund, or from its wholly owned SPV

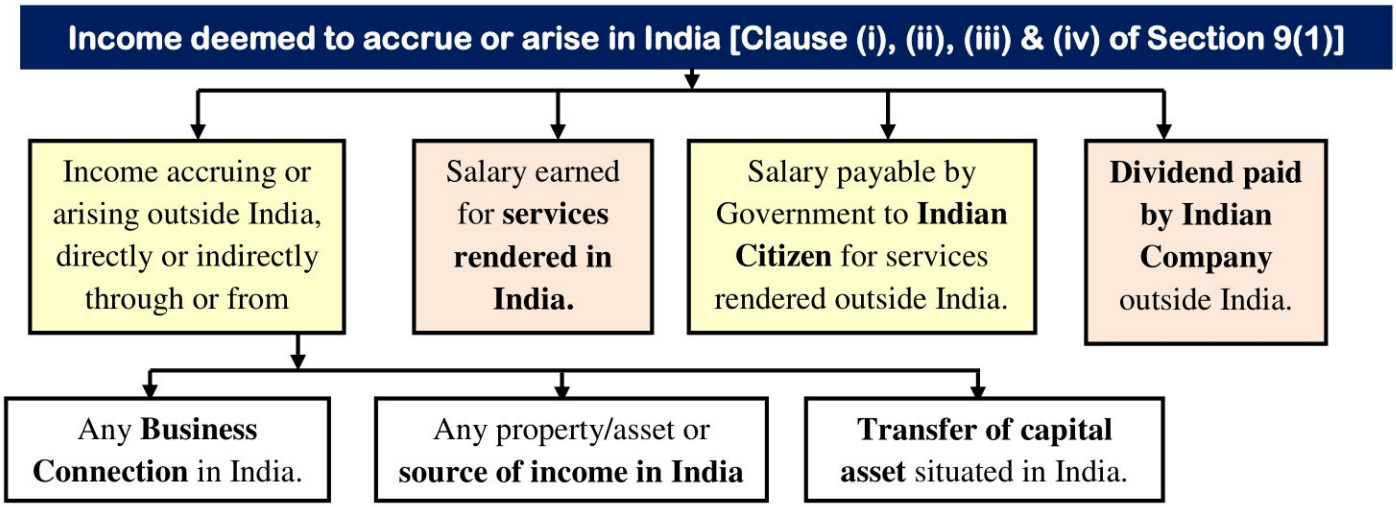
×

Aggregate of daily "AUM" i.e. closing balance of the value of assets or investments of the specified fund held by NR unit holders (not being PE of a non-resident in India), *from the date of acquisition of such shares of a company resident in India, by the specified fund, to the date of transfer of such shares.*

Aggregate of daily total "AUM" i.e. total closing balance of the value of assets or investments of the specified fund, *from the date of acquisition of such shares of a company resident in India, by the specified fund, to the date of transfer of such shares.*

➢ **The specified fund has to furnish an annual statement of exempt income in the prescribed form (viz. Form No. 10-IJ) electronically under digital signature on or before the due date u/s 139(1).**

SECTION 9: *INCOME DEEMED TO ACCRUE OR ARISE IN INDIA: -*



Business connection:

Where any business or profession is carried on abroad by a non-resident and in connection with such business or profession a ***certain activity is carried on in India,*** *then,* ***it establishes business connection.***

Explanation 2 to section 9(1)(i):

"Business connection" shall also include

Any business activities carried through a person who, acting on behalf of the non-resident,

(a) - **habitually concludes contracts** or

- **habitually plays the principal role leading to conclusion of contracts by the non-resident.**

This rule is applicable if the contracts is-

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

(ii) for the transfer of the ownership of property owned by that non-resident or that the non-resident has the right to use; or

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

(b) has no such authority, **but habitually maintains in India a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the non-resident;** or

(c) **habitually secures orders in India,** mainly or wholly for the non-resident or for that non-resident and other non-residents controlling, controlled by, or subject to the same common control, as that non-resident.

Explanation 1 to section 9(1)(i):

In the case of a Non-resident, following shall not be treated as business connection in India:

(1) In case of a business, in respect of which all the operations are not carried out in India such part of income *which cannot be reasonably attributed to the operations in India, is not deemed to accrue or arise in India.*

(2) **Purchase of goods in India for export.**

(3) **Collection of news and views in India for transmission out of India.**

(4) **Shooting of cinematograph films in India.**

Explanation 2A: *Significant Economic Presence:-*

Significant economic presence of a non-resident in India **shall also constitute "business connection" in India** and "significant economic presence" for this purpose, shall mean-

(a) transaction in respect of any goods, services or property carried out by a non-resident with any person in India including provision of download of data or software in India, **if the aggregate of payments** arising from such transaction or transactions during the previous year **exceeds such amount as may be prescribed** (which is ₹ 2 crore); or

(b) systematic and continuous soliciting of business activities or engaging in interaction with such number of **users in India,** as may be prescribed (which is 3 Lakhs).

Provided 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.***

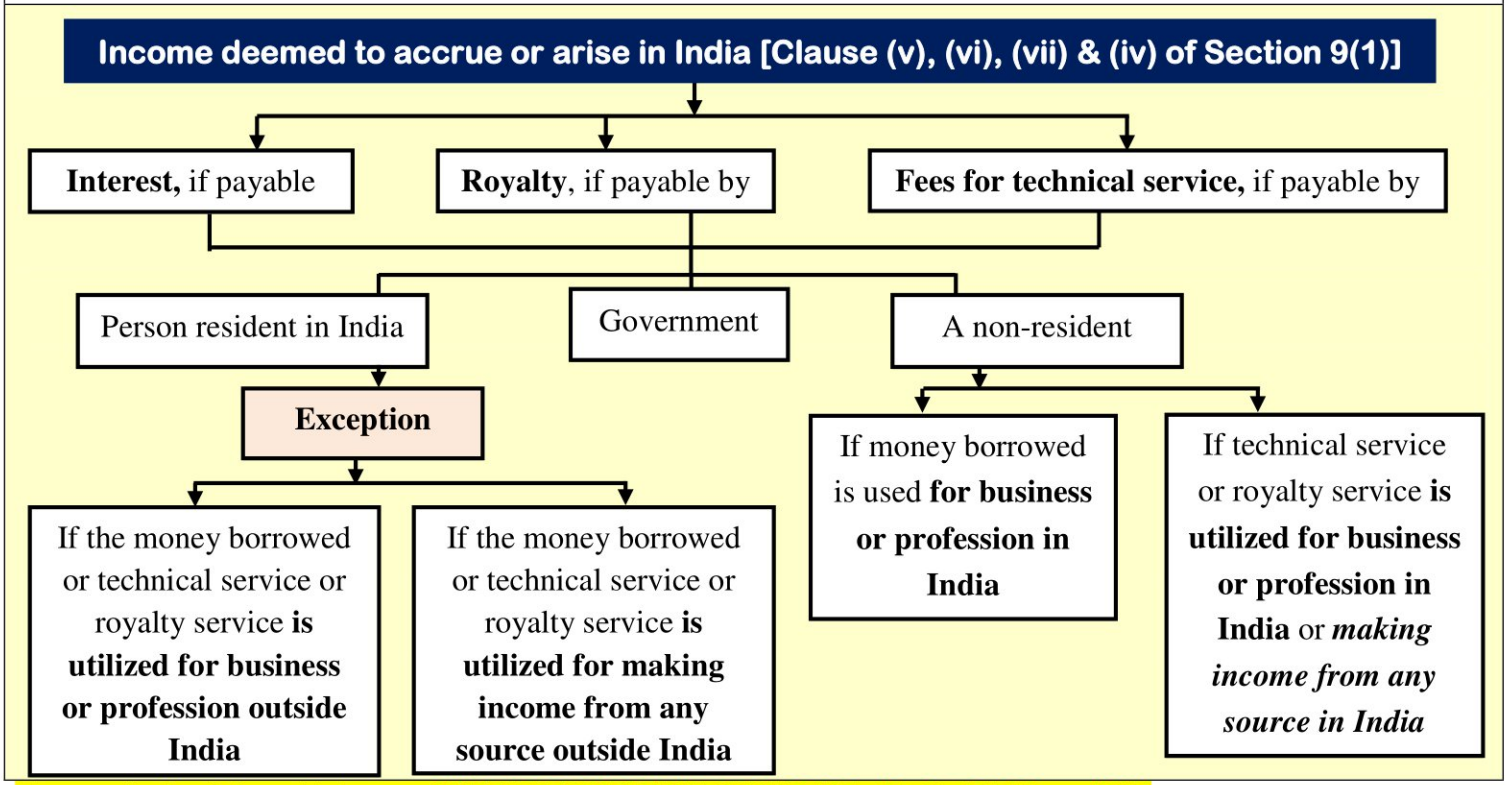
Explanation 3A to section 9(1)(i):

For the removal of doubts, it is hereby declared that the ***income attributable to the operations carried out in India,*** *as referred to in Explanation 1,* ***shall include*** *income from-*

(i) *such advertisement which targets a customer* ***who resides in India or*** *a customer* ***who accesses the advertisement through internet protocol address located in India;***

(ii) *sale of data collected from a person* ***who resides in India or from a person who uses internet protocol address located in India****; and*

(iii) *sale of goods or services using data collected from a person* ***who resides in India or from a person who uses internet protocol address located in India.***



Interest paid by India PE to its foreign head office bank:- **[Explanation to section 9(1)(v)]**

If -

(1) The assessee is a **non-resident** and **engaged in the business of banking**.

(2) Interest is payable by the **permanent establishment in India of such non-resident to the head office of any permanent establishment or any other part of such non-resident outside India**.

then, **the permanent establishment in India shall be deemed to be a person separate and independent of the non-resident person of which it is a permanent establishment** *and the provisions of the Act relating to computation of total income, determination of tax and collection and recovery would apply.*

☞ Section 9 provides that such interest payable by the permanent establishment in India of such non-resident to the head office or any permanent establishment or any other part of such non-resident outside India **shall be deemed to accrue or arise in India and shall be chargeable to tax in addition to any income attributable to the permanent establishment in India.**

☞ Accordingly, the PE in India shall be obligated to deduct tax at source on any interest payable to either the head office or any other part or PE, etc., of the non-resident outside India.

Further, **non-deduction would result in disallowance of interest claimed as expenditure by the PE and may also attract levy of interest and penalty in accordance with relevant provisions of the Act.**

"Meaning of Royalty: **[Explanation 2 to section 9(1)(vi)]**

Any consideration except chargeable as income under the head "Capital gains" for—

(i) **the transfer of all or any rights (including the granting of a license)** *any patent, invention, model, design, secret formula or process or trade mark or similar property;*

(ii) **the imparting of any information concerning the working of, or the use of** *any patent, invention, model, design, secret formula or process or trade mark or similar property;*

(iii) **the use of** *any patent, invention, model, design, secret formula or process or trade mark or similar property;*

(iv) the imparting of any information concerning technical, industrial, commercial or scientific knowledge, experience or skill;

(iva) the use or right to use any industrial, commercial or scientific equipment;

(v) the transfer of all or any rights (including the granting of a license)

- **in respect of any copyright,** literary, artistic or scientific work
- *including films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting.*

As per Explanation 4 to section 9(1)(vi):

- the transfer of all or any rights in respect of any right, property or information (i.e. royalty) includes
- transfer of all or any rights
- for use or right to use a **computer software** (including granting of a license)
- irrespective of the medium through which such right is transferred.

Engineering Analysis Centre of Excellence P. Ltd v. CIT and Another (2021)(Supreme Court):

Issue:

Would the amounts paid by resident Indian end-users / distributors to non-resident computer software manufacturers/suppliers, as consideration for the use/resale of the computer software through End-User Licence Agreement (EULAs)/distribution agreements, be considered as payment of royalty for the use of copyright in the computer software? If yes, is it liable for deduction of tax at source u/s 195?

Analysis and Decision:

- The Apex Court observed that **as per the definition given in Explanation 2(v) to section 9(1)(vi)** of the Income-tax Act, 1961, *"royalty" means* consideration for, inter alia, the transfer of all or any rights (including the granting of a licence), **in respect of any copyright**, literary, artistic or scientific work.
- **As per Explanation 4** thereto, such **transfer of all or any rights includes transfer of all or any right for use or right to use a computer software (including the granting of a licence).**
- **As per the meaning assigned in the DTAA** with Singapore, for example, "royalty" means payment of any kind received as consideration for **"the use of, or the right to use, any copyright"** of a literary, artistic or scientific work. The meaning of royalty in India's DTAA with other countries like Australia, Canada, France, Italy, USA, Netherlands, Sweden, Taiwan, Japan, China etc. is similar if not identical.
- **The Apex Court observed the following four categories of cases, in which the distribution agreements and end-user licence agreements did not create any interest or right to such distributors or end- users, which would amount to the use of or right to use any copyright:**

(i) *where computer software is purchased directly by an end-user, resident in India, from a foreign, non-resident supplier or manufacturer.*

(ii) *where resident Indian companies acting as distributors or resellers, purchase computer software from foreign, non-resident suppliers or manufacturers and then, resell the same to resident Indian end-users.*

(iii) *where the distributor happens to be a foreign, non-resident vendor, who, after purchasing software from a foreign, non-resident seller, resells the same to resident Indian distributors or end-users.*

(iv) *where computer software is affixed onto hardware and is sold as an integrated unit/equipment by foreign, non-resident suppliers to resident Indian distributors or end-users.*

In all the above cases, the Apex Court held that **the amount paid by resident Indian end-users or distributors to non-resident computer software manufacturers or suppliers, as consideration for the resale or use of the computer software through end-user licence agreements or distribution agreements, is not royalty for the use of copyright in the computer software.**

The provisions contained in the Income-tax Act, 1961 [namely, section 9(1)(vi) read along with Explanations 2 and 4 thereof], which deal with royalty, not being more beneficial to the assessees, have no application in the facts of these cases. Consequently, the consideration paid to the non- resident computer software manufacturers or suppliers would not be chargeable to tax India. Hence, no tax is required to be deducted at source u/s 195.

Note: *As per section 90(2), the provisions of the Income-tax Act, 1961 will apply only to the extent they are more beneficial to the assessee, in a case where India has entered into a DTAA with the other country. In this case, since the provisions under the DTAA are more beneficial, the taxability of the payment would be determined as per the meaning of royalty assigned under the DTAAs.*

Explanation as given at the end of section 9:

For the purposes of section 9(1)(*v*)/(*vi*)/(*vii*)), *income of a non-resident shall be deemed to accrue or arise in India 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.***

Part of Explanation 1 of section 9:

In the case of a **foreign company** engaged in the business of **mining of diamonds,** ***no income shall be deemed to accrue or arise in India to it through or from the activities*** **which are confined to the display of uncut and unassorted diamond in any special zone notified** by the Central Govt. in the Official Gazette in this behalf.

Section 9(1)(viii):

(1) **Payer is resident** in India (i.e. money is received from a person resident in India).

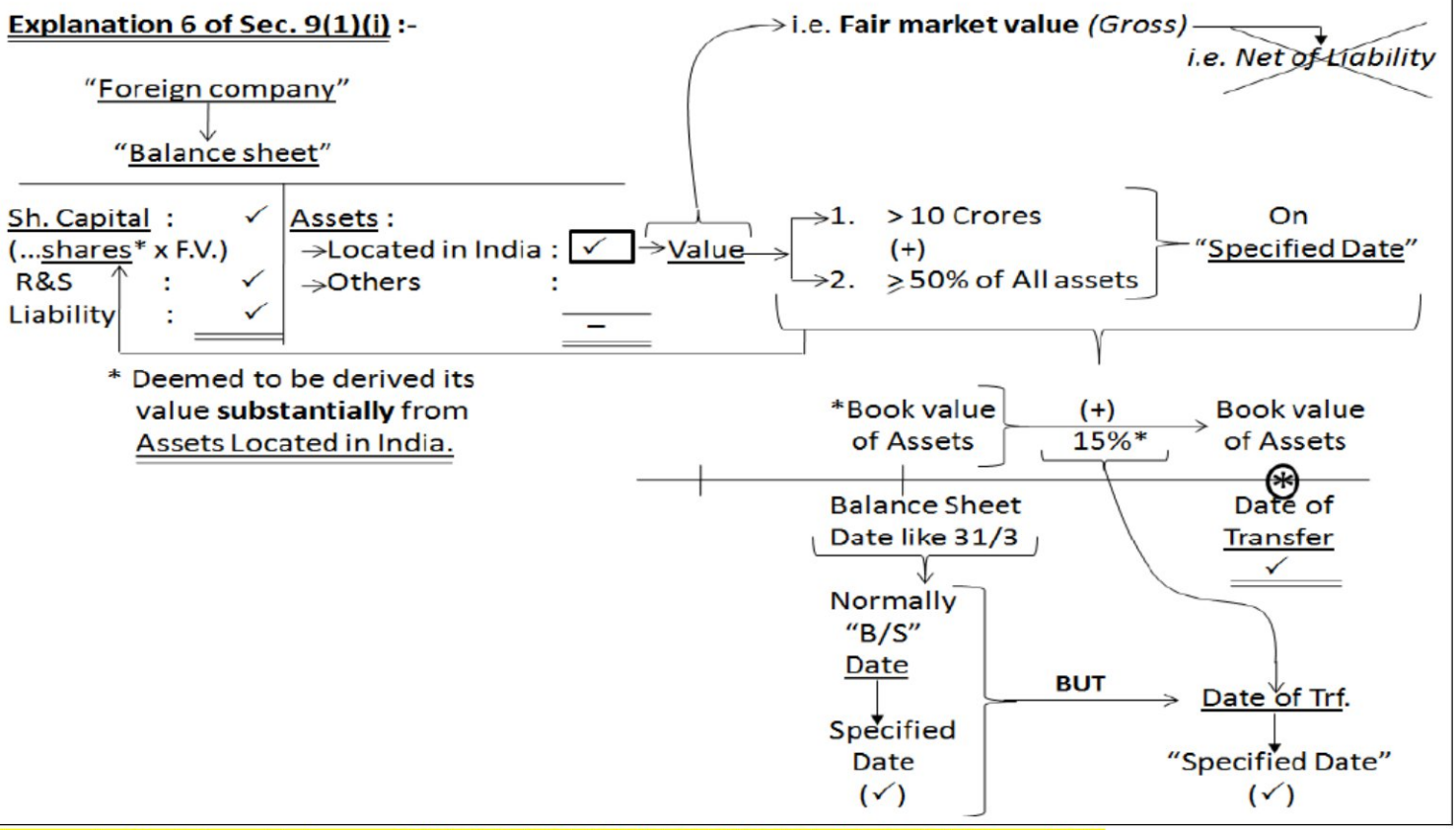
(2) **Recipient is non-resident** / foreign company (i.e. money is received by non-resident / foreign company).

(3) **Income arises outside India** ***and transaction is not covered under any exception as given u/s 56(2)(x).***

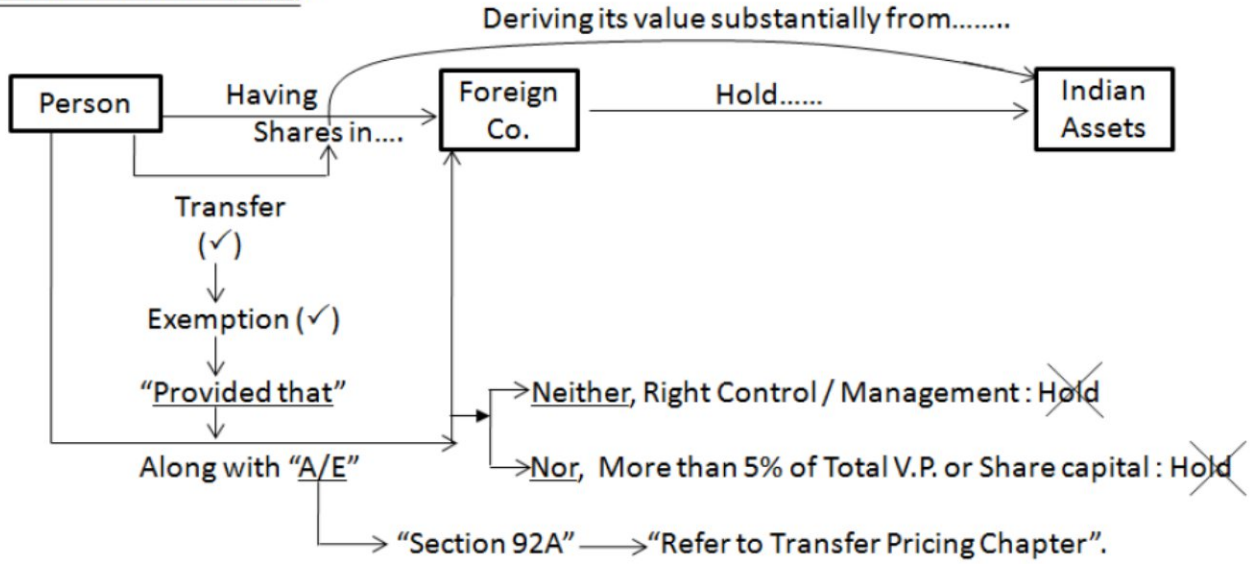
If these conditions are satisfied, ***money received by such NR / F.Co., shall be deemed to accrue or arise in Indi.a***

Explanation 5 to section 9(1)(i):

- An asset or a capital asset being any **share in a company registered or incorporated outside India**
- **shall be deemed to be and shall always be deemed to have been situated in India**
- ***if the share derives,*** *directly or indirectly,* ***its value substantially from the assets located in India.***



Explanation 7 of Sec. 9(1)(i):-



"SECTION 6: DETERMINATION OF RESIDENTIAL STATUS"

Determination of Residential Status of Individual:-

☞ **Normally, An individual will be resident in any previous year if:**

(a) He is a citizen of India *who leaves India during the previous year* **for the purposes of employment outside India or as a member of crew of an Indian ship** and **is in India in that previous year for a period/s of 182 days or more**; or

(b) He is a citizen of India or a person of Indian origin who being outside India, **comes on a visit to India in any previous year and is in India for a period/s of 182 days or more** in that previous year; or

(c) In any other case:

(i) Is in India for a period/s of 182 days or more in that previous year; or

(ii) Having within the 4 years immediately preceding that previous year been in India for a period/s amounting to 365 days or more in aggregate and **is in India for a period/s of 60 days or more in that previous year.**

☞ **Resident and ordinarily resident / resident but not ordinarily resident:**

An individual is said to be a **resident and ordinarily resident** if he satisfies both the following conditions:

(a) He is a resident in **any 2 years (or more) out of the last 10 previous years** preceding the relevant previous year, and

(b) His total stay in India in last 7 years preceding the relevant previous year is **730 days or more.**

❖ **If an individual satisfies only one of the aforesaid conditions or none of the conditions are satisfied,** ***then such individual will be treated resident but not ordinarily resident.***

Amendment s made by Finance Act, 2020:

Amendment No. 1 [Effect of amendment in Explanation 1(b) to section 6(1) read with section 6(6)(c)]:

➢ An individual shall be deemed to be a resident *but not-ordinarily resident* in the following case:

(a) The individual is an **Indian citizen or person of Indian origin**;

(b) His **total income** (except income from foreign sources) **exceeds ₹ 15 lakhs** during the previous year; and

(c) He ***comes on a visit to India*** during the relevant previous year ***for 120 days or more but less than 182 days*** **and** has been in India **365 days or more within 4 years** immediately preceding the relevant previous year.

Amendment No. 2 [Effect of newly inserted section 6(1A) read with section 6(6)(d)]:

➢ An individual shall be deemed to be resident *but not-ordinarily resident* in India if the following conditions are fulfilled:

(a) The individual is an **Indian citizen**;

(b) His **total income** (except income from foreign sources) **exceeds ₹ 15 lakhs** during the previous year; and

(c) **He is not liable to tax in any other country or territory by reason of his domicile or residence or any other criteria of similar nature.**

Section 2(29A): "liable to tax", in relation to a person and with reference to a country, **means** that

– there is an ***income-tax liability on such person under the law of that country*** *for the time being in force and*

– *shall* include **a person who has subsequently been exempted from such liability** under the law of that country (*like,* **any income which is taxable in a particular country but full exemption is provided in that country by a notification issued by the Government in that country).**

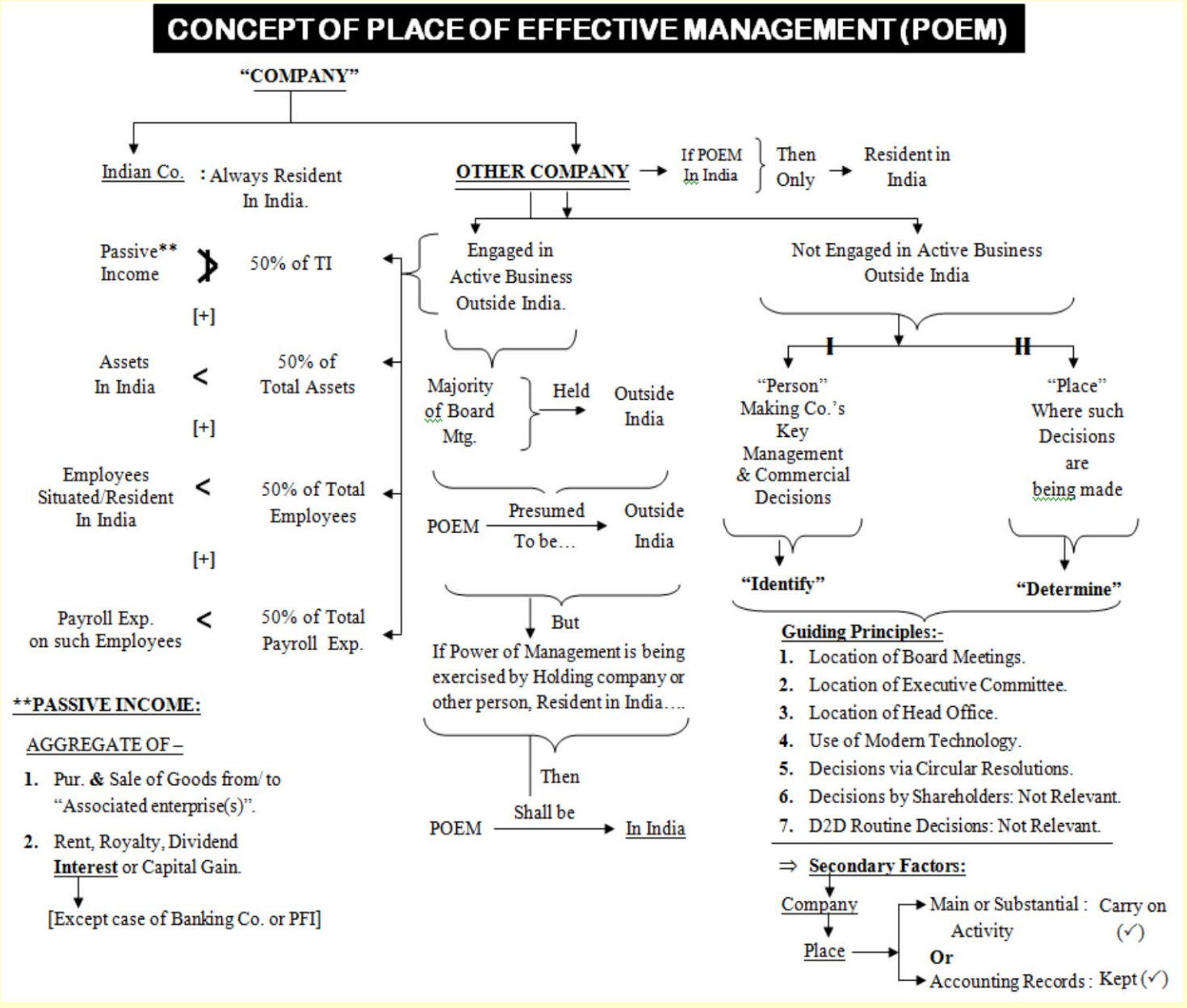
For the aforesaid both amendments, "income from foreign sources" means *income which accrues or arises outside India* ***(except income derived from a business controlled in or a profession set up in India).***

Determination of Residential Status of Company:-

A company is said to be resident in India in any previous year, if,—

(i) It is an **Indian company**; or

(ii) Its **place of effective management, in that year, is in India**.



"TRANSFER PRICING"

Section 92: *Computation of income from international transaction having regard to ALP:-*

International Transaction or Specified Domestic Transaction — **related** → **Income;** OR **Interest or other expense;** OR **Allocation of expenditure incurred in relation to joint activity** (*like,* R&D activity carried out jointly by MNC group enterprises) → **shall** be computed... → having regard to **Arm's length price.**

ALP **means** → Price which is **used in transaction..** → **with non-associated enterprise (i.e. unrelated person)** (+) as held **in uncontrolled conditions.**

In simple words, **correct market price.**

Exception of section 92 (i.e. mandatory adoption of income, etc. at ALP):

If adoption of aforesaid income / interest or other expense/ allocated cost **at arms length price** **has the effect of…….**

Reduction of income Or **Increment of loss**

In such a case, **Transfer pricing provisions shall NOT apply.**

Section 92A: *Meaning of associated enterprise :-*

Two enterprises shall be deemed to be associated enterprises if, at any time during the previous year, -

(a)	One enterprise ***holds,*** directly or indirectly, shares carrying at least **26%** of the voting power ***in other enterprise***; or
(b)	Any person ***holds,*** directly or indirectly, shares carrying at least **26%** of the voting power ***in each of such enterprises***; or
(c)	A ***loan advanced*** by one enterprise to the other enterprise constitutes at least **51%** of the book value of the total assets of the other enterprise; or
(d)	One enterprise ***guarantees*** at least **10%** of the total borrowings of the other enterprise; or
(e)	***More than half directors*** or members of the governing board or **at least one executive director** or executive member of the governing board of one enterprise is ***appointed by the other enterprise;*** or
(f)	***More than half of the directors*** or members, or **at least one executive director** or executive member of the governing board of ***each of the two enterprises are appointed by the same person;*** or
(g)	The manufacturing or otherwise **business of one enterprise** is ***wholly dependent on any intangible*** (like,

	know–how, patents, copyrights, licenses, franchises, etc.) **of the other enterprise**; or
(h)	***At least 90% of the required raw materials*** and consumables of one enterprise***, are supplied by the other enterprise*** *and the prices and other condition relating thereto are influenced by such other enterprise*; or
(i)	***The goods manufactured by one enterprise***, ***are sold to the other enterprise*** *and the prices and other condition relating thereto are influenced by such other enterprise*; or
(j)	***Where one enterprise is controlled by an individual, the other enterprise is also controlled by such individual*** or his relative or jointly by such individual and his relative; or
(k)	***Where one enterprise is controlled by a HUF***, the other enterprise is controlled by a member of such HUF, or by a relative of such member, or jointly by such member and his relative; or
(l)	***Where one enterprise is a firm, association of persons or body of individuals,*** the other enterprise holds at least **10% interest** in such firm, association of persons or body of individuals.

Section 92 B : *Meaning of international transaction:-*

International transaction **means** → Transaction → **Entered between two or more associated enterprises** (out of which, at least one party **must be non-resident**, which includes not-ordinarily resident)

(+)

In the **nature** of:

- Purchase, sale, lease, transfer or use of any item whether tangible or intangible.
- or
- Providing of services
- or
- Lending or borrowing money
- or
- Any other transaction having impact on income, losses or assets
- or
- Business re-structuring or re-organization transaction ir-respective of its impact upon current or future income, losses or assets.

International transaction → **includes** a mutual arrangement for allocation of cost / expense in relation to joint activity as carried out by MNC group enterprises.

Deemed international transaction:

A transaction of an assessee enterprise **with unrelated person** (whether resident or non-resident) **will be deemed with associated enterprise** (i.e. Deemed international transaction) if in relation to relevant transaction:

(a) There is *prior agreement* ***between such unrelated person and associated enterprise****;* or

(b) *Terms are substantially determined* ***between such unrelated person and associated enterprise.***

Assessee enterprise (A Ltd.) → Transaction → Mr. C (Unrelated person) ↔ **Associated enterprises (B Inc.)** of Assessee enterprise (A Ltd.)

Mr. C related to Associated enterprises (B Inc.)

Prior agreement; or substantial terms determination (✓)

Then, it will be deemed **with associated enterprise (i.e. Deemed International transaction).**

Section 92BA: *Meaning of specified domestic transaction:-*

Specified domestic transaction means:-

(1)	**Any inter-unit transfer of goods or services** [means, transfer of goods / services by the assessee from his eligible business (i.e. eligible for deduction u/s 80IA to 80RRB or section 10AA), to a normal business or vice-versa and consideration for such transfer does not match with fair market value of such goods / services].
(2)	**Any transaction between assessee** (who is carrying on eligible business i.e. eligible for deduction u/s 80IA to 80RRB or section 10AA) **and other person** (carrying normal business), **which produces profit more than ordinary profit to the assessee.**
(3)	**Any transaction between assessee** (who exercised option u/s 115BAB) **and other person** carrying normal business, **which produces profit more than ordinary profit to the assessee.**

Provided that aggregate of aforesaid transactions during the previous year must exceed ₹ 20 crores.

Section 92C: *Computation of arm's length price :-*

(1) ALP shall be determined **by the most appropriate method,** *out of the following methods,* **which will be applied in prescribed manner** (as given in **Rule 10B**) which is as follows:

(1) COMPARABLE UNCONTROLLED PRICE METHOD:

When will it be regarded as most appropriate method?	If details of comparable transaction, prices, etc. are given.

MANNER / STEPS FOR APPLICATION OF THIS METHOD (TO ARRIVE AT ALP):

(i)	Identify the price Charged / Paid in comparable uncontrolled transaction	✓
(ii)	Adjust such price to account for the difference between international transaction (or specified domestic transaction) and the comparable uncontrolled transaction	(+)/(-)
		ALP

(2) RE-SALE PRICE METHOD:

When will it be regarded as most appropriate method?	If purchased goods / services from associated enterprise are resold to unrelated person.

MANNER / STEPS FOR APPLICATION OF THIS METHOD (TO ARRIVE AT ALP):

(i)	Identify the price charged against resale of such goods or service to unrelated persons	✓
(ii)	Reduce the normal gross profit margin	(-)
(iii)	Reduce expense incurred by assessee in relation to purchase of such goods/services	(-)
(iv)	Adjust such price to account for any other difference (if needed)	(+)/(-)
		ALP

(3) COST PLUS METHOD:

	When will it be regarded as most appropriate method?	*If details about cost & profit mark up are given.*	
	MANNER / STEPS FOR APPLICATION OF THIS METHOD (TO ARRIVE AT ALP):		
	(i)	**Determine direct & indirect cost of the transaction and comparable uncontrolled transaction for which ALP is being computed**	✓
	(ii)	**Determine the normal gross profit mark up, and adjust it to account for the difference between above said transaction**	✓
	(iii)	**Increase the cost by such adjusted Markup**	(+)
			ALP
(4)	**PROFIT SPLIT METHOD:**		
	When will it be regarded as most appropriate method? **If there is a case of multiple international transactions (or SDT) and can't be evaluated separately.**		
	MANNER / STEPS FOR APPLICATION OF THIS METHOD (TO ARRIVE AT ALP):		
	(i)	**Determine the combined net profit** (i.e. Total consideration received (-) Total cost incurred upon such project by the group)	
	(ii)	**Allocate such profit amongst all involved associated enterprises on the basis of their performed functions, assets employed or risk assumed (i.e. in Relative contribution ratio).**	
	(iii)	**ALP for assessee associated enterprise:** Cost incurred by it : ✓ (+) Allocated net margin : ✓	
(5)	**TRANSACTIONAL NET MARGIN METHOD:**		
	When will it be regarded as most appropriate method?	**When details of net margin of comparable uncontrolled transaction are given.**	
	MANNER / STEPS FOR APPLICATION OF THIS METHOD (TO ARRIVE AT ALP):		
	(i)	**Identify the net margin realized in comparable uncontrolled transaction.**	
	(ii)	**Adjust such net margin to account for the differences between international transaction and comparable uncontrolled transaction.**	
	(iii)	**Such adjusted net margin will be treated ALP (in terms of net margin).**	
(6)	**OTHER METHOD (AS PRESCRIBED BY THE BOARD) [Rule 10AB]:-**		
	– *Consider the price which has been charged or paid, or would have been charged or paid,* – **for the same or similar uncontrolled transaction,** – **with or between non-associated enterprises,** – ***under similar circumstances***, considering all the relevant facts.		

(2) In a case where more than one price is determined by the most appropriate method, the Arm's length price in relation to such transaction shall be computed in prescribed manner which is as follows:

Rule 10CA : This Rule is Applicable **where Most Appropriate Method** → **Results** → **More than one price (✓)** → **in this case** → **Final ALP ?**

- **Range Concept** → Apply in a case where six or more entries (i.e. comparable transactions) are given.
- **Arithmetical mean approach** → Apply in other cases (i.e. where less than 6 entries are given means where range concept is not applicable)

RANGE CONCEPT:-

(1) Identify the price of, comparable transaction

	Details (i.e. prices) of six or more entries (i.e. comparable transactions)							
of, :	E1	E2	E3	E4	E5	E6	E7	- - - -
Current Year :	✓	✓	✓	✓	✓	✓	✓	✓
Ist Last Year :	✓	✓	✓	✓	✓	✓	✓	✓
IInd Last Year :	✓	✓	✓	✓	✓	✓	✓	✓
(2) Compute **weighted average** of such prices :	✓	✓	✓	✓	✓	✓	✓	✓
(3) Arranged such results **in Ascending order** :	✓	✓	✓	✓	✓	✓	✓	✓
Place / No. :	1	2	3	4	5	6	7	8

(4) Identify 35th percentile i.e. : Total entries in dataset X 35/100 = ⊛ → If this Result is in....
- Fractional figure (e.g. 4.5) → Value at 5th place (in ascending dataset) : Consider (✓)
- Whole Number (e.g. 5) → Average of value at 5th & 6th place : Consider (✓)

(5) Identify 65th percentile i.e. : Total entries in dataset X 65/100 = ⊛ → If this Result is in....
- Fractional figure (e.g. 4.8) → Value at 5th place (in Ascending Dataset) : Consider (✓)
- Whole Number (e.g. 5) → Average of value at 5th & 6th place (in Ascending dataset) : Consider (✓)

(6) Construct an Arm's Length Range: Result of 35th percentile **To** Result of 65th percentile.

(7) If Price actually shown by assessee is →
- With in arm's length Range: Price Actually shown by Assessee shall be taken as **Final ALP.**
- Outside Arm's Length Range → Median of Dataset *shall be taken* as **Final ALP** .

i.e. Total entries in Ascending Dataset X 50/100 = ⊛ → If this Result is in....
- Fractional figure (e.g. 7.6) → Value at 8th place (in ascending dataset) : Consider (✓)
- Whole Number (e.g. 8) → Average of value at 8th & 9th place : Consider (✓)

ARITHMETICAL MEAN APPROACH:

If range concept is not applicable (i.e. in a case where data set consists of less than six entries), **the arm's length price shall be the arithmetical mean (i.e. average) of all the values given.**

Provided that **if the variation between the arithmetical mean and actual transaction price** (as shown by the assessee) **does not exceed 3%** (in case of wholesale trading: 1%) of the actual transaction price, in such a case, actual transaction price shall be deemed to be the arm's length price. **(Means, no adjustment will be required).**

Section 92C (3): Circumstances in which ALP can be computed by the AO:

If on the basis of material available to him, he is of the opinion that –

(a) The price **has not been determined as per prescribed method (or in prescribed manner)**; or

(b) Any **information and document have not been kept and maintained** as per section 92D; or

(c) The **information or data used in computation of ALP is not reliable or correct**; or

(d) The **assessee has failed to furnish required information or document** within the specified time under a notice issued under section 92D,

- the Assessing Officer may determine the arm's length price **subject to an opportunity** which will be given by the Assessing Officer to the assessee through a show cause notice.

Section 92C (4): ***Where an arm's length price is determined by the Assessing Officer***, the Assessing Officer *may compute* the total income of the assessee having regard to such arm's length price.

☞ **No deduction under section 10AA or under Chapter VI-A shall be allowed** in respect of the enhanced amount of income which is in effect of such ALP.

☞ Considering the ALP (as determined for payer), **payee can not claim refund of excess TDS.**

Section 92CA: *Reference to Transfer Pricing Officer:-*

(1) AO → Transfer Pricing Officer (TPO) — In relation to International transaction or Specified Domestic Transaction — May Refer "Computation of ALP" to ….. — BUT With the prior approval of CIT / PCIT.

(2) TPO → Assessee — shall serve a Notice to the …. requiring him to furnish reliable Supportive Evidences on a date to be specified in such notice

(2A) During the course of Proceedings, Any other International Transaction comes to the notice of the TPO → Then → TPO shall determine ALP of such other international transaction as if it has been referred to him by the assessing officer.

(2B) During the course of Proceedings, an international transaction which was not reported u/s 92E comes to the notice of the TPO → Then → TPO shall determine ALP of such other international transaction as if it has been referred to him by the assessing officer.

Note: if during the proceedings, TPO detect new S/D/T, then he is not empowered to determine ALP for the same under this section.

(3) TPO → After considering all Documents, evidences Shall pass… → Order determining ALP.

Time limit : 60 days before the date on which time Limit for completion of assessment/Re-assessment as given u/s 153/153B Expires.

However, where assessment proceedings are stayed by any Court or where a requisition for exchange of information has been made from foreign tax authority under the DTAA u/s 90/90A,

- *the time available to TPO for making an order after excluding (i.e. adding) the time for which assessment proceedings were stayed or the time taken for receipt of information, as the case may be*
- is less than 60 days, then
- *such remaining period shall be extended to 60 days.*

❖ In such a case, time left for AO (after the extended time-limit of TPO) is less than 60 days, it shall be extended to 60 days.

(4) AO → Shall pass his Assessment order In confirmity of order of T.P.O, (means, order of TPO shall be binding upon AO).

(5) TPO → in case his order having mistake Apparent from Record…. → "MAY AMEND HIS ORDER" But subject to the Provisions of Section 154.

Section 92CB: *Power of Board to make safe harbour rules:-*

- **The determination of ALP** by AO or TPO **shall be subject to safe harbour rules** as framed by the Board.
- **"Safe harbour" means** circumstances in which the income-tax authorities **shall accept** the transfer price declared by the assessee.

Rule 10TD: *Safe harbour in relation to international transactions:* Not Notified for A.Y. 2023-24

Sl. No.	Eligible International Transaction	Circumstances in which transfer price (based on margin as specified below) declared by the assessee shall be accepted by the I.T. Authority	
1.	**Provision of software development services**	Where the **value of international transaction** ….	The **operating profit margin declared** in relation to operating expense incurred must be
		doesn't exceed ₹100 Crores	**at least 17%**
		exceeds ₹100 Crores but doesn't exceed ₹200 Crores	**at least 18%**
2.	**Provision of information technology enabled services**	Where the **aggregate value of such transactions entered into during the previous year** ….	The **operating profit margin declared** in relation to operating expense incurred must be
		doesn't exceed ₹100 Crores	**at least 17%**
		exceeds ₹100 Crores but doesn't exceed ₹200 Crores	**at least 18%**
3.	**Provision of knowledge process outsourcing services**	The **value of international transaction does not exceed ₹200 Crores and**	
		Where **proportion of employees cost** out of operating expense is	The **operating profit margin declared** in relation to operating expense incurred must be
		Not less than 60%	**at least 24%**
		Less than 60% but not less than 40%	**at least 21%**
		Less than 40%	**at least 18%**
4.	**Advancing of intra-group loans where the amount of loan is denominated in**	**The interest income must be declared as per the rate which is not less than….**	
		Credit Rating (as per CRISIL)	One-year **money lending rate of SBI** as on

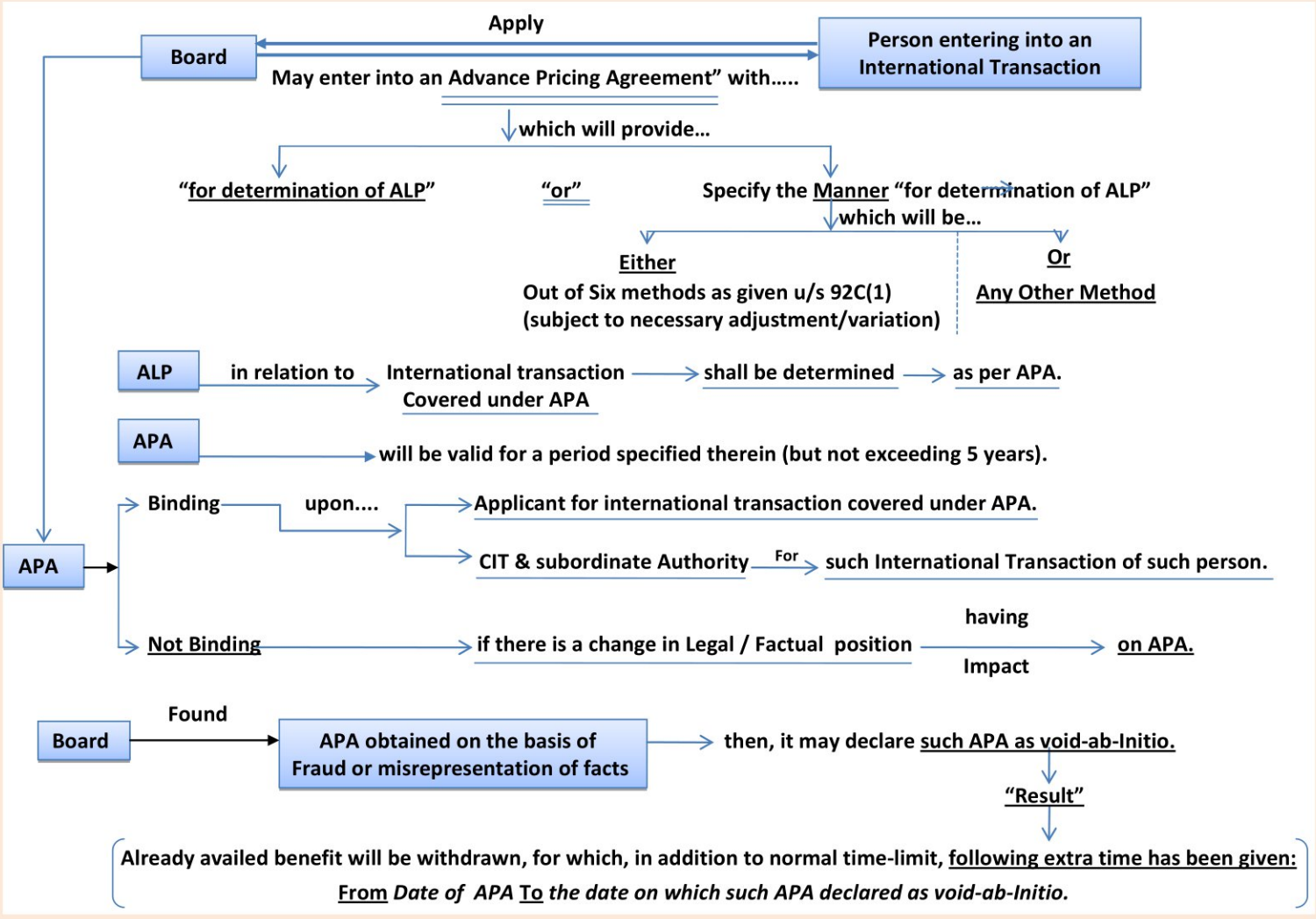
	Indian Rupees (INR).	of the recipient enterprise is……	1st April of the relevant previous year **(+)**
		between AAA to A	**1.75%**
		BBB-, BBB or BBB+	**3.25%**
		between BB to B	**4.75%**
		between C to D	**6.25%**
		Not available	**4.25%**
5.	**Advancing of intra-group loans where the amount of loan is denominated in foreign currency.**	**The interest income must be declared as per the rate which is not less than….**	
		Credit Rating (as per CRISIL) of the recipient enterprise is……	6 Months London Inter-Bank Offer Rate as on 30th September of relevant previous year **(+)**
		between AAA to A	**1.50%**
		BBB-, BBB or BBB+	**3.00%**
		between BB to B	**4.50%**
		between C to D	**6.00%**
		Not available	**4.00%**
6.	**Providing corporate guarantee**	The **guarantee commission or fee declared is at least 1% per annum on the amount guaranteed.**	
7.	**Provision of contract research and development services** relating to: ➢ **software development; or** ➢ **generic pharmaceutical drugs**	The **value of international transaction does not exceed ₹200 Crores** **and** The **operating profit margin declared by the eligible assessee** in relation to operating expense incurred is **at least 24%**.	
9.	**Manufacture and export of core auto components**	The **operating profit margin declared by the eligible assessee** from the eligible international transaction in relation to operating expense **is at least 12%.**	
10.	**Manufacture and export of non-core auto**	The **operating profit margin declared by the eligible assessee** from the eligible international transaction in relation to operating expense **is at least**	

	components	**8.5%.**
11.	**Receipt of low value-adding intra-group services** (*like,* support services)	The entire value of the international transaction, including a mark-up **upto 5%, does not exceed a sum of ₹10 Crores.**

Rule 10THC: *Safe harbour for specified domestic transactions*: **Applicable for A.Y. 2023-24**

1.	Supply /transmission of electricity by Govt. Co.	The tariff (or its methodology) is determined (or approved) by the Appropriate Commission as per the Electricity Act, 2003.
2.	Purchase of milk or milk products by co-operative society from member	The price is determined at a rate **on the basis of the quality of milk**, (a) irrespective of, **the quantity of milk procured and % of his shares / voting power** as held in the co-operative society; and (b) **such prices are routinely declared by the co-operative society in a transparent manner and are available in public domain**.

Section 92CC: *Advance pricing Agreement (APA):-*



Roll back Mechanism:

APA **may provide** → For determination of ALP or Specify the manner for the same, **in relation to….** → International Transaction → Entered **during 4 previous years** preceding the first of the previous year for which APA applies.

☞ It may be noted here that **as per Rule 10MA -** Applicability of roll back provision **must be requested for all roll back years (i.e. 4 years)** in which such international transaction has been undertaken.

Section 92CD: *Effect to Advance Pricing Agreement:-*

(1)	**If return for any previous year** to which APA applies **has already been furnished before the date of such APA,** **assessee shall furnish a modified return within 3 months** from the end of the month in which such APA was entered, and **such return shall be deemed to be a return u/s 139.**
(2)	If on the date of filing of modified return assessment or re-assessment for such year is pending: AO shall consider such APA and modified return in completing such assessment / re- assessment.
	☞ Time limit as otherwise available for completion of such assessment / re- assessment **shall be extended by one year.**
(3)	If without awaiting for modified return (i.e. before the expiry of time limit of modified return), **assessment or re-assessment for any year** *to which APA applies* **has already been completed.** In such a case, to give effect of APA, AO shall pass an order modifying the total income of the relevant assessment year (determined in such assessment/reassessment) having regard to and in accordance with APA.
	Such proceedings must be completed within one year from the end of the year of filing of modified return.

Amendments in Section 92CB & Section 92CC as made by the Finance Act, 2020:-

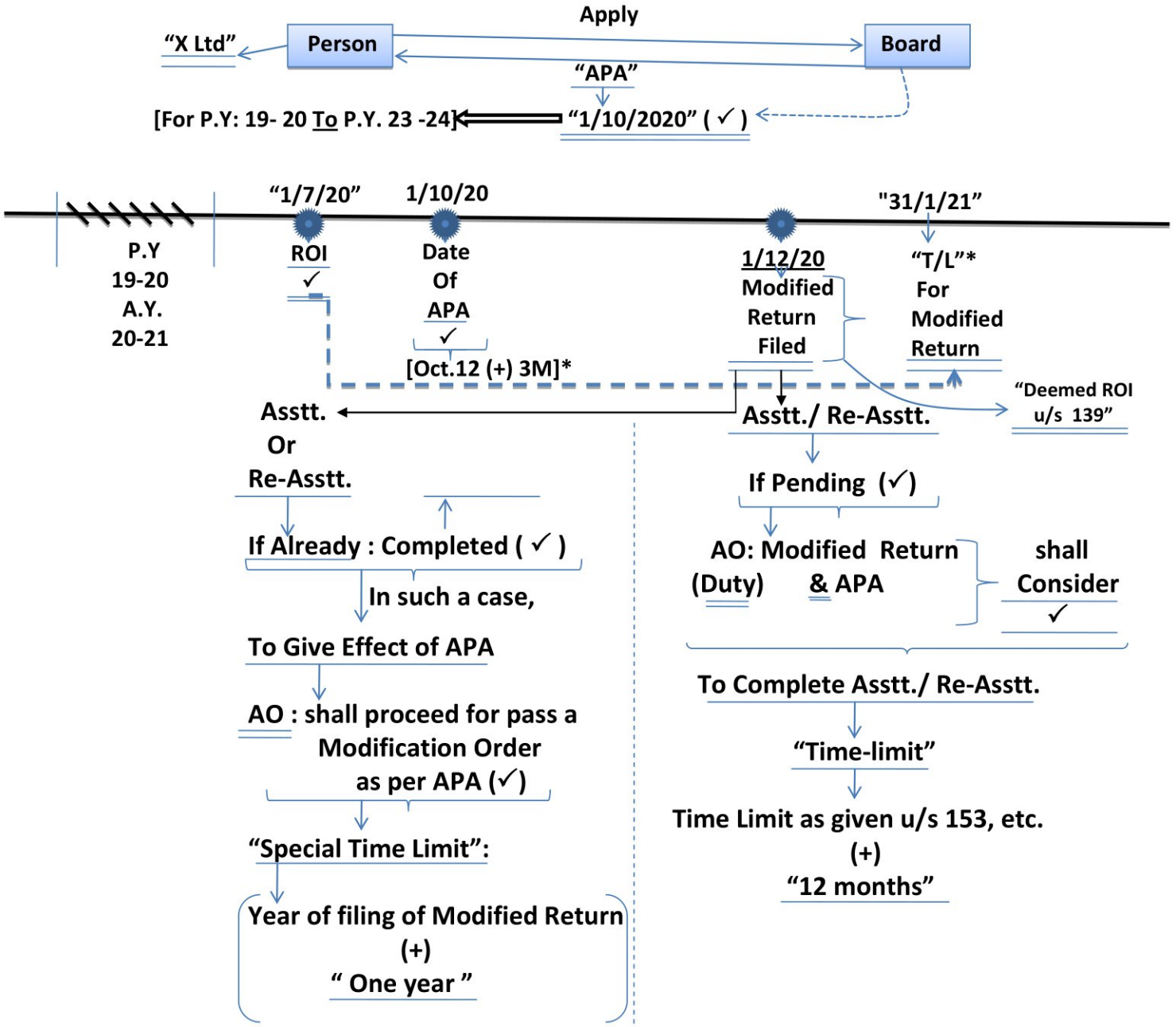
Section 92CC:

- Under the existing provisions, the CBDT may enter into an APA with any person, determining the ALP or specifying the manner in which ALP is to be determined, in relation to an international transaction to be entered into by that person.
- **The scope of this section 92CC has been widened to provide that the CBDT may also enter into an APA with any person determining income referred to in section 9(1)(i), or specifying the manner in which said income is to be determined, as is reasonably attributable to the operations carried out in India by or on behalf of that person, being a non-resident.**
- The amendment in section 92CC provides that APA can be entered into to determine "the income referred to in section 9(1)(i) as is reasonably attributable to the operations carried out in India by or on behalf of the non-resident."

Section 92CB:

- Section 92CB, which relates to power of CBDT to make safe harbour rules, provides that the determination of arm's length price (ALP) under section 92C or section 92CA shall be subject to safe harbour rules.

To be discussed with section 92CD (for Basic provisional understanding):



- For this purpose, safe harbour means the circumstances in which the income-tax authorities shall accept the transfer price declared by the assessee.
- This Section has been substituted to provide that apart from the determination of ALP, **the determination of the income referred to in section 9(1)(i) shall also be subject to safe harbour rules.**
- *Explanation* to section 92CB defining safe harbour is, amended to provide that safe harbour would now also include circumstances in which income tax authorities shall accept the income under section 9(1)(*i*) declared by the assessee.

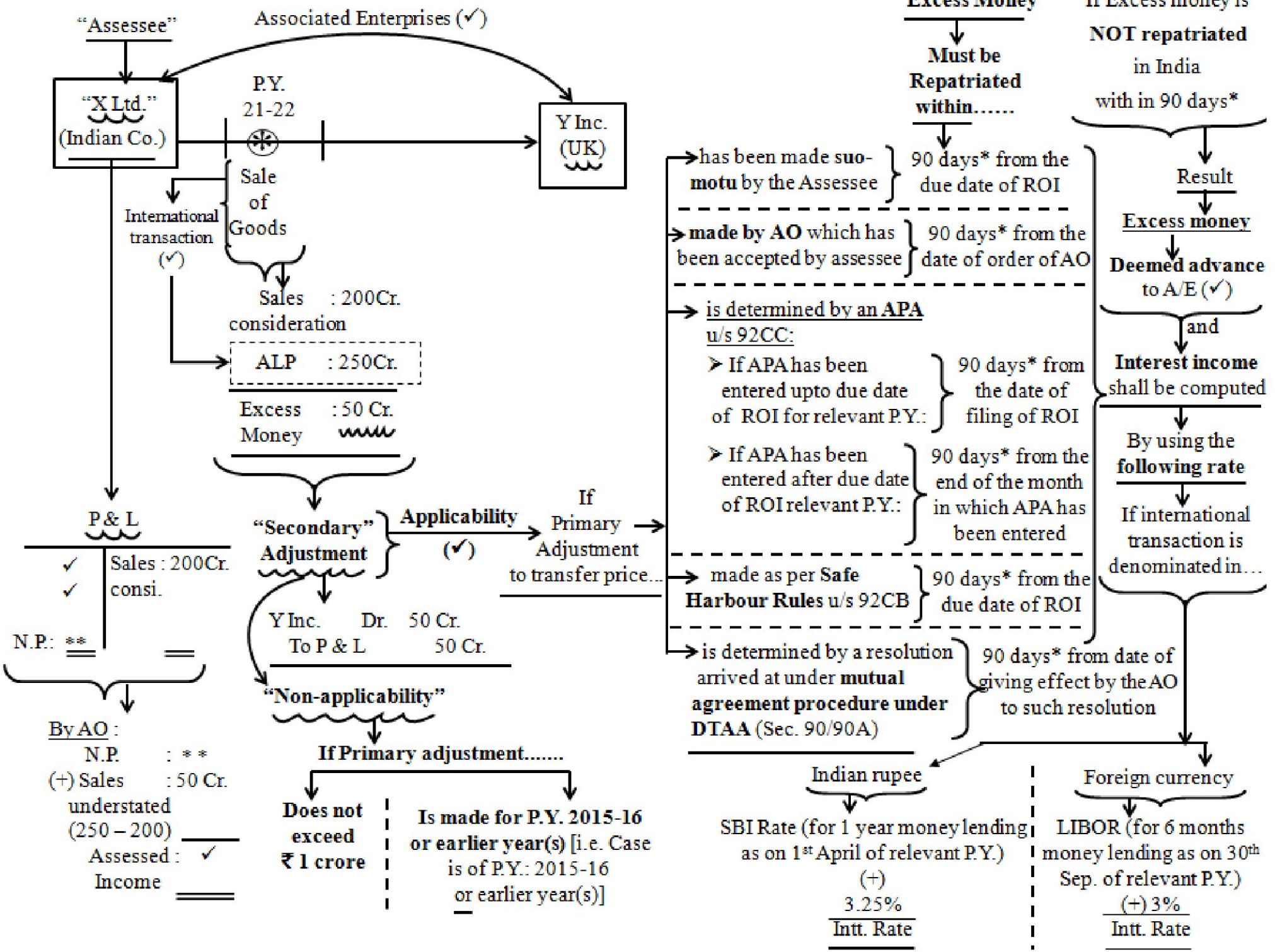
Combined effect of section 92D, 92E, 271AA, 271BA and section 271G:-

Obligations	Default	Penalty
Assessee → In relation to International transaction or specified domestic transaction → shall → Keep & maintain prescribed information & documents (Except where aggregate value of transaction doesn't exceed ₹ 1Cr.) upto prescribed period viz. **8 years from the end of the relevant assessment year.**	**If fails to keep and maintain the same** 271AA	**2% of value such transaction**
→ Furnish such information within 30 days from receipt of notice in this regard from AO/CIT(A). The AO / CIT(A) is also empowered to extend time (on request) by a further period **not exceeding 30 days.**	**If fails to furnish such information** 271G (This may be levied by TPO also)	**2% of value such transaction**
	Furnish incorrect information 271AA	
→ Obtain and furnish a report from C.A. one month prior to the due date of ROI. Section 92 E	**If fails to furnish such report** 271BA	**₹ 1,00,000**
	Fails to report any transaction in such report 271AA	**2% of value of such transaction**
Assessee → is constituent entity of an international group → shall → Also keep and maintain prescribed information & documents in respect of the international group	—	
→ Furnish prescribed information to prescribed authority upto prescribed date.	**If fails to furnish such information**	**₹ 5,00,000** 271AA

Section 92CE: *Secondary adjustment in certain international transactions:-*

Amended Rule 10CB: *Computation of interest income pursuant to secondary adjustments:-*

Section 92CE: *Secondary adjustment in certain international transactions:-*



	Case	*Excess money or part their of must be repatriated to India with in 90 days from:*	Interest on non-repatriated excess money or part thereof within the specified time limit, is chargeable from:
(i)	Where a primary adjustment to transfer price **has been made suo-motu by the assessee in his ROI**	*the due date of filing of ROI u/s 139(1)*	**the due date of filing of ROI u/s 139(1)**
(ii)	Where a primary adjustment to transfer price **made by the Assessing Officer / Appellate Authority** has been accepted by the assessee	*the date of the order of Assessing Officer / Appellate Authority*	**the date of the order of Assessing Officer / Appellate Authority**
(iii)	Where a primary adjustment to transfer price **is determined by an advance pricing agreement** entered into by assessee u/s 92CC		
	➢ If the APA has been entered into upto the due date of ROI for the relevant P.Y.	*the date of filing of ROI u/s 139(1)*	**the due date of filing of ROI u/s 139(1)**
	➢ If the APA has been entered into after the due date of filing of return for the relevant P.Y.	*the end of the month in which the APA has been entered into*	**the end of the month in which the APA has been entered into**
(iv)	Where assessee **has exercised option as per the safe harbour rules** u/s 92CB	*the due date of filing of ROI u/s 139(1)*	**the due date of filing of ROI u/s 139(1)**
(v)	Where a primary adjustment to transfer price is determined by a resolution arrived at under **mutual agreement procedure under DTAA**.	*the date of giving effect by the A.O. under Rule 44H to such resolution*	**the date of giving effect by the A.O. under Rule 44H to such resolution**

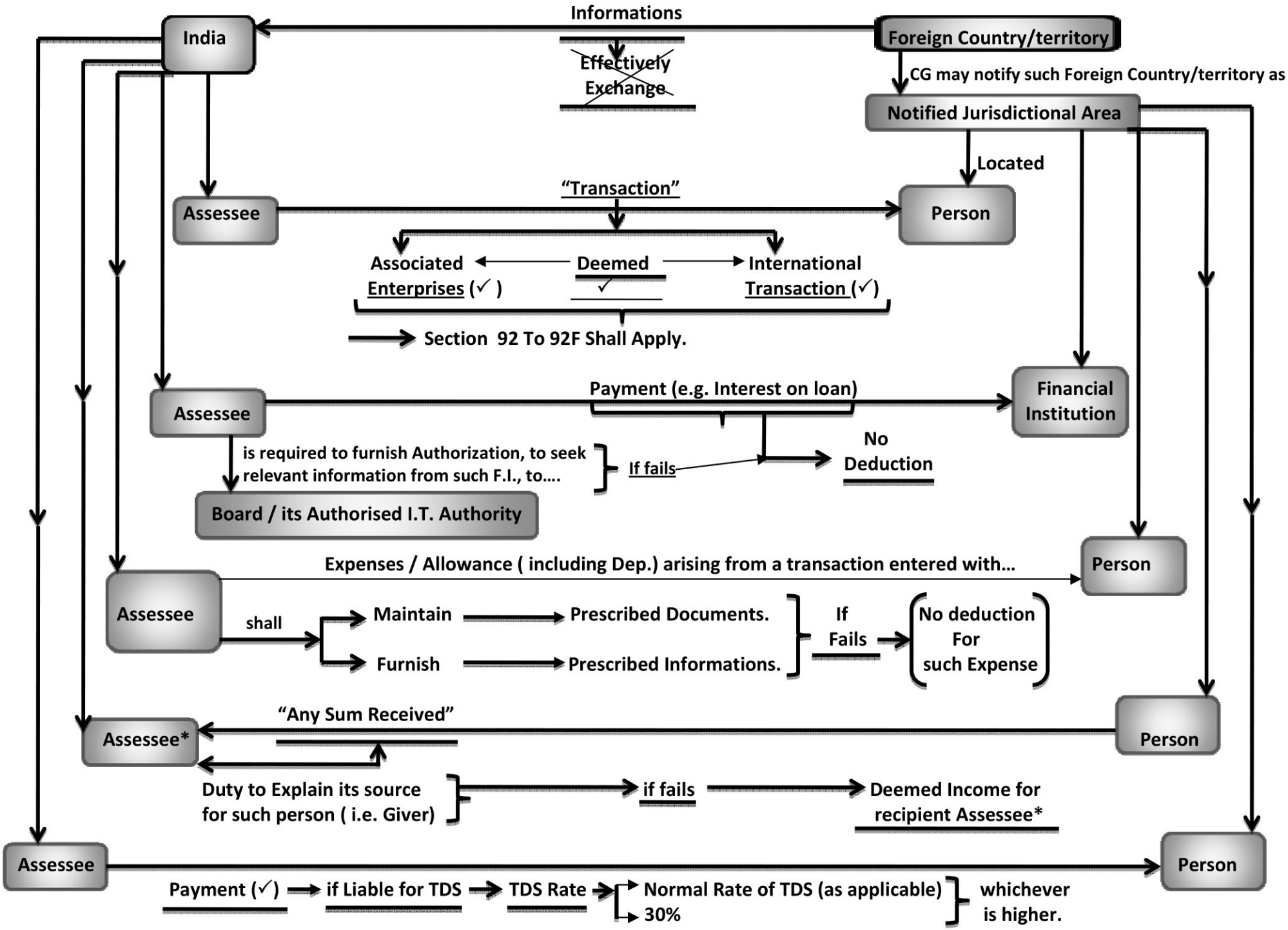
In case of failure to repatriate the excess money with in the above time-limit, *interest would be computed as follows:*

	Case	Rate
(i)	Where the international **transaction is *denominated in Indian rupee***	At the one year marginal cost of fund lending rate of SBI as on 1st April of the relevant previous year **+ 3.25%.**
(ii)	Where the international transaction is ***denominated in foreign currency***	At six month London Interbank Offered Rate (LIBOR) as on 30th September of the relevant previous year **+ 3.0%.**

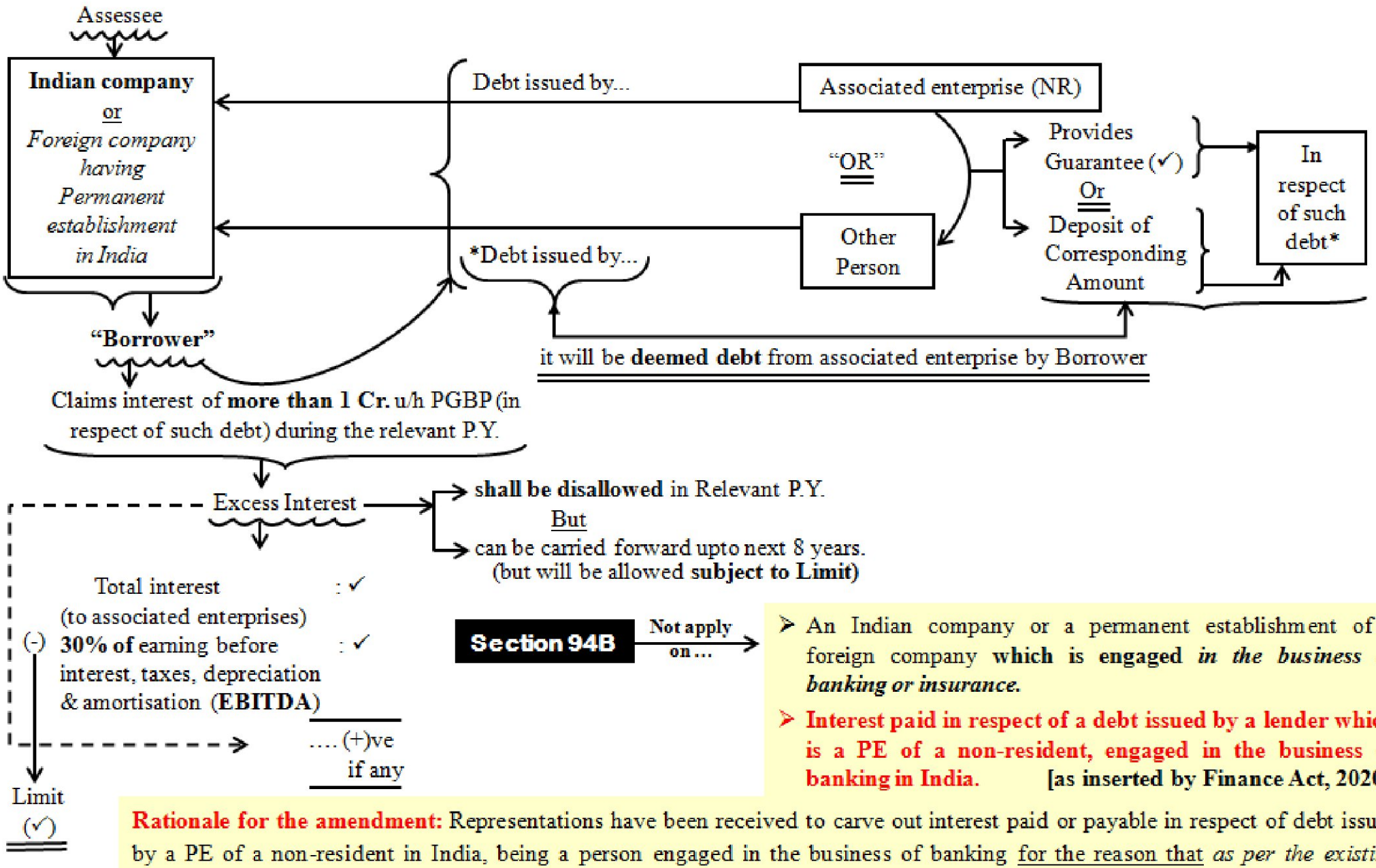
Scheme relating to one-time payment named as additional income-tax on excess money [sub-sections (2A) to (2D)]:

- Where the excess money or part thereof has not been repatriated in prescribed time, the assessee **may at his option** *pay additional income-tax at the rate of 18% (+12% surcharge + 4% HEC) on such excess money.*
- If the assessee pays the additional income-tax, **he will not be required to make secondary adjustment or compute interest *from the date of payment of such tax.*** It is needless to say here that he is required to make secondary adjustment pertaining to interest till the date of payment of additional tax.
- The tax so paid shall be the final payment of tax and no credit shall be allowed in respect of such tax.

Exams oriented approach for Section 94A:



Section 94B: *Limitation on interest deduction in certain cases:-*



Section 94B — **Not apply on …**

- An Indian company or a permanent establishment of a foreign company **which is engaged *in the business of banking or insurance.***
- **Interest paid in respect of a debt issued by a lender which is a PE of a non-resident, engaged in the business of banking in India.** **[as inserted by Finance Act, 2020]**

Rationale for the amendment: Representations have been received to carve out interest paid or payable in respect of debt issued by a PE of a non-resident in India, being a person engaged in the business of banking for the reason that *as per the existing provisions a branch of the foreign company in India is a non-resident in India. Further, the definition of the AE in section 92A, inter alia, deems two enterprises to be AE, if during the previous year a loan advanced by one enterprise to the other enterprise is at 50 per cent or more of the book value of the total assets of the other enterprise.* ***Thus, the interest paid or payable in respect of loan from the branch of a foreign bank may attract provisions of interest limitation provided for under this section.***

"DOUBLE TAXATION RELIEF"

Section 90: *Relief in case where DTAA exists (i.e. Bilateral Relief):-*

This section empowers the CG to enter into an agreement (i.e. DTAA) with the Govt. of any country outside India or specified territory outside India (i.e. Notified by the CG, *like,* Hong Kong, Macau, Netherlands, etc.).

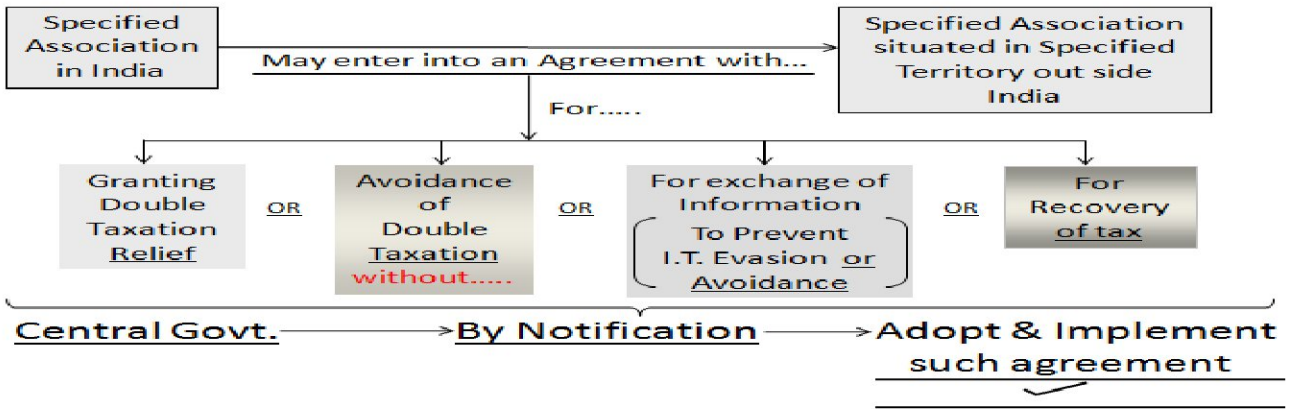
Purposes of DTAA or Underlying idea behind DTAA	➢ **For grating relief*** in respect of Income chargeable under the Indian Income Tax Act and the income tax law of that foreign country / territory to promote Mutual economic relations, trade and investment etc. ➢ **For the avoidance of double taxation of income** ***without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in the said agreement for the indirect benefit to residents of any other country/territory.*** ➢ **For exchange of information** for the prevention of evasion or avoidance of income tax. ➢ **For recovery of income tax.**
***Methods of granting relief under DTAA**	**(i) Exemption Method:** A particular income is taxed in one of the two countries and exempted in the other. **(ii) Tax Credit Method:** The income is taxed in both the countries in accordance with the respective tax laws read with DTAA, but country of residence shall allow credit for the tax charged thereon in the country of source.
Effect of such agreement	**If there is a difference between the tax treatment as per the provisions given under the Act and the tax treatment as per the agreement,** then, **provisional treatment or treatment as per agreement whichever is more beneficial to the assessee shall apply.** **Exception:** If DTAA provides that **"the taxation levied on any foreign concern in India shall not be less favorably than the taxation levied on Indian concern carrying on the same activities in the same circumstances."** In such a case, **taxation of foreign company *(like,* in respect of its branch in India) at the rate applicable to foreign company (i.e. 40%)** which is higher than the rate applicable to domestic company, **shall not be regarded as less favourable charge / levy of tax in respect of such foreign company.** **[Explanation 1 to section 90]**
Condition for claiming relief under DTAA	– Non-resident to whom double taxation avoidance agreement applies, – **shall not be entitled to claim any relief under such agreement** – *unless a certificate of his being a resident in any foreign country / territory (i.e. Tax Residency Certificate)* – *is obtained by him from the Government of that foreign country / territory.*

	► **The aforesaid assessee shall also provide such other documents and information, as may be prescribed.**

Section 91: *Relief in case where no DTAA exist (i.e. Unilateral Relief):-*

Essential conditions for claiming relief	(1) The assessee must have been **resident in India.** (2) The income must be **earned outside India.** (3) The assessee must have **paid the tax on such income in the foreign country.**
Quantum of relief	**Lower of the following:** Tax attributable from such double taxed income **in India** which shall be computed as under: $\frac{\text{Tax on total income in India}}{\text{Total Income in India}}$ X **Such double taxed income** Tax attributable from such double taxed income **in foreign country** which shall be computed as under: $\frac{\text{Tax paid in foreign country}}{\text{Total Income assessed in foreign country}}$ X **Such double taxed income**
	Double taxed income means: Net income i.e. income after all expenses and deductions as available under the Income-tax Act.

Section 90A:-



Section 155(14A): *Enabling claim of credit for foreign tax paid in case of dispute:-*

- If **due to dispute upon foreign tax payment,** credit for such tax u/s 90/90A/91 has not been given and
- if subsequently such dispute is settled; and
- the assessee, **within six months from the end of the month in which the dispute is settled,**
- furnishes to the Assessing Officer
- *evidence of settlement of dispute, and evidence of payment of such tax along with an undertaking that credit has not been claimed or will not be claimed in future,*
- Then Assessing Officer **shall allow credit for the same** by amending assessment order / intimation u/s 154.

"ASSESSMENT OF CHARITABLE/ RELIGIOUS TRUST AND INSTITUTION"

As per section 2(15): Charitable purpose includes-

- **Relief of the poor**
- **Education**
- **Medical Relief**
- **Yoga**
- **Preservation of:**
  - **Environment** (including watershed forest, or wild life), or
  - **Monuments or places or objects of artistic or historic interest;**
- **Advancement of any other object of general public utility**

EXCEPTION

- If it involves any **trade, commercial or business activity,**
- **which is carried on for any consideration** (ir-respective of use of such income / retention of such income)

But

If such activity i.e. commercial activity is undertaken **in the course of actual carrying out of its main object** i.e. Advancement of any other object of general…….

AND

Aggregate receipts from such commercial activity / activities during the P.Y. **> 20% of total receipts in that P.Y.**

In this case, **Exemption will be available.**

It may be noted here that **if in a particular year commercial receipts exceeds 20% of total receipts,** then

For such year:
Exemption u/s 11&12 **will not be allowed.**
[Section 13(8)]

Registration will not be cancelled by the CIT **only because of the reason that commercial receipts exceed 20% of total receipt.** [BOARD CIRCULAR]

Incomes eligible for exemption u/s 11:-

Income derived from property…

- **held for charitable or religious purpose:** **Exempt upto the extent of application of such income for such purposes in India.**
- held under trust created **for international welfare:** **Foreign application for such purposes will also be exempt.**

Voluntary Contribution received…

- **With specific direction of forming part of corpus of the trust (i.e. corpus donation)** : **Fully exempt** (See Amendment below) (without limitation of its applications).
- **In otherwise case** (i.e. without such direction)
  - Will be **deemed property income;** **Section 12**
  - **Will be exempt upto the extent of its application in India.**

Amendments made by the F. A. 2021

Income in the form of *voluntary contributions made with a specific direction, that they shall form part of the corpus of the trust or institution*, shall be fully exempt **subject to the condition that such voluntary contributions are invested or deposited in one or more of the forms or modes specified in section 11(5) maintained specifically for such corpus.**

Additional Corresponding Amendments (as made by the Finance Act, 2021):

Explanation 4 to section 11(1):

For the purposes of determining the amount of application (for exemption u/s 11),

(i) *Application for charitable or religious purposes from the corpus* ***shall not be treated as application*** *of income for charitable or religious purposes.*

– **Provided** that the amount not so treated as application, or part thereof,

– shall be treated as application for charitable or religious purposes

– in the previous year in which the amount, or part thereof, is invested or deposited back, into one or more of the forms or modes specified in section 11(5) maintained specifically for such corpus,

– from the income of that year and to the extent of such investment or deposit.

Income (i.e. capital gain) arises on transfer of property held for charitable or religious purpose….

If

- Consideration is **fully re-invested in new property** for such purposes → then → **CG will be fully exempt.**
- Consideration is **partly re-invested in such property** → then → Quantum of exemption will be:
  Cost of new asset
  (–)
  Cost of transferred asset.

OTHER RELEVANT POINTS:

Exemption depends upon application of income for charitable or religious purpose which includes –

(i)	**Revenue expense.**
(ii)	**Capital expense (Purchase of capital asset).**
	➢ It may be noted here that **if acquisition has been claimed as application** *then* ***no depreciation will be allowed on it*** *neither in same nor in any other year.* **Section 11(6)**

INSERTION MADE BY FINANCE ACT, 2022:

– For the purposes of this section,

– *any sum payable by any trust or institution* shall be considered as application of income

– **in the previous year in which such sum is actually paid by it**

– ***(irrespective of the previous year in which the liability to pay such sum was incurred by the trust or institution according to the method of accounting regularly employed by it)***

Provided that where during any previous year, any sum has been claimed to have been applied by the trust or institution, such sum shall not be allowed as application in any subsequent previous year.

(iii) **Application out of loan/borrowing:**

Explanation 4 to section 11(1): **AS INSERTED BY F. A.2021**

for the purposes of determining the amount of application (for exemption u/s 11),

(ii) ***Application for charitable or religious purposes, from any loan or borrowing, shall not be treated as application of income for charitable or religious purposes***

- **Provided** that the amount not so treated as application, or part thereof,
- shall be treated as application for charitable or religious purposes
- in the previous year in which the loan or borrowing, or part thereof, is repaid from the income of that year and to the extent of such repayment.

(iv) **Set off of excess application of any preceding year:**

For the purposes of section 11(1), it is hereby clarified that

- for the computation of income required to be applied or accumulated during the previous year
- **no set off or deduction or allowance of any excess application of any of the year preceding the previous year, shall be made.**

(v) **Donation to other trust / institution registered u/s 12AA/12AB or approved u/s 10(23C).**

Exception: If donation has been given with specific direction that they shall form part of the corpus of the recipient trust as covered u/s 12AA/12AB or approved u/s 10(23C) i.e. **corpus donation, shall not be treated as application of income.**

(vi) Payment in contravention of **provisions of section 40A(3)/(3A)** or 30% of sum (as paid/credited) in contravention of **section 40(a)(ia), will not be eligible for exemption.**

(vii) **INSERTION MADE BY FINANCE ACT, 2022:** **Explanation 3A to section 11(1)**

- For the purposes of this sub-section,
- where the property held under a trust or institution includes **any temple, mosque, gurdwara, church or other place notified u/s 80G(2)(b),**
- any sum received by such trust or institution *as voluntary contribution*
- ***for the purpose of renovation or repair of such temple, mosque, gurdwara, church or other place,***
- **may,** at its option, be treated by such trust or institution
- **as forming part of the corpus of the trust or the institution,**
- subject to the condition that the trust or the institution:
  - **(a) applies such corpus only for the purpose for which the voluntary contribution was made;**
  - **(b) does not apply such corpus for making contribution or donation to any person;**
  - **(c) maintains such corpus as separately identifiable; and**
  - **(d) invests or deposits such corpus in the forms and modes specified u/s 11(5).**

Explanation 3B:

- For the purposes of Explanation 3A,
- *where any trust or institution has treated any sum received by it as forming part of the corpus,* and
- ***subsequently any of the conditions specified in clause (a) to (d) of the said Explanation is violated,***
- such sum shall be deemed to be the income of such trust or institution
- **of the previous year during which the violation takes place.**

❖ **Identical provisions to Explanation 3A & 3B have been inserted in section 10(23C) by F.A. 2022.**

ACCUMULATION FACILITIES TO TRUST:-

(1) Trust can accumulate upto **15% of income*** to be utilized for charitable / religious purpose in future.

☞ Since there is no requirement to specify the purpose and period about it, hence, **it is treated as adhoc deduction.**

(2) For claiming full exemption, **trust is required to apply 85% income** for charitable or religious purpose, **subject to the following exceptions:**

Exception – I: **Clause 2 of Explanation to section 11(1)**

Cases of DEEMED APPLICATION OF INCOME	**(a) If due to non-receipt of income, OR**	**(b) For any other reason** (*like,* income received at year end, etc.)
	Trust couldn't met out the standard of 85%, still, **such income (i.e. shortfall) shall be deemed to have been applied*** during the year of deriving of such income.	
OBLIGATION ATTACHED TO TRUST	Such income (i.e. shortfall) must be applied **in the year of receipt or in next year theirof.**	Such income (i.e. shortfall) must be applied **in the immediately following year of the current year.**
	In both the cases, a **declaration must be filed upto the due date of filing of ROI.**	
If violation, then CONSEQUENCE	***Such deemed applied amount will be taxable** as income **of next year to the year of receipt.**	***Such deemed applied amount will be taxable** as income **for such immediately following year of the current year.**

It may also be noted here that- **If such income (i.e. shortfall) is applied for making a donation to any trust or institution registered u/s 12AA/12AB or to any fund u/s 10 (23C),** then ***that shall not be treated as application of income for charitable or religious purposes.***

Exception – II: **Section 11(2)**

Assessee trust can claim exemption in respect of accumulated income **in excess of 15% but subject to fulfillment of the following conditions:**

	(a)	Trust → **Statement** (must be filed in Form 10 upto the due date of ROI) → AO Specifying → **Purpose* of such accumulation** ⋮ **Period for such accumulation** ≯ **5 Years**
		*It is not necessary to particularize each and every object for which accumulation is sought. **It is enough if the assessee seeks permission for accumulation for the object** (like, medical relief).
	(b)	**Such money should be invested / deposited in any mode as specified u/s 11(5)]** [*like,* investment in Govt. securities, shares of public sector company, deposit in bank, post office, etc.].

Section 11(3): *Exemption withdrawn if specific conditions not satisfied :-*

	If such excess accumulated income…..	Consequence: Such excess accumulated income shall be taxable as income…
(a)	is applied for a purpose **other than the purpose as specified in statement**	**of the year of such application** i.e. mis-utilization of accumulated income.
(b)	**Cease** to remain invested/deposited in specified mode of 11(5)	**of the year in which it is so ceases.**
(c)	**Not utilized for specified purpose with in specified period** (like, **5 years) and in next year theirof (i.e. 6th year)**	**of the next year (i.e. 6th year) of period specified in the notice** (like, **5 years).**
(d)	**Donated to trust/institution of section 12AA/12AB/10(23C)**	**of the year in which it is denoted**
	Note: There is no prohibition of donation out of income accumulated upto 15%. [Bagri foundation(Del.-HC)]	

Section 11(4) and 11(4A): *Treatment of Business Income :-*

Property includes business undertaking **But** → **To claim exemption in relation of business income,** following two **additional** conditions must **also** be satisfied:

- Such business **must be incidental to the attainment of the object of the trust /institution**
- **(+)**
- **Separate books of account** must be maintained by such trust / institution in respect of such business.

Section 11(7): *Restriction on claim of exemption u/s 10 to a Registered Trust u/s 12AA/12AB:-*

If registration u/s 12AA/12AB → **has been granted** **AND** **it is in force**

→ Means **assessee is eligible to claim exemption u/s 11**

In such a case,

No exemption can be claimed u/s 10 ***except*** ***10(1), 10(23C) &10(46).***

- **Provided that such registration shall become inoperative** from the date on which such trust or institution is approved/notified u/s 10(23C)/10(46) or 1st October, 2020, whichever is later.

- But in such a case, **the trust or institution may apply to get its registration operative u/s 12AB** and *on doing so, the approval u/s 10(23C)/10(46) to such trust or institution shall cease to have any effect from the date on which the said registration becomes operative and thereafter, it shall not be entitled to exemption u/s 10(23C)/10(46).*

Crux: **w.e.f. 1st** Oct., 2020, an institution may hold either registration u/s 12AB or Approval u/s 10(23C)/10(46).

Section 12A: *Essential Conditions for claiming exemption u/s 11 &12:-*

Assessee trust must get itself registered with the PCIT/CIT.

If such trust

Applied for registration to the PCIT/CIT **(+)** Got **registered** u/s

then

Exemption shall begin from the year of application for registration.

Exception

If in the absence of registration, **exemption has been claimed** ***for any year of which on the date of grant of registration…***

Assessment is **pending**

In this case, AO **shall allow** exemption u/s 11&12 in such assessment.

OR

Assessment is not pending (*like,* ROI with exemption has been filed and no assessment has been done; or assessment with exemption has been done).

AO shall not re-open such case u/s 147 (To withdraw the allowed exemption)

In case of modification of object of the trust (*like,* registration was granted with the condition of providing medical relief and now trust has shifted from medical relief to education)

then

Trust **shall obtain a fresh registration** ***within 30 days from the date of such modification.***

If total income of the trust **without exemption u/s 11&12, exceeds basic exemption limit (i.e. ₹2.5L)**

In this case

the books of account and other documents have been kept and maintained in prescribed form and manner & at prescribed place and **Accounts of the trust must be audited** and audit report must be filed ***1 month prior to the due date of ROI u/s 139(1).***

To claim ANY exemption u/s 11&12

ROI must be filed within the due date as given u/s 139(1).

But these benefits would not be available if –

Registration application of trust has been **rejected.**

Registration **once granted is cancelled.**

Section 12AB: *Procedure for registration:-* as inserted w.e.f. 1st, April, 2021

- All charitable institutions which are currently registered u/s 12AA *are required to apply for a* ***fresh registration u/s 12AB.***
- All new entities which want exemption u/s 11 & 12 are required to apply for registration u/s 12AB.
- **The process for registration for new and existing trusts will be completely electronic under which a unique registration number (URN) will be issued to all new and existing trusts.**
- ***New trusts which are yet to start their activities*** *will get* ***provisional registration for 3 years.***

Power to PCIT/CIT to cancel registration granted u/s 12AB: **AMENDMENTS MADE BY FINANCE ACT, 2022**

To ensure that non-genuine trusts / institutions do not get exemption under automated approval system, following amendments have been made:

(4) Where registration or provisional registration of a trust or an institution has been granted u/s 12AA/12AB, as the case may be, and subsequently,—

(a) the Principal Commissioner or Commissioner has **noticed occurrence of one or more specified violations during any previous year**; or

(b) the Principal Commissioner or Commissioner has **received a reference from the Assessing Officer under the second proviso to sub-section (3) of section 143** for any previous year; or

(c) such case has been **selected in accordance with the risk management strategy, formulated by the Board** from time to time, for any previous year,

the Principal Commissioner or Commissioner shall-

(i) **call for such documents or information from the trust or institution, or make such inquiry as he thinks necessary** *in order to satisfy himself about the occurrence or otherwise of any specified violation;*

(ii) **pass an order in writing, cancelling the registration of such trust or institution,** after affording a reasonable opportunity of being heard, for such previous year and all subsequent previous years, *if he is satisfied that one or more specified violations have taken place;*

(iii) **pass an order in writing, refusing to cancel the registration** of such trust or institution, *if he is not satisfied about the occurrence of one or more specified violations;*

(iv) **forward a copy of the order** under clause (ii) or clause (iii), as the case may be, **to the Assessing Officer** and such trust or institution.

Explanation:

For the purposes of this sub-section, the following shall mean **"specified violation",—**

(a) where **any income** derived from property held under trust, wholly or in part for charitable or religious purposes, **has been applied, other than for the objects of the trust or institution**; or

(b) the trust or institution **has income from profits and gains of business which is not incidental to the attainment of its objectives or separate books of account are not maintained** by such trust or institution in respect of the business which is incidental to the attainment of its objectives; or

(c) the trust or institution has **applied any part of its income** from the property held under a trust **for private religious purposes,** which does not enure for the benefit of the public; or

(d) the trust or institution **has applied any part of its income for the benefit of any particular religious community or caste**; or

(e) **any activity being carried out by the trust or institution—**

(i) is not genuine; or

(ii) is not being carried out in accordance with all or any of the conditions subject to which it was registered; or

(f) **If the trust** or institution has not complied with the requirement of any other law **which was material for the purpose of achieving its objects, and the order holding such** non-compliance **has occurred, has not been disputed (or has attained finality).**

(5) The order under sub-section (4) shall be passed **before the expiry of a period of six months,** calculated *from the end of the quarter in which the first notice is issued by the Principal Commissioner or Commissioner, calling for any document or information, or for making any inquiry, under sub-section (4).*

❖ **Identical provisions to section 12AB(4) [except clause (c) & (d) as given under Explanation] and (5) have been inserted in section 10(23C) by F.A., 22.**

Consequential amendment in section 143(3):

➢ The *second proviso* to section 143(3) has been substituted to provide that **the AO shall send a reference to the PCIT/CIT to withdraw the approval u/s 10(23C) or registration u/s 12AB.** He may do so only if **he is satisfied that any trust/institution referred to in section 11 or any institution referred to in section 10(23C)(iv)/(v)/(vi)/(via) has committed any aforesaid specified violation.** Once the AO sends a reference, he cannot make an assessment order without giving effect to the order passed by the PCIT or CIT under section 10(23C) or section 12AB(4), as the case may be.

Section 13(1): *Exemption provisions of section 11&12 shall not apply in the following cases:-*

(a) In case of **private religious trust** → In this case, → **Entire income will be taxable.**

(b) **In case of a charitable trust created for the benefit of any particular community or caste** [Subject to the exception of creation for the benefit of schedule castes, backward classes, schedule tribes, or women & children] → In this case → **Entire income** of trust will be **taxable.**

(c) **In case trust used / applied its income or property for the benefit of any specified person as referred to in section 13(3)** → In this Case → **Such part of income** of the trust **will be taxable** → **EXCEPTION** → In case of educational / medical trust, **benefit by way of educational or medical facilities has been provided to specified person,** in such a case

- **Exemption u/s 11 shall not be denied** for any income other than the value of such benefit provided.
- **Value of facilities provided** (either free of cost/at concessional rate) **shall be deemed as taxable income for the trust.**

(d) In case trust invest/deposit its fund in any mode ***other than as specified u/s 11(5)*** → **Income to the extent of such deposits or investments of such trust will be taxable.**

Meaning of specified person [Section 13(3)]:-

(i) The *author* of the trust or *founder* of the institution;
(ii) *Any person* whose has made a total contribution (up to the end of the relevant previous year) of an *amount exceeding ₹50,000/-(i.e. Substantial Contributor);*
(iii) Where such author, founder or person (i.e. substantial contributor) is a HUF, a *member of HUF*;
(iv) Any *trustee* of the trust or *manager* of the institution;
(v) Any *relative* of such author, founder, substantial contributor, member, trustee or manager;
(vi) Any *concern* in which any of the persons referred to above has a substantial interest.

Section 271AAE: *Benefits to related persons:-* AS INSERTED BY F. A., 2022

- If during any proceedings under this Act, it is found that
- a person as referred to in **section 10(23C)(iv)/(v)/(vi)/(via)** or any trust/institution referred to in **section 11**
- *has violated the provisions of the twenty-first proviso to section 10(23C), or section 13(1)(c), as the case may be,* **[i.e. Mis-utilisation of funds for the benefit of specified persons]**
- the Assessing Officer may direct that such person shall pay by way of penalty-
  - **(a) a sum equal to the aggregate amount of income applied, directly or indirectly, by such person, for the benefit of any person referred to in section 13(3),** where the violation is noticed for the first time during any previous year; and
  - **(b) a sum equal to two hundred per cent of the aggregate amount of income of such person applied, directly or indirectly, by that person, for the benefit of any person referred to in section 13(3),** where violation is noticed again in any subsequent previous year.

Amendment as made by the Finance Act, 2022 to the proviso of section 56(2)(*x*):

- Proviso to section 56(2)(x) provides that the section **does not apply** *to any sum of money or any property received from any charitable institution referred to in section 10(23C); or from any trust or institution registered u/s 12AB.*
- The aforesaid proviso has been amended to provide that **the above referred exemption in proviso shall not apply *where any sum of money or any property has been received by any person referred to in section 13(3)*** [i.e. a specified person/an interested party for a charitable institution].

INSERTION MADE BY FINANCE ACT, 2022:

Background: *Different provisions mandate denial of exemption to the trusts/institutions, some of the provisions under which exemption is not available for its violation are as follows:*

(i) **First proviso to section 2(15):** Case of **commercial receipts in excess of 20% of the total receipts.**
(ii) **Violation of Section 12A(b): Not keeping and maintaining prescribed books and other documents** or **not getting accounts audited/furnish audit report within the due date of ROI u/s 139(1).**
(iii) **Violation of Section 12A(ba): Not filing the return of income within due date as given u/s 139(1).**

✓ *In case of non-availability of exemption in these cases,* ***there is presently no clarity on computation of taxable income (whether any deduction will be given or whether entire income will be taxable).***

✓ **To pin point consequences where exemption is denied to a trust/institution in any of the three cases given above,** a new sub-section (10) has been inserted in section 13, which provides as follows:

- In any of the **three non-compliance cases** given above,
- *income chargeable to tax of the trust or institution* ***shall be computed***
- **after allowing deduction for the expenditure** ***(other than capital expenditure)*** **incurred in India,**
- **for the objects of the trust or institution,** subject to fulfilment of the following conditions, namely:—
  - (a) such expenditure is **not from the corpus standing** to the credit of the trust or institution **as on the end of the financial year immediately preceding the previous year** relevant to the assessment year for which income is being computed;
  - (b) such expenditure is **not from any loan or borrowing;**
  - (c) **claim of depreciation is not in respect of an asset, acquisition of which has been claimed as application** of income, in the same or any other previous year; and
  - (d) such expenditure is **not in the form of any contribution or donation to any person.**

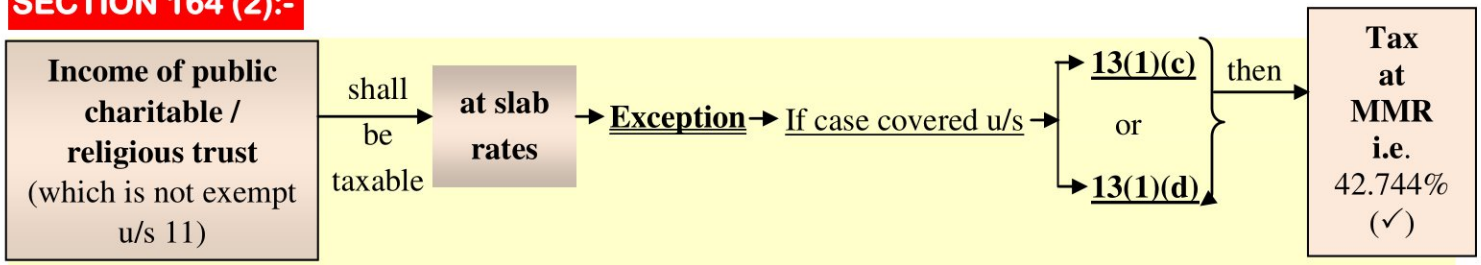
➢ For the purposes of determining the amount of expenditure under sub-section (10), the provisions of **section 40(a)(ia) and section 40A(3) and (3A), shall**, mutatis mutandis, **apply** *as they apply in computing the income chargeable under the head "Profits and gains of business or profession.*

➢ For the purposes of computing income chargeable to tax under sub-section (10), **no deduction in respect of any expenditure or allowance or set-off of any loss shall be allowed** to the assessee under any other provision of this Act.

➢ **Similar provisions have been inserted in section 10(23C).**

"TAXATION OF TRUST INCOME"

SECTION 164 (2):-



New Insertion: Section 115BBI: *Special rate for taxation of certain income of trusts:-*	
(1)	– Where the total income of – **any fund or institution referred to in section 10(23C)(iv)/(v)/(vi)/(via)** or **any trust or institution referred to in section 11,** includes – any ***"specified income"***, then – notwithstanding anything contained in any other provision of the Act,

	– the income-tax payable shall be the *aggregate* of: (a) the amount of income-tax calculated **at the rate of 30% (+ surcharge + HEC,** as applicable) on the *aggregate specified income*; and (b) the amount of income tax with which the assessee would be chargeable if the total income of the assessee is reduced by the aggregate specified income referred to in clause (*a*).
(2)	No deduction in respect of any expenditure or allowance or set-off of any loss shall be allowed to the assessee under any provision of the Act in computing the specified income.

"Specified income" means:

(a) ***Income accumulated or set apart in excess of 15% of the income*** **where such accumulation is not allowed under any specific provisions of the Act;** or

(b) Deemed income referred to in section 11(1B)/(3) or Explanation 4 to the third proviso to section 10(*23C*) **[i.e. violation of provision relating to for accumulation of income]**; or

(c) Any income which is not exempt under section 10(*23C*) on account of violation of clause (*b*) of the *third proviso* to section 10(*23C*) or any income which is not exempt by virtue of section 13(1)(d), **[i.e. Investment of fund in non-specified modes].**

(d) Any income which is deemed to be income under the *twenty-first* proviso to section 10(*23C*) or any income which is not exempt by virtue of section 13(1)(c), **[i.e. Mis-utilisation of funds for the benefit of specified persons].**

(e) Any income which is not excluded from total income under section 11(1)(c) **[that is, application towards charitable or religious purposes outside India].**

Section 115BBC: *Anonymous Donation:-*

Meaning	Any donation about which **trust has not maintained a record of identify of name & address of donor** who has made such contribution and *such other records as may be prescribed.*
Taxation	Total Anonymous Donations (–) (5% of total Donations OR ₹ 1,00,000 — Whichever is higher) = … → **Taxable u/s 115BBC @ 30%** (+) surcharge & cess (as applicable); **No exemption u/s 11& 12. [Section 13(7)]** Anonymous Donations **Upto** (5% of total Donations OR ₹ 1Lac — Whichever is higher) = … → **Taxable as per normal provisions** (i.e. not governed as per sec. 115BBC) Means; Exemption u/s 11&12 can be claimed.
Applicability	**If trust is created wholly for charitable purposes, or** If trust is created for both purposes (i.e. charitable & religious) and anonymous donations received with **specific direction of its use** in medical or educational institution run by such trust.

SPECIAL PROVISIONS RELATING TO TAX ON ACCRETED INCOME IN CERTAIN CASES

Section 115TD: *Tax on Accreted Income:-*

Applicability	Specified person i.e. Trust/Institution registered/approved u/s 12AA/12AB/10(23C)(iv)/(v)/(vi)/(via)	
Events /cases covered…	**(1)**	**Conversion of such Specified person** into any form which is not eligible for grant of registration/approval u/s 12AA/12AB/10(23C)(iv)/(v)/(vi)/(via).
		Question: When such conversion shall be deemed? **Answer:** (i) If its **registration/approval** as granted **u/s 12AA/12AB/10(23C)(iv)/(v)/(vi)/(via) has been cancelled**; or (ii) If it **has modified its object But** (a) **Not applied for fresh registration/approval, or** (b) **Fresh registration/approval application has been rejected.**
	(2)	**Merger of assessee specified person** with an entity which: ➢ ***has not its similar object, or*** ➢ ***is not registered/approved u/s 12AA/12AB/10(23C)(iv)/(v)/(vi)/(via), or*** ➢ ***neither has its similar object nor registered /approved u/s 12AA/12AB/10(23C)(iv)/(v)/(vi) / (via).***
		☞ If specified person merged with an entity which has **its similar object *as well as* registered / approved u/s 12AA/12AB/10(23C)(iv)/(v)/(vi)/(via), then, *this section shall not apply.***
	(3)	On dissolution, **non-distribution of ALL its assets** *to trust / institution registered / approved u/s 12AA/12AB/10(23C) with in a period of 12 months from the end of the month of dissolution.*
		☞ **Difference in objects of transferor & transferee** trust / institution **will not attract the applicability of this section.**
Tax on….	***Accreted income (as computed with reference to specified date).***	
Tax at ….	***Maximum Marginal Rate (i.e. 30% + 12% surcharge (specially given) + 4% HEC= 34.944%).***	
Meaning of ACCRETED INCOME (as computed w.r.t. specified date; & as per *prescribed method of valuation*)	**Aggregate FMV of ALL assets of trust (–) Total liabilities of the trust** ↓ **Exceptions** ↓ **Following assets (and their liabilities) shall not be considered** in calculation of accreted income: **(i)** Any asset acquired **out of agriculture income.** **(ii)** Any asset acquired **during the period of its creation to the date of its registration became effective.** (Reason being trust would not have claimed exemption during this period). **(iii)** On dissolution, **asset transferred to trust or institution registered / approved u/s 12AA/12AB / 10(23C) with in 12 months from the end of the month of dissolution.**	

Meaning of specified date and due date of payment of this Additional Income tax:

The tax on accreted income is to be paid to the credit of the CG within 14 days from the time frame tabulated below:

Situation in which tax on accreted income is leviable	Meaning of SPECIFIED DATE And Computation of time limit of 14 days to deposit such tax on accreted income
(1) If specified person i.e. **registered / approved u/s 12AA / 12AB / 10(23C)(iv)/(v) /(vi)/(via)** (like, charitable trust) **Converted into** Any form which is **not eligible for grant of registration / approval u/s 12AA / 12AB / 10(23C)(iv)/(v) / (vi)/(via)** (like, non-charitable trust)	Possible cases → (i) **If registration / approval has been cancelled** → In this case → **Date of registration / approval cancellation order** will be treated as **specified date.** → On the **basis** of which … → Accreted income and its tax will be computed.
	If against such order → **Appeal has not been filed** to the ITAT → then → Tax on accreted income must be paid within 14 days From the date of **expiry of time limit** for filing of appeal to ITAT (i.e. 60 days)
	If against such order → **Appeal has been filed** to the ITAT **But** ITAT **confirm such cancellation of Regn. / Approval** → then → Tax on accreted income must be paid within 14 days From the **date of receipt** of such cancellation confirmation order of ITAT (by the specified person).
	(ii) If specified person **has modified its object** (which is not in conformity of existing registration / approval) (+) Application for fresh registration / approval **has not been filed** → In this case → Date of adoption of modification its object will be treated as **specified date** → On the basis of which → Accreted income and its tax will be computed
	Tax on accreted income must be must be paid within 14 days From **the end of the previous year of such modification**
	OR Such application **has been rejected** → If against such order... → Appeal has **not** been filed → Then such tax must be paid within 14 days from the date of expiry of time limit for filing such Appeal (i.e.60days)
	If against such order... → Appeal has been filed but ITAT **confirm such rejection** → Then such tax must be paid within 14 days from the date of receipt of such rejection confirmation order
(2) Merger of specified person with an entity which: ➢ **has not similar object,** or ➢ is **not** registered	In this case, **Date of merger** will be treated as **specified date** → On the basis of which… → Accreted income and its tax will be computed. **And** **Tax on accreted income must be paid within 14 days from the date of such merger.**

or approved u/s 12AA / 12AB / 10(23C)(iv)/(v) / (vi) / (via), or ➢ **Neither** has its similar object **nor** registered or approved u/s 12AA / 12AB / 10(23C)(iv)/(v) / (vi) / (via),.	
(3) On Dissolution: – Non distribution of ALL assets to – trust / institution registered u/s **12AA /12AB/ 10(23C)** – within 12 months from the end of dissolution month	In this case, **Date of dissolution** will be treated as **specified date** ↓ On the basis of which ↓ Accreted income and its tax will be computed. **And** Tax on accreted income **must be paid** within 14 days **from the expiry of permissible time limit of 12 months for such distribution.**

In case of failure in payment of tax on accreted income within the prescribed time limit of 14 days,

Then such specified person or its trustee or its principal officer…..

Shall be liable to pay interest

- **On unpaid tax**
- @ **1%** per month or part of the month
- **From 15th day** till the date of deposit of such tax.

Section 115TE

Shall be deemed to be an **assessee in default**, and accordingly shall be liable for interest u/s 220(2) and penalty u/s 221.

In case of dissolution:

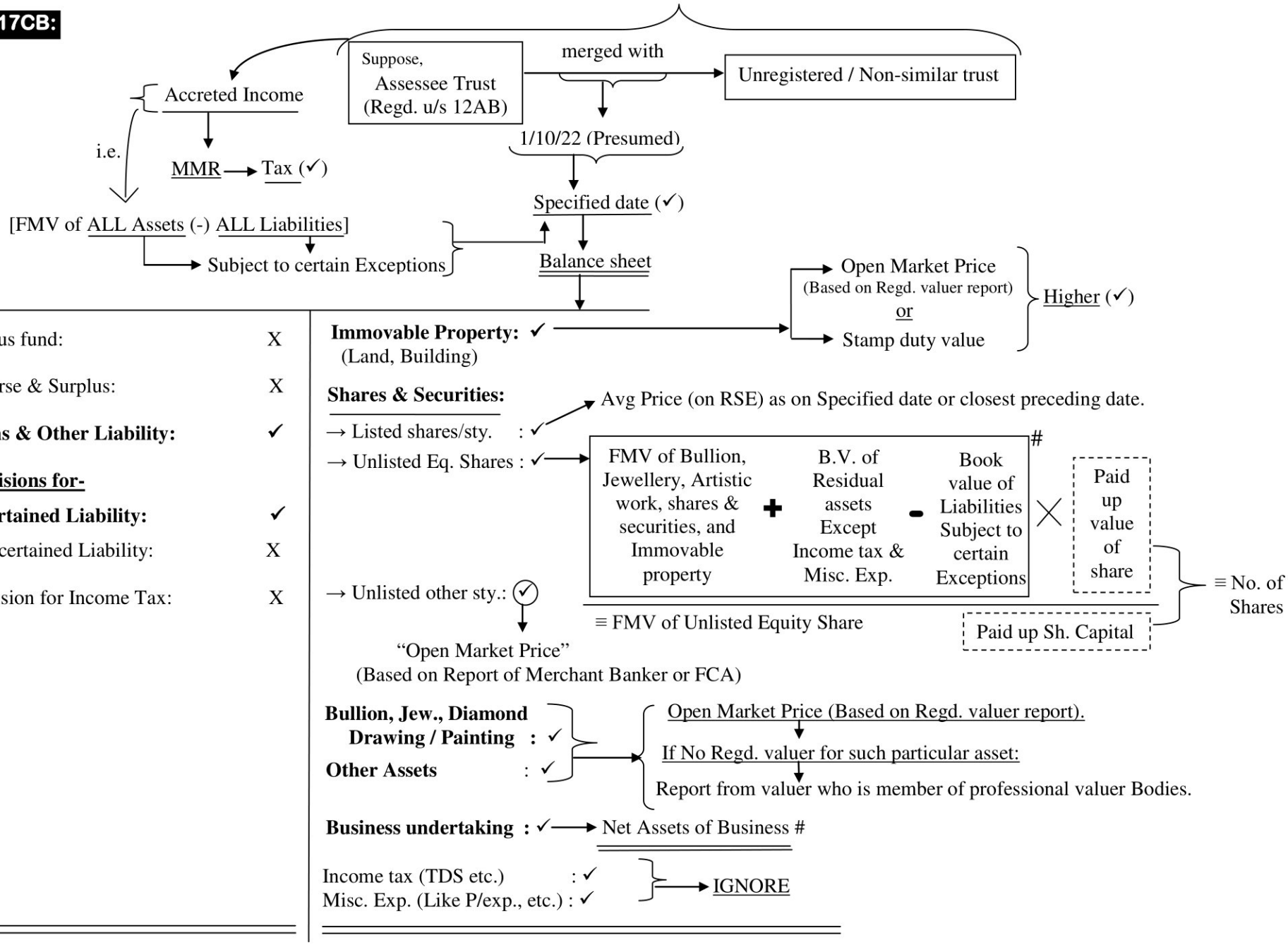
If distribution of assets → to → Entity **other than** registered u/s 12AA/12AB or 10(23C). → then →
- Such entity **shall also be liable for assessee in default**
- **But** It's liability shall be limited **to the extent of assets received.**

Section 115TF

Section 49(8):-

If an asset in respect of which tax has already been levied u/s 115TD (on its FMV) → **subsequently transferred then…** → **for capital gain purpose** → **already considered its FMV u/s 115TD** ↓ **Will be deemed as cost of acquisition.**

Rule 17CB:


Suppose,
Assessee Trust
(Regd. u/s 12AB)
merged with
Unregistered / Non-similar trust
Accreted Income
i.e.
MMR → Tax (✓)
[FMV of ALL Assets (-) ALL Liabilities]
Subject to certain Exceptions
1/10/22 (Presumed)
Specified date (✓)
Balance sheet
Corpus fund: X
Reverse & Surplus: X
Loans & Other Liability: ✓
Provisions for-
Ascertained Liability: ✓
Unascertained Liability: X
Provision for Income Tax: X
Immovable Property: ✓
(Land, Building)
Open Market Price
(Based on Regd. valuer report)
or
Stamp duty value
Higher (✓)
Shares & Securities:
→ Listed shares/sty. : ✓
Avg Price (on RSE) as on Specified date or closest preceding date.
→ Unlisted Eq. Shares : ✓
FMV of Bullion, Jewellery, Artistic work, shares & securities, and Immovable property
+
B.V. of Residual assets Except Income tax & Misc. Exp.
-
Book value of Liabilities Subject to certain Exceptions
#
×
Paid up value of share
≡ No. of Shares
≡ FMV of Unlisted Equity Share
Paid up Sh. Capital
→ Unlisted other sty.: ✓
"Open Market Price"
(Based on Report of Merchant Banker or FCA)
Bullion, Jew., Diamond Drawing / Painting : ✓
Other Assets : ✓
Open Market Price (Based on Regd. valuer report).
If No Regd. valuer for such particular asset:
Report from valuer who is member of professional valuer Bodies.
Business undertaking : ✓ → Net Assets of Business #
Income tax (TDS etc.) : ✓
Misc. Exp. (Like P/exp., etc.) : ✓
IGNORE

TAXATION OF PRIVATE TRUSTS

(1)	**In case of a private discretionary trust *where beneficiaries & their shares both are determinate*,** shares falling to each of the beneficiaries are liable to be assessed in the hands of the trustee(s) as a representative assessee. Such assessment is made at the rate applicable to the total income of each beneficiary. **Section 161**
(2)	**In case of a private discretionary trust where shares of the beneficiaries are unknown,** trustee(s) is liable to pay tax as a representative assessee at the maximum marginal rate. ***But, the maximum marginal rate shall not apply in the following cases:-*** *(a) None of the beneficiaries has any other income chargeable to tax exceeding the maximum amount not chargeable to tax; or* *(b) None of the beneficiaries is a beneficiary under any other trust; or* *(c) Where t87he relevant income or part of the relevant income is receivable under a trust declared by any person by will and such trust is the only trust so declared by him; or* *(d) Where trust is created by a non-testamentary instrument before March,1970 for the exclusive benefit of the relatives of the settlor, or where the settlor is HUF, for the exclusive benefit of its members in circumstances where such relatives or members were mainly dependent on the settlor for their support and maintenance.* **If the case falls within any of the above four cases, the relevant income or part thereof is to be taxed at the normal rates applicable to an AOP (i.e. Slab rates).** **Section 164(1)**

"CORPORATE TAXATION"

Section 115JB: *"MINIMUM ALTERNATIVE TAX" :-*

It over-rides the other provisions of the I.T. Act.

It is applicable in case of ALL companies (whether public / private / Indian / Foreign# / Banking / Insurance / Electricity / Govt. company, etc.)

If……

Income tax payable (under normal provisions)	: ✓	<	*15 % of Book Profit : ✓
(+) Surcharge (as applicable)	: ✓		(+) Surcharge (as applicable) : ✓
(+) Health & Education cess @ 4%	: ✓		(+) Health & Education cess @ 4% : ✓

then **Book Profit** → **shall be deemed to be the total income; and**

→ **× 15%*** (+ Surcharge + HEC, as applicable) **= ….. Final payable sum (✓)**

*If Company → is **located in International Financial Service Centre** **and** derives income solely in convertible foreign exchange → then **Rate shall be 9%** (instead 15%).

 # MAT Provisions shall not apply *to a foreign company* → **If it is a resident of country / territory with which….**

→ **India has DTAA** but such foreign company **does not have permanent establishment in India.**

OR

→ **India does not have DTAA** and such foreign company is **not required to seek registration under any law.**

OR

→ **If its total income comprises solely of income of business as referred to in section 44B, 44BB, 44BBA, or 44BBB, and *such income has been offered to tax as per the rates of those sections.***

"COMPUTATION OF BOOK PROFIT"

As per Explanation 1 to section 115JB, Book profit MEANS –

Profit as shown in **statement of P&L** →

- In case of a company which governs from any special Act (*like,* Banking Co. etc.) → **Must be prepared as per respective regulatory Act.**
- In any other case: **Must be prepared as per Companies Act.**
- Accounting policies, Accounting standards and method and rates for depreciation **should be the same** as have been adopted for statement of profit and loss of AGM.

-

ADD: Following items *if these are debited in Statement of profit and loss:*		
(1)	**Income tax** (whether paid / payable / provision theirof) **including Interest charged under Income tax Act,** surcharge & cess.	+
	EXPLANATORY REMARKS:- (i) **Any other tax** *like* securities transaction tax, commodities transaction tax, etc. **will not be added.** (ii) Interest charged under any other Act, and penalty of any Act *even of I.T. Act* will not be added.	
(2)	**Deferred tax** (including provision their of)	+
(3)	Amount of **dividend paid / proposed** (whether relates from equity / preference shares)	+
(4)	**Amount transferred to ANY reserves** (whether general / statutory / made as per direction of RBI)	+
(5)	**Provision for unascertained liabilities** (*like,* provision for contingency, provision for gratuity on adhoc basis etc.)	+
	EXPLANATORY REMARK:- **Provision for ascertained liabilities** (*like* provision for gratuity on actuarial valuation basis, provision for leave encashment/warranty, etc. made on scientific/rational basis), will not be added.	
(6)	**Provision for diminution in value of any asset** (*like,* **provision for bad debt**, provision as per AS-13 / AS-28, etc.) [It may be noted that actual amount of bad debt (as debited) will not be added back]	+
(7)	**Losses (including provision their of) of subsidiary company**	+
(8)	**Expenditure related to income exempt u/s 10/11/12**	+
(9)	**Expenditure related to** income i.e. **member's share** in income of AOP/BOI, which is exempt u/s 86	+
(10)	– Expenditure incurred by **foreign company** on earning of – **Capital gain relating to securities**, **dividend**, **interest, royalty or fees for technical services** – if otherwise applicable tax rate on such income is less than MAT Rate (15%) **As amended by F. A.2021**	+
(11)	Expenditure related to **royalty income from patent** which is taxable at concessional rate u/s 115BBF	+
(12)	**Depreciation** (in totality as debited to profit & loss)	+
		✓
ADD: Amount standing in revaluation reserve on retirement or disposed of such revalued asset, ***if not credited to statement of profit & loss***		+
		✓
LESS: Following items *if these are credited in Statement of P&L [Except item (7), (9) & (10)]:*		
(1)	Amount **withdrawn from any reserve** *provided Book profit was increased by the amount transferred to such reserves in the year of creation of such reserve.*	–

(2)	**Deferred tax**	–
(3)	**Income** which is **exempt u/s 10/11/12**	–
	EXPLANATORY REMARK:- ➢ Income covered u/s **10AA / under Chapter VI-A** (*like,* section 80IA, etc.) **shall not be reduced.**	
(4)	Income i.e**. member's share in Income of AOP/BOI which is exempt u/s 86**	–
(5)	– Income of **foreign company** by way of – **capital gain relating to securities, dividend, interest, royalty or fees for technical services** – **if otherwise applicable tax rate on such income is less than MAT Rate (15%).** **As amended by F. A.2021**	–
(6)	**Royalty income from patent** which is chargeable to tax at concessional rate @ 10% u/s 115BBF	–
(7)	Depreciation debited **(excluding relating to revaluation component) to statement of P&L**	–
(8)	**Amount withdrawn from revaluation reserve (to the extent of depreciation relating to revaluation component)**	–
(9)	**Brought forward loss (other than depreciation) or unabsorbed depreciation,** whichever is less, **as per books of account (not as per I.T. Act)**	–
	EXCEPTION:- In the following two cases, **aggregate amount of brought forward loss (other than depreciation) or unabsorbed depreciation, shall be allowed as deduction in computing book profit:** **(A)** *In case of a company against whom application for corporate insolvency process under the Insolvency and Bankruptcy Code, 2016 has been admitted by the Adjucating Authority (NCLT).* **(B)** In case of a company, and its subsidiary and the subsidiary of such subsidiary, *where, the National Company Law Tribunal, on an application moved by the Central Government u/s 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, u/s 242 of the said Act.*	
(10)	**Profit of sick industrial company** (upto the previous year in which Net worth ≥ Accumulated loss)	–
SPECIAL ADJUSTMENTS RELATING TO ALLOTMENT & TRANSFER OF UNITS OF BUSINESS TRUST:		
LESS:	(i) **Notional gain credited on exchange of shares of SPV with units** *as allotted by business trust*	–
	(ii) **Gain on actual sale credited in statement of Profit & Loss** (i.e. Sale price of units – FMV of units in books as cost)	–
ADD:	(iii)**Actual gain realized on actual sale of such units** (i.e. Sale price of units – Cost of shares of SPV exchanges with such units, as cost of such units)	+

ADD:	(i) **National loss debited on exchange of shares of SPV with units** *as allotted by business trust*	+
	(ii) **Loss on actual sale debited in statement of profit & loss** (i.e. Sale price of unit – FMV of units in books at cost)	+
LESS:	(iii) **Actual loss incurred on actual sale of such units** (i.e. Sale price of units – Cost of shares of SPV exchanged with such units, as cost of such units).	–
	BOOK PROFIT:	✓

ADDITIONAL EXPLANATORY REMARKS (w.r.t. calculation of book profit):-

(1)	**If incomes chargeable under other heads of income (like CG, I/O/S, etc.) are credited in Statement of profit and loss, then these will not be excluded from Profit.**
(2)	**It may additionally be noted here that no exemption u/s 54 to 54GB or Deductions under Chapter VI-A (i.e. 80C to 80U) will be allowed in computing Book Profit.** **[N. J. JOSE & Co. (P) Ltd. (Ker.)]**
	Contrary Ruling: In the case of **CIT v/s Metal and Chromium Plater (P) Ltd.,** the **Madras High Court** has held that sub-section (5) of section 115JB allows for application of all other provisions contained in the Income-tax Act except specifically barred by that section itself. **Thus, the "book profit" would be further eligible to the benefits set out in the other provisions of the Act,** accordingly, held that *capital gain which form parts part of the net profit in the statement of profit and loss, in respect of which exemption u/s 54EC is available, should not be taken into account for calculation of minimum alternative tax on book profits u/s 115JB.*

Rationalisation of MAT provisions in line with Indian Accounting Standard (Ind-AS):

Step 1	**Find out net profit [before other comprehensive income (OCI)] as per statement of profit and loss.**		
Step 2	Make adjustment which are given under the **existing provisions** u/s 115JB(2) [i.e. Normal adjustments].		
Step 3	**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).**		
	These items **shall be included in book profit** for MAT purpose at the point of time as follows:		
	Different Items	**Point of time**	**Reason**
	➢ **Changes in revaluation surplus of PPE (Property, Plant or Equipment) and intangible assets (Ind AS 16 and Ind AS 38)**	– Revaluation reserve credited / debited to other comprehensive income **shall not be adjusted in the book profit in which it is debited or credited.** – **It shall be included in book profit of the year *in which the asset / investment is retired, disposed, realised or otherwise transferred.***	**Profit is not actually realised, or loss does not arise;** **Taxability arises in the year of realization.**

	➢ **Gains and losses from investments in equity instruments designated at fair value through OCI (Ind AS 109)**	– Gain / loss from such investments credited / debited to other comprehensive income **shall not be adjusted in the book profit in which it is debited or credited.** – **It shall be included in book profit of the year *in which the investment is retired, disposed or realised.***	**Profit is not actually realised, or loss does not arise;** **Taxability arises in the year of realization.**
	➢ **Remeasurements of defined benefit plans (Ind AS 19)** ➢ **Any other item**	To be included in book profits every year as the remeasurements gains and losses arise. In other words, Gain – Add in Book Profit Loss – Deduct from Book Profit.	**In As, it is recognised to P&L.** **However,** as per Ind AS, **this is non-reclassification adjustment (i.e. such gain / (loss) is not recognised in P&L).**

Transitional adjustment:

In computing book profit of the year of convergence (i.e. year of transition) and each of the following four years, **1/5 of transition amount** (excluding capital reserve and securities premium reserve) **will be added each year** (if credit balance of transition amount has been given). Conversely, **1/5 of transition amount** (excluding capital reserve and securities premium reserve) **will be deducted each year** (if debit balance of transition amount has given).

Effect on Book Profit in case of applicability of Section 92CC (APA) / 92CE (Secondary Adjustment):

➢ A new **sub-section (2D)** has been inserted by this **Finance Act, 2021,** which provides as follows:

– In the case of an assessee being a company,

– where there is an increase in book profit of the previous year

– *due to income of past year or years included in the book profit on account of an advance pricing agreement entered into by the assessee under section 92CC or on account of secondary adjustment required to be made under section 92CE,*

– the Assessing Officer shall, on an application made to him in this behalf by the assessee,

– recompute the book profit of the past year or years and tax payable, if any, by the assessee during the previous year u/s 115JB(1), in such manner as may be prescribed and

– the provisions of section 154 shall apply and the period of four years specified in section 154 shall be reckoned from the end of the financial year in which the said application is received by the Assessing Officer.

Provided that the provisions of this sub-section (2D) shall apply only if the assessee has not utilised the credit of tax paid under this section in any subsequent assessment year under section 115JAA.

Provided further that the provisions of this sub-section (2D) shall also apply to assessment year 2020-21 or earlier year but no interest shall be payable to such assessee on the refund arising on account of these provisions.

REMAINING PART OF SECTION 115JB:

Sub	*Save as otherwise provided in this section,* ***all other provisions such as relating to carry forward & setoff***

sec. (3) & (5)	***of losses, advance tax, interest u/s 234B, 234C and penalty, etc. shall apply to company*** *even if it is liable for MAT.* Meaning there by, company liable to pay MAT is required to pay advance tax and in case of failure, will be liable to pay interest u/s 234B and 234C. **[JCIT v/s Rolta India Ltd. (2011)[SC]**
(4)	***Report of C.A.*** *certifying correct book profit* must be furnished one month prior to the due date of ROI by company liable for MAT.
(5A)	Any income of a company from life insurance business **will not be liable for MAT.**

Section 115JAA: *MAT CREDIT:-*

Where any tax is paid u/s 115JB by a company *for any assessment year* then credit shall be allowed to such company in the following manner-

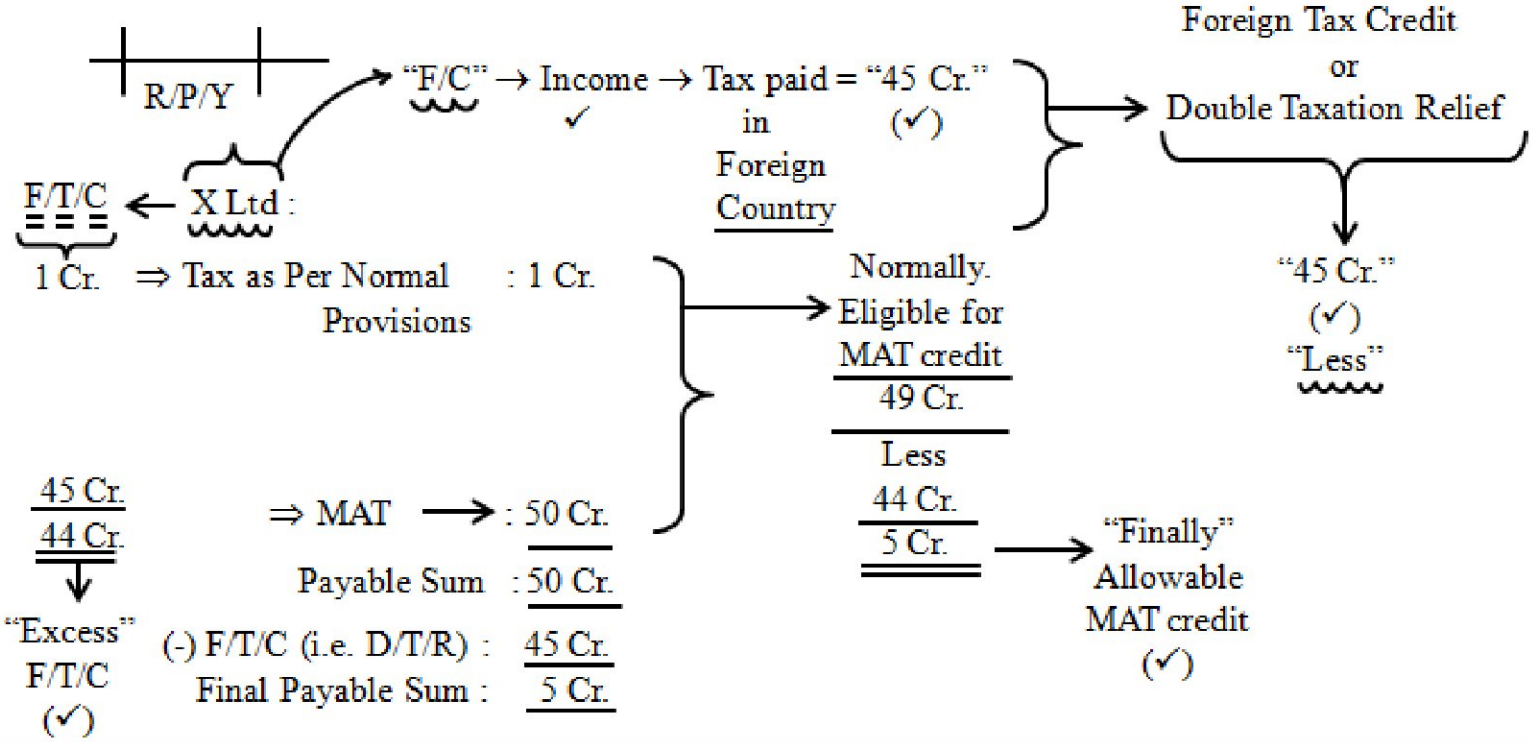
Credit shall be allowed of …..	***Tax paid u/s 115JB (-) Tax payable as per normal provisions of the Act.***
Maximum period for C/F & setoff	***15 years succeeding to the P.Y. in which such MAT has been paid.***
Extent to which credit can be claimed in a particular year	***"Normal tax payable (less) Tax payable as per MAT provision"*** ☞ *No interest* shall be payable on tax credit.
If company is entitled to foreign tax credit (i.e. FTC) and which is allowed against MAT	***In this case, MAT credit shall not be allowed to be carried forward up to the following extent:*** **The amount of foreign tax credit (FTC) allowed against MAT** ***Less*** **FTC allowable against the tax computed under normal provisions.**

"ALTERNATE MINIMUM TAX FOR PERSON OTHER THAN A COMPANY"

Section 115JC: *Special provisions for payment of tax by certain persons other than company:-*

Eligible assessee	**Any person *except company.***
Chargeability	Where, **Regular I.T. payable** (i.e. Tax as per normal provisions) (+) Surcharge (+) Cess, as applicable **<** *** 18.5% of Adjusted Total Income** (+) Surcharge (+) Cess, as applicable In this case ↓ **Adjusted TI shall be deemed to be the total income** **&** Adjusted TI × 18.5%* (+) Surcharge & Cess, (as applicable) **will be final payable sum.**
	*If assessee → is **located in International Financial Service Centre** & derives income solely in convertible foreign exchange, then **Rate shall be 9%** (instead 18.5%) *If assessee → **is Co-operative society: Rate shall be 15%** (instead 18.5%).

Section 115JAA:



Adjusted Total Income Means…	Total income (as computed as per normal provisions) : ✓ (+) Deduction claimed u/s 80-IA to 80RRB (Except section 80P) : ✓ (+) Deduction claimed u/s 10AA (+) Deduction claimed u/s 35AD **as adjusted by** notional depreciation : ✓ which would have been allowable **in absence of section 35AD** **Adjusted Total Income:** ✓

☞ ***Report of C.A.*** *certifying correct adjusted TI* must be furnished one month prior to the due date of ROI by the assessee liable for AMT. **As amended by the Finance Act. 2020**

Section 115JD: *TAX CREDIT FOR ALTERNATE MINIMUM TAX:-*

Provisions of AMT Credit are similar to MAT Credit as given u/s 115JAA.

Section 115JE: *Application of other provisions of this Act:-*

➢ *Save as otherwise provided in this Chapter*, all other provisions of this Act shall apply to such person who is liable to pay AMT. (Meaning thereby, **all other provisions such as relating to advance tax, Interest u/s 234B, 234C and penalty etc. shall apply to such person**).

Section 115JEE: *Conditions for Applicability of this Chapter:-*

➢ This Chapter (i.e. AMT provisions) shall apply **only if:**

(1) Assessee has claimed deduction u/s 80-IA to 80RRB (except section 80P), 10AA, or 35AD, and

(2) If assessee is **Individual / HUF / AOP / BOI / AJP**, then *adjusted total income should also exceed ₹20 Lacs.*

☞ **Credit can be claimed ir-respective of the limitations /conditions as given u/s 115JEE** (i.e. even if conditions of claim of deduction u/s 80-IA, etc., **and** in case of individual, etc. adjusted TI does not exceed 20Lacs, **are not being fulfilled in the year of claim of credit, still, credit can be claimed**).

TAXATION OF BUY-BACK OF SHARES

Section 115QA: *Tax on distributed income to shareholders:-*

Applicability	Buyback of **shares** by a domestic company.
Taxable amount	**Distributed income** which is: (**Consideration paid on buyback** (—) **Amount received for issue of such shares** (as determined in prescribed manner **i.e. Rule 40BB**))
Rate of Tax	**20% (+ 12% Surcharge + 4% Health & Education cess) = *Final Rate: 23.296%.***
Time limit to deposit tax	***14 days from the date of payment of any consideration on such buy-back.***
Consequence in case of default	Company or its principal officer: (1) Shall be liable to pay **interest @ 1% per month** or part of the month from 15th day till the deposit of such tax. **Section 115QB** (2) Shall be treated **as assessee in default** and consequences shall follow accordingly. **Section 115-QC**
Section 10(34A) Exemption to shareholder	**Any income (i.e. capital gain) as arising on such buyback of ~~unlisted~~ shares shall be exempt in the hands of share holders.**

TAXATION OF BLACK MONEY

Section 115BBE: *Tax on income referred to in section 68 to section 69D:-*

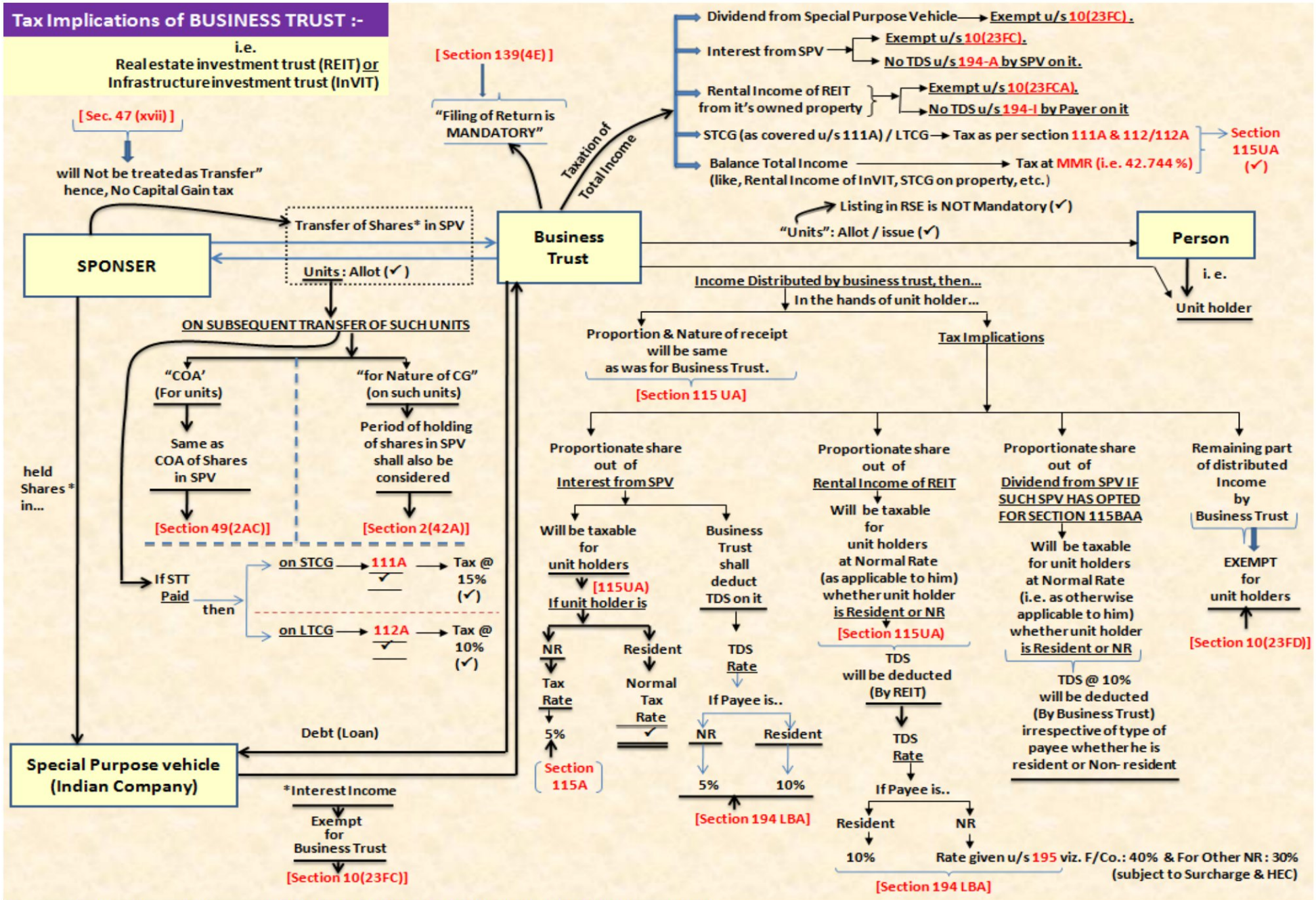
Eligible assessee	***Any Person.***			
Eligible income	***Any income as referred to in section 68 / 69 / 69A / 69B / 69C / 69D*** *(whether disclosed by assessee in his return **or** detected by the AO under assessment).*			
Rate of tax	*Flat tax rate*	*Surcharge*	*HEC*	***Final tax rate***
	60%	*25% of tax*	*4% of (tax + surcharge)*	***78%***
Benefit prohibited	***No deduction or setoff*** *under any provision of the Act in respect of aforesaid income.*			

"DEEMED INCOMES"

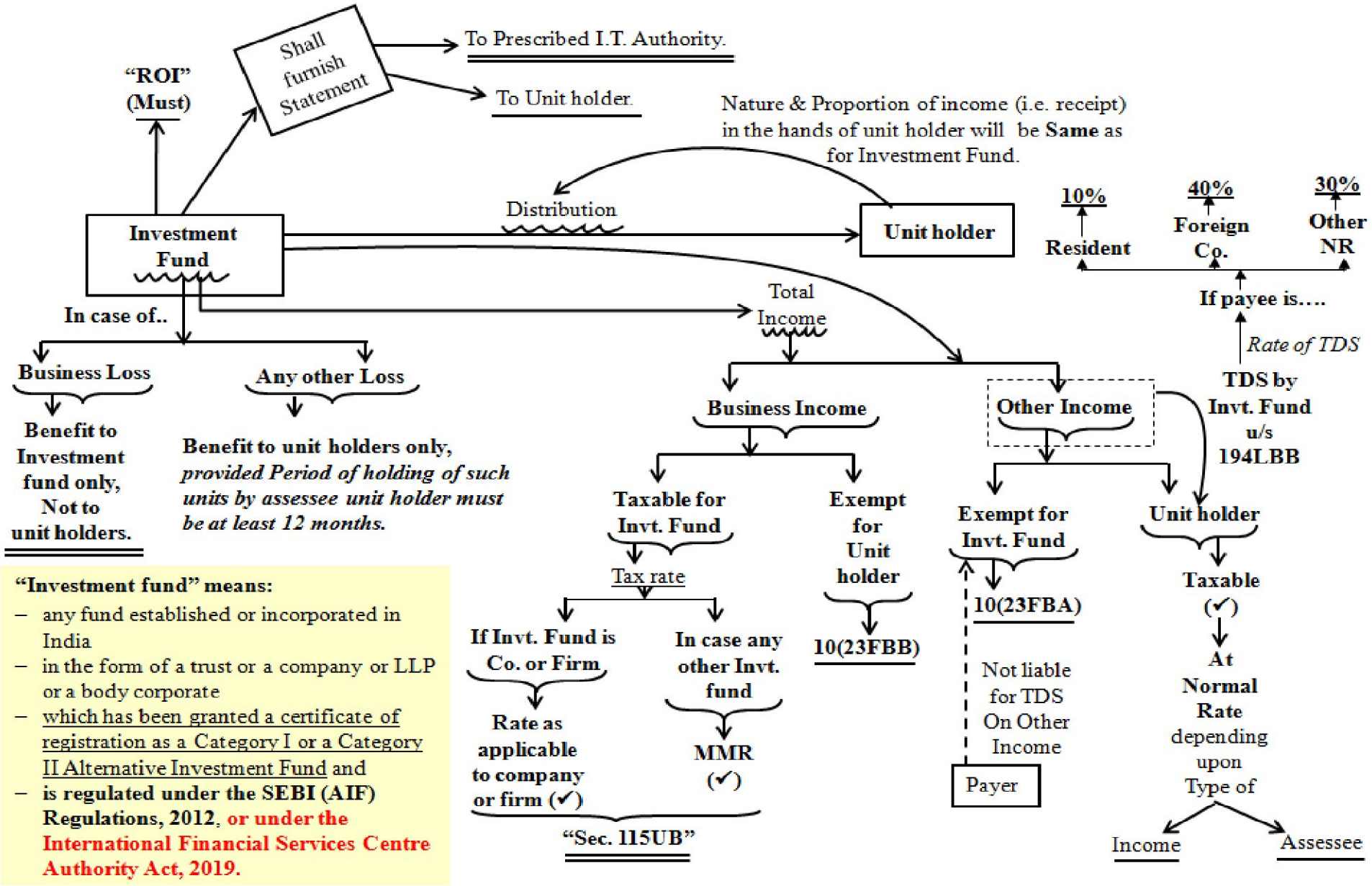
Section 68: *Cash Credits:-*

Deemed Income	***Any sum credited in books and about its nature & source, no explanation or unsatisfactory explanation has been offered by the assessee.*** In case of closely held company, **for nature & source of share capital / share application money / share premium / any other similar amount,** such company shall also prove **its source in the hands of resident share holder.**

	Similarly, in case of any person, **for nature & source of loan or borrowing or any such amount, by whatever name called,** lender will have to prove **its source in his hands.** **Exceptions: If Venture Capital Fund or Venture Capital Company is such closely held company/borrower.**
Of which year…	***Year in which such sum is credited in books of account.***
Section 69: *Unexplained investments:-*	
Deemed Income	***Investment made but not recorded in books and no explanation or unsatisfactory explanation has been offered by the assessee about it.***
Of which year…	***Year in which such investment was made.***
Section 69A: *Unexplained money, jewellery etc.:-*	
Deemed Income	*Assessee is found* ***owner of money, bullion, jewellery or other valuable articles but not recorded in books and no explanation or unsatisfactory explanation offered by assessee.***
Of which year…	***Year in which it was detected.***
Section 69B: *Investments not fully disclosed:-*	
Deemed Income	Investment made **OR** assessee is found to be the owner of money, bullion jewellery or any other valuable articles **but not properly recorded (i.e. recorded at lesser amount)** and no explanation / unsatisfactory explanation is offered by assessee, then, ***excess amount (i.e. to the extent not recorded in books) will be deemed as income.***
Of which year…	***Year in which*** *such investment was* ***made*** ***OR*** *money, etc.* ***was detected****, as the case may be*
Section 69C: *Unexplained expenditure:-*	
Deemed Income	***Any expenditure incurred and no explanation or unsatisfactory explanation about its source has been offered by the assessee.***
Of which year…	***Year in which such expenditure was incurred.***
Prohibition	***Unexplained expenditure, which is deemed as income, cannot be claimed as deduction under any head of income.***
Section 69D: *Any amount borrowed/repaid on hundi:-*	
Deemed Income	***Any amount borrowed / repaid on hundi*** *except through an account payee cheque.*
Of which year…	***Year in which such amount is borrowed / repaid (including interest) by the assessee.***
Relaxation	*If borrowed amount has already been deemed as income* ***then again it will not be deemed as income at the time of repayment.***


Tax Implications of BUSINESS TRUST :-
i.e.
Real estate investment trust (REIT) or
Infrastructure investment trust (InVIT)
[Section 139(4E)]
"Filing of Return is MANDATORY"
Taxation of Total Income
Dividend from Special Purpose Vehicle → Exempt u/s 10(23FC).
Interest from SPV → Exempt u/s 10(23FC). / No TDS u/s 194-A by SPV on it.
Rental Income of REIT from it's owned property → Exempt u/s 10(23FCA). / No TDS u/s 194-I by Payer on it
STCG (as covered u/s 111A) / LTCG → Tax as per section 111A & 112/112A
Balance Total Income (like, Rental Income of InVIT, STCG on property, etc.) → Tax at MMR (i.e. 42.744 %)
Section 115UA (✓)
[Sec. 47 (xvii)]
will Not be treated as Transfer" hence, No Capital Gain tax
SPONSER
Transfer of Shares* in SPV
Units : Allot (✓)
Business Trust
Listing in RSE is NOT Mandatory (✓)
"Units": Allot / issue (✓)
Person
i. e.
Unit holder
Income Distributed by business trust, then...
In the hands of unit holder...
Proportion & Nature of receipt will be same as was for Business Trust.
[Section 115 UA]
Tax Implications
ON SUBSEQUENT TRANSFER OF SUCH UNITS
"COA' (For units)
Same as COA of Shares in SPV
[Section 49(2AC)]
"for Nature of CG" (on such units)
Period of holding of shares in SPV shall also be considered
[Section 2(42A)]
held Shares * in...
If STT Paid then
on STCG → 111A → Tax @ 15% (✓)
on LTCG → 112A → Tax @ 10% (✓)
Proportionate share out of Interest from SPV
Will be taxable for unit holders [115UA]
If unit holder is
NR → Tax Rate → 5% → Section 115A
Resident → Normal Tax Rate (✓)
Business Trust shall deduct TDS on it
TDS Rate
If Payee is..
NR → 5%
Resident → 10%
[Section 194 LBA]
Proportionate share out of Rental Income of REIT
Will be taxable for unit holders at Normal Rate (as applicable to him) whether unit holder is Resident or NR
[Section 115UA]
TDS will be deducted (By REIT)
TDS Rate
If Payee is..
Resident → 10%
NR → Rate given u/s 195 viz. F/Co.: 40% & For Other NR : 30% (subject to Surcharge & HEC)
[Section 194 LBA]
Proportionate share out of Dividend from SPV IF SUCH SPV HAS OPTED FOR SECTION 115BAA
Will be taxable for unit holders at Normal Rate (i.e. as otherwise applicable to him) whether unit holder is Resident or NR
TDS @ 10% will be deducted (By Business Trust) irrespective of type of payee whether he is resident or Non-resident
Remaining part of distributed Income by Business Trust
EXEMPT for unit holders
[Section 10(23FD)]
Debt (Loan)
Special Purpose vehicle (Indian Company)
*Interest Income
Exempt for Business Trust
[Section 10(23FC)]

Diagrammatic Presentation of Tax Implications of Investment Fund & its Unit holders :-



"Investment fund" means:

- any fund established or incorporated in India
- in the form of a trust or a company or LLP or a body corporate
- which has been granted a certificate of registration as a Category I or a Category II Alternative Investment Fund and
- **is regulated under the SEBI (AIF) Regulations, 2012, or under the International Financial Services Centre Authority Act, 2019.**

CONCESSIONAL TAXATION / ALTERNATE TAX REGIME

Section 115BAA: *Tax at the rate of 22% on income of certain domestic companies:-*

Eligible Assessee	***Any Domestic Company.***
Essential conditions to claim the benefit of lower tax rate	**(i)** Total income must be computed **without availing the benefit of following sections:** ➢ **32(1)(iia)** i.e. Additional depreciation. ➢ **33AB, 33ABA** (i.e. Tea development account, Site restoration account). ➢ **35(1)(ii)/(iia)/(iii)/ 35(2AA)/35(2AB)** i.e. Scientific research expense/contribution. ➢ **35AD** i.e. Investment linked deduction to specified business. ➢ **35CCC, 35CCD** i.e. Agriculture extension project or skill development project. ➢ **80C to 80U** (Except section 80JJAA, **section 80M** and section 80LA) **and 10AA**. **(ii) Total income of the company shall be calculated** – **without setoff of any brought forward loss or depreciation** from any earlier year; and – ***without setoff of loss or unabsorbed depreciation deemed of assessee company u/s 72A*** – if such loss or unabsorbed depreciation is attributable to any deduction under the aforesaid sections **and** – *such loss or unabsorbed depreciation will not be carried forward.*
	☞ **In case of violation of aforesaid conditions in any previous year**, *the option exercised under this section shall become* ***invalid*** *in respect of the assessment year relevant to that previous year and subsequent assessment years* and other provisions of the Act shall apply, as if the option had not been exercised for those assessment years.

Computation of Tax liability on total income

	On special incomes (like, Lottery income, LTCG, STCG u/s 111A etc.) as covered under Chapter XII (i.e. Section 110 to 115BBG)	On other income
Tax	**At special rate as given under these section**	**22%**
Surcharge	**@ 10% on tax computed on total income**	
Health & education cess	**@ 4% on aggregate of tax & surcharge on total income**	

Optional scheme	To avail the benefit of lower tax rate, option must be exercised in the prescribed manner *on or before the due date of ROI* ***for any previous year relevant to assessment year 2020-21 (or any subsequent year).*** ➢ **Option once exercised under this section– can't withdraw *neither* for same *nor* for any other year.**
MAT not applicable	MAT provision (i.e. section 115JB) **shall not apply** on a company which has exercised its option us 115BAA.

MAT Credit not available	MAT Credit provision (i.e. section 115JAA) **shall not apply** on a company which has exercised its option us 115BAA. *Meaning there by, benefit of brought forward MAT Credit u/s 115JAA shall **NOT** be given.*	

Common Amendment in Rule 5 (relating to Depreciation) for section 115BAA TO 115BAD

Depreciation allowance u/s 32(1)(ii) of any block of assets entitled to more than 40% **shall be restricted to 40%** on the written down value of such block of assets ***in case of a person who/which has exercised option u/s 115BAA, 115BAB, 115BAC or 115BAD.***

Section 115BAB: *Tax @ 15% on income of certain new domestic manufacturing companies:-*

Eligible Assessee	***Domestic Company.***	
Essential conditions to claim the benefit of lower tax rate	**(i)**	Such Company must be → **(a) Engaged in business of manufacturing or production of any article or thing** (including *research or distribution of its manufactured or produced article, **but not engaged in any other business).*** **(+)** **(b) Setup & registered on or after 1/10/2019 and commenced manufacturing on or before 31/3/2024.**
		Business of manufacture/production of any article or thing does not include business of: **(1) Development of computer software in any form or in any media** **(2) Mining** **(3) Conversion of marble blocks or similar items into slabs** **(4) Bottling of gas into cylinder** **(5) Printing of books or production of cinematograph films** **(6) Any other business as may be notified by the Central Govt. in this behalf.**
	(ii)	Total income must be computed **without availing benefit of following sections:** ➢ **32(1)(iia)** i.e. Additional depreciation. ➢ **33AB, 33ABA** (i.e. Tea development account, Site restoration account). ➢ **35(1)(ii)/(iia)/(iii)/35(2AA)/35(2AB)** i.e. Scientific research expense/contribution. ➢ **35AD** i.e. Investment linked deduction to specified business. ➢ **35CCC, 35CCD** i.e. Agriculture extension project or skill development project. ➢ **80C to 80U** (Except 80JJAA and **80M**) **and 10AA**.
	(iii)	**(a)** It is **not formed** by splitting up, or the reconstruction of a business in existence. **(b) New plant and machinery must be used by the assessee company.**

<table>
<tr><td rowspan="5"></td><td></td><td>EXCEPTIONS:
(i) Any plant and machinery which was used outside India by any person other than the assessee, provided such plant & machinery:
➢ <u>is imported into India</u>;
➢ is not used in India and depreciation has not been claimed in respect theirof before the date of installation by assessee.
(ii) <u>If total value of previously used plant & machinery does not exceed 20%</u> of the total value of plant & machinery used in the business, then, it shall be deemed that the above condition has been complied with.</td></tr>
<tr><td>(iv)</td><td>The company does not use any building previously used as a hotel / as a convention centre.</td></tr>
<tr><td>(v)</td><td>Total income of the company is calculated without setoff of any loss or unabsorbed depreciation deemed of assessee company u/s 72A (pursuant to amalgamation, etc.), <u>if such loss is attributable to any deduction under the aforesaid sections</u> and such loss will not be carried forward.</td></tr>
<tr><td colspan="2">☞ <u>In case of violation of aforesaid conditions in any previous year</u>, the option exercised shall become invalid in respect of the assessment year relevant to that previous year and subsequent assessment years and other provisions of the Act shall apply, <u>as if the option had not been exercised</u>.
☞ Where the option exercised under section 115BAB has been rendered invalid due to violation of <u>conditions specified in (i)(a), (iii)(b), and (iv) above</u>, such person may exercise option under section 115BAA. [Part of section 115BAA]
➢ <u>Option once exercised – can't withdraw neither for same nor for any other year.</u></td></tr>
<tr><td rowspan="5">Computation of Tax liability on total income</td><td></td><td>On income, which has been derived from or is incidental to the business of manufacturing or production of an article or thing</td><td>On special incomes (like, Lottery income, LTCG, etc.) as covered under Chapter XII (i.e. Section 110 to 115BBG)</td><td>On any other income**</td></tr>
<tr><td>Tax</td><td>15%</td><td>At special rate as given under section</td><td>22%</td></tr>
<tr><td>Surcharge</td><td colspan="3">@ 10% on tax computed on total income</td></tr>
<tr><td>HEC</td><td colspan="3">@ 4% on aggregate of tax & surcharge computed on total income</td></tr>
<tr><td colspan="4">Note: In computing such other income**, no deduction or allowance in respect of any expenditure or allowance shall be allowed.</td></tr>
</table>

Optional scheme	**Option must be exercised in the prescribed manner on or before due date of first ROI.** Option once exercised – can't withdraw *neither* for same *nor* for any other year. ☞ **In case of amalgamation**, the option exercised u/s 115BAB shall remain valid in the case of the amalgamated company only and if the essential conditions as given under this section are continued to be satisfied by such company.
MAT not applicable	MAT provision (i.e. section 115JB) **shall not apply** on a company which has exercised its option us 115BAB.
Power of AO to compute reasonable profit in certain cases	Due to close connection or for any other reason, if transaction with any person, produces profit more than the ordinary expected profit, then, **AO shall consider reasonable profit for the purpose of this section.** ☞ **Income tax on the income in excess of the amount of the profits determined by the Assessing Officer shall be subject to** tax @ 34.32% (i.e**., Tax @ 30% + Surcharge @ 10% + HEC @ 4%).**
Section 115BAC: *Tax on income of individuals and Hindu undivided family:-*	
Eligible Assessee	***Any individual or a Hindu undivided family.***
Essential conditions to claim the benefit of lower tax rate	**(1)** Total income must be computed **without availing the benefit of following sections:** ➢ **10(5)** i.e. Leave travel allowance. ➢ **10(13A)** i.e. House rent allowance. ➢ **10(14)** i.e. Special allowances except prescribed items. ➢ **10(17)** i.e. Allowances to MPs or MLAs. ➢ **10(32)** i.e. Exemption up to ₹ 1500 per child in case of clubbed income of minor ➢ **16** i.e. Standard deduction, entertainment allowance & professional tax. ➢ **24(b)** i.e. Interest on borrowing in respect of self occupied property etc. ➢ **57(iia)** i.e. Standard deduction in case of family pension. ➢ **32(1)(iia)** i.e. Additional depreciation. ➢ **33AB, 33ABA** i.e. Tea development account, Site restoration account. ➢ **35(1)(ii)/(iia)/(iii)/ 35(2AA)** i.e. Scientific research contribution. ➢ **35AD** i.e. Investment linked deduction to specified business. ➢ **35CCC** i.e. Agriculture extension project. ➢ **80C to 80U** (Except **section 80CCD(2),** section 80JJAA, and section 80LA) **and 10AA**. **(2) Total income of the individual/HUF shall be calculated** – **without setoff of any brought forward loss or depreciation** from any earlier year; and – if such loss or unabsorbed depreciation is attributable to any deduction under the aforesaid

sections and

- **without setoff of any loss under the head "Income from House property", and**
- *aforesaid losses or unabsorbed depreciation will not be carried forward.*

(3) Total income of the individual/HUF shall be calculated

- after claiming depreciation [except unabsorbed depreciation] determined in prescribed manner, and
- Without any exemption or deduction for allowance or perquisite, by whatever name called, provided under any other law for the time being in force.

Optional Scheme: To avail the benefit of lower tax rate, option must be exercised in the prescribed manner as follows:

(i) **Person not having income from business or profession:** Such option must be exercised alongwith return of income u/s 139(1) for such previous year (meaning there by, fresh option will be exercised every year to avail the benefit of this section.

(ii) **Person having income from business or profession:** Such option must be exercised on or before the due date of return of income u/s 139(1) for any previous year relevant to the assessment year 2021-22 or any subsequent year, and such option once exercised shall apply to subsequent years. Moreover, ***this exercised option can be withdrawn ONLY ONCE for a previous year*** other than the year in which it was exercised and thereafter, the person shall never be eligible to exercise option under this section, except where such person ceases to have any income from business or profession ***in which case, option under clause (i) shall be available.***

☞ **In case of violation of conditions as specified in (1), (2) & (3) above in any previous year**, *the option exercised under this section shall become* ***invalid*** *in respect of the assessment year relevant to that previous year and subsequent assessment years* and other provisions of the Act shall apply, as if the option had not been exercised for the assessment year relevant to that previous year and subsequent assessment years.

Computation of Tax liability on total income

(i) Tax on special incomes (like, Lottery income, LTCG, STCG u/s 111A etc.) as covered under Chapter XII **(i.e. Section 110 to 115BBG):**

At special rate as given under Chapter XII (i.e. Section 110 to 115BBG);

(ii) Tax on other incomes:

Up to ₹ 2,50,000	From ₹ 2,50,001 to ₹ 5,00,000	From ₹ 5,00,001 to ₹ 7,50,000	From ₹ 7,50,001 to ₹ 10,00,000	From ₹ 10,00,001 to ₹ 12,50,000	From ₹ 12,50,001 to ₹ 15,00,000	Above ₹ 15,00,000
Nil	**5%**	**10%**	**15%**	**20%**	**25%**	**30%**

	Surcharge	**As applicable in existing tax regime**
	Health & education cess	**@ 4% on aggregate of tax & surcharge on total income**
	Notes: ➢ Under the new regime, **No special exemption limit of ₹ 3,00,000 / ₹ 5,00,000 is available.** ➢ **Since rebate u/s 87A has not been restricted, means, that may be claimed as usual.**	
AMT not applicable	AMT provision (i.e. section 115JC) **shall not apply** on a person (individual/HUF) who has exercised its option us 115BAC.	
AMT Credit not available	AMT Credit provision (i.e. section 115JD) **shall not apply** on a person (individual/HUF) who has exercised its option us 115BAC.	

Circular No. C1 of 2020, dated April 13,2020: *Clarification in respect of option u/s 115BAC:-*

- The Board has clarified that an **employee** *(not having income under the head "profit and gains of business or profession" and intending to opt for the concessional rate under section 115BAC),* **may intimate the deductor,** being his employer, of such intention for each previous year and upon such intimation, the deductor *shall compute the amount of TDS u/s 192* ***in accordance with the provisions of section 115BAC.***
- If such intimation is not made by the employee, the employer shall make TDS without considering the provision of section 115BAC.
- It is also clarified that *the intimation so made to the deductor shall be* ***only*** *for the purposes of TDS during the previous year and* ***cannot be modified during that year.*** However, the intimation would not amount to exercising option in terms of section 115BAC and the **person shall be required to do so alongwith the return to be furnished u/s 139(1) of section 139 for that previous year.** *Thus, option at the time of filing of return of income u/s 139(1) could be different from the intimation made by such employee to the employer for that previous year.*

Section 115BAD: *Tax @ 22% on income of certain resident co-operative societies:-*

Eligible Assessee	***Resident co-operative society.***
Essential conditions to claim the benefit of lower tax rate	**(i)** Total income must be computed **without availing the benefit of following sections:** ➢ **32(1)(iia)** i.e. Additional depreciation. ➢ **33AB, 33ABA** (i.e. Tea development account, Site restoration account). ➢ **35(1)(ii)/(iia)/(iii)/ 35(2AA** i.e. Scientific research contribution. ➢ **35AD** i.e. Investment linked deduction to specified business. ➢ **35CCC** i.e. Agriculture extension project. ➢ **80C to 80U** (Except section 80JJAA and section 80LA) **and 10AA**. **(ii) Total income of the co-operative society shall be calculated**

<table>
<tr><td></td><td colspan="3">– without setoff of any brought forward loss or depreciation from any earlier year; and
– if such loss or unabsorbed depreciation is attributable to any deduction under the aforesaid sections and
– such loss or unabsorbed depreciation will not be carried forward.
(iii) Total income of assessee co-operative society shall be calculated after claiming depreciation (except unabsorbed depreciation) determined in prescribed manner.</td></tr>
<tr><td></td><td colspan="3">☞ In case of violation of aforesaid conditions in any previous year, the option exercised under this section shall become invalid in respect of the assessment year relevant to that previous year and subsequent assessment years and other provisions of the Act shall apply, as if the option had not been exercised for the assessment year relevant to that previous year and subsequent assessment years.</td></tr>
<tr><td rowspan="4">Computation of Tax liability on total income</td><td></td><td>On special incomes (like, Lottery income, LTCG, STCG u/s 111A etc.) as covered under Chapter XII (i.e. Section 110 to 115BBG)</td><td>On other income</td></tr>
<tr><td>Tax</td><td>At special rate as given under these section</td><td>22%</td></tr>
<tr><td>Surcharge</td><td colspan="2">@ 10% on tax computed on total income</td></tr>
<tr><td>Health & education cess</td><td colspan="2">@ 4% on aggregate of tax & surcharge on total income</td></tr>
<tr><td>Optional scheme</td><td colspan="3">To avail the benefit of lower tax rate, option must be exercised in the prescribed manner on or before the due date of ROI for any previous year relevant to assessment year 2021-22 (or any subsequent year).
➢ Option once exercised under this section– can't withdraw neither for same nor for any other year.</td></tr>
<tr><td>AMT not applicable</td><td colspan="3">AMT provision (i.e. section 115JC) shall not apply on a person (co-operative society) who has exercised its option us 115BAD.</td></tr>
<tr><td>AMT Credit not available</td><td colspan="3">AMT Credit provision (i.e. section 115JD) shall not apply on a person (co-operative society) who has exercised its option us 115BAD.</td></tr>
</table>

"ASSESSMENT OF FIRMS"

➢ Any person who is a partner in LLP, his liability, in respect of legal dues from LLP, **will be unlimited** as in case of partner in normal firm. **Section 167C**

"TAX IMPLICATIONS OF FIRM AND ITS PARTNERS"

- Tax rate: **30%** (for firm) → But, **on special income** (like, LTCG, etc.), tax shall be charged **at special rate** (as applicable).
- **Partner's share** in TI of firm is **fully exempt** in the hands of partners.
- **Losses & unabsorbed depreciation** of firm will be allowed to firm only (not to partners)
  - **Exception**: In case of change in constitution of firm due to retirement or death of any partner, **loss attributable** (at that time) **to such partner** shall not be allowed *even to firm also*, **(that will become deed loss)** **Section 78(1)**
- Payment of remuneration and interest to partners
  - For Firm → **Allowed** *as per section 40(b)*
  - For partners → **Taxable** *as allowable to the firm.*

Section 40(b): ***Relevant conditions for claiming deduction of interest and remuneration to partners :-***

Essential conditions for allowance		Interest to partners	Remuneration to partners	
(1)	**Payment must be made to …..**	*Any Partner*	*Working Partner (only)*	
(2)	Such payment **must be authorized from partnership deed**	✓ **(Rate of interest should be given)**	✓ **(Remuneration amount or manner of its quantification should be given)**	
(3)	Such payment should pertain to the period **after the date of amended partnership deed**	✓ Meaning there by, payment with retrospective effect **will be disallowed**		
(4)	**Permissible deduction**	**Upto 12% per annum.**	**Upto B.P. of ₹ 3L or in case of Loss** →	90% of B.P. or 1.5L **whichever is higher**
			On balance B.P. →	60% of Book Profit

To compute Book Profit →
- Compute taxable income u/h PGBP **with all adjustments** (Except remuneration), &
- **Add back remuneration (as debited in profit & loss).**

Payment of interest by firm to ↓ in	**Partner in Representative Capacity** (*like,* Karta is a partner on behalf of HUF)	**Partner in Individual Capacity** (i.e. in his own capacity)
(i) **his individual capicity**	➢ Section 40(b) shall **not** apply. ➢ **Allowed without limit & conditions of 40(b).**	➢ **Section 40(b) shall apply.** ➢ Allowed **with limit & condition of 40(b)**
(ii) **Respresentative Capicity**	➢ **Section 40(b) shall apply.** ➢ **Allowed with limit & conditions of 40(b).**	➢ Section 40(b) shall **not** apply. ➢ Allowed ***without limit & condition of 40(b)***

"Taxability of AOP/BOI (Section 167 B)"

Test – 1	+	Test – 2	+	Test – 3	=	RESULT
Where the **shares of members** in income of AOP/BOI are …		If **otherwise applicable tax rate**…		If **total income** (except his share in income of AOP/BOI) …..		**Tax liability of AOP/BOI will be determined as follows:**
KNOWN (*like,* **profit sharing ratio has been maintained** to distribute the income of AOP/BOI)		**For No member is higher than MMR**		**of No member has more than basic exemption limit**		**At slab rate** (as applicable in case of Individual)
		OR		**of one or more member has more than basic exemption limit**		**At Maximum marginal rate (i.e. MMR)**
		for one or more member is higher than MMR (It is possible only in a case where foreign company is member and it's personal income which is taxable in India is more than 10 crores)		N.A.		**Tax at higher rate** on: ✓ *proportionate income attributable to such member* (+) **Tax at MMR** *on balance income of AOP* : ✓
UNKNOWN (*like,* **NO PSR,** Income is being distributed as per their mutual understanding at that time)		**For No member is higher than MMR**		N.A		**At MMR**
		OR				
		for one or more member is higher than MMR		N.A		**At Higher Rate** (as applicable to such member)

Section 40 (ba): *Disallowance in relation to interest & remuneration to members:-*

Fully disallowed

Exception

If AOP/BOI pays interest as well as receives interest from such member, then **only Net interest will be disallowed.**

Section 67A : *Method of computing a member's share in income of AOP/BOI :-*

Step -I	Step -II	Step -III	Step -IV	
Compute Total Income of AOP/BOI as per I.T.Act	Reduce interest & remuneration paid to members from such Total income.	**Distribute resultant amount of Step II among members in their PSR.**	In apportioned amount of a member, **add interest and remuneration paid individually to him** (if any)	→ Result will be **member share** in total income of AOP/BOI.

Tax implication of member's share in the hands of member:-

If total income of AOP or BOI is **taxable at…..**

- **MMR / Higher Rate:** In this case, **member's shall will be exempt** in the hands of each member.
- **Slab Rate(s) [as applicable in case of individual]**

In this case…

If total income of AOP/BOI exceeds Basic exemption limit

Ist : Member's share shall be included in TI of each member, and, then

IInd: Rebate u/s 86 shall be allowed as follows:

$$\text{Tax payable by member} \times \frac{\text{Member's share}}{\text{Total income of such Member}}$$

If total income of AOP or BOI ⩽ BEL

Ist : Member's share shall be included in his total income, and

IInd: No rebate will be allowed.

Keep remember the following sequence to allow rebate u/s 86 (as adopted by ICAI in its study material):

Compute Tax on TI (including member share) → then → **Allow rebate u/s 87A** (if available) → then → **Add surcharge & cess** (as applicable) → and then… → **Allow rebate u/s 86 (✓)**

"Tax Implication on Dissolution / Reconstitution of FIRMS/AOP/BOI"

Insertion of Section 9B: *Income on receipt of capital asset or stock in trade by specified person from specified entity:-* Applicable w.e.f. A.Y. 21-22

(1)

- **Where a** *specified person* (hereinafter referred to as **Partner/Member of Firm/AOP/BOI)**
- **receives** during the previous year
- **any capital asset or stock in trade or both**
- **from a** *specified entity* (hereinafter referred to as **Firm/AOP/BOI)**
- ***in connection with the dissolution or reconstitution of such Firm/AOP/BOI,*** then
- **the Firm/AOP/BOI shall be deemed to have transferred such capital asset or stock in trade** or both, as the case may be, **to the Partner/Member of Firm/AOP/BOI**
- **in the year in which such capital asset or stock in trade or both are received by the Partner/Member of Firm/AOP/BOI.**

Explanation:

"reconstitution of the Firm/AOP/BOI" means, where—

(a)	**one or more of its partners or members**, as the case may be, of such Firm/AOP/BOI **ceases to be partners or members;** or
(b)	**one or more new partners or members,** as the case may be, **are admitted in such Firm/AOP/BOI** in such circumstances that **one or more of the persons who were partners or members**, as the case may be, of the Firm/AOP/BOI, **before the change, continue as partner or partners or member or members after the change; or**
(c)	**all the partners or members, as the case may be, of such Firm/AOP/BOI continue with a change in their respective share or in the shares of some of them.**

(2) **Any profits and gains arising from such deemed transfer of capital asset or stock in trade or both,** as the case may be, by the Firm/AOP/BOI **shall be—**

(i) **deemed to be the income of such Firm/AOP/BOI** *of the previous year in which such capital asset or stock in trade or both were received by the Partner/Member of Firm/AOP/BOI;* and

(ii) **chargeable to income-tax as income of such Firm/AOP/BOI under the head "Profits and gains of business or profession" or under the head "Capital gains",** as per the provisions of this Act.

(3) For this purpose, **FMV of the capital asset/stock in trade/both on the date of its receipt by the Partner/Member of Firm/AOP/BOI** ***shall be deemed to be the full value of the consideration*** *received or accruing as a result of such deemed transfer of the capital asset or SIT or both by the Firm/AOP/BOI.*

(4) If any difficulty arises in giving effect to the provisions of this section and section 45(4), the Board may, with the approval of the Central Government, issue guidelines for the purposes of removing the difficulty.

Substitution of Section 45(4): *Capital gain on transfer of a capital asset by Firm/AOP/ BOI to partner/member:-*

Applicable w.e.f. A.Y. 21-22

- Notwithstanding anything contained in section 45(1),
- **where a** *specified person* (hereinafter referred to as **Partner/Member of Firm/AOP/BOI)**
- **receives** during the previous year **any money or capital asset** or both
- **from a** *specified entity* (hereinafter referred to as **Firm/AOP/BOI)**
- ***in connection with the reconstitution of such Firm/AOP/BOI,*** then
- **any profits or gains arising from such receipt by the Partner/Member of Firm/AOP/BOI**
- shall be chargeable to income-tax **as income of such Firm/AOP/BOI**
- **under the head "Capital gains"** and
- *shall be deemed to be the income of such Firm/AOP/BOI of the previous year in which such money or capital asset or both were received by the Partner/Member of Firm/AOP/BOI.*

Such profits or gains i.e. Capital gain shall be computed as follows: A = B + C – D	
Value of any money received by the Partner/Member of Firm/AOP/BOI from the Firm/AOP/BOI on the date of such receipt	B
(+) the amount of **fair market value of the capital asset received by the Partner/Member of Firm/AOP/BOI** from the Firm/AOP/BOI on the date of such receipt	C
(-) the **amount of balance in the capital account** (represented in any manner) of the Partner/Member of Firm/AOP/BOI in the books of account of the Firm/AOP/BOI **at the time of its reconstitution**	D
Income chargeable to income-tax u/s 45(4) of the Firm/AOP/BOI under the head "Capital gains"	A

- **If the value of "A" in the above formula is negative,** ***its value shall be deemed to be zero.***
- The balance in the capital account of the Partner/Member of Firm/AOP/BOI in the books of account of the Firm/AOP/BOI is to be calculated **without taking into account the increase in the capital account of the Partner/Member of Firm/AOP/BOI due to revaluation of any asset or due to self-generated goodwill or any other self-generated asset.**
- When a capital asset is received by a Partner/Member of Firm/AOP/BOI from a Firm/AOP/BOI in connection with the reconstitution of such Firm/AOP/BOI, **the provisions of this section shall operate in addition to the provisions of section 9B** and the taxation under the said provisions shall be worked out independently.'

Explanatory Remarks:

(1) In case of **reconstitution** of Firm/AOP/BOI, *due to the simultaneous applicability of section 9B and 45(4),* ***there will be double taxation on Firm/AOP/BOI*** *at the time of such reconstitution.*

(2) In case of **dissolution** of Firm/AOP/BOI, **section 45(4) shall not apply,** *and* ***taxability will be governed by section 9B only.***

Insertion in Section 48: *Attribution of capital gain on transfer of a capital asset by Firm / AOP / BOI, to remaining capital assets:-* Applicable w.e.f. A.Y. 21-22

(iii) – If any money or capital asset is received by a Partner/Member of Firm/AOP/BOI from a Firm/AOP/BOI,
- then the **amount chargeable** to income-tax **as income of such Firm/AOP/BOI** under section 45(4),
- **which is attributable to the capital asset being transferred by the Firm/AOP/BOI,**
- shall be calculated in the prescribed manner and
- **shall be allowed as a deduction in computing capital gains on REMAINING CAPITAL ASSETS held by Firm/AOP/BOI.**

Rule 8AB: *Manner of attribution of capital gain, arising on transfer of a capital asset by Firm/AOP/BOI u/s 45(4), to remaining capital assets of Firm/AOP/BOI:*

For the purposes of clause (iii) of section 48, ***where the amount is chargeable to income-tax as income of Firm/AOP/BOI u/s 45(4), the Firm/AOP/BOI shall attribute such amount to CAPITAL ASSET REMAINING with the Firm/AOP/BOI*** *in a manner provided in this rule.*

	Where capital gain charged u/s 45(4) relates ↓	**Manner of attribution of capital gain to remaining capital assets of the firm/AOP/BOI:**
(1)	**to revaluation of any capital asset of the Firm/AOP/BOI** (except cases covered under points given below)	**Capital gain charged u/s 45(4) X** $\frac{\text{Increase in value of such remaining asset because of revaluation}}{\text{Aggregate of increase in value of all assets because of revaluation, or recognition of value of self-generated asset or self-generated goodwill because of valuation}}$
(2)	**to valuation of self-generated asset or self-generated goodwill, of the Firm / AOP / BOI,**	**Capital gain charged u/s 45(4) X** $\frac{\text{Recognition of value of such self-generated asset or self-generated goodwill because of valuation}}{\text{Aggregate of increase in value of all assets because of revaluation, or recognition of value of self-generated asset or self-generated goodwill because of valuation}}$
(3)	**only to the capital asset received by the Partner/Member of Firm/AOP/BOI from the Firm/AOP/BOI, or In any other case.**	**the amount charged to tax u/s 45(4) shall not be attributed to any capital asset for the purposes of clause (iii) of section 48.**

Rule 8AA: *Determination of nature of Capital gain chargeable as income of Firm/AOP/BOI u/s 45(4):*

(i)	**it shall be deemed to be from transfer of short term capital asset (i.e. STCG), if it is attributed to,-**

	(a)	*capital asset which is short term capital asset at the time of taxation of amount u/s 45(4); or*
	(b)	*capital asset forming part of block of asset; or*
	(c)	*capital asset being self-generated asset and self-generated goodwill; and*
(ii)	**In otherwise case,** ***it shall be deemed to be from transfer of long term capital asset (i.e. LTCG).***	

Circular No. 14 of 2021, Dated 2-7-2021: Guidelines under section 9B and section 45(4):

- It is noticed that the **amount taxed under section 45 (4) is required to be attributed to the remaining capital assets of the Firm/AOP/BOI, so that when such capital assets get transferred in the future, the amount attributed to such capital assets gets reduced from the full value of the consideration and** ***to that extent the Firm/AOP/BOI does not pay tax again on the same amount.***
- It is further clarified that **in case the capital asset remaining with the Firm/AOP/BOI is <u>forming part of a block of asset</u>, the amount attributed to such capital asset** ***shall be reduced from the full value of the consideration received or accruing as a result of subsequent transfer of such asset by the Firm/AOP/BOI,*** **and the net value of such consideration shall be considered for reduction from the written down value of such block u/s 43(6) or for calculation of capital gains, as the case may be, u/s 50 of the Act.**

Example 1:

- **There are three partners "A", "B" and "C" in a firm "FR", having one third share each.**
- **Each partner has a capital balance of ₹ 10 lakh in the firm.**
- **There are three pieces of lands "S", "T" and "U" in that firm and there is no other capital asset in that firm.**
- **Book value of each of the land is ₹ 10 lakh.** ***All three lands were acquired by firm more than 2 years ago.***
- **Partner "A" wishes to exit.**
- **The firm revalues its lands based on valuation report from a registered valuer, as defined in rule 11U of the Rules, and as per that valuation report fair market value of lands "S" and "T" is ₹ 70 lakh each, while fair market value of land "U" is ₹ 50 lakh.**
- **On the exit of partner "A", the firm decides to give him ₹ 11 lakh of money and land "U" to settle his capital balance.**
- **Indexed cost of acquisition of land "U" is ₹ 15 lakh.**

<u>Tax treatment In accordance with the provisions of section 9B of the Act:</u>

- On receipt of land "U" by partner "A" from a firm "FR" in connection with the reconstitution of such firm "FR" (i.e. on his retirement), then **it would be deemed that the firm "FR" has transferred land "U" to the partner "A" at its fair market value of ₹ 50 lakh.** Thus, an amount of ₹ 50 lakh *less* ₹ 15 lakh would be charged to tax in the hands of firm "FR" under the head "Capital gains".
- **For partner "A", the cost of acquisition of this land would be ₹ 50 lakh.**
- Hence, the amount of **₹ 35 lakh is charged to long term capital gains** and let us assume that the tax is ₹ 7 lakh (assume no surcharge or cess just for ease of calculation and illustration purposes).

Accounting treatment in the books of Firm "FR" on distribution of Land "U" to partner "A":

Net book profit after tax of ₹ 33 lakh [viz. Profit of ₹ 40 lakh (i.e. FMV ₹ 50 lakh – Book Value ₹10 lakh) *less* tax of ₹ 7 lakh] is to be credited in the capital account of each of the three partners, i.e. ₹ 11 lakh each. ***Thus partner "A" capital account would increase to ₹21 lakh.*** **This exercise is required to be carried out since section 9B mandates that it is to be deemed that the firm "FR" has transferred the land "U" to partner "A" and the long term capital gains of ₹ 35 lakh is chargeable to tax in the hands of the firm "FR".**

Tax treatment In accordance with the provisions of section 45(4) of the Act:

As per section 45(4), **on receipt of money and land "U" by partner "A" from a firm "FR" in connection with the reconstitution of such firm "FR"** (i.e. on his retirement), "capital gains" shall be chargeable to tax as income of such firm "FR", which *shall be computed* as follows: **A = B + C – D**

B	**Value of any money received** by partner "A" from firm "FR" on the date of such receipt	11L
C	(+) the amount of **fair market value of the capital asset received** by partner "A" from firm "FR" on the date of such receipt	50L
D	(-) the **amount of balance in the capital account** (represented in any manner) of partner "A" in the books of account of firm "FR" at the time of its reconstitution	21L
A	**Capital gains chargeable to tax u/s 45(4) in the hands of firm "FR"**	40L

- **This shall be in addition to an amount of ₹ 35 lakh charged to tax under section 9B of the Act.**

Attribution of capital gain taxable u/s 45(4) to remaining capital assets of firm "FR":

On account of section 48(iii) *read with Rule 8AB,* aforesaid amount of capital gain of ₹ 40 lakh chargeable to tax u/s 45(4) for firm "FR", **is to be attributed to the remaining assets of the firm "FR" on the basis of increase in their value due to revaluation** based on the valuation report of registered valuer.

As per Rule 8AB, *capital gain of ₹40 lakh will be attributed on remaining assets of the firm "FR" as follows:*

Remaining assets	**Book value**	**FMV** as per valuation report	**Increase in their value due to revaluation**	**Attribution of capital gain taxable u/s 45(4) to Land "S" and Land "T"**
Land "S"	₹ 10 lakh	₹ 70 lakh	₹ 60 lakh	₹ 40 lakh X ₹ 60 lakh ÷ ₹ 120 lakh = ₹ 20 lakh
Land "T"	₹ 10 lakh	₹ 70 lakh	₹ 60 lakh	₹ 40 lakh X ₹ 60 lakh ÷ ₹ 120 lakh = ₹ 20 lakh
Aggregate of increase in value of All assets:			₹ 120 lakh	Total attributed capital gain: ₹ 40 lakh

When either of these lands "S" and "T" gets sold subsequently, this amount of ₹ 20 lakh attributed to each of them **would be reduced from sales consideration** in computing capital gain on sale of such land "S" and "T".

Determination of nature of Capital gain of ₹ 40 lakh which is taxable for firm '"FR" u/s 45(4):

As per Rule 8AA, the amount of ₹ 40 lakh which is charged to tax under section 45(4) shall be charged **as long term capital gains, since the amount of ₹ 40 lakh is attributed to land "S" and land "T"** ***which are both long term capital assets*** *at the time of taxation of ₹40 lakh under section 45(4).*

Example 2:

- **There are three partners "'A". "B" and "C" in a firm "FR", having one third share each.**
- **Each partner has a capital balance of ₹ 100 lakh in the firm.**
- **There is a piece of land "S" of book value of ₹ 30 lakh. The land was acquired by the firm more than two years ago.**
- **There is patent "T" of written down value of ₹ 45 lakh. The patent was acquired/developed/registered one year back. And there is cash of ₹ 225 lakh.**
- **Partner "A" wishes to exit.**
- **The firm revalues its land and patent based on valuation report from a registered valuer, as defined in rule 11U of the Rules, and as per that valuation report fair market value of land "S" is ₹ 45 lakh and fair market value of patent "T" is ₹ 60 lakh.**
- **As per the valuation report there is also self-generated goodwill of ₹ 30 lakh.**
- **On the exit of partner "A", the firm decides to give him ₹ 75 lakh in money and land "S" to settle his capital balance.**
- **Indexed cost of acquisition of land "S" is ₹ 45 lakh.**

Tax treatment In accordance with the provisions of section 9B of the Act:

- **On receipt of land "S" by partner "A" from a firm "FR" in connection with the reconstitution of such firm "FR"** (i.e. on his retirement), then **it would be deemed that the firm "FR" has transferred land "S" to the partner "A" at its fair market value of ₹ 45 lakh.** ***However, since the sale consideration is equal to indexed cost of acquisition, there will not be any capital gains tax.***
- For partner "A", the cost of acquisition of this land would be ₹ 45 lakh.

Accounting treatment in the books of Firm "FR" on distribution of Land "S" to partner "A":

Net book profit after tax of ₹ 15 lakh [viz. Profit of ₹ 15 lakh (i.e. FMV ₹ 45 lakh – Book Value ₹30 lakh) *less* tax: Nil] is to be credited in the capital account of each of the three partners, i.e. ₹ 5 lakh each. *Thus partner "A" capital account would increase to ₹105 lakh.* **This exercise is required to be carried out since section 9B of the Act mandates that it is to be deemed that the firm "FR" has transferred the land "S" to partner "A". Thus, any gain in the books is to be apportioned to partners' capital accounts.**

Tax treatment In accordance with the provisions of section 45(4) of the Act:

As per section 45(4), **on receipt of money and land "S" by partner "A" from a firm "FR" in connection with the reconstitution of such firm "FR"** (i.e. on his retirement), **"capital gains" shall be chargeable to tax as income of such firm "FR",** *which shall be computed as follows:* ***A = B + C – D***

B	**Value of any money received by partner "A"** from firm "FR" on the date of such receipt	75L

C	(+) the amount of **fair market value of the capital asset received by partner "A"** from firm "FR" on the date of such receipt	45L
D	(-) the amount of **balance in the capital account** (represented in any manner) **of partner "A" in the books of account of firm "FR" at the time of its reconstitution**	105L
A	**Capital gains chargeable to tax u/s 45(4) in the hands of firm "FR"**	15L

Attribution of capital gain taxable u/s 45(4) to remaining capital assets of firm "FR":

On account of section 48(iii) *read with Rule 8AB,* aforesaid amount of capital gain of ₹ 15 lakh chargeable to tax u/s 45(4) for firm "FR", **is to be attributed to the remaining assets of the firm "FR" on the basis of increase in their value due to revaluation** based on the valuation report of registered valuer **or due to recognition of the value of self-generated goodwill, based on the valuation report of registered valuer.**

As per Rule 8AB, *capital gain of ₹15 lakh will be attributed on remaining assets of the firm "FR" as follows:*

Remaining assets	Book value	FMV as per valuation report or Recognition of value of self-generated goodwill	Increase in their value due to revaluation or Recognition of self-generated goodwill	Attribution of capital gain taxable u/s 45(4) to Patent "T" and Self-generated goodwill
Patent "T"	**₹ 45 lakh**	**₹ 60 lakh**	**₹ 15 lakh**	**₹ 15 lakh X ₹ 15 lakh ÷ ₹ 45 lakh = ₹ 5 lakh**
Self-generated goodwill	**-**	**₹ 30 lakh**	**₹ 30 lakh**	**₹ 15 lakh X ₹ 30 lakh ÷ ₹ 45 lakh = ₹ 10 lakh**
Aggregate of increase in value of All assets:			₹ 45 lakh	Total attributed capital gain: ₹ 15 lakh

- **₹ 5 lakh attributed to patent "T" shall not be added to the block of the assets** and ***no depreciation shall be available on the same.***
- **When patent 'T" gets transferred subsequently, this ₹ 5 Lakh attributed *shall be reduced* from the sales consideration of patent "T",** and the **net value shall be considered for reduction from the written down value** of the intangible block u/s 43(6) **or for calculation of capital gains,** as the case may be, u/s 50.
- **Let us say that Patent T is sold for ₹ 25 lakh.** *₹5 lakh shall be reduced from ₹25 lakh and only net amount of ₹20 lakh shall be considered for reduction from WDV or for calculation of capital gains u/s 50.*
- Similarly **when goodwill gets sold subsequently, *₹10 lakh would be reduced from its sales consideration under section 48(iii) in computing capital gain on sale of such goodwill.***

Determination of nature of Capital gain of ₹ 15 lakh which is taxable for firm "'FR" u/s 45(4):

As per Rule 8AA, the amount of ₹ 15 lakh which is charged to tax under section 45(4) **shall be charged as short term capital gains,** ***as ₹5 lakh is attributed to the Patent "T" which is part of block of assets and ₹10lakh is attributed to self-generated goodwill.***

"PROFITS AND GAINS OF BUSINESS OR PROFESSION"

Section 28: *Chargeability:-*

The following incomes inter alia, shall be chargeable to tax under this head:

(1) ***Export incentives,*** **which includes-.**

- ☞ **Profits on sale of Import Entitlement License.**
- ☞ **Cash assistance received or receivable against export (i.e. Cash Compensatory Support)**
- ☞ **Duty drawbacks of customs and central excise duties.**

(2) **Any sum received or receivable in cash or in kind under an agreement:**

(a) for not carrying out any activity in relation to any business/profession (i.e. Non-compete fees); or

(b) for not sharing any patent, copyright, etc. (i.e. Non-sharing fees),

☞ **Provided, such sum, should not be chargeable to tax under the head "capital gains".**

EXPLANATORY REMARK: *Treatment of such fee in the hands of Payer:-*

IMPORTANT RULING: Ferromatic Milacron India Pvt. Ltd(2018)(Guj.-HC):-

Rights acquired under a non-compete agreement gives enduring benefit and protects the assessee's business against competition. **The expression "or any other business or commercial rights of similar nature" used in section 32(1)(ii) is wide enough** ***to include non-compete rights.***

In simple words, **right acquired by the assessee by payment of non-compete fee is in the nature of an intangible asset and eligible for depreciation u/s 32.**

CONTRARY RULING: M/s. Asianet Communications Ltd.(2018)(Mad.-HC):

On account of the payment of non-compete fee, the company does not acquire any business, the profit-making apparatus remains the same and there is no new business or new source of income and therefore, the expenditure has to be treated as revenue in nature.

(3)

- Any **compensation** or other payment received or receivable,
- **whether revenue or capital,**
- **in connection with the termination or modification of the terms and conditions of any contract**
- relating to **his business.**

Section 32 (1)(ii): *DEPRECIATION ALLOWANCE (WDV Method):-*

(1) **Depreciation is allowed in respect of-**

(a) Building, machinery, plant or furniture, being tangible assets;

(b) Know-how, patents, copyrights, trademarks, licenses, franchises or any other business or commercial rights of similar nature, being intangible assets, not being goodwill of a business/profession. **As amended by F. A., 2021**

(2) **Such asset should be *owned* and *used for the purpose of the business or profession by the assessee.***

(3) *Depreciation* ***shall be allowed*** *on* ***written down value*** *of the* ***block of assets*** *at the prescribed percentage.*

(A) RELEVANT NOTE WITH REFERENCE TO POINT NO. 1 OF SECTION 32 (1) (ii):-

- ~~**Depreciation will be allowed on payment for goodwill (like, goodwill paid by amalgamated company to amalgamating company, or in any other case).** [CIT v/s Smifs Securities Ltd. (SC)]~~
- **w.e.f. A.Y. 2021-22, No depreciation is allowable on payment for goodwill of a business/profession.**

(B) RELEVANT NOTES WITH REFERENCE TO POINT NO. 2 OF SECTION 32 (1) (ii):-

- **In case of "Lease"** ***ir-respective of type of lease,*** **lessor will be entitled for depreciation** ***provided he is engaged in leasing business.*** **[K.M. Sugar Mills Ltd. (All.-HC)]**
- **In case of hire purchase system,** ***depreciation shall be allowed to hire purchaser, in view of the CBDT Circular No. 9 dated 23.03.1943, on cash price.*** **[Kaveri Engg. Industries (Mad.-HC)]**
- *Beneficial ownership has to be seen.* After taking possession of a building in pursuance of an agreement to sell, he shall be considered as deemed owner, and depreciation shall be allowed ***even if building is not registered in his name.*** **[Mysore Minerals Limited (SC)]**
- **General Rule:** Assets which are ready for use **but not actually put into use** during the relevant previous year, are not entitled for depreciation. **[Dinesh Kumar Gulab Chand Aggarwal (Bom.-HC)]**

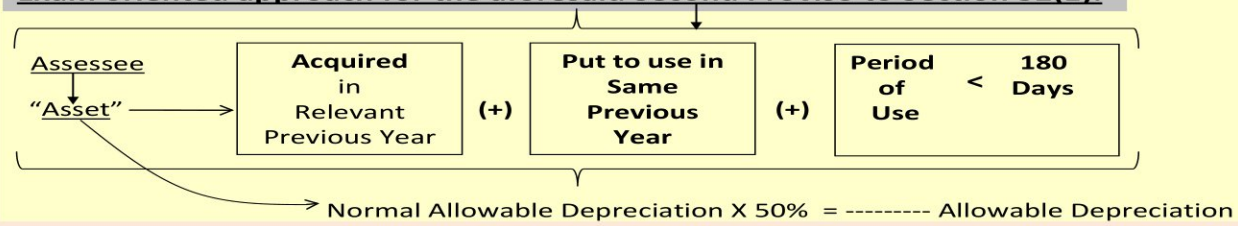
EXCEPTIONS:

- **If asset is of such a nature which requires its special use (i.e. on demand) like gen-set, fire extinguisher, emergency spares, standby machine, etc. then depreciation shall be allowed on the basis of its ready to use.**
- **If assessee couldn't put to use an asset because of extraneous reason (like, paucity of funds / raw material, lack of labour, etc.), assessee will be entitled to claim depreciation.**

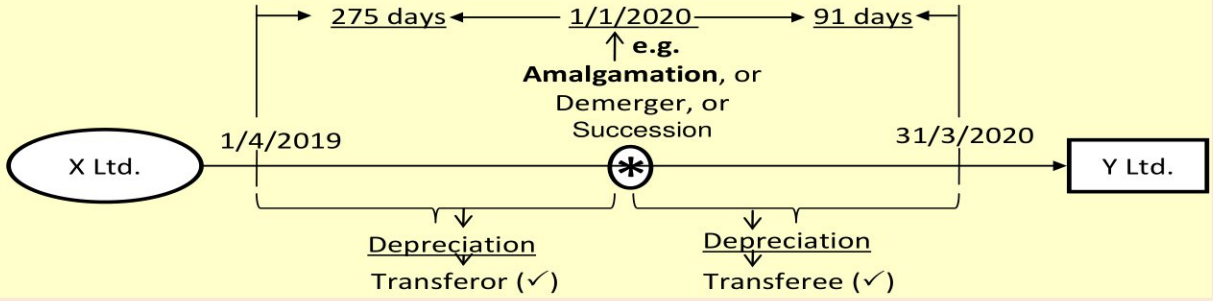
(C) RELEVANT NOTES WITH REFERENCE TO POINT NO. 3 OF SECTION 32 (1) (ii):-

- It is ***mandatory*** for the assessee to claim depreciation.

Exam oriented approach for the aforesaid Second Proviso to Section 32(1):



Exam oriented approach for the aforesaid 6th Proviso to Section 32(1):



Section 43(6): *Written Down Value:-*

	WDV of the block of assets at the beginning of the previous year [i.e. Actual cost *less* **depreciation actually allowed** to him in earlier year(s)]	**
Add:	***Actual cost*** of the assets acquired during the previous year	**
Less:	***Moneys payable*** in respect of an asset of same block which is sold, discarded, demolished or destroyed during the previous year and the amount of scrap value.	**
Less:	*Notional WDV* (i.e. WDV computed as if the asset was only asset in the block) *of asset transferred by way of slump sale*	###
	W.D.V. of the Block of Assets for the relevant assessment year:	***

KEY POINTS:

(1) **IMPORTANT RULING: CIT v/s Kasturi & Sons Ltd. (SC):-**

It was held that moneys payable has to be interpreted only as actual moneys payable in cash or by cheque/ draft and not any other thing or benefit which can be converted into money.

(2) With effect from the previous year 2020-21, goodwill of a business/profession is not eligible for depreciation. If the value of a block of assets on 1st April, 2020 includes goodwill of a business/profession (on which depreciation was obtained by the assessee in any preceding year), then, depreciated value of goodwill shall be deducted from the value of the block of assets on 1st April, 2020.

For this purpose, depreciated value of goodwill shall be calculated as if goodwill was only asset in the relevant block of asset.

AS INSERTED BY F. A., 2021

Section 43(1): *Actual Cost:-*

If assessee acquires an asset in respect of which…….

Payment or **aggregate** of payments	(+)	**In a day**	(+)	To **a Person**	(+)	**Other than through** A/C Payee cheque/draft or by use of ECS through a bank A/C *or through such other electronic mode as may be prescribed*	(+)	**Exceed ₹10,000/-**

Such expenditure shall be ignored for the purposes of determination of actual cost.

Section 43A: *Special provisions consequential to changes in rate of exchange:-*

Conditions for applicability of this section:

(1) Assessee has acquired an asset from a country outside India* on credit or through a foreign currency loan.

(2) After the acquisition of such asset, **at the time of making actual payment**–**

(a) To foreign supplier of such asset; or

(b) Repayment of such foreign currency loan,

due to change in rate of exchange, **there is an increase or reduction in liability** of the assessee as expressed in Indian currency.

THEN such increment or reduction in liability shall be added/ deducted from the actual cost of asset.

Section 43AA: *Taxation of foreign exchange fluctuation:-*

- Any gain or loss
- *due to change in foreign exchange rates*
- **in respect of all foreign currency transactions**
- shall be treated as income or loss,
- which shall be computed in the manner provided in ICDS.

Exception:

☞ **This section is not applicable in respect of cases covered by section 43A.**

"DETERMINATION OF ACTUAL COST IN SPECIAL CASES"

Explanation 2C to Section 43(6)	**Block of assets transferred by company to LLP under conversion of such company into LLP [as covered u/s 47(xiiib)]**	**WDV of such block of assets as on the date of conversion will be treated as actual cost for LLP.**
Explanation 7 to Section 43(6)	**In the case of 'composite income' (i.e. where partly income is exempt and remaining part is taxable by virtue of Rule 8, Rule 7A, and Rule 7B)**	**To calculate depreciation for current year, opening WDV will be computed on the assumption that total depreciation would have been allowed in earlier years.**

Section 2 (11): Block of assets means -

- *A **group of assets***
- *falling within a class of assets comprising tangible/intangible assets except goodwill of a business/profession.*
- ***in respect of which same rate of depreciation is prescribed.***

Rule 5: Prescribed Percentage for depreciation-

(1) Building →
- Residential =5%
- Non-residential =10%
- Purely temporary erection = 40%

(2) Furniture & Fitting = ***10%***

(3) Plant & Machinery:

(i) *General* = ***15%***

(ii) *Motor cars* ***[Except (iii)]*** = ***15%*** ***(But, if acquired between 23rd August, 2019 to 31st March, 2020 and put to use on or before 31st March, 2020, then, Depreciation @ 30% shall be allowed).***

(iii) *Motor cars, Motor buses, Motor lorries, Motor taxies, Motor vans used in the business of running them on hire* = ***30%*** ***(But, if acquired between 23rd August, 2019 to 31st March, 2020 and put to use on or before 31st March, 2020, then, Depreciation @ 45% shall be allowed).***

(iv) *Books owned by assessee carrying on a profession, or owned by a library* = 40%

(v) *Computers* = 40%

(vi) *Aeroplane* = 40%

(vii) Windmills and any specifically designed device which run on windmills = 40%

(viii) *Air pollution control equipment, water pollution control equipments* = 40%

(ix) Ship = 20 %

(x) Oil Well = 15%

(4) Intangible assets = 25%

Section 32 (1) (iia): *Additional Depreciation:-*

Assessee (i.e. **any person**) should be engaged in the **manufacturing business** of any article or thing, ***or in the business of generation, transmission or distribution of power***	**(+)**	He has acquired and installed **new plant & machinery**

Then, Additional depreciation @ 20% of the actual cost shall be allowed as deduction u/s 32 (1)(ii).

ADDITIONAL CONSIDERABLE POINTS FOR ADDITIONAL DEPRECIATION:

(1) If PERIOD OF USE IN FIRST YEAR of its acquisition is LESS THAN 180 DAYS:

50% additional depreciation will be allowed **in this first year itself.**	**Balance 50% additional depreciation** ***will be allowed*** **in the immediately succeeding previous year.**

(2) Additional depreciation shall not be allowed in respect of:

(i) **Second hand** plant and machinery (whether was used in India or outside India); or

(ii) Any machinery or plant **installed in any office premises or any residential accommodation**; or

(iii) Any **vehicle** i.e. road transport vehicles; or

(iv) **Ships or aircraft**; or

(v) **Any plant or machinery, of which 100% cost is allowed as a deduction in any one previous year** under the head P/G/B/P.

Section 33AB*: Deduction in respect of Tea Development Account, etc.:-*

CONDITIONS FOR ALLOWANCE OF DEDUCTION UNDER THIS SECTION:

(1)	Assessee should engage in the business of ***growing and manufacturing tea, coffee or rubber in India.***
(2)	He has deposited any amount: ➢ **with** National Bank for Agriculture and Rural Development **(NABARD):** Under a scheme approved by Tea Board or Coffee Board or Rubber Board or ➢ **In Deposit Account:** Opened as per the scheme framed by Tea Board or Coffee Board or Rubber Board with previous approval of the Central Government.
(3)	Time-limit for deposit: **30th September of the relevant assessment year.**
(4)	**Accounts must be audited** by the Chartered Accountant and audit report must be furnished *one month prior to the due date of submission of ROI.*

QUANTUM OF DEDUCTION:- Least of the following -

"Amount deposited" OR "40% of Profit of such business before deduction under section 33AB"

WITHDRAWL OF DEPOSIT:-

Any amount can be withdrawn from NABARD/ Deposit Account **for the purposes specified in the scheme** of Tea Board / Coffee Board / Rubber Board, But where amount in the NABARD / Deposit Account is utilised as per the scheme for the purposes of any expenditure, **such expenditure shall not be allowed as a deduction in computing P/G/B/P.**

PROHIBITION OF UTILIZATION:-

Where any deposited amount with NABARD/ Deposit Account is **utilized for the purchase of:**

(i) A machinery or plant to be installed in any office premises or residential accommodation;

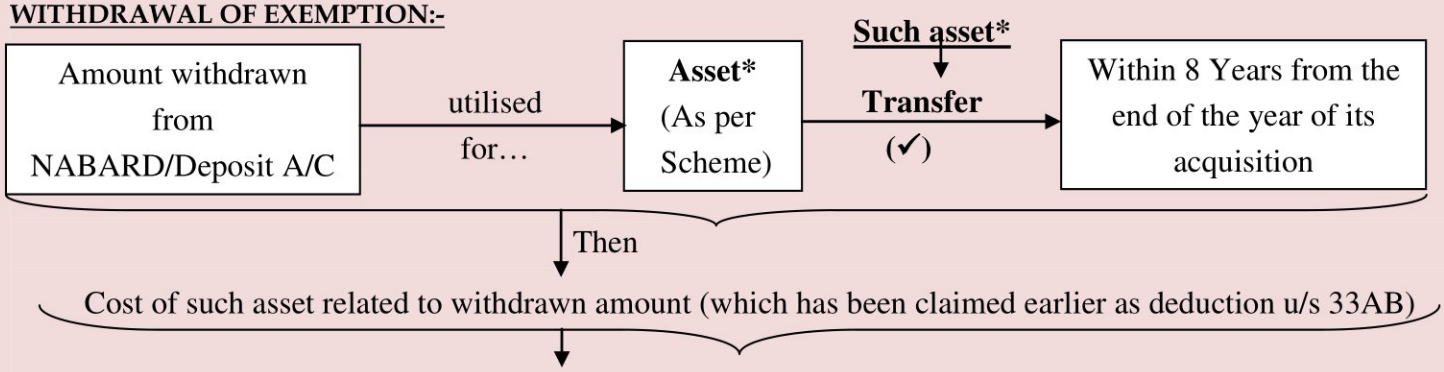
(ii) Any office appliances (not being computers);

(iii) Any machinery or plant, of which 100% cost is allowed as a deduction in any one previous year;

Then, such mis-utilised amount shall be deemed to be the profits and gains of business of that previous year.

- **Amount withdrawn from NABARD / Deposit Account must be utilized in same previous year in which it is withdrawn, in otherwise case,** unutilized amount shall be deemed to be the profit / gain of business of the previous year in which it is withdrawn**.**

WITHDRAWAL OF EXEMPTION:-



Activity	Tea (Rule 8)		Coffee (Rule 7B)		Rubber (Rule 7A)	
	PGBP	Agriculture Income	PGBP	Agriculture Income	PGBP	Agriculture Income
(i) Growing and manufacturing	40%	60%	25%	75%	35%	65%
(ii) Roasting and grounding (also)	-	-	40%	60%	-	-

STEPS TO REMEMBER (AS SUPPORTED BY AFORESAID RULES):

(1) **First of all, allow deduction u/s 33AB along with other deductions as allowable under the head PGBP to obtain *Net result** from such business (i.e. Tea / Coffee / Rubber Activity).**

(2) **After that, percentage as prescribed in Rule 8 / Rule 7A / Rule 7B shall be applied on such *Net result**.**

(3) **If assessee has any brought forward loss, then, that can be set off from taxable proportion as arrived at by applying the aforesaid % as given in Rule 8 / Rule 7A / Rule 7B as the case may be.**

Note: **If, due to any reason, deduction u/s 33AB is withdrawn (like, case of utilization of withdrawn amount in prohibited capital purpose, etc.),** then deemed income under section 33AB will be computed by applying the percentage as given in Rule 8 / Rule 7A / Rule 7B, as the case may be, (for the purpose of taxation of income under the head PGBP).

Section 35: *Expenditure on Scientific Research:-*

Timing of Incurrence	Section 35(1)(iv) Capital expenditure on scientific research (100% deduction)	Section 35(1)(i) Revenue expenditure on scientific research (100% deduction)
(1) **If incurred during the relevant previous year** (whether in case of new business/existing business)	All capital expenses (other than land)	All revenue expenses
(2) **If business is newly commenced** then expenses incurred **during 3 years** *prior to the date of commencement of the business*	All capital expenses (other than Land)	**Only Salary and Material expenses** relating to scientific research *upto the approved extent (by Prescribed Authority)*
Due to deduction u/s 35(1)(iv), business loss cannot be computed, If profit is inadequate, then, same treatment, as of unabsorbed depreciation, will be provided.		

(B) Contribution based deduction:

Contribution to…….

Notified bodies (by Central Government)		➢ National Laboratory ➢ IIT ➢ University ➢ Persons approved by Prescribed Authority for approved programme.	**Indian Company** (having main object of scientific research and development) *approved by CCIT* and amt. is paid *for use in Scientific research*
For use in *Scientific research*	For use in *Social Science or statistical research*		
100% Deduction	**100% Deduction**	**100% Deduction**	**100% Deduction**
35(1)(ii)	**35(1)(iii)**	**35(2AA)**	**35(1)(iia)**

- An assessee shall not be denied the deduction in respect of any sum paid to an institution to which section 35(1)(ii)/(iia)/(iii)/(2AA) applies, merely on the ground that subsequent to the payment of such sum by the assessee, the approval granted to the such institution has been withdrawn.

(1A) *Deduction in respect of any sum paid to the research association, university, college or other institution referred to in section 35(1)(ii)/(iia)/(iii)/(2AA),* ***shall not be allowed,*** unless such research association, university, college or other institution or company

(i) prepares and deliver a statement for prescribed period in such form and manner and setting forth such particulars and within such time, as may be prescribed, **to the prescribed income-tax authority** or the person authorised by such authority:

(ii) **furnishes to the donor, a certificate specifying the amount of donation** in such manner, containing such particulars and within such time from the date of receipt of sum, as may be prescribed.

Section 35ABB: *Expenditure for obtaining a license to operate telecommunication services:-*

Deduction u/s 35ABB….	If telecommunication license fee has *actually* been paid **before commencement of business**	If telecommunication license fee has *actually* been paid **after commencement of business**
☞ **Shall begin……**	From year of commencement of business	From year of actual payment of such fee
☞ **Shall be allowed upto...**	the year in which the license comes to an end	
☞ **Quantum of deduction**	License fee paid / Year of commencement of business to the year in which license expires	License fee Paid / Previous year of actual payment to the previous year in which license expires

☞ **In case of Amalgamation / Demerger:**
Outstanding installments (i.e. unavailed benefit) will be allowed to the amalgamated/resulting company (instead amalgamating company/demerged company) from the year of amalgamation/demerger.

Section 35ABA: *Expenditure for obtaining right to use spectrum for telecom services:-*

Deduction u/s 35ABA….	If spectrum fee has *actually* been paid **before commencement of business**	If spectrum fee has *actually* been paid **after commencement of business**
☞ **Shall begin……**	From year of commencement of business	From year of actual payment of such fee
☞ **Shall be allowed upto...**	the year in which the spectrum comes to an end	
☞ **Quantum of deduction**	Spectrum fee paid / Year of commencement of business to the year in which spectrum expires	Spectrum fee Paid / Previous year of actual payment to the previous year in which spectrum expires

Under this section, **"has actually been paid" means:**
- Actual payment of such fees has been made; **OR** **It becomes payable in the prescribed manner (Rule 6A*).**

***Rule 6A: For the purpose of section 35ABA, the term "payment has actually been made" shall mean,-**

Where an assessee has opted and been allowed by the Department of Telecom to make deferred payment, the amount which would have been payable by the assessee had he opted for full upfront payment of spectrum fee.

Section 35AD: *Deduction in respect of expenditure on specified business:-*

(A) Deduction shall be allowed to the assessee who is carrying on the following specified business:

(1)	**Setting up and operating cold chain facilities for specified products.**

	➢ **Specified products are- agricultural and forest produce, meat and meat products, poultry, marine and dairy products, products of horticulture, floriculture and apiculture and processed food items.** ➢ **Cold chain facility" means a CHAIN OF FACILITIES for storage or transportation under scientifically controlled conditions including refrigeration and other facilities necessary for the preservation of specified products.**
(2)	**Setting up and operating warehousing facilities for storage of agriculture produce.**
(3)	**Laying and operating cross-country natural gas or petroleum oil pipeline network.**
(4)	**Building and operating, anywhere in India, a hotel of two star or above category** as classified by CG. ➢ Where the assessee builds a hotel of two-star or above category and subsequently, while continuing to own the hotel, transfers the operation thereof to another person, **the assessee shall be deemed to be carrying on this specified business.**
(5)	**Building and operating, anywhere in India, a hospital with at least 100 beds for patients.**
(6)	**Developing and building a housing project under a Government scheme -** ➢ for **slum redevelopment or rehabilitation;** or ➢ for **affordable housing.**
(7)	**Production of fertilizer in India.**
(8)	**Setting up and operating an inland container depot or a container freight station.**
(9)	**Bee-keeping and production of honey and beeswax.**
(10)	**Setting up and operating a warehousing facility for storage of sugar.**
(11)	**Laying and operating a slurry pipeline for the transportation of iron ore.**
(12)	**Setting up and operating a semi conductor wafer fabrication manufacturing unit** as notified by Board
(13)	**Developing or/and maintaining & operating a new infrastructure facility (like, road including toll road, highway, water supply project, port, airport, etc.)**
(B)	**SALIENT FEATURES OF SECTION 35AD:**
(1)	**100% OF CAPITAL EXPENDITURE → ALLOWED IN THE YEAR OF ITS INCURRENCE ITSELF.** **But,** if expenditure is incurred Prior to commencement of business operations **(and)** which is capitalised in the books **Will be allowed in the year of commencement of business operations**

(2) **Deduction under this section shall not be allowed in respect of:**

(i) Any expenditure incurred on acquisition of any land or goodwill or financial instrument;

(ii) **Any expenditure in respect of which:**

Payment or **aggregate** of payments **(+)** **In a day** **(+)** To **a Person** **(+)** **Other than through** A/C Payee cheque/draft or by use of ECS through a bank A/C *or through such other electronic mode as may be prescribed* **(+)** **Exceed ₹10,000/-**

(3) No double deduction in respect of the expenditure allowed to the assessee under this section.

(4) If assessee claimed → Deduction u/s 35AD for any A.Y. → No deduction → u/s 80IA to 80RRB & u/s 10AA for the same or any other A.Y.

In respect of such Specified Business.

Asset claimed as deduction under this section → Should be used **Only for the specified business** → Upto 8 years from the year of its acquisition

If violation, then-

Deduction allowed u/s 35AD (*less*) Notionally allowable depreciation (in absence of deduction u/s 35AD)

= ----- ✓---------- **(i.e. Notional WDV)**

- Will be deemed as income u/s PGBP for the year of violation
- Will be treated as actual cost of that asset and will be added with corresponding block of asset

[Part of Explanation 13 of section 43(1)]

❖ If asset is sold, destroyed with in the aforesaid lock in period of 8 years, then, **that will not be treated a case of violation, and no consequence will arise.**

But, in such a case, **total amount received as sale consideration or insurance claim, as the case may be, will be taxable under the head PGBP** by virtue of special provisions of **section 28(vii).**

Section 35D: *Amortisation of certain preliminary expenses:-*

➢ **Eligible assessee** →	**ANY RESIDENT PERSON.**		
➢ **Should incurs expenditure on specified purposes.** [covers, expense on: project report, feasibility report, Engg. service, market survey, company registration expense, expense on issue of shares/debenture Memorandum / Article, etc.]	Either before commencement of business**	**OR** After commencement of business	
		For Extension	For New Unit

➢ **Qualifying limit for such expenses:** ⇒ *In case of company:* 5% of **capital employed** or 5% of **cost of project** whichever is higher ⇒ *In case of any other person:* 5% of **cost of Project** ➢ **Yearly quantum of deduction:** **1/5 of** (Actual preliminary expenses or Qualifying Limit whichever is lower)	**Capital Employed:** Issued share capital (+) Debenture (+) Long-term borrowings. **Cost of project:** Actual cost of fixed assets. **Figures (of share capital, fixed assets etc.) for capital employed and cost of project will be considered:** **In totality**** / **Only connected from…** (**Such Extension**, **Such New Unit**) → **As exist on the last day of first year of deduction** which is as follows: In case of new business: Year of commencement of business. In case of Extension: Year of completion of extension. In case of new unit: Year of start of operations by new unit.

Deduction will be allowed in 5 years commencing from…..	Year of commencement of business	Year of completion of Extension	Year of start of operations by new unit
In case of Amalgamation / Demerger	Outstanding Installment will be allowed to transferee company.		

➢ In case of non-corporate assessee, the assessee is required to furnish the audit report *one month prior to the due date of submission of the return of income for the first year.*

Section 35DD and Section 35DDA: *Expenditure for Amalgamation or Demerger, and Expenditure on Voluntary Retirement:-*

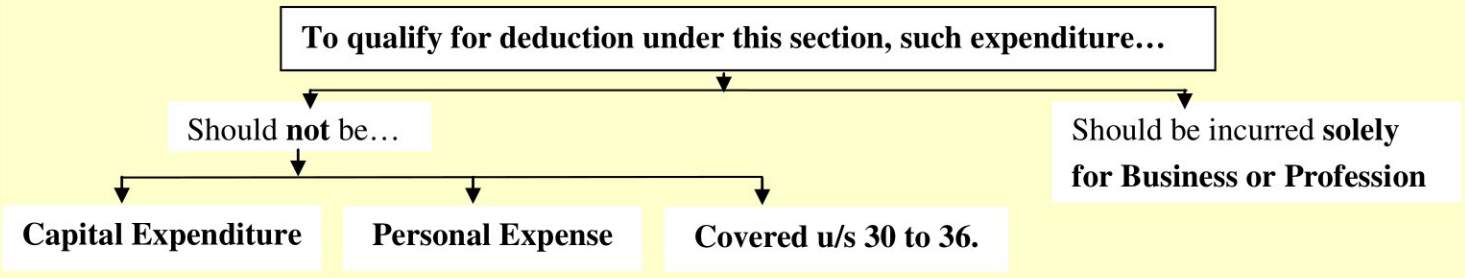
	Section 35DD	**Section 35DDA**
➢ **Eligible assessee**	**Indian company**	Any person
➢ **Eligible Expenditure**	**Expense on Amalgamation or Demerger**	**Expense on VRS of his employee**
➢ **Quantum of deduction (Yearly)**	**20% of such expenditure**	
➢ **Period of deduction**	**5 Years***	
➢ **Deduction will start from:**	**Year of Amalgamation or Demerger**	**Year of incurrence** of such expense.
➢ **In case of Amalgamation Demerger, succession, conversion**	-	**Outstanding installments will be allowed to transferee.**

Section 36: *Other deductions:-*

(1) The following deductions are allowable under this section -

(i)	➢ **Premium paid** on insurance **of stocks** or stores. ➢ **Premium paid** by any mode but other than cash **for insuring the health of the employees**.
(ii)	***Bonus or commission*** *paid to employees.*
(iii)	***Interest*** *paid in respect of money borrowed* ***for the purpose of business or profession.*** **But**, if capital is borrowed for acquisition of an asset, then interest liability pertaining to the period till the asset put to use cannot be allowed as deduction under this section.
(iv)	***Employer's contribution*** to *RPF / approved superannuation fund / approved gratuity fund.*
(iva)	**Employer's contribution towards a** ***Notified Pension Scheme (NPS) on account of an employee to the extent it does not exceed 10% of the salary of the employee in the previous year.***
(vii)	**Bad debts** ➢ Must be **written off as ir-recoverable in the accounts of the assessee** for the previous year. ➢ *It* ***should have been taken into account in computing the income*** *of the assessee of that previous year or any earlier previous year,* ***OR*** *it should represent money lent in the ordinary course of banking or money lending business.* ☞ **No need to prove it that debt, infact, has become ir-recoverable.** **[T.R.F. Ltd. (SC)]** ☞ ***The successor of the business is entitled to claim deduction in respect of debt created by the predecessor.*** **[T. Veerabhadra Rao (SC)]** ☞ If as per ICDS, **an income has been offered for taxation without recording the same in the accounts,** and subsequently such amount becomes ir-recoverable, then, such amount **shall be deemed to be written off as ir-recoverable in the accounts and** *it will be allowed as deduction in the previous year in which such debt becomes irrecoverable.*
	Section 41(4): ***Recovery of Bad debts :-*** If an amount is recovered out of the bad debt allowed earlier, then, such amount will be taxable in the year of such recovery but subject to the condition that **the assessee who claimed the deduction of bad debt and the assessee who recovers the bad debt must be same.** **[P.K.Kaimal (SC)]**
(ix)	➢ **Eligible Assessee** — ***Company*** ➢ **Qualifying expenses** — ***Expenses on promoting family planning among employees.*** ➢ **Quantum and period of deduction** — Revenue expenses = ***100%***; Capital expense = ***20% each year*** **over a period of 5 years.** ➢ **Unallowed portion** — ***Will be treated in same manner as provided for unabsorbed depreciation.***
(xv)	***Securities transaction tax / Commodities transaction tax.***

Section 37: ***General Deductions:-***



Explanations to section 37:

- For the removal of doubts, it is hereby declared that *any expenditure incurred by an assessee* ***for any purpose which is an offence or which is prohibited by law*** *shall not be deemed to have been incurred for the purpose of business or profession and* no deduction or allowance shall be made in respect of such expenditure.

For example:

(1) Payment to Mafia Don (like hafta), bribe, etc. - NOT allowable.

(2) Penalty for infraction of Law - NOT allowable.

- If Penalty is in the nature of damage which is paid in normal course of business for breach of contract (like, payment for delay in completion of construction contract) **is allowable.**

INSERTION MADE BY FINANCE ACT, 2022:

- For the removal of doubts, it is hereby clarified that the expression **"expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law"** under the aforesaid Explanation, **shall include** and shall be deemed to have always included **the expenditure incurred by an assessee,—**

(i) for any purpose which is an offence under, or which is prohibited by, any law for the time being in force, **in India or outside India**; or

(ii) to provide any benefit or perquisite, in whatever form, to a person, whether or not carrying on a business or exercising a profession, and acceptance of such benefit or perquisite by such person is in violation of any law or rule or regulation or guideline, as the case may be, for the time being in force, governing the conduct of such person; or

(iii) to compound an offence under any law for the time being in force, in India or outside India.

For example:

- **Providing of freebees like gifts, or other benefits by pharmaceutical companies to medical practitioner (which is in violation of the Regulations of Medical Counsel of India) - NOT allowable.**
- It may additionally be noted here that value of freebees enjoyed by the medical practitioner **will be taxable as income for him.**

– **CSR Expenditure** shall not be treated as expense for business / profession, hence, **not allowable u/s 37.**

Section 37(2B):

Any expenditure by the assessee on advertisement in any publication (like magazine, etc.) of a political party **is disallowable. But,** it may be noted here that **in case of company,** such expenditure is deemed as contribution to political party u/s 80GGB, hence, **company can claim deduction u/s 80GGB in respect of that expenditure.**

Section 40(a): Notwithstanding anything contained in section 30 to 38, **no deduction shall be allowed in respect of the following:**

Section 40(a)(i)	Section 40(a)(ia)	Section 40(a)(ib)	Section 40(a)(iii)
- Any chargeable sum **(except salary)** - which is payable to - a **Foreign company or other NR**	- Any chargeable sum - which is payable to - a **Resident**	- Consideration for specified services - which is paid or payable to - a **non-resident**	Salary payable: - **outside India; or** - **to a non-resident**
On which tax is deductible under chapter of TDS (or on which **equalisation levy** is deductible), **But,** (a) such tax (or levy) has not been deducted or (b) after deduction, has not been paid **on or before the due date specified in section 139(1).**			On which tax at source has not been deducted or paid thereon **within the time prescribed under the chapter of TDS.**
100% Disallowance of such sum	**30% Disallowance**	**100% Disallowance** of such sum	**100% Disallowance** of Salary
Proviso: - If such tax (or levy, as the case may be) has been deducted in any subsequent year, **or** - has been deducted during the previous year but has been paid after the due date specified in section 139(1), - Then such sum shall be allowed in **the previous year in which such tax (or levy) has been deposited**.			- If deduction or payment is delayed by one day then **such sum shall never be allowed.**

A relief has been given u/s 40(a)(i) and u/s 40(a)(ia) on fulfillment of following conditions:

Tax is **deductible** on the aforesaid sum but it is not deducted **AND** **The Payer is not deemed to be an assessee-in-default** u/s 201(1).

Then,

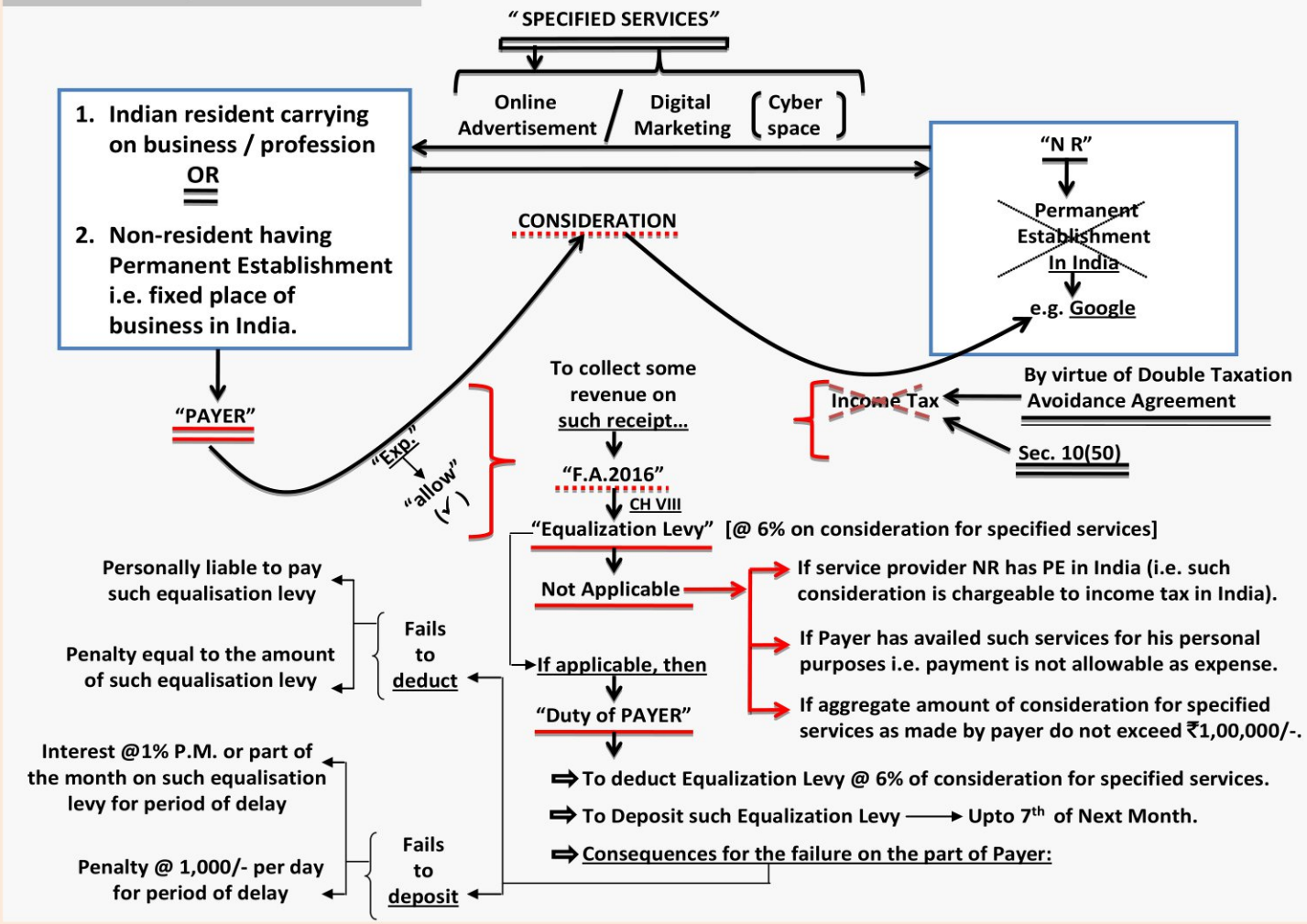
- **for the purpose of section 40(a)(i) and section 40(a)(ia), it shall be deemed that**
- **the payer has deducted and paid the tax on such amount**
- **on the date of the furnishing of return of income by such recipient (Payee).**

Under the first proviso to section 201(1), the **payer is not deemed to be an assessee-in-default if,-**

Payee has furnished his return of income u/s 139. + **Payee has taken into account the above income in such return** of income. + **Payee has paid tax due on the income** declared in such return of income. + **Payer furnishes a certificate to this effect** from a Chartered Accountant in a prescribed form.

"CONCEPT OF EQUALISATION LEVY"

CONCEPT OF EQUALISATION LEVY:



Equalisation levy on E-commerce supply or services: Chapter VIII of Finance Act, 2016:

Equalisation levy has newly been imposed on E-COMMERCE SUPPLY OR SERVICES in the following manner:

Section 165A: *Charge of equalisation levy on e-commerce supply or services:-*

Equalisation levy shall be charged at the rate of **2%** **of the amount of consideration received or receivable by an e-commerce operator from e-commerce supply or services** made or provided or facilitated by it, on or after the 1st day of April, 2020,-

- **to a person resident in India; or**
- **to a non-resident in the specified circumstances (as given below); or**
- **to a person who buys such goods or services or both using internet protocol address located in India.**

"e-commerce operator" means a non-resident who owns, operates or manages digital or electronic facility or platform for online sale of goods or online provision of services or both.

"e-commerce supply or services" means-

(i) online sale of goods **owned by the e-commerce operator; or**

(ii) online provision of services **provided by the e-commerce operator; or**

(iii) online sale of goods or provision of services or both, **facilitated by the e-commerce operator; or**

(iv) any combination of activities listed in clause (i), (ii) or clause (iii).

"Specified circumstances" mean-

- **sale of advertisement, which targets a customer, who is resident in India or a customer who accesses the advertisement through internet protocol address located in India; and**
- **sale of data, collected from a person who is resident in India or from a person who uses internet protocol address located in India.**

Non-applicability: Equalisation levy under these new provisions **shall not be charged** in the following cases:

(i) where the e-commerce operator making or providing or facilitating e-commerce supply or services **has a permanent establishment in India and such e-commerce supply or services is effectively connected with such permanent establishment;**

(ii) **where the equalisation levy is leviable** under section 165 **(i.e. under the existing provisions)**;

(iii) **sales, turnover or gross receipts,** as the case may be, **of the e-commerce operator** from the e-commerce supply or services made/provided/facilitated **is less than two crore rupees during the previous year.**

INSERTIONS MADE BY FINANCE ACT, 2021:-

(1) "online sale of goods" and "online provision of services" shall include one or more of the following online activities, namely:

- acceptance of offer for sale; or
- placing of purchase order; or
- acceptance of the purchase order; or
- payment of consideration; or
- supply of goods or provision of services, partly or wholly.

(2) "consideration received or receivable from e-commerce supply or services" shall include:

(i) consideration for sale of goods irrespective of whether the e-commerce operator owns the goods, so, however, that it shall not include consideration for sale of such goods which are owned by a person resident in India or by a permanent establishment in India of a person non-resident in India, if sale of such goods is effectively connected with such permanent establishment.

(ii) consideration for provision of services irrespective of whether service is provided or facilitated by the e-commerce operator, so, however, that it shall not include consideration for provision of services which are provided by a person resident in India or by permanent establishment in India of a person non-resident in India, if provision of such services is effectively connected with such permanent establishment.

(3) Consideration received or receivable for specified services and for e-commerce supply or services shall not include the consideration, which are taxable as royalty or fees for technical services in India under the Income-tax Act, read with the agreement notified by the Central Government u/s 90 or 90A of the said Act.

Section 166A: *Collection and recovery of eq. levy on e-commerce supply or services:-*

The equalisation levy as referred to in section 165A (i.e. under these new provisions), **shall be paid by every e-commerce operator to the credit of the Central Government** as follows:

For the quarter ending….	*Due date of the financial year for payment of such levy……*
30th June of the financial year	*7th July*
30th September of the financial year	*7th October*
31st December of the financial year	*7th January*
31st March of the financial year	*31st March*

Section 10(50) of I. T. Act:

Any income arising from any specified service or from any e-commerce supply or services, and chargeable to Equalisation levy SHALL BE EXEMPT FROM INCOME TAX.

Explanation: Income referred to in this clause **shall not include** and shall be deemed never to have been included **any income which is chargeable to tax as royalty or fees for technical services in India** under this Act read with the agreement notified by the Central Government u/s 90 or 90A. **AS INSERTED BY F. A., 2021**

(ii) **Income tax** (including tax paid outside India in respect of which relief u/s 90, 90A or 91 is available).

EXPLANATORY REMARK:

- Interest on money borrowed for payment of income tax is **NOT allowable.**
- Interest on delay in payment of income tax / TDS / TCS, or other interest leviable under Income-tax Act (like, interest for delay in filing of ROI) is **NOT allowable.**
- Interest for delay in payment of GST, Custom/Excise duty, etc. i.e. under any other Act is **allowable.**
- Penalty for violation of any Law *whether Income-tax Act or any other Law* is NOT allowable.
- **ROC filing fees, fees for delay in filing of ROI / TDS return, etc. are allowable.**

Observation & Corresponding Insertion of New Explanation By Finance Act, 2022 w.r.e.f. 01/04/2005:

- A controversy had been revolving around the treatment of *cess on income tax*. **The main issue of contention was whether *cess* is considered a tax and, accordingly, similar to taxes paid, whether *cess* would also attract disallowance.**
- The **Rajasthan High Court** in Chambal Fertilizers & Chemicals Ltd v/s Jt. CIT [2019] and **Bombay High Court** in the case of Sesa Goa Limited v/s JCIT [2020] while dealing with the above controversy expressly held that ***'education cess' can be claimed as an allowable expenditure and provisions of section 40(a)(ii) are not attracted in case of 'education cess'.***
- The **Kolkata tribunal** in Kanoria Chemicals & Industries Ltd v/s ACIT, relying on the **Apex Court** ruling in CIT v/s. K. Srinivasan [1972](SC), stated that ***taxes includes surcharge and 'cess' is an additional surcharge and accordingly, 'cess' is to be considered as included under the expression tax. Thus, the deduction should not be allowable.***
- *In order to make the intention of legislation clear and to supersede the aforesaid rulings, a new Explanation has been inserted which provides as follows-*

❖ For the removal of doubts, it is hereby clarified that for the purposes of this sub-clause (ii), the term "tax" shall include and shall be deemed to have always included **any surcharge or cess, by whatever name called, on such tax.'**

Section 155(18): *Recomputation of income due to disallowance of surcharge/cess:-*

In addition to the retrospective amendment u/s 40(a)(ii), the Finance Act, 2022 has also inserted a new sub-section (18) in section 155, which is as follows:

- Where any deduction in respect of any surcharge / cess (which is not allowable as deduction u/s 40),
- **has been claimed and allowed** in the case of an assessee in any previous year,
- **such claim shall be deemed to be under-reported income of the assessee for such previous year** for the purposes of section 270A, and
- the Assessing Officer **shall** recompute the total income of the assessee for such previous year and make necessary amendment; and
- the provisions of section 154 shall, so far as may be, apply thereto, but the **time limit of four years** as specified in section 154(7) **shall be reckoned from the end of the previous year 2021-22:**

Relief from penalty:

Proviso to Section 155(18) *provides relief from considering the addition so made as under-reported income,* if the following conditions are satisfied:

(a) The **assessee makes an application** *in the prescribed form and time* **to the Assessing Officer;**

(b) The application is filed **to request the Assessing officer for recomputation of the total income of the previous year *without allowing the deduction of surcharge or cess;*** and

(c) The assessee **pays "the amount due thereon" within the specified time.**

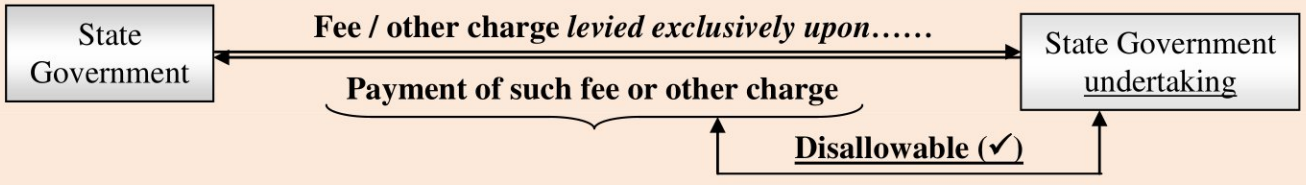
If all the above conditions are satisfied, then, in such case the **claim of 'surcharge' or 'cess' in previous year shall not be deemed as under-reported income** for the purposes of section 270A.

Explanatory Note:

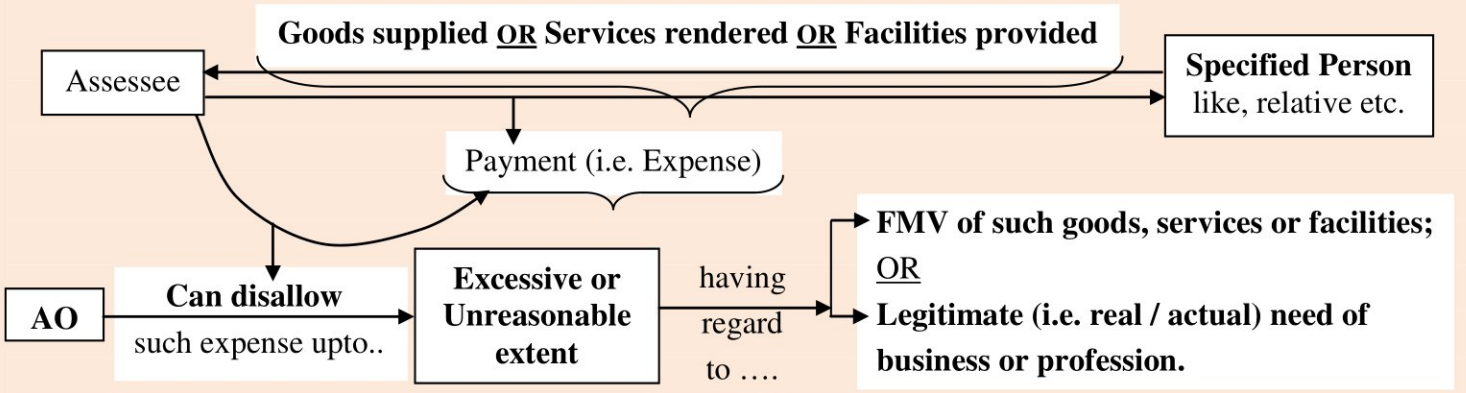
It is pertinent to observe that the requirement is to pay **"the amount due thereon"**. ***Whether for the purpose of quantification, would any interest also be considered along with the tax arising due to disallowance of surcharge/cess?***

It is submitted that the Courts in various cases as well as the CBDT by an order [F.No. 400/234/95-IT(B), dated 30-1-1997] also recognized that **interest should not be levied in cases of retrospective amendments.** Accordingly, no interest under section 234A, 234B or 234C would be levied on income recomputed by AO in accordance with section 155(18).

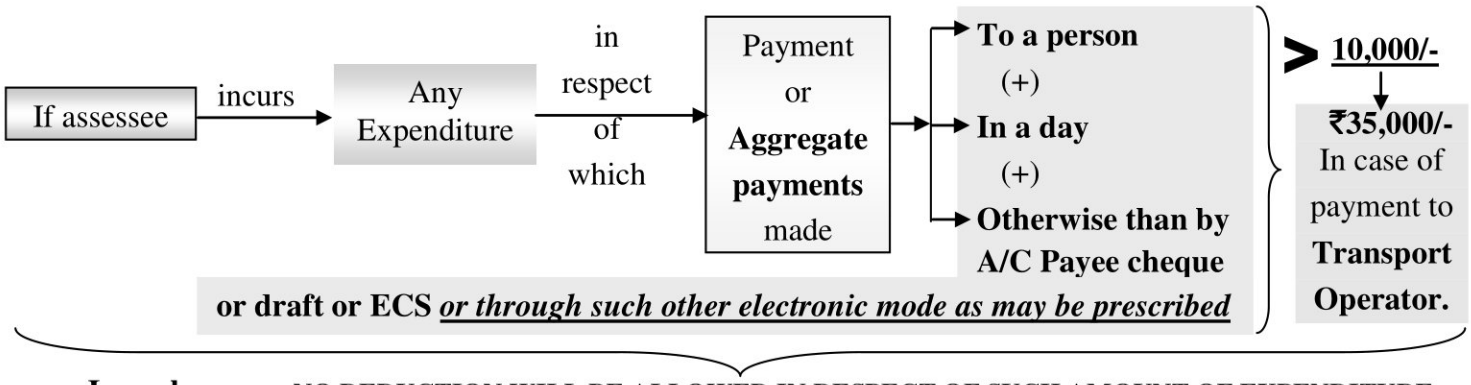
(iib)



Section 40A(2): *Payment made to relatives etc.:-*



Section 40A(3): *Disallowance out of cash expenditure:-*



In such a case, NO DEDUCTION WILL BE ALLOWED IN RESPECT OF SUCH AMOUNT OF EXPENDITURE.

EXCEPTIONAL CASES (RULE 6DD): In the following cases, **no part of the payment shall be disallowed:**

WHERE PAYMENTS IS MADE:	
(i)	To **Government or banks and financial institutions.**
(ii)	**Through book entry** (i.e. Bookish Adjustment).
(iii)	**For the purchase of-** » *Agricultural or forest produce; or* » *The produce of animal husbandry (including hides and skins) or dairy or poultry farming; or* » *Fish or fish products* ***(including crab, lobster and other marine product)****; or* » *The products of horticulture or apiculture; or* » *Products manufactured or processed without the aid of power in a cottage industry,* **to the cultivator, grower or producer of such articles, produce or products.**
	EXPLANATORY REMARKS: ❖ **Payment to any headman of fishermen** ***would not be liable for disallowance.*** ❖ **Payment to trader or any other middleman (like, hawker)** ***will be liable for disallowance.***
(iv)	**At a place** (like village) where on the date of such payment **banking facility is not available.**

(v)	**Against retirement benefit** (like, gratuity) and aggregate of such benefits **does not exceed ₹ 50,000/-.**
(vi)	To his employee on a ***temporarily posted place*** */ ship, where he has not bank account.*
(vii)	*By an authorized dealer/money changer against purchase of foreign currency in normal course of business.*

Section 40A(3A):

If deduction in respect of any expenditure has been claimed in any year on the basis of its incurrence and in any subsequent year assessee did the aforesaid violation in respect of such expenditure, then, **such violated amount shall be taxable as income under the head PGBP for the year of such violation.**

Section 40A(7)	**No deduction shall be allowed in respect of Provision For Gratuity in any case (even if it is made as per actuarial valuation).**
Section 40A(9)	**No deduction shall be allowed in respect of contribution made by the assessee to unrecognized or non-statutory welfare fund / trust (*like,* employees welfare trust).**

Section 43B: *Certain deduction to be only on actual payment:-*

If any sum payable by way of –

(a) Any ***tax, duty, cess, fee*** under any law in force;

(b) Any ***bonus or commission*** to employees;

(c) Any ***interest*** *on loan or borrowing or advance from any public financial institution or state financial corporation or state industrial investment corporation or schedule bank / co-operative bank or NBFC; or*

(d) ***Leave Salary****;*

(e) ***Employer's Contribution*** *to any provident fund or superannuation fund* or gratuity fund or any other fund for the welfare of the employees (like NPS); or

(f) *Any* ***sum payable to the Indian Railways*** *for the use of railway assets*

Is actually paid either during the relevant previous year or on or before the due date for furnishing of ROI

Deduction shall be allowed for the year from which such expense relates (i.e. incurred).

If the payment is made after the due date for ROI

Deduction can be claimed **only in the year of actual payment not for the year from which such expense relates (i.e. incurred).**

Explanation to section 43B: AS AMENDED BY F. A., 2022

- For the removal of doubts, it is hereby declared that
- a deduction of any sum, being **interest payable** as referred to in this section,
- **shall be allowed if such interest has been actually paid** and
- *any interest referred to in this section* ***which has been converted into a loan or borrowing or debenture or any other instrument by which the liability to pay is deferred to a future date***
- **shall not be deemed to have been actually paid.**

Purpose of Amendment (Relevant extract from the Explanatory Memorandum):

- "Certain taxpayers are claiming deduction u/s 43B on account of conversion of interest payable on an existing loan into a debenture on the ground that such conversion is a constructive discharge of interest liability and, therefore, amounted to actual payment which has been upheld by several Courts.
- **Such interpretation is against the intent of legislation.** The section was introduced *to curb the mischief of claiming deduction by the assessee, without paying interest to financial institutions/NBFC/scheduled bank or a co-operative bank.* Section 43B makes a departure from other sections in the Act, as indicated by its non obstante clause. ***Under this section, conversion of the outstanding interest liability into debentures is not an actual payment and cannot be claimed as deduction.*** *In other words, a mercantile system of accounting can not be looked at when a deduction is claimed under this section, as actual payment would have to be made.*
- In view of the above, it is proposed to amend Explanation to section 43B to provide that **conversion of interest payable** as referred to in this section, **into debenture or any other instrument by which liability to pay is deferred to a future date, shall also not be deemed to have been actually paid.**

Explanation to section 43B:

The provisions of this section shall not apply and shall be deemed never to have been applied to a sum received by the assessee from any of his employees to which the provisions of section 2(24)(x) applies (i.e. employee's contribution towards RPF, etc.)

In case of receipt of employee's contribution towards RPF, ESI or any other welfare fund:

First of all, It will be treated as an income of such employer u/s 2(24)(x),

And, Then

If employer deposit such amount upto the expiry of due date of such relevant fund (Not due date of ROI)	Effect Of Section 36(1)(va)	If Employer does not deposit such amount upto the expiry of due date of such relevant fund.
Deductible in the hands of Employer in the same P.Y. in which such amount is being treated as Income of Employer.		Employee contribution as received by employer shall never be allowed as deduction in the hands of Employer.

EXPLANATORY REMARKS (in relation to section 43B):-

(1) The Board has clarified that if interest payable is converted into loan or debenture or any other instrument by which the liability to pay is deferred to a future date, then**, that shall not be allowable in the year of such conversion,** but, ***that can be claimed as deduction in the year of actual payment of such amount.***

(2) Furnishing of bank guarantee will not be treated as actual payment for the purpose of section 43B.

Section 41(1): *Deemed Income:-*

Where deduction has been made in respect of loss / expenditure / trading liability for any year,

AND

Subsequently *the assessee or* ***successor of the business***

has obtained

Any amount in respect of *such loss or expenditure*	**OR**	some benefit in respect of *such trading liability* by way of remission or cessation thereof,
the amount obtained	**OR**	the value of benefit accrued

shall be deemed to be income, ***Even if the business has been discontinued.***

- **Remission or cessation of a trading liability, which was earlier allowed as deduction, may be effected by a unilateral act (i.e. one sided act) also.** **[Explanation to section 41(1)]**
- Section 41(1) shall apply **on waiver of the working capital loan** which was utilised for day to day operations, because it amount to remission of trading liability. **[Rollatainers Ltd. (Delhi-HC)]**
- Section 41(1) shall **not** apply **on waiver of loan as given to assessee to meet the capital cost of the asset, because it can't be treated as remission of trading liability but that shall be reduced from actual cost of the asset.** **[Steel Authority of India (Delhi-HC)]**

IN CASE OF DISPUTE:

- **Remission or cessation of trading liability** will take place only when ***the dispute is finally settled in the favour of the assessee*** and accordingly section 41(1) shall apply. **[J. K. Synthetic Ltd. (SC)]**
- But, **if assessee has already paid the demand (like of excise duty) and subsequently if assessee has obtained any amount in respect of such expenditure,** then, such amount will be taxable in the year of its receipt *ir-respective of the fact that still dispute is going on such matter.* **[Polyflex India Pvt. Ltd. (SC)]**

Section 44AB: *Compulsory audit of Accounts:-*

	Category of person	Condition for requirement to get his accounts audited
(i)	In case [other than (i) & (ii) above] ✓ **Carrying on profession** ⟶ ✓ **Carrying on business** ⟶	**Gross receipts exceed ₹ 50 Lakhs.** **Total sales, turnover / gross receipts exceeds ₹ 100 Lakhs.**** **For person declaring income as per section 44AD, this limit of 100 lacs **shall be construed as ₹ 200 lacs.**
	Provided *that in the case of a person whose —* (a) *aggregate of all amounts received including amount received for sales, turnover or gross receipts during the previous year,* ***in cash, does not exceed 5% of the said amount;*** *and* (b) *aggregate of all payments made including amount incurred for* ***expenditure, in cash,*** *during the previous year* ***does not exceed 5% of the said payment,***	

this clause shall have effect as if for the words "one crore rupees", the words ***"ten crore rupees"*** *had been substituted.*

Provided further *that for this purposes, the payment or receipt, as the case may be, by a cheque drawn on a bank or by a bank draft, which is not account payee, shall be deemed to be the payment or receipt, as the case may be, in cash.* **Proviso inserted By Finance Act, 2021**

☞ In the aforesaid cases, assessee shall get his accounts audited and furnish report of such audit duly signed and verified by a Chartered Accountant, one month prior to the due date of filing the return of income u/s 139(1).

Amendment (by F.A. 2022) in Section 2(12A): ***Enlargement of the scope of "Books of account":-***

Section 2(12A) define the term **"books or books of account"** which includes ledgers, day-books, cash books, account-books and other books, *whether kept* ~~in the written form or as print-outs of data stored in~~ ***in the written form or in electronic form or in digital form or as print-outs of data stored in such electronic form or in digital form or in*** *a floppy, disc, tape or any other form of electro-magnetic data storage device.*

Explanatory Note:

The pre-amendment definition covered only books of account **kept in written form or as print-outs** of computerised books of account. But, after the amendment, **it also covers books or books of account or data kept in electronic form or in digital form.** Moreover, *having books of account in hard copies were necessary for an assessee.* Now, it does not matter whether print-outs of such data/books/records have been taken or not.

"PRESUMPTIVE TAXATIONS"

Section 44AE: ***Special provision for computing profits and gains of business of plying, hiring or leasing goods carriages:-*** **(Overriding effect on Section 28 To 43C)**

Applicability	**Any Person carrying on business of plying, hiring or leasing goods carriages** and not owning more than 10 goods carriages at any time during the previous year.
Minimum amount of presumptive income	➢ In case of **Heavy goods vehicle:** **₹ 1,000/- per ton of gross vehicle weight for every month or part of a month** of ownership of such heavy goods vehicle. ➢ In case of **Others:** **₹ 7,500/- per month or part of a month for a goods carriage.**
	"Heavy goods vehicle" means any goods carriage, the gross vehicle weight of which exceeds 12000 kilograms.
Allowability of deduction u/s 30 to 38	**Deemed to be allowed.**
Computation of presumptive income in case the assessee is a **firm**	**Compute presumptive income as above** - **Less: Interest and remuneration to partners** -

	[Subject to the provision of section 40(b)] **Income chargeable under the head PGBP: -**
Option for lesser amount of Income	**Books of accounts to be maintained u/s 44AA and audit u/s 44AB have to be fulfilled.**

Section 44AD: *Special Provisions For Computing Profits & Gains Of BUSINESS On Presumptive Basis:-* (Overriding effect on Section 28 To 43C)

Essential conditions for applicability of this section:

Assessee

- Must be resident:
  - ✓ **Individual**
  - ✓ **HUF**
  - ✓ **Firm**

  (Except LLP).
- **Not claimed deduction** u/s
  - 10AA,
  - 80IA - 80RRB
- Should be engaged in **ANY business Except** business covered u/s 44AE.
- **Should NOT:**
  - **Carry on Profession.**
  - **Commission Agent/Broker.**
  - **Carry on agency business.**
- **Turnover** of Eligible business **should not exceed ₹ 2 crores.**

If ALL above conditions are satisfied then presumptive income will be: **8% of total turnover / gross receipts.**

BUT

In case of Payment (Turnover)

which is received **before the due date of ROI** (+) **By Account payee cheque / draft or use of ECS through a bank account** *or through such other electronic mode as may be prescribed*

In such a case, **Deemed business profit would be computed @ 6% (instead 8%).**

The assessee can voluntarily declare a higher income in his return.

CONSEQUENCES FOR ADOPTION OF PRESUMPTIVE TAXATION

- **All deductions** (including partners Interest & remuneration) are **deemed to have been allowed.**
- **Required to pay** his his **total Advance tax on or before 15th March.**
- **No need to maintain Books** (consequently no question to get his accounts audited).

OPTION TO DECLARE LOWER INCOME AND ITS CONSEQUENCES

If assessee declares profit for any previous year as per this section **AND** **Declares profit for any of the 5 consecutive subsequent previous years not as per this section**

then

He shall not be eligible to claim the benefit of this section in the 5 years subsequent to the previous year in

which he did not declare income as per this section. **[Section 44AD(4)]**

If section 44AD(4) applies **(+)** **Total Income > Basic Exemption Limit**

then, assessee will have to……

Keep and maintain his books of accounts **and** Get them audited u/s 44AB (ir-respective of turnover).

Section 44ADA: *Special provision for presumptive income computation of profession :-*

(Overriding effect on Section 28 To 43C)

Essential conditions for applicability of this section:

Assessee

- Must be resident:
  - ✓ **Individual**
  - ✓ **Firm (Except LLP)**

(+)

- Should be **Engaged in specified profession** as referred to in section 44AA(1) [like, Medical, etc.]

(+)

- **Gross receipts ≯ 50 Lacs from profession**

then,

Presumptive income (PGBP)=50% of Gross receipts; and this income will be net of all deduction u/s 30-38.

The assessee can voluntarily declare a higher income in his return.

OPTION TO DECLARE LOWER INCOME AND ITS CONSEQUENCES:

If assessee declare lower income **(+)** **His Total Income > Basic Exemption Limit**

then, assessee will have to……

Keep and maintain his books of accounts **and** Get them audited u/s 44AB (ir-respective of turnover).

Section 44B: *Special Provision for computing profits and gains of Shipping business in case of a NR:-*

"Non Resident"

Engaged In The Business Of Operation Of Ships

- Goods, etc. Shipped At Any Port In India → **Fare / Freight received In India or outside India.**

(+)

- Goods, etc. Shipped At Any Port Outside India → **Fare / Freight received or deemed to be received in India (only).**

"Deemed Income= 7.5%"

Section 44BBA: *Special Provision for computing income of business of operation of Aircraft for NR:-*

"Non Resident"

Engaged In The Business Of Operation Of Aircrafts

Goods, etc. Loaded From Any Place In India (+) Goods, etc. Loaded From Any Place Out Side India

Fare / Freight received In India or outside India. (+) Fare/ Freight received or deemed to be received In India (only).

"Deemed Income= 5%"

Section 44BB: *Special Provisions for computing profits and gains in connection with business of exploration, etc. of Mineral Oil in case of non residents:-*

"Non Resident"

Engaged In The Business Of.....

Providing Services/ Facilities In Connection With..... OR Supplying P&M On hire To Be Used In.....

Prospecting / Extracting / Production Of Mineral Oils

Project Location:-	In India	Outside India
Considerable Receipts:-	Amount (i.e. hire charges, etc.) received in India or outside India	Amount Received or Deemed To Be Received In India
Deemed Income:-	10%	10%

Option To Claim Lower Income Is Available *But subject to*
- Requirement of keeping and maintenance of Books of account
- Requirement of Audit.
- Compulsory scrutiny assessment u/s 143(3).

Section 44BBB:- *Special provision for computing profits and gains of foreign companies engaged in the business of civil construction etc. in certain turnkey power projects:-*

"Foreign Company"

Engaged In Business Of.....

Civil Construction / Erection Or Testing & Commissioning P&M

"In connection with Turn Key Power Project (Approved By CG)"

then

Deemed Income =10% of Amount whether Is Received In India or outside India.

Option To Claim Lower Income Is Available *But subject to*
- Requirement of keeping and maintenance of Books Of Account
- Requirement of Audit.
- Compulsory scrutiny assessment u/s 143(3).

Section 44C: *Deduction of Head Office expenditure in the case of non-residents:-*

- **Deduction in respect of any head office expenditure shall be allowed as follows:**

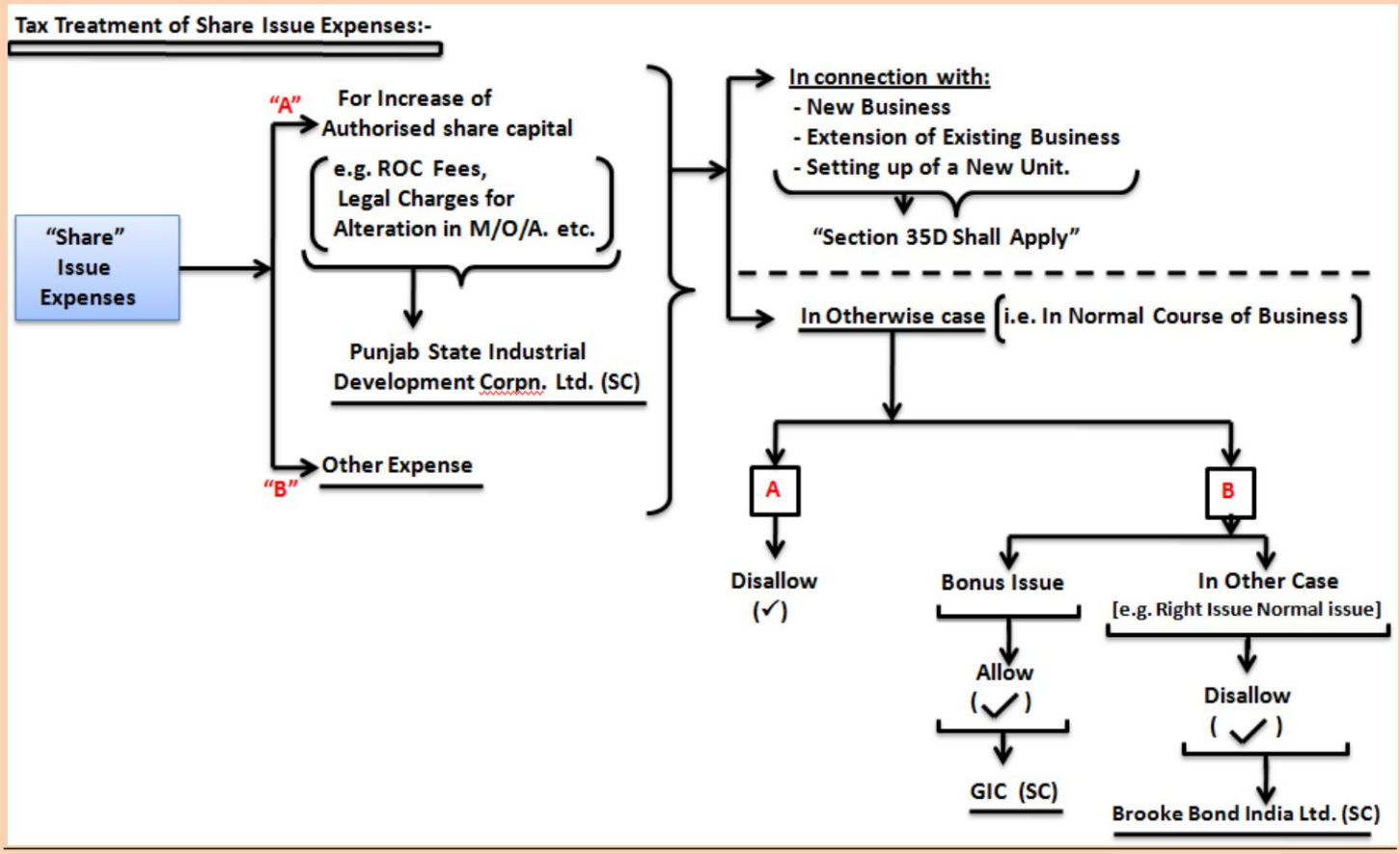
The actual amount of Head Office expenditure attributable to the business/profession in India

OR

An amount equal to 5% of the adjusted total income of the assessee for the relevant year

Whichever is lower.

- *The term **'adjusted total income'** means:* **total income** without giving effect to:
  - unabsorbed depreciation, or
  - 1/5 of capital expenditure on promoting family planning amongst employees as allowable u/s 36(1)(ix).
  - any brought forward loss, or
  - any deduction under section 80C to 80U.



Supportive amendments to Income computation and disclosure standards (ICDS)

Insertion of section 36(1)(xviii) and section 40A(13): *Allowance of marked to market loss:-*

- **Marked to market loss or other expected loss** as computed in accordance with the ICDS shall be allowed as deduction.
- **No deduction or allowance shall be allowed in respect of any marked to market loss or other expected loss, except as allowable u/s 36(1)(xviii).**

Insertion of new section 43CB: *Computation of income from construction / service contracts:*

(i) Profits and gains arising from construction contracts / service contracts **shall be determined *on the basis of percentage of completion method*** in accordance with the ICDS.

(ii) Income from service contracts with duration of not more than 90 days **shall be determined *on the basis of project completion method.***

Moreover, service contracts involving indeterminate number of acts over a specified period of time **shall be determined *on the basis of straight line method.***

(iii) For making above computations, **contract revenue shall include retention money.**

(iv) **Contract costs shall not be reduced by any incidental income in the nature of interest, dividends or capital gains.**

Substitution of section 145A: *Method of accounting in certain cases:-*

For the purpose of computing income chargeable under the head PGBP, the following valuation rules will apply:

(i)	The valuation of inventory **shall be made *at lower of actual cost or net realizable value*** *computed in the manner provided in ICDS.*
(ii)	The valuation of purchase and sale of goods or services and of inventory **shall include the tax, duty, cess or fee, by whatever name called, actually paid or incurred by the assessee for bringing such goods or services for the present location and condition,** *whether any right (like, cenvat credit) may arise as a consequence of such payment or not.*
(iii)	Inventory (being **securities not listed, or listed but not quoted** with regularity, on a recognized stock exchange) **shall be valued *at actual cost initially recognized*** *in the manner provided in ICDS.*
(iv)	Inventory (being **listed securities**) **shall be valued *at lower of actual cost or net realisable value*** *in the manner provided in ICDS* and for this purpose, the **comparison of actual cost and net realizable value shall be done category-wise.**
(v)	Inventory (being securities held by a scheduled bank or financial institution) **shall be valued *in accordance with ICDS after taking into account extant guidelines issued by the RBI.***

Insertion of section 145B: *Taxation on certain incomes:-*

(i)	Interest received by an assessee on compensation or on enhanced compensation **shall be deemed to be the income of the year in which it is received.** (Refer to chapter of Capital Gains)
(ii)	The claim for escalation of price in a contract or export incentives **shall be deemed to be the income of the previous year *in which reasonable certainty of its realisation is achieved.***
(iii)	Income referred to in section 2(24)(xviii) [i.e. subsidy, grant, etc.] **shall be deemed to be the income of the previous years in which its received,** if not charged to income tax for any earlier previous year.

"INCOME COMPUTATION AND DISCLOSURE STANDARDS"

Applicable to...

- All Assessees **Except** Individual or HUF not requiring Tax Audit.
- \+
- Mercantile system of Accounting → Follow ✓

Applicable for...

- **Computation of Income under the head PGBP or I/O/S.**
- **Not for maintenance of Books of Accounts.**

ICDS - I

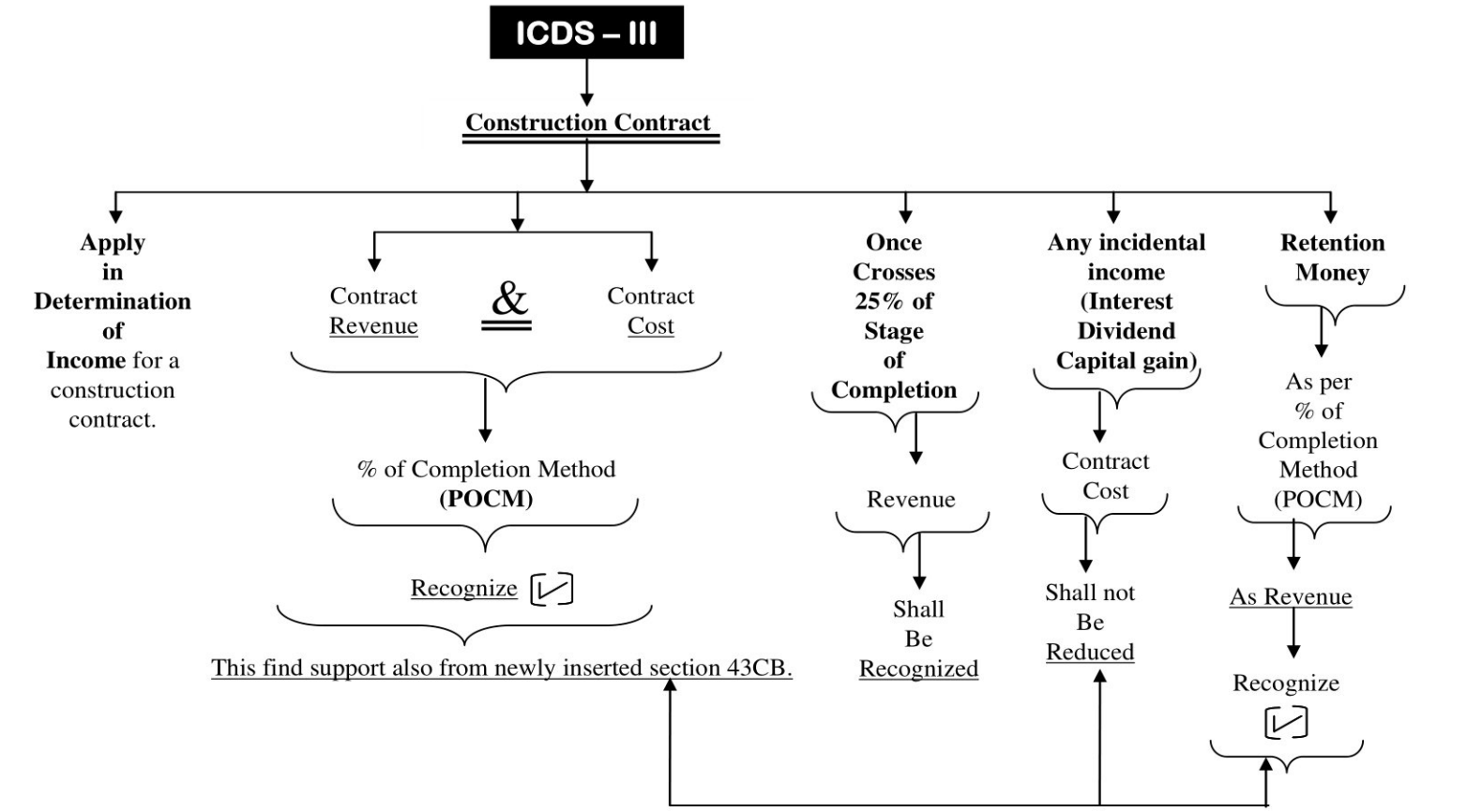
- **Deals with** → Significant Accounting Policies.
- **Recognize** → Fundamental Accounting Assumptions of → Consistency, Going Concern, Accrual
- **Does not Recognize** → Materiality, Prudence } in selection of Accounting Policy.
- **Treatment & Presentation** → **of a Transaction** → To be governed by their substance. / Not merely by the form.
- **Marked to Market Loss**, **Expected Loss** → **shall not be Recognised*** → but this is.. Subject to any Specific Provision under other ICDS.

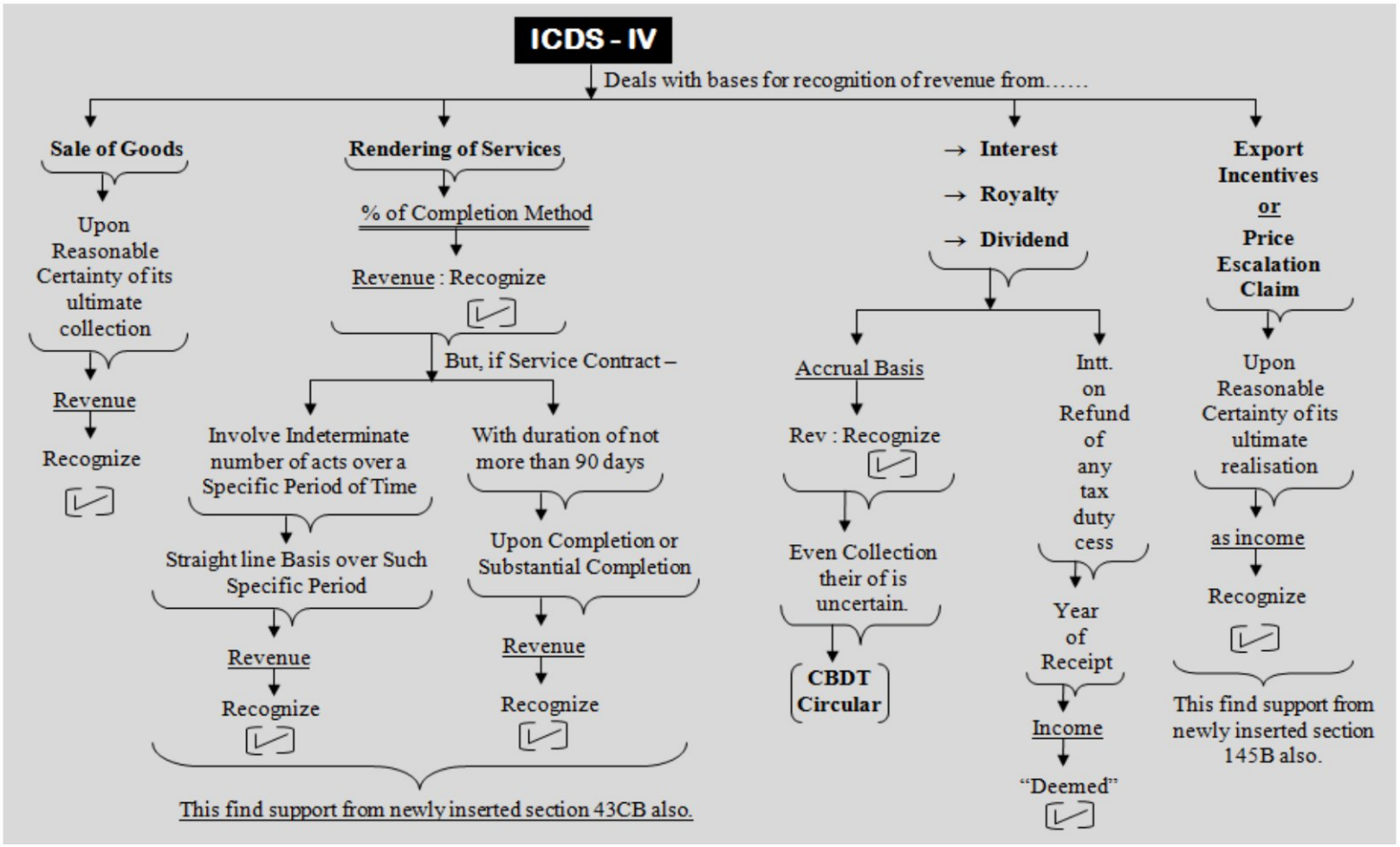
In case of marked to market gain:
*Same Theme ✓
CBDT : Clarified (✓)

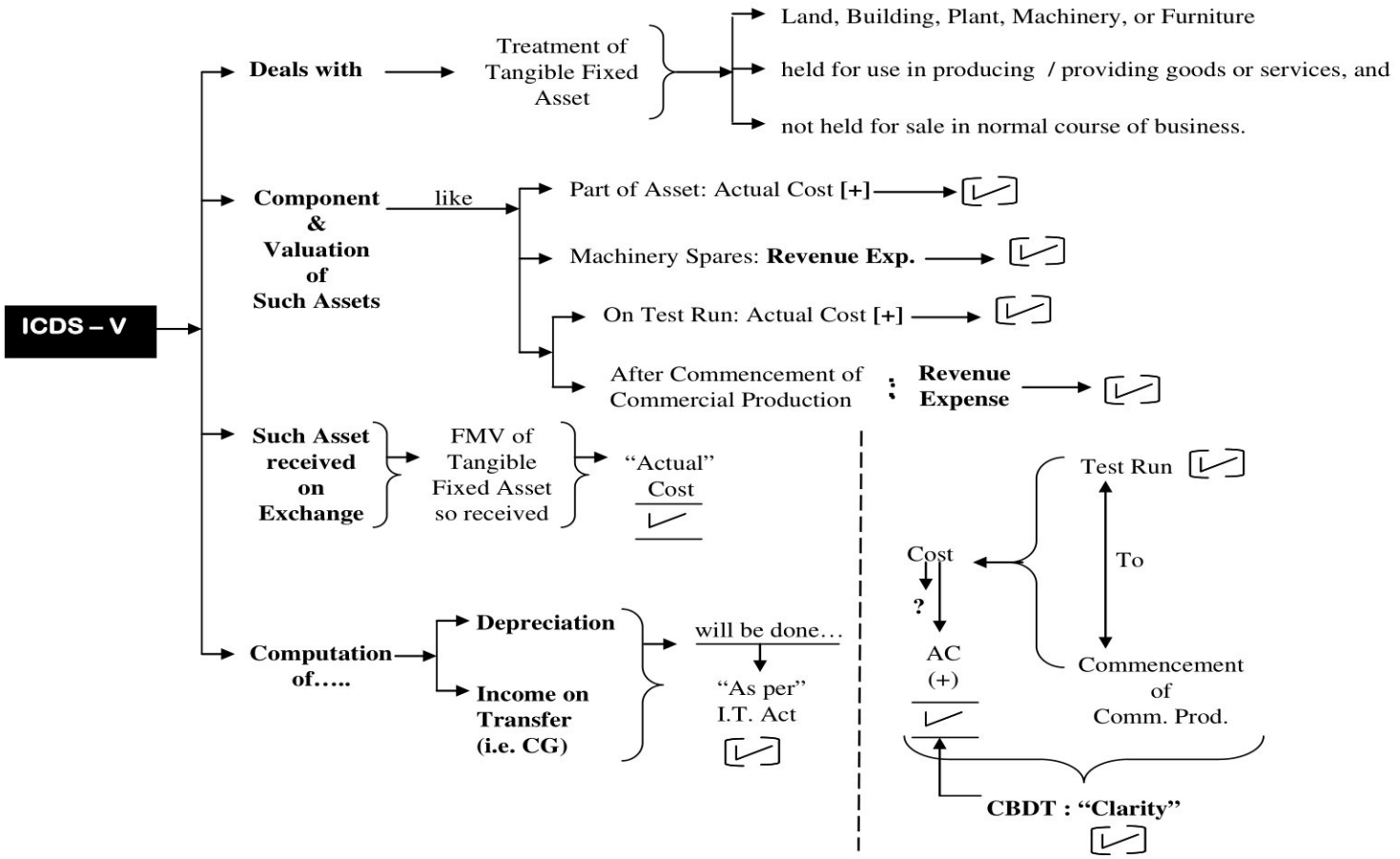
ICDS - II

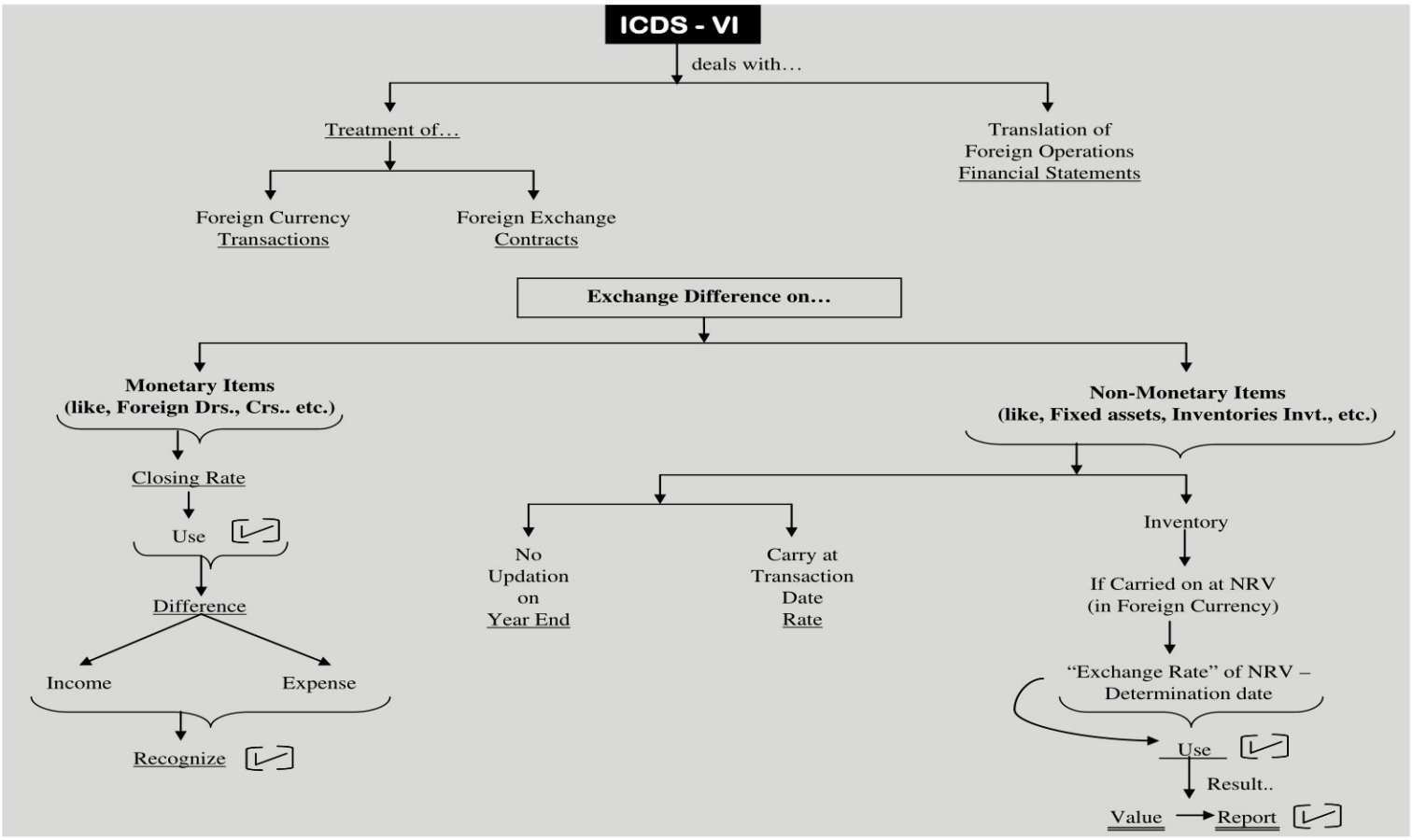
- Inventories
  - Finished Goods (i.e. items Ready for sale…)
  - WIP (i.e. in Process of Production)
  - Consumables in Production Process / Service.
  - COST* / or / NRV } Whichever is Lower.
- In case of **Dissolution** of Firm/AOP/BOI → Whether Business
  - Discontinue ✓ / Or / Discontinue (X) → Inventory will be valued at NRV

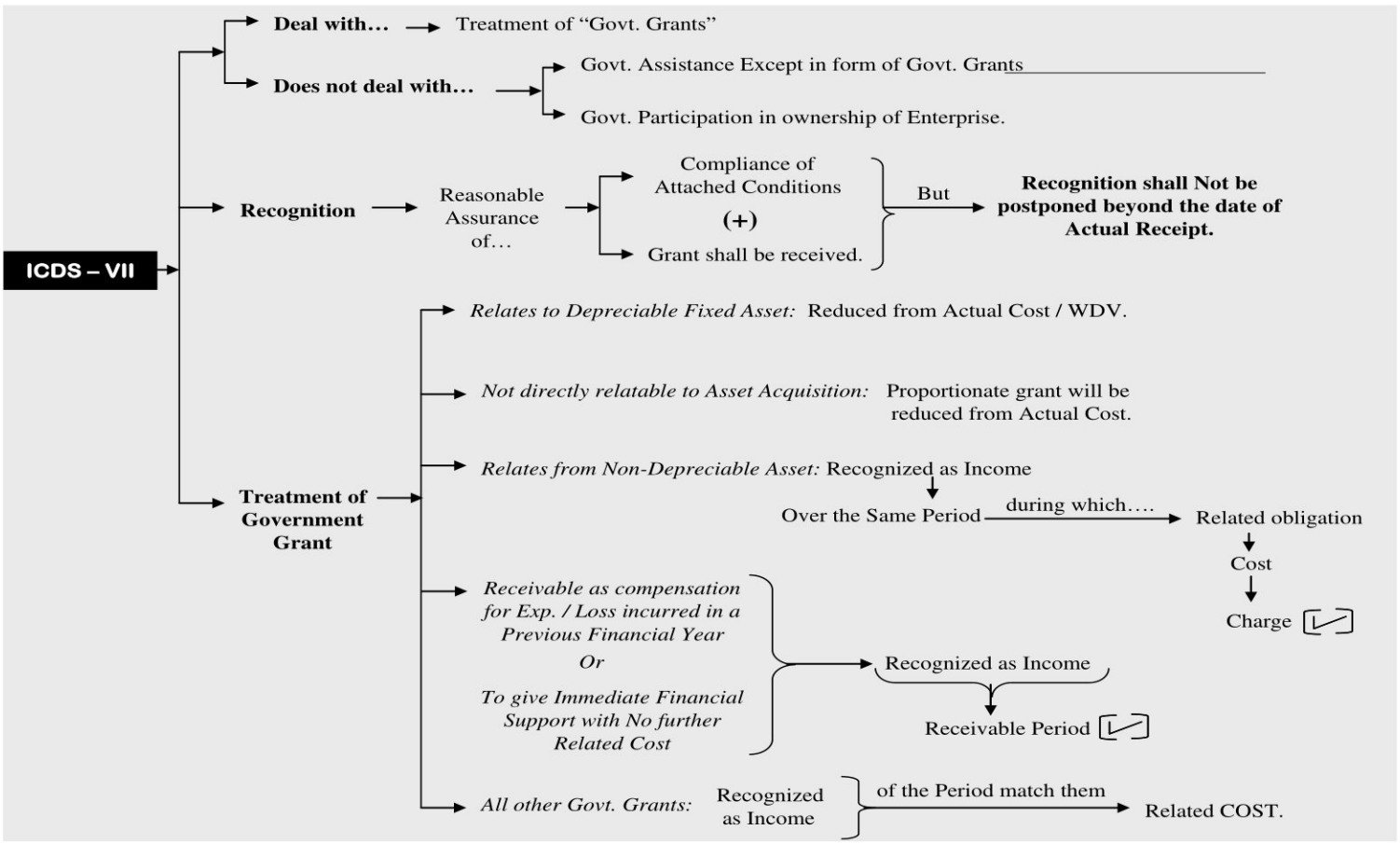
But **Supreme Court** in case of **Shakti Trading Co.**, has held that- in case of dissolution where business has not been discontinued, inventory will be valued at cost or NRV, whichever is lower, and, **this will prevail over the effect of ICDS** because ICDS can't override the Judgement, as supported by **Delhi High Court** in case of **Chamber of tax consultants v/s UOI.**

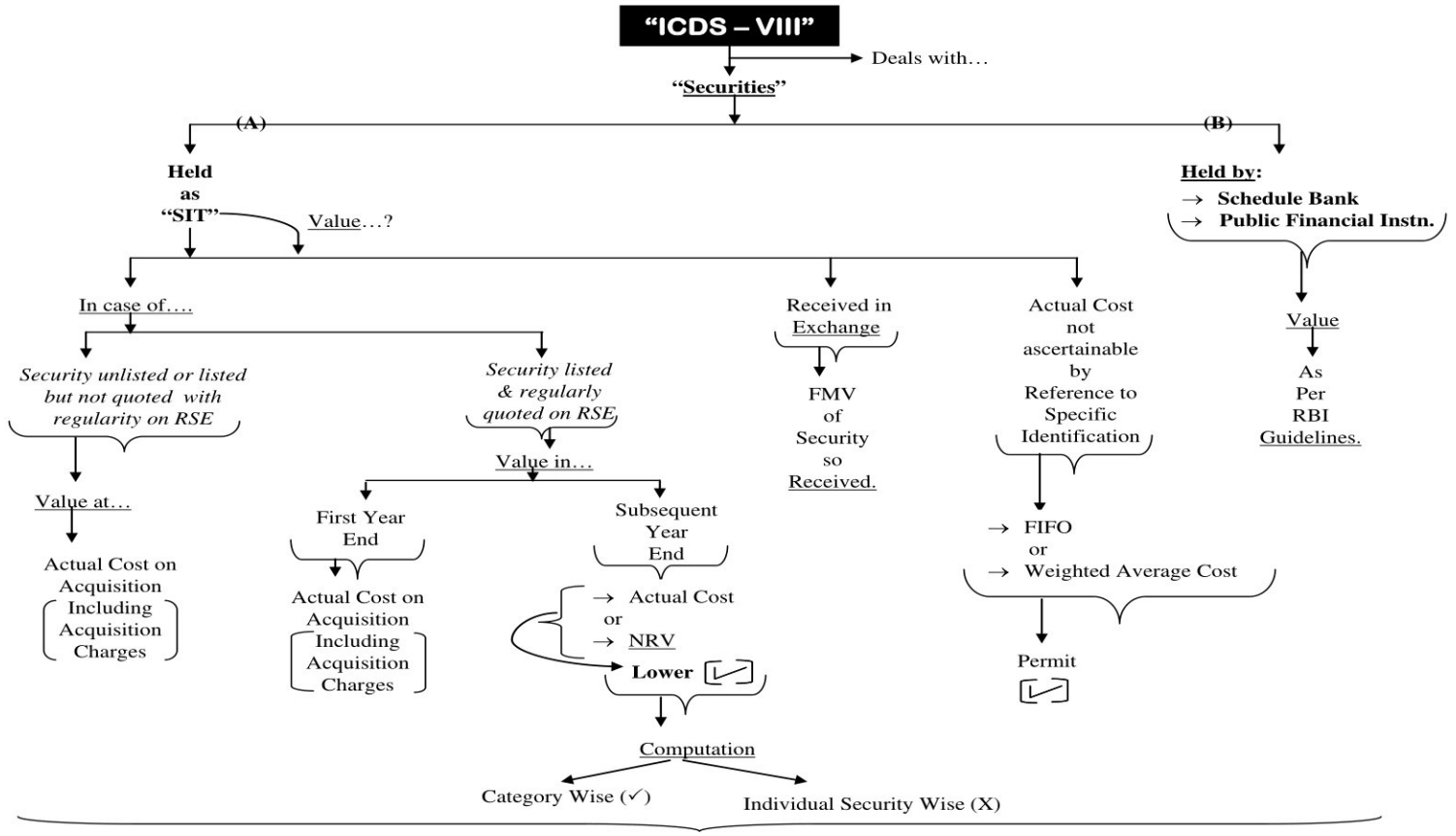

ICDS – III
Construction Contract
Apply in Determination of Income for a construction contract.
Contract Revenue
&
Contract Cost
% of Completion Method (POCM)
Recognize
This find support also from newly inserted section 43CB.
Once Crosses 25% of Stage of Completion
Revenue
Shall Be Recognized
Any incidental income (Interest Dividend Capital gain)
Contract Cost
Shall not Be Reduced
Retention Money
As per % of Completion Method (POCM)
As Revenue
Recognize


ICDS - IV
Deals with bases for recognition of revenue from……
Sale of Goods
Upon Reasonable Certainty of its ultimate collection
Revenue
Recognize
Rendering of Services
% of Completion Method
Revenue : Recognize
But, if Service Contract –
Involve Indeterminate number of acts over a Specific Period of Time
Straight line Basis over Such Specific Period
Revenue
Recognize
With duration of not more than 90 days
Upon Completion or Substantial Completion
Revenue
Recognize
This find support from newly inserted section 43CB also.
→ Interest
→ Royalty
→ Dividend
Accrual Basis
Rev : Recognize
Even Collection their of is uncertain.
CBDT Circular
Intt. on Refund of any tax duty cess
Year of Receipt
Income
"Deemed"
Export Incentives or Price Escalation Claim
Upon Reasonable Certainty of its ultimate realisation
as income
Recognize
This find support from newly inserted section 145B also.

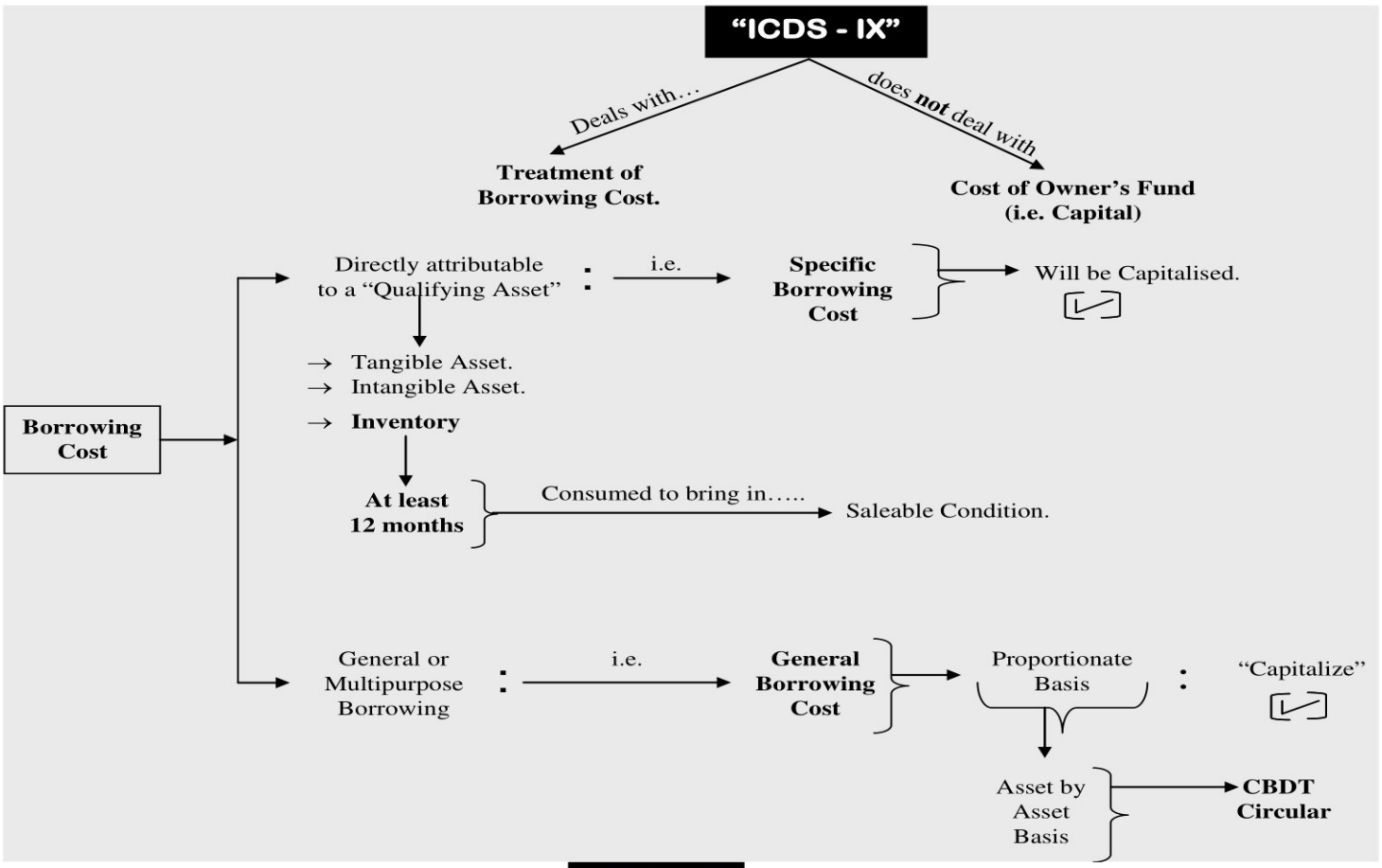

ICDS – V
Deals with
Treatment of Tangible Fixed Asset
Land, Building, Plant, Machinery, or Furniture
held for use in producing / providing goods or services, and
not held for sale in normal course of business.
Component & Valuation of Such Assets
like
Part of Asset: Actual Cost [+]
Machinery Spares: Revenue Exp.
On Test Run: Actual Cost [+]
After Commencement of Commercial Production : Revenue Expense
Such Asset received on Exchange
FMV of Tangible Fixed Asset so received
"Actual" Cost
Computation of…..
Depreciation
Income on Transfer (i.e. CG)
will be done…
"As per" I.T. Act
Test Run
To
Cost
?
AC (+)
Commencement of Comm. Prod.
CBDT : "Clarity"

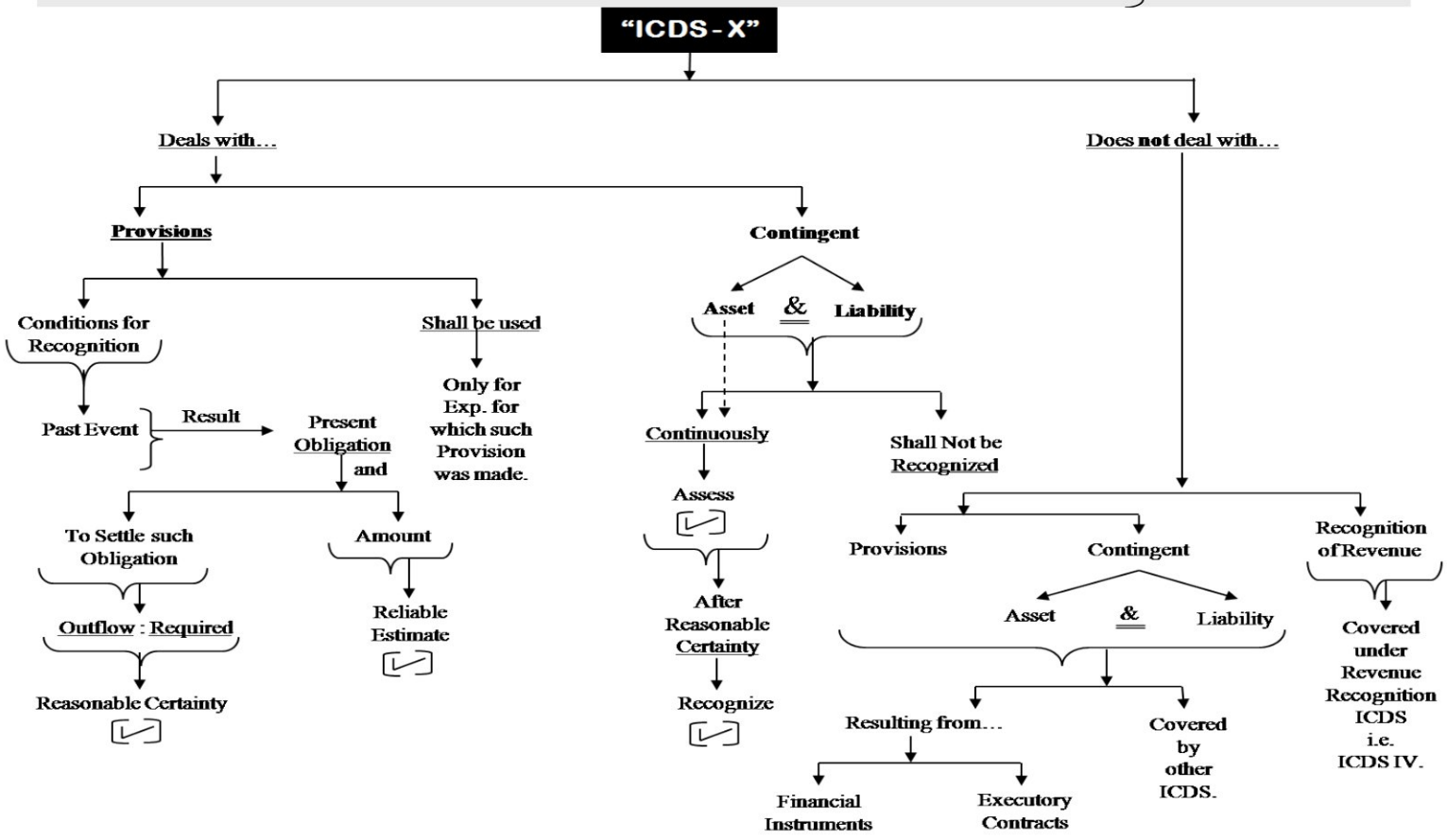

ICDS - VI
deals with…
Treatment of…
Translation of Foreign Operations Financial Statements
Foreign Currency Transactions
Foreign Exchange Contracts
Exchange Difference on…
Monetary Items (like, Foreign Drs., Crs.. etc.)
Non-Monetary Items (like, Fixed assets, Inventories Invt., etc.)
Closing Rate
Use
Difference
Income
Expense
Recognize
No Updation on Year End
Carry at Transaction Date Rate
Inventory
If Carried on at NRV (in Foreign Currency)
"Exchange Rate" of NRV – Determination date
Use
Result..
Value
Report

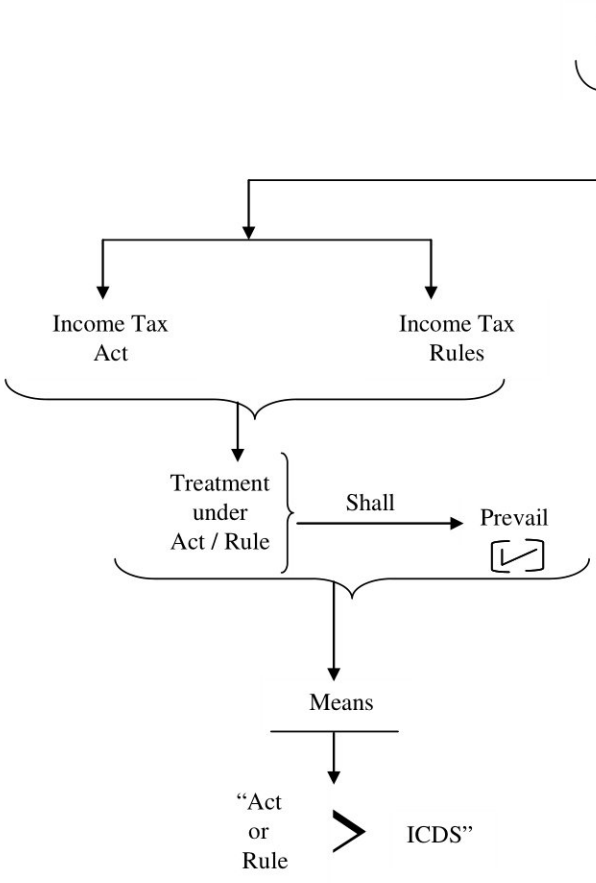


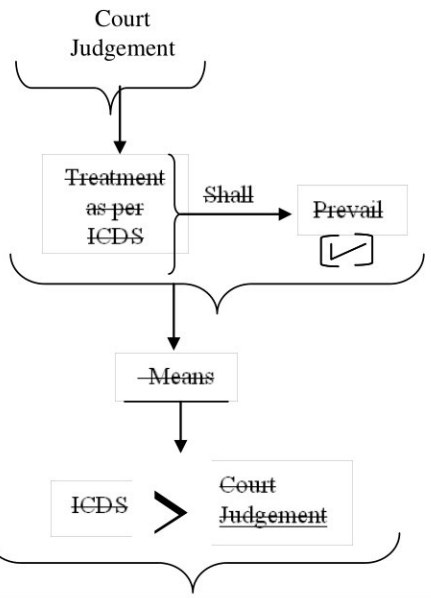


This find support also from newly substituted section 145A.


"ICDS - IX"
Deals with…
does not deal with
Treatment of Borrowing Cost.
Cost of Owner's Fund (i.e. Capital)
Borrowing Cost
Directly attributable to a "Qualifying Asset"
i.e.
Specific Borrowing Cost
Will be Capitalised.
→ Tangible Asset.
→ Intangible Asset.
→ Inventory
At least 12 months
Consumed to bring in…..
Saleable Condition.
General or Multipurpose Borrowing
i.e.
General Borrowing Cost
Proportionate Basis
"Capitalize"
Asset by Asset Basis
CBDT Circular


"ICDS - X"
Deals with…
Does not deal with…
Provisions
Contingent
Conditions for Recognition
Past Event
Result
Present Obligation and
To Settle such Obligation
Outflow : Required
Reasonable Certainty
Amount
Reliable Estimate
Shall be used
Only for Exp. for which such Provision was made.
Asset & Liability
Continuously
Assess
After Reasonable Certainty
Recognize
Shall Not be Recognized
Provisions
Contingent
Asset & Liability
Resulting from…
Financial Instruments
Executory Contracts
Covered by other ICDS.
Recognition of Revenue
Covered under Revenue Recognition ICDS i.e. ICDS IV.





As per Delhi High Court in the case of Chamber of tax consultants v/s UOI, Central Govt. can not override the **judicial precedents applicable thereto as they stand.**

In case of conflict, judicial precedents shall prevail.

"CAPITAL GAINS"

Section 45 (1): *Chargeability:-*

➢ ***To tax income under the head capital gains following four conditions must be satisfied-***

There should be a **capital asset.** + Such capital asset should have been **transferred.** + Any **profits or gains** (i.e. known as capital gains) **should arise on such transfer**. + Such capital gains **should not exempt** u/s 54 to 54GB.

If all the aforesaid conditions are satisfied then such gain shall be chargeable to tax **for previous year in which such transfer took place.**

SEC. 47	TRANSACTIONS NOT REGARDED AS TRANSFER FOR THE PURPOSE OF CG
(1)	Distribution of capital asset on total or partial **partition of Hindu undivided family.** **[Clause (i)]**
(2)	Transfer of capital asset under a **gift or will or an irrevocable trust.** **[Clause (iii)]**
(3)	Transfer of a capital asset **by a holding company to its subsidiary company or vice-versa** provided that the following conditions are satisfied: **[Clause (iv) & (v)]** (a) the holding company hold the **entire share capital** of the subsidiary company and (b) the transferee company is an Indian company. ➢ This exemption shall **not** be available ***if the capital asset is transferred as stock in trade.***
	Section 47A: *Withdrawl of exemption:-* - If capital gain has been claimed as exempted u/s 47 and **within 8 years** from the date of transfer: (i) Holding company **ceases to hold the whole of the share capital** of the subsidiary company; or (ii) Transferee company **converts the capital asset into stock in trade,** - the capital gains so exempted would be taxable in the year in which the transfer took place.
	In case of applicability of aforesaid section 47A: **(1) The assessment of the transferor company shall be rectified u/s 154 with in 4 years from the end of the previous year in which the capital asset was converted into stock in trade or in which the holding company ceased to hold the whole of the share capital of subsidiary company.** **Section 155** **(2) The cost to the transferee company shall be the actual cost incurred by that company to acquire the asset from Transferor Company.** **Section 49(3)**
(4)	Transfer of capital assets by amalgamating company to the amalgamated company (i.e. Indian company) **in the scheme of amalgamation.** **[Clause (vi)]**
	Section 43C: If, **in case of section 47(i), 47(iii), and 47(vi),** capital asset is transferred as stock in trade, then

	cost on its acquisition, improvement and expense on transfer, **as incurred by transferor,** *will be treated as cost (of such stock in trade) for transferee.*
(5)	Transfer of **shares in an Indian company held by a foreign company to another foreign company under a scheme of amalgamation** of the two foreign companies, Provided that: ➢ At least 25% of the shareholders of the amalgamating foreign company continue to remain shareholders of the amalgamated foreign company, and ➢ No capital gain tax attract on such transfer in the country of incorporation of amalgamating company. **[Clause (via)]**
(6)	Transfer of shares held in an Indian company **by a demerged foreign company to the resulting foreign company** Provided that: ➢ Shareholders having at least 75% of the share capital of the demerged foreign company continue to remain shareholders of the resulting foreign company, and ➢ No capital gain tax attract on such transfer in the country of incorporation of demerged company. **[Clause (vic)]**
(7)	Transfer of capital assets in a scheme of **amalgamation of a banking company with a banking institution,** as sanctioned and brought into force by the Central Government. **[Clause (viaa)]**

Other Corresponding Sections for ALL the aforesaid cases i.e. for Section 47(i) to 47(viaa) :-

Section 49(1):

The cost of acquisition of the capital asset in the hands of transferee shall be the cost to the previous owner.

Section 2 (42A):

In case of subsequent transfer of such asset, period of holding of previous owner **shall also be included.**

Section	Transaction not regarded as Transfer	Cost in the hands of transferee…..	In case of subsequent transfer of such asset, whether prior period of holding shall be included ?
47(vii)	Any transfer **by a shareholder,** in a scheme of amalgamation, of shares held by him in the amalgamating company, ***provided that,*** (i) in consideration, shares in the amalgamated company are allotted **except where the shareholder itself is the amalgamated company,** and (ii) The amalgamated company is an Indian company.	Cost of shares in the amalgamating company	Yes

47(vib)	Transfer in a **demerger** of a capital asset by the demerged company to resulting company if the resulting company is an Indian company.	Cost to the previous owner (Demerged co.)	Yes
47(vid)	Transfer or **issue of shares by the resulting company, in a scheme of demerger to the shareholders of the demerged company**	See column below	Yes

Section 49(2C): ***Cost of acquisition of the shares in the resulting company shall be:***

Cost of original shares held by the assessee in the demerged co. **X** $\frac{\text{Net book value of assets transferred in demerger}}{\text{Net worth of the demerged company immediately before such demerger.}}$

For this purpose, ***Net worth means****- Aggregate of Paid up share capital & General reserve.*

Section 49(2D): ***Cost of acquisition of shares in the demerged company shall be:***

Cost of acquisition of original shares in the demerged company	***
Less: ***Cost of acquisition of shares in the resulting company as calculated in section 49(2C)***	***
	***

Section	Transaction not regarded as Transfer	Cost for transferee ?	Prior period of holding ?
47(vica) As amended by Finance Act, 2021	Any transfer in business reorganization of a co-operative bank (i.e. Amalgamation / Demerger of a Co-operative Bank **or conversion of a primary co-operative bank),** of a capital asset *by the predecessor co-operative bank to the successor co-operative bank* ***or to the converted banking company.***	Cost to the previous owner (Predecessor co-operative bank)	Yes
47(vicb) as amended by F.A. 2021	**Allotment of shares in** successor co-operative bank **or converted banking company** *in lieu of shares held in predecessor cooperative bank*	As per section 49(2),(2C) &(2D) as given above	Yes
47(x)	Transfer by way of **conversion of bonds / debentures/debenture stock/deposit certificate into shares or debenture of that company**	Cost of converted Bonds or Debenture	**Yes** ↑ **[As per Rule 8AA]**
47(xb)	Transfer by way of **conversion of preference shares into equity shares of that company**	Cost of converted preference shares	**Yes**
47(xa)	Transfer by way of **conversion of bonds i.e. FCEB** [referred to in section 115AC(1)(a)] into shares or debentures of any company	Cost of converted Original bonds i.e. FCEB	**No** **[Because neither section 2(42A) nor Rule 8AA provides for inclusion of prior period of holding in this case]**

Section	Transaction not regarded as Transfer	Cost for transferee ?	Prior period of holding ?
47(viia)	- Transfer *made outside India* of - **Bonds / GDR's** *referred to in section 115AC,* - by a non-resident to another non-resident	**Actual cost incurred**	**No**
47(viiaa)	- Transfer *made outside India* of - **rupee denominated bond** of an Indian company issued outside India, - by a non-resident to another non-resident	**Actual cost incurred**	**No**
47(viiab)	- Transfer of ➢ **Bonds or Global Depository Receipts** referred to in section 115AC; or ➢ **rupee denominated bond** of an Indian company; or ➢ **derivative**; or ➢ ***such other security as may be notified* by the Central Government,*** - made by a non-resident - **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.*	**Actual cost incurred**	**No**
Section	**Transaction not regarded as Transfer**	**Cost for transferee ?**	**Prior period of holding ?**
47(viiac) Insertion made by F.A. 2021	– Any transfer, – **in relocation,** – of a capital asset **by the original fund** – ***to the resultant fund***	Cost to the previous owner (Original fund)	Yes
47(viiad) Insertion made by F.A. 2021	– *The allotment of shares, units or interest of the resultant fund* – **to the shareholders, unit holders or interest holder of the original fund** – ***as a result of this relocation***	Cost of shares, units or interest in the Original fund	Yes

For this purpose, the terms **'original funds', 'relocation'** and **'resultant fund'** have been defined as follows:

(a) **"original fund" means** a fund *established or incorporated or registered outside India,* which collects funds from its members for investing it for their benefit and **fulfils the following conditions,** namely:

	(i) the fund is **not a person resident in India**; (ii) the fund **is a resident of a country or a specified territory with which an agreement** referred to in section 90/ 90A has been entered into; or **is established or incorporated or registered in a country or a specified territory as may be notified by the Central Government in this behalf;** (iii) the **fund and its activities are subject to applicable investor protection regulations** in the country or specified territory *where it is established/incorporated or is a resident;* and (iv) fulfils such other conditions as may be prescribed.
(b)	**"relocation" means** – **transfer of assets of the original fund,** or of its wholly owned special purpose vehicle, – **to a resultant fund** on or before the 31st day of March, 2023, – **where consideration for such transfer is discharged in the form of share or unit or interest in the resulting fund** to,- (i) shareholder or unit holder or interest holder of the original fund, in the same proportion in which the share or unit or interest was held by such shareholder or unit holder or interest holder in such original fund, *in lieu of their shares/units/interests in the original fund;* or (ii) the original fund, in the same proportion as referred to in sub-clause (i), **in respect of which the share/unit/interest is not issued by resultant fund to its shareholder/unit holder/interest holder;'.**
(c)	**"resultant fund" means** a fund established or incorporated in India in the form of a trust or a company or a limited liability partnership, which— (i) **has been granted a certificate of registration as a Category I or Category II or Category III Alternative Investment Fund,** and is regulated under the SEBI (Alternative Investment Fund) Regulations, 2012 or International Financial Services Centres Authority Act, 2019; and (ii) **is located in any IFSC** as referred to in section 80LA'.

Section	Transaction not regarded as Transfer	Cost for transferee ?	Prior period of holding ?
47(viiae) Insertion made by F.A. 2021	– any transfer of capital asset – **by India Infrastructure Finance Company Limited** – ***to an institution established for financing the infrastructure and development,*** – set up under an Act of Parliament and notified by the Central Government for the purposes of this clause.	Cost to the previous owner (India Infrastructure Finance Company Limited)	Yes
47(viiaf) Insertion made by F.A. 2021	– any transfer of capital asset, – *under a plan approved by the Central Government,* – ***by a public sector company***	Cost to the previous owner (Public sector co.)	Yes

	– **to another public sector company notified** by the Central Government for the purpose of this clause or – **to the Central Govt. or to a State Govt.**		
47(viib)	- Transfer of **Government security carrying periodic payment of interest** - **made outside India** - through an intermediary dealing in settlement of securities - by a non-resident to another non-resident	**Actual cost incurred**	**No**
47(viic)	**Redemption** of **Sovereign Gold Bond** issued by RBI under the Sovereign Gold Bond scheme, 2015, by an **individual**		
SECTION	**TRANSACTIONS NOT REGARDED AS TRANSFER**		
47(xiii)	(i) Transfer of a capital asset **by a Firm to a company** under succession of business of the firm by the company, **Provided that -** (a) All assets and liabilities of the firm **become assets and liabilities of the company**. (b) **All partners of the firm** immediately before the succession **become share holder of the company in their capital account ratio** as stood in books of firm on the date of succession. (c) Partners should receive consideration **only by way of allotment of shares** in the company. (d) **Aggregate voting power of the partners of firm in the company shall not be less than 50% at any time during the period of 5 years from the date of succession.**		
	(ii) - Transfer of capital asset **by an AOP/BOI (RSE) to a company** - under corporatisation or demutualisation of recognized stock exchange (as approved by SEBI), - provided all assets and liabilities of such AOP/BOI become assets and liabilities of successor company.		
47(xiv)	Transfer of capital asset **by a sole proprietary concern to a company** under succession of business of sole proprietary concern by company, **Provided that -** (a) All assets and liabilities of such concern **become assets and liabilities of the company**. (b) Sole proprietor should receive consideration **only by way of allotment of shares** in the company. (c) **The shareholding of the sole proprietor in the company shall not be less than 50% at any time during the period of 5 years from the date of succession.**		
47(xiiib)	- Transfer of a capital asset by a **private company / unlisted public company to a limited liability partnership**, or - any transfer of a **share or shares held in the company by a shareholder**,		

- as a result of conversion of the company into a limited liability partnership
- **in accordance with the provisions of the Limited Liability Partnership Act, 2008,**

Provided that -

(a) All the assets and liabilities of the company become the assets and liabilities of the LLP.

(b) All the shareholders of the company 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 should receive any consideration only 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 50% at any time during the period of five years from the date of conversion.

(e) The total turnover in business of the company in any of the 3 previous years preceding the year of conversion should not exceed ₹ 60Lacs.

(ea) the total value of the assets *as appearing in the books of account* of the company in any of the 3 previous years preceding the year of conversion should not exceed ₹ 5 Crores.

(f) 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 three years from the date of conversion.

Other Corresponding Sections for section 47(xiii), 47(xiv), and 47(xiiib) :-

Section 49(1): *Deemed Cost of acquisition:-*

The cost of acquisition of the assets in the hands of transferee shall be the cost to the previous owner.

Section 2 (42A) : *Period of holding:-*

In case of subsequent transfer of such asset, period of holding of previous owner **shall be included.**

Section 47A: *Withdrawl of exemption:-*

- **If the conditions stipulated regarding the succession of a proprietary concern or a firm by a company, or conversion of the company into LLP, are not complied with,**
- the benefits availed by the sole proprietor or the firm or predecessor company or shareholders of predecessor company, as the case may be, shall be deemed to be profits and gains of the successor company or LLP or shareholders of predecessor company
- **chargeable to tax in the year in which infringement (i.e. violation) takes place.**

Section	Transaction not regarded as Transfer	Cost for transferee ?	Prior period of holding ?
47(xiiia) and Section 55*	Transfer of a capital asset, being a **membership right held by a member of a recognized stock exchange (AOP)** in India in consideration of **allotment to him of shares and trading / clearing right in successor company**	*Cost of allotted shares would be cost of original membership, and *Cost of trading /	In both cases (i.e. shares and trading / clearing rights), the period for which the person was a member of RSE (AOP) will also be

	***Option of FMV of 1/4/2001 is not available**	clearing rights would be **Nil.**	considered.
47(xvi)	Transfer of a capital asset in a transaction of **Reverse Mortgage** made under a scheme notified by the Central Government		
	Section 10(43) provides that **loan amounts received, whether in lump sum or in installment, under reverse mortgage shall not be included in total income.**		
47(xviii)	Any transfer by a **unit holder of units, held by him *in the consolidating scheme of a mutual fund*,** made in consideration of the allotment to him of **units, in the consolidated scheme of the mutual fund** (Provided that such consolidation is of two or more schemes of equity oriented fund or of two or more schemes of debt oriented fund).	Cost of acquisition of units in the consolidating scheme of mutual fund	Prior period of holding i.e. Period of holding of units in the consolidating scheme of mutual fund will also be considered.
47(xix)	Any transfer by a **unit holder of units, held by him *in the consolidating plan of a mutual fund scheme*,** made in consideration of the allotment to him of **unit or units, in the consolidated plan** of that scheme of the mutual fund	Cost of acquisition of units in the consolidating plan	Prior period of holding i.e. Period of holding of units in the consolidating plan of that mutual fund scheme will also be considered.
47(xii)	Transfer of **land by a sick industrial company** which is managed by its worker's Co-operative	**Actual cost**	**No**
47(ix)	Transfer of a capital asset (being **work of art, painting, etc.) to National Museum, etc.**	**Actual cost**	**No**

Section 48: *Method of computation of capital gain:-*

Calculation of long term capital gain **(i.e. IInd Proviso to section 48):-**

	Full value of consideration	**
Less:	Indexed cost of acquisition	-
Less:	Indexed cost of improvement	-
Less:	Expenses of transfer	-
	LTCG	**

Here,

(I) INDEXED COST OF ACQUISITION:

$$\text{Indexed cost of acquisition} = \text{Cost of acquisition} \times \frac{\text{Cost Inflation Index for the year in which asset is transferred}}{\text{Cost Inflation Index for the first year in which asset was held by the Assessee** or for the year 2001-02 (whichever is latest)}}$$

**** IMPORTANT RULING: CIT v/s Manjula J. Shah (BOM.-HC):-**

The expression "held by the assessee" used in section 48 has to be understood in the context and harmoniously with other Sections [like, section 49, 2(42A)] and where cost is required to be adopted the cost for which the previous owner had acquired the property, then indexation of cost of acquisition shall be allowed from the date the previous owner acquired that asset.

(II) INDEXED COST OF IMPROVEMENT:

$$= \text{Cost of improvement} \times \frac{\text{CII for the year in which the asset is transferred}}{\text{CII for the year in which the improvement to the asset took place}}$$

However **as per 4th proviso to section 48**- benefit of Indexation shall not be allowed in the computation of long term capital gain arising from the transfer of **bonds and debentures** other than-

(a) Capital indexed bonds issued by the Government; or

(b) **Sovereign Gold Bond issued by the RBI under the Sovereign Gold Bond Scheme, 2015.**

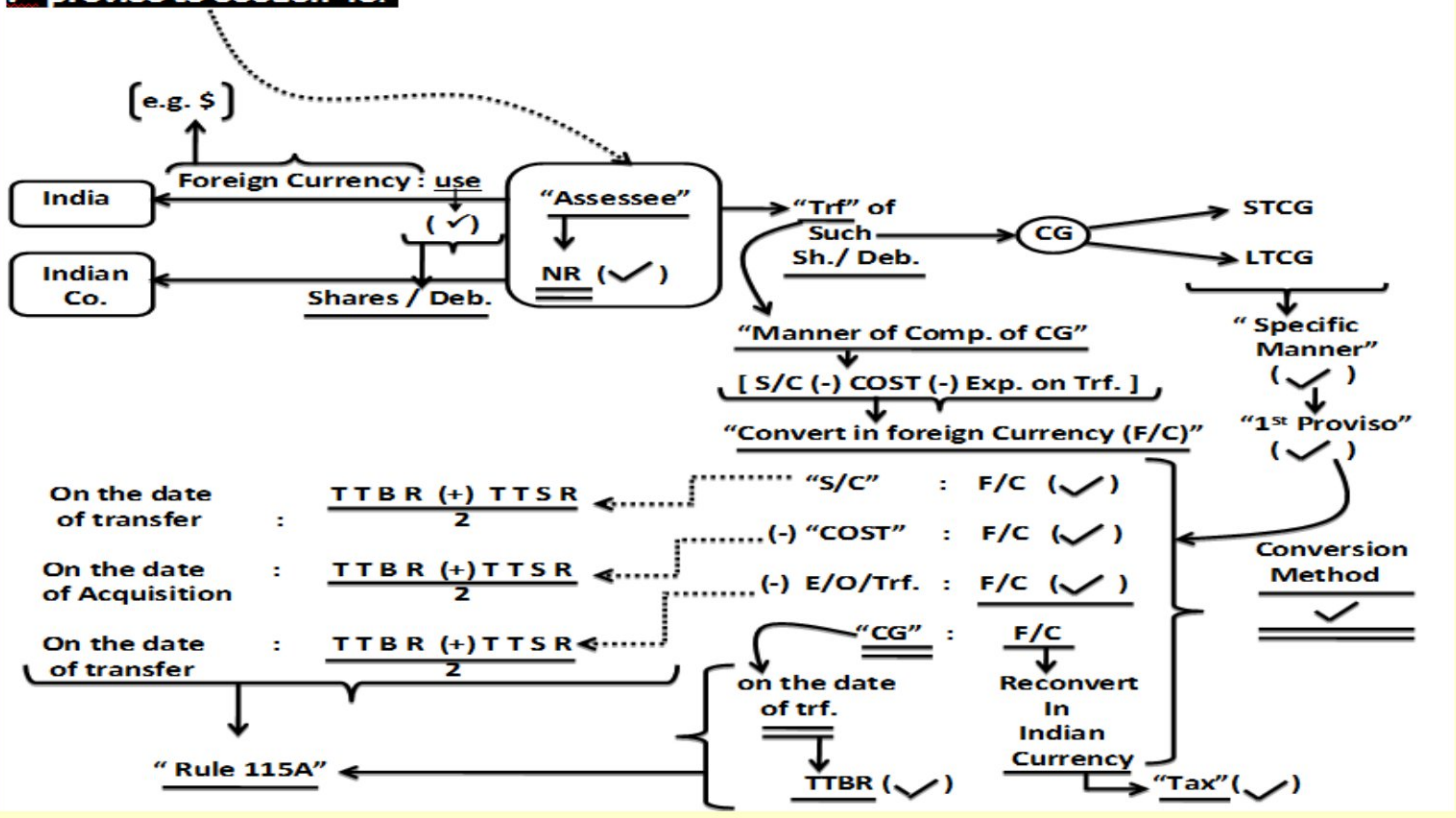
EXPLANATORY REMARK:-

(1) **In addition to above, benefit of Indexation shall not be given where case is covered under the Following sections:-** "Refer to Foreign Taxation"

"Section 48 (1st Proviso), 50B (Slump Sale), 112A, 115AB, 115AC, 115AD, 115D".

(2) **In computing the CG, STT SHALL NOT BE DEDUCTED.** **[7th Proviso to section 48]**

1st proviso to section 48:-



5h proviso to section 48:-

Non-resident (+) Held **Rupee denominated bond** of an Indian Company (+) **Redemption** of such RDB (+) **Appreciation of rupee** against foreign currency

→ **Gain due to such Appreciation** → **Shall not be included in sales consideration.**

→ **Means, that shall be Exempt (✓).**

Section 55 : *Cost of Acquisition :-*

(1) If asset is acquired on or before 1/4/2001 : **FMV as on 1/4/2001** may be adopted as cost of acquisition. (whether by assessee or previous owner)

But, in case of capital asset (being land or building or both), the fair market value of such asset on 1st April, 2001 **shall not exceed** the stamp duty value of such asset as on 1st April, 2001, if available

(2) In relation to a capital asset being:

- ***goodwill of a business or profession, or trade mark or brand name associated with a business, or***
- ***tenancy right, or stage carrige permits (i.e.Route Permit) or loom hours (i.e. Loom license), or***
- ***a right to manufacture, produce or process any article or thing (i.e. Patent),***
- ***Right to carry on any Business or PROFESSION,***

Cost of acquisition means-

(i)	in case such asset is purchased by the assessee	**Amount of purchase price**
(ii)	in case such asset is acquired by any mode as specified u/s 49(1)	**Cost to the previous owner**
(iii)	in any other case	**Nil**

It must be carefully noted that in this case **option to take COA as FMV as on 1/4/2001** ***is not available.***

Insertion made by the Finance Act, 2021 (Applicable from A.Y. 2021-22)**:**

- **In case of** a capital asset, being **goodwill of a business or profession,**
- *in respect of which depreciation has been obtained in any previous year upto previous year 2019-20,*
- Cost of acquisition shall be the amount of **purchase price** ***as reduced by*** **the total amount of depreciation obtained upto previous year 2019-20.**

(3) **COST OF IMPROVEMENT**

In relation to-
- **Goodwill of the business, or**
- **Right to manufacture, produce or Process any article or thing, or**
- **Right to carry on any Business or PROFESSION**

→ **"shall be taken to be nil"**

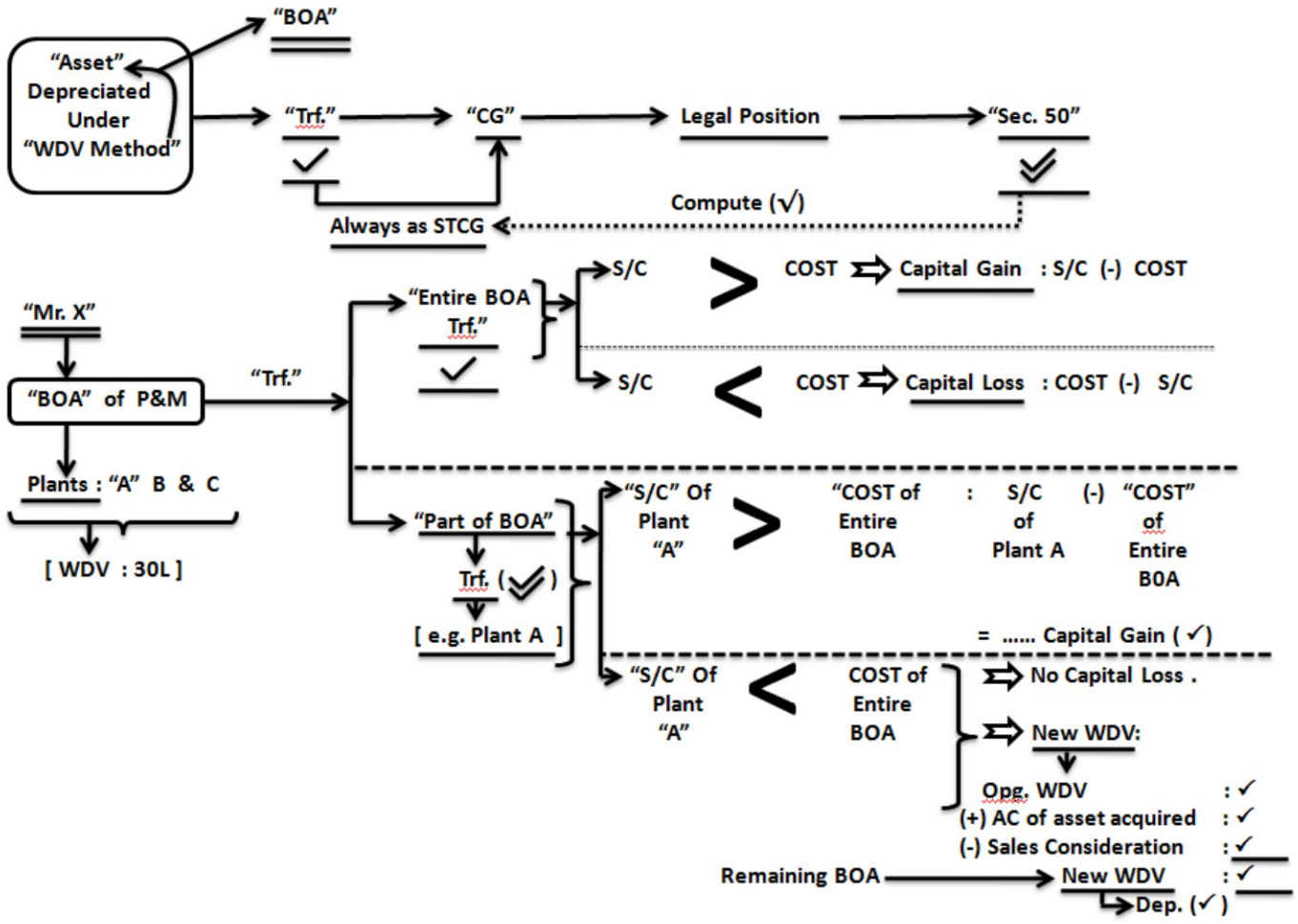
In relation to any other asset

Incurred before 1/4/2001 → **"shall be ignored"**

Incurred on or after 1/4/2001 → **"shall be considered"**

Section 50: *Computation of capital gain on transfer of depreciable assets on which*

depreciation is allowed on WDV basis:-



** ***CG/Capital loss shall be computed as short-term,*** *meaning there by, ir-respective of period of holding, indexation effect will not be given.*

Insertion made by the Finance Act, 2021 (Applicable from A.Y. 2021-22)**:**

- **Goodwill forming part of a block of asset** for the assessment year beginning on April 1, 2020
- *in respect of which depreciation is obtained under the Act,*
- the **written down value** of that block of asset and **short-term capital gain,** if any, **shall be determined in the prescribed manner (Rule 8AC).**

Rule 8AC: ***Computation of short term capital gains and written down value u/s 50 where depreciation on goodwill has been obtained:***

- *Where the written down value of block of asset "intangible" as on 1st April, 2020* ***includes goodwill of the business or profession for which depreciation was obtained in the previous year 2019-20,***
- ***written down value*** *of this block of asset "intangible"* ***eligible for depreciation for the previous year 2020-21*** *shall be determined by reducing the written down value of such goodwill which will be computed* ***as if such goodwill was the only asset in that block.***

Where the amount which is to be reduced for goodwill (i.e. Notional WDV of goodwill) **for the previous year 2020-21**	>	**WDV of the block of asset "intangible" as on 1st April, 2020** (without giving effect to reduction of notional WDV of goodwill) **(+)** **Actual cost of any asset** falling within the block of assets "intangible", other than goodwill, **acquired during the previous year 2020-21,**

Such excess shall be deemed to be the amount of SHORT-TERM CAPITAL GAIN.

- Where the **goodwill of the business or profession was the only asset in the block** of asset "intangible"(for which depreciation was obtained in the previous year 2019-20), and
- the **block of asset ceases to exist** on account of there being **no further asset acquired during the previous year 2020-21 in that block,**
- **there will not be any capital gains or loss on account of the block of asset having ceased to exist.**

OBSERVATION AND CORRESPONDING AMENDMENT MADE BY FINANCE ACT, 2022::

- *The **Finance Act, 2021** has enacted that **goodwill of a business/profession is not considered as a depreciable asset.** Consequently, depreciation will not be allowed on goodwill of a business/profession in any situation.*
- *In case where goodwill is purchased by an assessee, the purchase price of the goodwill continue to be considered as "cost of acquisition" for the purpose of computation of capital gain **subject to the condition that in case depreciation was obtained by the assessee in relation to such goodwill prior to the assessment year 2021-22,** then, **the depreciation so obtained by the assessee shall be reduced from the amount of the purchase price of the goodwill.***
- *When the aforesaid amendment was carried out through the Finance Act, 2021, consequential amendment was carried out in section 50. **However, no amendment was incorporated for computation of deemed capital gains if amount of goodwill is reduced from the block of assets.** On the other hand Rule 8AC covers the case of computation of deemed capital gains.*
- *Accordingly, the scheme of section 50 has been modified by inserting a **new Explanation** to clarify that **reduction of the amount of goodwill of a business/profession from the block of assets in accordance with section 43(6) shall be deemed to be transfer.***

"SLUMP SALE"

Section 2(42C): *Slump Sale Means:-* **as amended by the Finance Act, 2021 & 2022**

- the **TRANSFER** of one or more ***undertakings***
- ~~as a result of *sale*~~ ***BY ANY MEANS***
- for a ***lump sum consideration***
- ***without value being assigned to the individual assets & liabilities in such ~~sale~~ transfer***.

Section 50B: *Special provisions for computation of capital gains on slump sale:-*

(1) Any profits or gains arising from slump sale:

- shall be taxable **as capital gain**, and
- shall be treated as income **of the year of such transfer** (i.e. slump sale).

Nature of Capital gain: Highlighted text with white background are amendments as made by the Finance Act, 2021

- If period of holding of transferred undertaking is –

(a) **Not more than 36 months** : STCG
(b) **More than 36 months** : LTCG (even if period of holding of certain asset < 36Months)

(2) Computation of capital Gain (whether short-term / long term) on slump sale:

"Capital Gain = FMV of capital assets as on the date of transfer (Less) Net worth"

Here,

- **FMV will be calculated in prescribed manner** i.e. **as per Rule 11UAE**.
- ***Net worth means***:-

	Aggregate value of total assets of Undertaking / Division transferred	**
Less:	Value of liabilities of such undertaking *as appearing in its books of account*	**
	Net worth	**

- *For computing the net worth, the aggregate value of total assets shall be —*

(a) For depreciable assets : *WDV as per section 43(6) (see Note below)*
(b) For asset covered u/s 35AD : *Nil*
(c) For self-generated goodwill of business/profession : *Nil*
(d) In any other case : *Book value (other than revaluation).*

Note: WDV of depreciable asset shall be:

	Actual cost of such asset (i.e. Part of block as transferred under slump sale)	**
Less:	Amount of depreciation that would have been allowable *as if the asset was only asset in the block of assets since the date of its acquisition and put to use*	**
	WDV of depreciable asset transferred	***

Rule 11UAE: *Determination of FMV of Capital Assets for the purposes of section 50B:-*

(1)	**For the purpose of computing capital gain on slump sale i.e. under section 50B,** ***the fair market value of the capital assets shall be:*** – **FMV1** determined under sub-rule (2) or – **FMV2 d**etermined under sub-rule (3), whichever is **higher.**	
(2)	The **FMV1** shall be**: A + B + C + D - L,** *where,*	
	A	**Book value of all the assets** (other than jewellery, artistic work, shares, securities, and immovable property) **relating to the undertaking transferred *as reduced by*** *the following amount which relate to such undertaking—*

		(i) any amount of **income-tax** paid, if any, as reduced by the amount of income- tax claimed as refund, if any; and (ii) any amount shown in the balance sheet as asset including the **unamortized amount of deferred expenditure** which does not represent any asset;
	B	the price which the **jewellery and artistic work** would fetch *if sold in the open market on the basis of the valuation report* obtained from a registered valuer;
	C	*fair market value* of **shares and securities** determined as per rule 11UA;
	D	the *value adopted* or assessed or assessable by any authority of the Government for *the purpose of payment of stamp duty* in respect of the **immovable property.**
	L	**book value of liabilities relating to the undertaking transferred**, but not including the following amounts which relate to such undertaking, namely:— (i) the **paid-up capital in respect of equity shares**; (ii) any amount representing **contingent liabilities** other than arrears of dividends payable in respect of cumulative preference shares; (iii) 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 AGM of the company; (iv) **reserves and surplus**, by whatever name called, even if the resulting figure is negative, other than those set apart towards depreciation; (v) any amount representing **provision for taxation**; (vi) **provisions made for meeting liabilities, other than ascertained liabilities**;
(3)	The **FMV2** shall be**: E + F + G + H,** where,	
	E	**Monetary consideration received** or accruing as a result of the transfer;
	F	**FMV of non-monetary consideration** received or accruing as a result of the transfer **represented by property referred to in Rule 11UA(1)** *determined in the manner provided that rule 11UA;*
	G	the *price* which the **non-monetary consideration** received or accruing as a result of the transfer **represented by property, other than immovable property, which is not referred to in Rule 11UA(1)** *would fetch if sold in the open market on the basis of the valuation report obtained from a registered valuer;*
	H	**Stamp duty value of non-monetary consideration** received or accruing as a result of the transfer **represented by the immovable property.**
(4)	**FMV1 and FMV2 shall be determined on the date of slump sale** and for this purpose valuation date referred to in Rule 11UA shall also mean the date of slump sale.	

Rule 11UA: *Determination of FMV for section 56(2)(x):-* **Relevant for Taxation of Gifts chapter**

(1) For the purpose of section 56(2)(x)-

(a) Valuation of jewellery, bullion OR archaeological collections, etc. (hereinafter referred as artistic work):

The FMV of jewellery / artistic work shall be the price *which they would fetch if sold in the open market.*

(b) Valuation of shares and securities:-

THE FAIR MARKET VALUE OF *QUOTED SHARES AND SECURITIES* SHALL BE DETERMINED AS FOLLOWS:

(i) If such shares and securities are received by way of transaction *carried out through any recognized stock exchange:* **The transaction value will be treated as FMV of such shares and securities.**

(ii) If such quoted shares and securities are received by way of transaction *carried out **other than** through any recognized stock exchange:*

(a) The *lowest trading price on the valuation date* of such shares and securities, and

(b) **If there is no trading in such share and securities on any recognized stock exchange on the valuation date,** then, the *lowest price on a date immediately preceding the valuation date* when such shares and securities were traded on such stock exchange.

THE FAIR MARKET VALUE OF *UNQUOTED EQUITY SHARES* SHALL BE DETERMINED AS FOLLOWS:

$$\text{FMV of unquoted equity shares} = (A+B+C+D-L) \times \frac{\text{Paid-up value of such equity share}}{\text{Total amount of paid-up equity share capital}}$$

A = **Book value of ALL the assets** including fixed assets, current assets and investments (other than jewellery, artistic work, shares, securities, and immovable property)

But, following shall not be considered as assets for this purpose:

- Advance tax, TDS & TCS other than income- tax claimed as refund, if any.
- Any **unamortized amount of deferred expenditure** which does not represent any asset.

B = FMV of the **jewellery and artistic work** as per valuation report obtained from a registered valuer

C = *Fair market value* of **shares and securities** as per this rule;

D = *Stamp duty value* of the **immovable property.**

L = **Book value of liabilities shown in the balance sheet**, but other than the following:

(i) the **paid-up capital in respect of equity shares**;

(ii) representing **contingent liabilities** other than arrears of dividends payable;

(iii) the **amount set apart for payment of dividends** on preference shares and equity shares;

(iv) **reserves and surplus**;

(v) any amount representing **provision for taxation**;

(vi) provisions made for meeting liabilities, other than ascertained liabilities.

THE FAIR MARKET VALUE OF UNQUOTED SHARES *OTHER THAN EQUITY SHARES* SHALL BE:

	The **fair market value** as per the *valuation report from a merchant banker in respect of such valuation.*

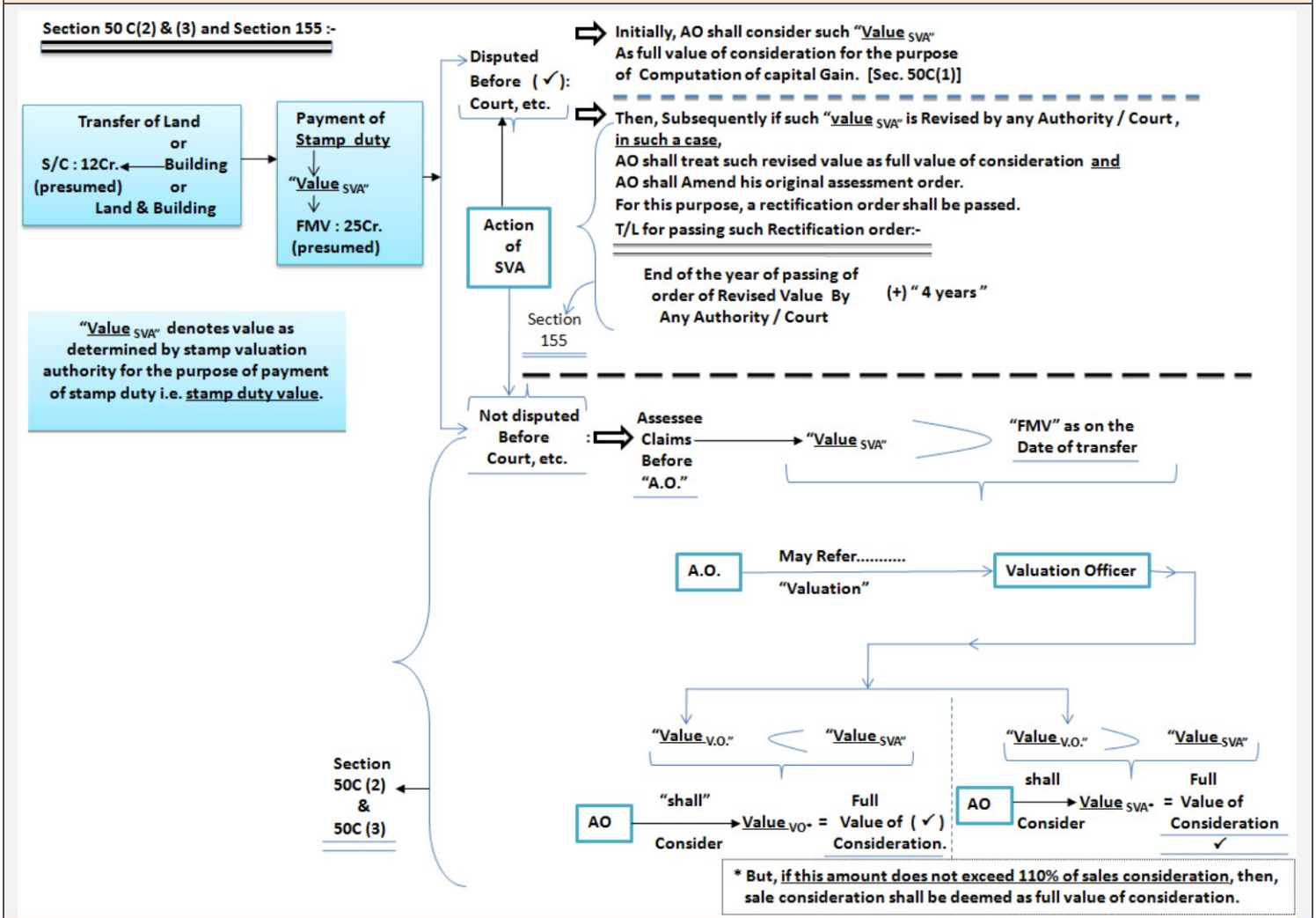
Section 50C: *Special provisions for full value of consideration in certain cases :-*

Capital asset being land or building or both Transfer (✓)	(+)	**If Stamp duty value > 110% of sales consideration** (as shown by assessee)

Then, Capital Gain shall be computed by taking such stamp duty value as sales consideration.

☞ ***Generally, stamp duty value is taken on the date of registration of the immovable property.***
But,

- **Where the date of the agreement and the date of registration are not the same,**
- *the stamp duty value on the date of agreement may be taken,*
- only in a case where consideration, or a part thereof, has been received by way of an account payee cheque or account payee bank draft or by use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed, on or before the date of the agreement for transfer.



Section 43CA: *Computation of income under the head "PGBP" for transfer of immovable property in certain cases:-*

Land or building or both held as stock in trade ↓ Transfer (✓)	(+)	**If Stamp duty value > 110% of sales consideration** (as shown by assessee)

Then, **profit and gain** (i.e. PGBP) **shall be computed by taking such stamp duty value as sales consideration.**

☞ **The Finance Act, 2021 has increased safe harbour threshold from existing 10% to 20%,** in respect of transfer of a **residential** unit, *provided the following conditions are satisfied:*

(i) The transfer of residential unit takes place *during the period from 12th November, 2020 to 30th June, 2021*;

(ii) The transfer is by way of **first-time allotment of the residential unit** to any person; and

(iii) The **consideration** received or accruing as a result of such transfer **does not exceed ₹ 2 crore.**

☞ **Provisions of section 50C(2) and 50C(3) shall also apply here.**

☞ **Option to take stamp duty value of date of agreement has been given on the same line as given u/s 50C.**

Section 50CA: *Special Provisions for Full Value Of Consideration for transfer of share other than Quoted share:-*

Capital asset being **share of a company other than Quoted share** ↓ Transfer (✓)	(+)	**Sales consideration (shown by assessee)**	**<**	**Fair Market Value (as per prescribed method)**

Then, Capital Gain shall be computed by taking such fair market value as sales consideration.

Exception: ***If transfer is made by the prescribed person subject to such conditions as may be prescribed.***

Explanation:

Quoted share means:

Share → Quoted on Recognised stock exchange *with regularity,* **(+)** Quotation is based on current transaction made *in ordinary course of business.*

Section 50D: *FMV Deemed To Be Full Value Of Consideration In Certain Cases:-*

- **If consideration for transfer of a capital asset is NOT determinable,** then
- for computing capital gain, ***fair market value shall be taken as sales consideration.***

Section 51 & section 56(2)(ix): *Advance Money Forfeited :-*

Treatment of Advance Money Forfeited:-

(1) If forfeited by the assessee before 1/4/2014:

☞ **Section 51** shall apply.

☞ Such forfeited advance money or other many **will be deducted** from actual cost or WDV or FMV (as the case may be) *in computing cost of acquisition.*

☞ **If forfeited sum is more than cost of acquisition,** such excess shall be treated as capital receipt, ***not taxable.*** **[Travancore Rubber & Tea Co. Ltd v/s CIT [2000](SC)]**

(2) If forfeited by the assessee on or after 1/4/2014:

- Section 56(2)(ix) shall apply.
- **Such forfeited amount** *(not only excess, but in totality)* shall be chargeable to tax under the head Income from other sources.
- Such sum shall not be deducted in computing the cost of acquisition. **[Proviso to Section 51]**

"COMPUTATION OF CAPITAL GAINS IN SPECIAL CASES"

Section 45(1A): *Capital Gains in case of damage or destruction of Capital Asset*:-

- *Notwithstanding anything contained in section 45(1),*
- where any person receives at any time during any previous year any money or other assets
- under an 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; or

(ii) Riot or civil disturbance; or

(iii) Accidental fire or explosion; or

(iv) Action by an enemy (whether with or without a declaration of war)

Then,

- any profits or gains arising from receipt of such money or other assets shall be chargeable to tax under the head "capital gains" **and** shall be deemed to be the income of such person of the previous year in which such money or other asset was received **and**
- for the purposes of section 48, value of any money or fair market value of other assets on the date of such receipt shall be deemed to the full value of the consideration received or accruing as a result of transfer of such capital asset.

Section 45(2): *Capital gain on conversion of capital asset into stock in trade*:-

- Over-riding effect on section 45(1).

Capital Asset → Convert / Transfer (✓) → Stock in trade → Sale → Computation under the head PGBP:

Computation of CG:

FMV (on the date of Conversion) : ✓

(-) Cost/ Indexed Cost : ✓

Capital Gain : ✓(Taxable in the year in which stock is sold/otherwise transferred).

Sales consideration: ✓

(-) FMV of the asset on conversion : ✓

PGBP : ✓

EXPLANATORY REMARKS:

(1) For determining nature of capital gain, period of holding upto the date of conversion will be considered, and Indexation (if needed) will also depend on it.

(2) **If after conversion, stock is sold in parts,** like 50% in $Year_1$, and remaining 50% in $Year_2$, then capital gain will also be taxable on same proportionate basis i.e. 50% in $Year_1$ and remaining 50% in $Year_2$.

Tax implications relating to conversion of stock in trade into capital asset:

If Stock in trade is → Converted into → Capital Asset

Chargeable under the head PGBP.

Computation of business income:

FMV of such SIT (on conversion) : ✓
[as determined in **prescribed manner**]
(-) Cost of such stock in trade : ✓
PGBP : ✓
[Taxable in the year of conversion]

Section 28(via)

Sale of such capital asset

Computation of capital gain**:

Sales consideration : ✓
(-) Cost of such capital asset : ✓
i.e. FMV of the SIT on the date of conversion

Section 49(9) ✓

** **For determining nature of capital gain,** period of holding will commence from the date of conversion of such SIT in capital asset.

Section 45 (3): *Capital gain on transfer of capital asset by a partner/member to a Firm or AOP or BOI as capital contribution:-*

Partner/member → Transfer of capital asset as Capital contribution or otherwise → Firm/AOP/BOI

Capital gain in the hands of partner / *member (Taxable in the year of transfer):-*

*Amount recorded in the books of Firm/AOP/BOI (**Less**) Cost / Indexed Cost to the partner / member.*

Section 45(5): *Capital gain in case of compulsory acquisition of an asset :-*

☞ *Over-riding effect on section 45(1).*

- Applicable in case of **compulsory acquisition of an asset under any Law or where consideration for transfer is determined / approved by the Central Government or RBI.**
- Capital Gain arising from:
  - **Original compensation *will be taxable* in the previous year in which such original compensation or part their of is first received by the Assessee;**
  - **Enhanced compensation *will be taxable* in the year of receipt of such enhanced compensation.**

Additional Considerable Points:

(1) If any compensation is received in pursuance of an **interim order** of Higher Authority, then capital gain arising therefrom **will be taxable** in the year *in which the final order has been passed* by such Higher Authority.

(2) For determining nature of capital gain (whether from original compensation / enhanced compensation), **period upto the date of compulsory acquisition will be considered.**

(3) If in any year, capital gain has been taxed on the basis of original compensation or enhanced compensation, and subsequently such compensation is reduced by any Court / other Authority –
Then, such reduced compensation will be considered as full value of consideration, on the basis of which

capital gain will be re-computed, and, for this purpose, **assessing officer shall pass a rectification order within 4 years** from the end of the previous year in which the order reducing the compensation was passed by the Court / Other Authority. **[Section 155]**

Section 10(37): *Exemption in case of compulsory acquisition of urban agriculture land:-*

- In case of an ***individual or HUF***,
- **ANY capital gain** arising from the transfer of a *capital asset*
- being an ***agriculture land situated in urban area***
- **shall be exempt** *subject to the following conditions*-

(i) The transfer takes place by way of compulsory acquisition under any law OR the consideration for transfer is approved or determined by the CG or RBI.

(ii) Capital gain should arise from compensation / enhanced compensation which is received by the assessee.

(iii) Such land was being used for agricultural purposes by such HUF or individual or his parents during the period of two years *immediately preceding the date of transfer*.

Taxation of Interest received for delay in payment of Compensation/Enhanced Compensation

- **Such interest will be taxable under the head "Income from other sources" in the year in which it is received,** *ir-respect of the method of accounting followed by the assessee.* **[Section 145B + 56(2)(viii)]**
- **A deduction of 50% of such interest will be allowed u/s 57**, but no other deduction will be available under this section. **[Section 57]**

Section 45(5A): *Tax implications relating to joint development agreement:-*

- *Over-riding effect on section 45(1).*
- *Applicability:*

Individual / HUF
→ Transfer of **Land/Building/Both**
→ under
→ **Specified Agreement** means
- → Registered Agreement.
- (+)
- → Owner allow to developer to develop a real estate project on such Land / Building / Both.
- (+)
- → In Consideration: Share in such Project (+) Cash consideration. (that may be/may not be)

- **Year of Taxation:**

"Year of issuance of Completion Certificate* for the whole or part of the project by the Municipality"

- **Consideration for computation of capital gain (on Land / Building / Both):**

Stamp duty value of his share on the date of said certificate*
(+)
Cash consideration (if any).

- **If assessee transfers his share in the project on or before the date of issue of completion certificate*:**
  - **Section 45(5A) shall NOT Apply.**

CONSEQUENTIAL INSERTION i.e. Section 49(7):

In a case where section 45(5A) applies and assessee is taxed on the basis of stamp duty value of his share in the project, and subsequently transfer his share in the project, then such stamp duty value shall be deemed to be the cost of acquisition of his share in the project.

"TAXATION OF CAPITAL GAINS"

Section 111A: *Tax On Short Term Capital Gains In Certain Cases:-*

☞ Any *short-term capital gain* arising from a transaction **which is chargeable to securities transaction tax,** will be liable to income tax @ 15%.

Exception:

If transaction → is undertaken on RSE located in IFSC **(and)** of which consideration is paid / payable in foreign currency. → Then, even if STT is not paid still **STCG will be taxable @15%.**

Tax Liability: Tax @ 15 % on such STCG **(+)** Tax on balance income as if such balance amount were the total income of assessee.

Additional Considerable Point:

Resident Individual / HUF may claim their **unavailed basic exemption limit** from the STCG as referred to in this section, and **No deduction** under chapter VI-A (i.e. 80C to 80U) is available in respect of such STCG.

Section 112A: *New regime for taxation of LTCG on sale of equity shares and units:-*

☞ *It over-rides section 112,* and **apply on transfer made on or after 1st April 2018.**

Eligible assessee	**Any person** i.e. resident / non-resident.
Charge of tax on…..	**Long term capital gain** *arising from the transfer of* ***equity share in a company or unit of an equity oriented fund or unit of a business trust.***
Exempted upto…	**₹ 1,00,000/-**
Taxation	Tax @ **10%** on such LTCG in excess of ₹ 1Lac *ir-respective of basic exemption limit.* **Exception:** *Resident Individual / HUF* may claim their **unavailed basic exemption limit** from the LTCG as referred to in this section.
Condition for applicability of this section	Securities transaction tax should have been paid in case of …. Equity share → On acquisition as well as on transfer of such share. Unit → On transfer of such unit. **Exceptions**

Exception 1:

If Transaction → is undertaken on RSE located in IFSC (+) of which consideration is paid / payable in foreign currency

In this case, Even if securities transaction tax is not paid on such transaction (because it is exempt from securities transaction tax) still **section 112A shall apply.**

Exception 2:

If equity shares → Trf. (✓) (+) On acquisition **securities transaction tax** was **not** levied. (+) Such acquisition is **covered under cases Notified by the CG** like, acquisition of share in IPO, Bonus / right issue etc.

Section112A shall apply in this case *if STT is levied only upon transfer of equity shares.*

Special provisions relating to computation of LTCG

(1) LTCG covered under this section shall be computed **without giving the benefit of** second proviso (i.e. **Indexation**) and first proviso (i.e. **conversion**) to section 48.

3rd proviso to Section 48

(2) Determination of cost of acquisition of aforesaid shares or units acquired before 1st February 2018: **Section 55A(2)(ac)**

Final cost of acquisition is:

Cost of acquisition OR (FMV as on 31st January, 2018 OR Sales consideration) — Whichever is **less**

Whichever is **higher**

Benefits prohibited u/s 112A

Deductions under chapter VI-A (i.e. section 80C to 80U) and Rebate u/s 87A **shall not be allowed from the LTCG as covered u/s 112A.**

Section 112: *Tax on long term capital gains :-*

☞ Long-term capital gain is taxable @ 20%.

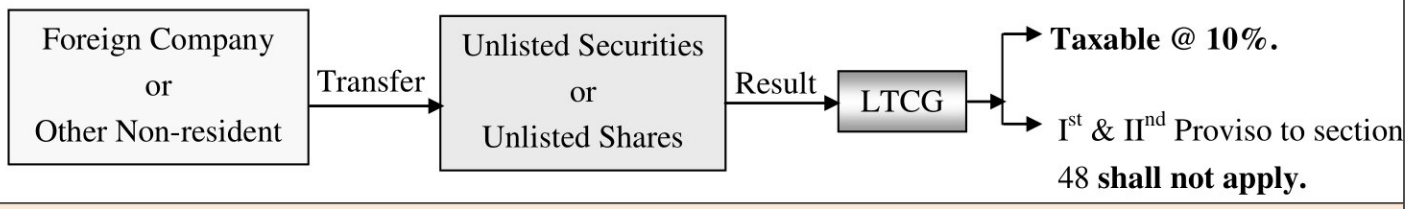
Exceptions:

(1) In case of **listed securities** (other than units) or **Zero Coupon Bond**

- LTCG (Computed Normally) × 20% = ✓
- Or
- LTCG (Computed without Indexation of its cost) × 10% = ✓

Final tax liability: whichever is lower

(2)



Additional Considerable Point:

Resident Individual / HUF may claim their **unavailed basic exemption limit** from the LTCG as referred to in this section, and **No deduction** under chapter VI-A (i.e. 80C to 80U) is available in respect of such LTCG.

"EXEMPTIONS FROM CAPITAL GAINS"

1	2	3	4	5	6	7	8	9	10
Sec.	Asset Transferred	Who is entitled	Use or holding Period	Amount to be invested	New asset	Exemption	Prescribed period for Investment	Treatment of unutilized amount	Sale of new asset
54	Residential house	Individual or HUF	LTCA	Capital gains	**One** Residential House** in India *****Two residential house,*** *provided capital gain doesn't exceed ₹ 2Cr.,* ***and*** *this option for once in lifetime.* Means, if capital gain exceeds ₹ 2 Cr. **or** after exercising this option (i.e. in future), **he can claim exemption for any new investment *in one house only*.**	Capital gains or amount invested whichever is less	Within 1 year before or 2 year after the date of transfer in case of purchase, or within 3 years after the date of transfer, in case of new construction.	Deposit in capital Gains Account scheme before due date of furnishing the return of Income	*If sold within 3 years from the date of purchase / construction,* for the purpose of computation of Capital Gain on the new asset, the cost of new asset shall be reduced by the amount of CG claimed as exempt earlier
54B	Agricultural land	Individual Or HUF	Used by him or his parent or by HUF for 2 years immediately prior to the date of transfer for Agriculture.	Capital gains	Agricultural land	As above	Within two years after Transfer	- As above -	- As above -
54D	L&B for Industrial Undertaking under Comp. Acquisition	Any Assessee	Used for 2 years **before Compulsory Acquisition under any Law**	Capital Gains	L&B for Industrial undertaking	As above	Within 3 year after transfer	-As above -	- As above -
54EC	Long Term Capital Assets **being land or building or both***	Any Assessee	LTCA	Capital Gains	Any bond Redeemable after **5 years** in NHAI or Rural Electrification Corporation Ltd. **or any other Bond as Notified by the Central Government in this behalf**	As above **Max.: 50Lakhs** For investment made in the financial year in which such* LTCA Trf. **And** in subsequent year their of.	Within 6 months of transfer of original asset	-As above -	If sold or converted into money within **5** years, exempted Capital Gains will be deemed to be the income of the assessee in the year of conversion / sale of new asset. (Additionally, CG on new asset will be computed normally i.e. the cost will **not** be reduced by the amount of CG claimed as exempt earlier).
54F	Any asset Other than Residential house	Individual Or HUF	**Should be LTCA. Should not own more than one house on date of transfer**	Net consideration	**ONE RESIDENTIAL HOUSE IN INDIA**	Capital Gain X Amount invested / Net consideration	Within 1 year before or 2 year after transfer in case of purchase, or 3 year after transfer in case of construction	Deposit in Capital Gains A/C Scheme before due date of ROI	*If sold within 3 years from the date of purchase /construction* , SAME TREATMENT AS APPLICABLE FOR 54EC (as given above)

1	2	3	4	5	6	7	8	9	10
Sec.	Asset Transferred	Who is entitled	Use or holding Period	Amount to be invested	New asset	Exemption	Prescribed period for Investment	Treatment of unutilized amount	Sale of new asset
54G	P&M or L&B or any right in L&B used in Industrial undertaking situated in Urban area	Any Assessee	May be LTCA or STCA	Capital Gains	P&M or L&B used for industrial Undertaking in Rural area or meeting expenses of shifting	Capital Gains or amount invested whichever is less	Within one year before or within 3 year after the date of transfer.	Deposit in Capital Gains Account Scheme before due date of furnishing return of income.	Same as for Section 54, 54B and 54D
54GA	P&M or L&B or any right in L&B used in Industrial undertaking situated in Urban area	Any Assessee	May be LTCA or STCA	Capital Gains	P&M or L&B used for industrial Undertaking **in Any SEZ** or meeting expenses of shifting	Capital Gains or amount invested whichever is less	Within one year before or within 3 year after the date of transfer.	Deposit in Capital Gains Account Scheme before due date of furnishing return of income.	Same as for Section 54, 54B and 54D
54H	**Where the transfer of an asset is by way of compulsory acquisition under any law,** *the period for acquiring the new asset or period for depositing in capital gain account scheme,* shall be commenced **from the date of receipt of such compensation** (instead the date of transfer i.e. compulsory acquisition).								

CBDT Circular No. 791 dated 2.6.2000

- The **CBDT has clarified** in case of conversion of a capital asset into stock-in-trade and subsequent sale of stock-in-trade, *the period of 6 months is to be reckoned **from the date of sale of stock-in-trade for the purpose of exemption under section 54EC.***

- **It may carefully be noted here that under all the above sections, amount deposited in capital gains account scheme, if not utilized within the prescribed time, it will be taxed in previous year in which the prescribed period expires.**

BOARD CIRCULAR:-

- **Unutilized money in capital gain account scheme kept by an individual and he died before the prescribed period of investments in the said section, it shall neither be taxed in the hands of the deceased nor in the hands of legal heirs.**

"RELEVENT JUDICIAL PRONOUNCEMENTS"

CIT v/s V.S. Dempo Company Ltd (2016) (SC):

On the issue that **whether benefit of exemption u/s 54EC can be claimed in a case where a depreciable asset (building) held for more than 24 months is transferred and capital gains on sale of such asset are reinvested in long- term specified assets within the specified time,**

The Apex court has held that **the assessee cannot be denied exemption u/s 54EC,** because firstly, *there is nothing in section 50 to suggest that the fiction created therein is not restricted to only sections 48 and 49.* Secondly, fiction created by the legislature has to be confined for the purpose for which is created. Thirdly, **section 54EC does not make any distinction between depreciable and non-depreciable asset for the purpose of re-investment of capital gains in long term specified assets for availing the exemption thereunder.**

Further, section 54EC specifically provides that when the capital gain arising on the transfer a long-term capital asset (being land or building or both) is invested or deposited in long-term specified assets, the assessee shall not be subject to capital gains to that extent. **Therefore, the exemption u/s 54EC cannot be denied to the assessee *on account of the fiction created in section 50.***

Note: **Aforesaid ruling will also be applicable** in the following cases:

(1) **To claim exemption under any other section *like* section 54F;**

(2) **To set-off of brought forward long-term capital losses against *capital gain arose on the sale of depreciable assets which was held for a period more than 24 months.***

(3) **To compute tax liability u/s 112 treating such capital gain** i.e. capital gain arose on the sale of depreciable assets which was held for a period more than 24 months ***as long-term capital gain.***

Section 54 & 54F: *Exemption from capital gains in case of investment in residential house:-*

(1) Where capital gain is assessed on notional basis u/s 50C, *whatever amount is invested in new residential house with in prescribed period u/s 54F would get benefit of exemption* ***irrespective of fact that funds from other sources are also utilized for new residential house.*** **[Gouli Mahadevappa v/s ITO(Kar.)]**

(2) If assessee invested its capital gain (under section 54) or sale proceeds (under section 54F) in:

(i) several units of a residential house, or

(ii) in two flats situated side by side and the builder had effected the necessary modification to make it as one unit:

- In the case of **Gita Duggal,** the **Supreme Court** has held that ***one residential house may have contained several units.***
- In the case of **Syed ali adil,** the **Andhra Pradesh High Court** has held **two adjacent flats will constitute a single unit even if purchased by separate sale deed.**

Therefore, assessee would be entitled to claim exemption in respect of all those units u/s 54 or 54F (as the case maybe).

Section 56(2)(x):-

"TAXATION OF GIFTS"

Any Person (i.e. assessee) ← Receives (during the P.Y.) from----- Any Person or Persons

(a)

Any **sum of money**

Without consideration (i.e. as a gift)
and
Aggregate > ₹ 50,000 Amount

Then

Whole of such sum shall be taxable.

Generally, SDV is taken on the date of registration of immovable property,
But, If date of agreement and date of registration are not same
and
Token/advance money has been paid by any specified digital mode

Then

Stamp duty value on date of agreement may be considered.

Any Property

Received as **capital asset**

Im-movable property (i.e. Land/building/L&B)

(b)

Without consideration (i.e. as a gift)
and
its stamp duty > 50,000 value (SDV)

Then

Such SDV shall be taxable.

OR

(c)#

(i) If consideration of such property < (SDV (-) 50,000)

(+)

(ii) SDV > 110% of consideration**

Then

= its SDV (-) such consideration
= ----- will be taxable.

**** 120% shall be taken if acquisition is by way of *first time allotment* between 12th Nov. 2020 to 30th June, 2021 and *consideration doesn't exceed 2 Crore.***

Specified Movable property i.e.
shares and securities, jewellery, archaeological collections, drawings, paintings, sculptures, or any work of art, Bullion, Virtual Digital Asset.

(d)

Without consideration (i.e. as a gift)
and
Aggregate FMV > 50,000

Then

Such aggregate FMV shall be taxable.

OR

(e)#

If aggregate consideration < (Aggregate FMV (-) 50,000)

Then

= Aggregate FMV (-) Such consideration
= ------ shall be taxable.

Received as **SIT**

No tax implication under this section.

Any other movable property (like, vehicle furniture, wrist watch, etc.)

No tax Implications.

 # In these cases, specific provisions of section 50C (in case of Immovable property) & section 50CA (in case of unquoted shares) shall apply to transferor.

➢ If assessee **objects** stamp duty value → Then → AO → May refer valuation of such property to….. → Valuation officer

Report

If value $_{VO}$ < SDV → In this case, ***value $_{Vo}$ shall be considered.***

If value $_{VO}$ > SDV → In this case, ***SDV shall be considered.***

Subject to, **SDV or value $_{VO}$ (as the case may be) must exceed 110% /120% of actual consideration (if any).**
(as the case may be)

➢ **Exceptions to section 56(2)(x):** *Taxability shall not arise in the following cases –*

Receipt of any Money / Property ……

- From any **relative**
- On the occasion of the **marriage**
- Under **will** or by way of **inheritance**
- **In contemplation of death** of the giver
- From **local authority**
- **From / by** any institution as referred to in **sec. 10(23C)**
- **From / by** any charitable or religious trust of **sec. 12AA**

  Except receipt of person as specified u/s 13(3), from such trust/institution
- **From an Individual by a trust** *created solely for the benefit of relative of such individual*

On **Partition of HUF** → Receipt of capital asset **by holding company** from **its 100% subsidiary *or vice-versa.***

In case of **Amalgamation/Demerger**

- **By amalgamated company** from amalgamating company
- **By resulting company** from demerged company
- **By Banking Institution** from banking company
- **By successor co-operative bank** from predecessor co-operative bank
- Receipt of capital asset being **shares in Indian Company by Amalgamated/Resulting foreign company** from amalgamating / demerged foreign company respectively.

Receipt of shares of

- **Resulting company** *by shareholder of demerged company*
- **Amalgamated company** *by shareholder of amalgamating company*
- **Successor co-operative bank** *by shareholder of predecessor co-op. bank*

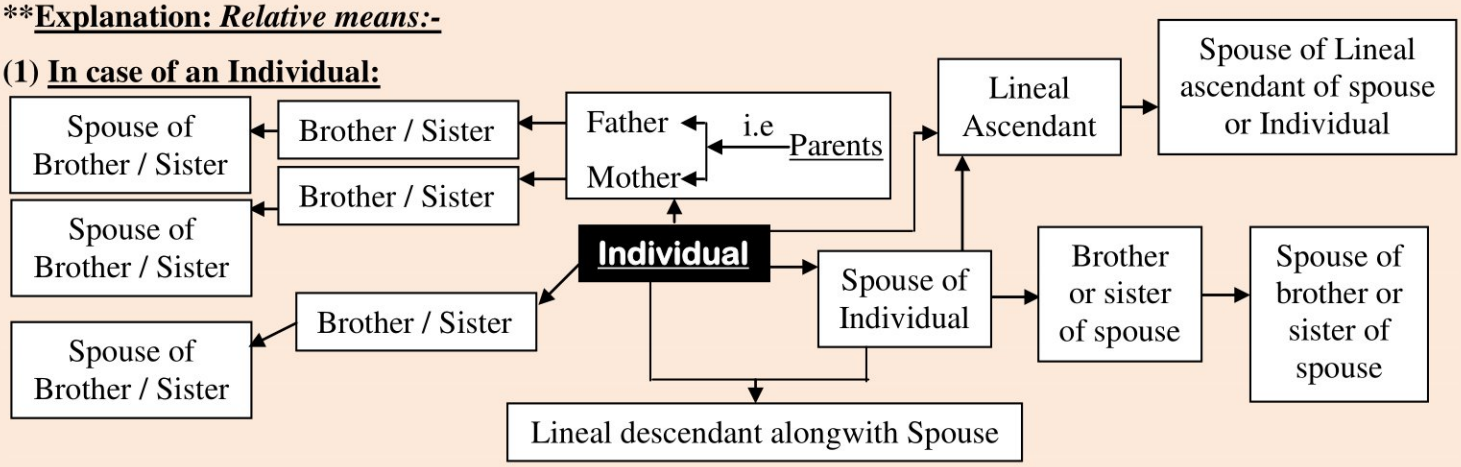
From such person & subject to such conditions as may be prescribed.

"TAXATION OF GIFTS"

Extract of Section 56(2)(x):-

**Explanation: *Relative means:-*

(1) In case of an Individual:

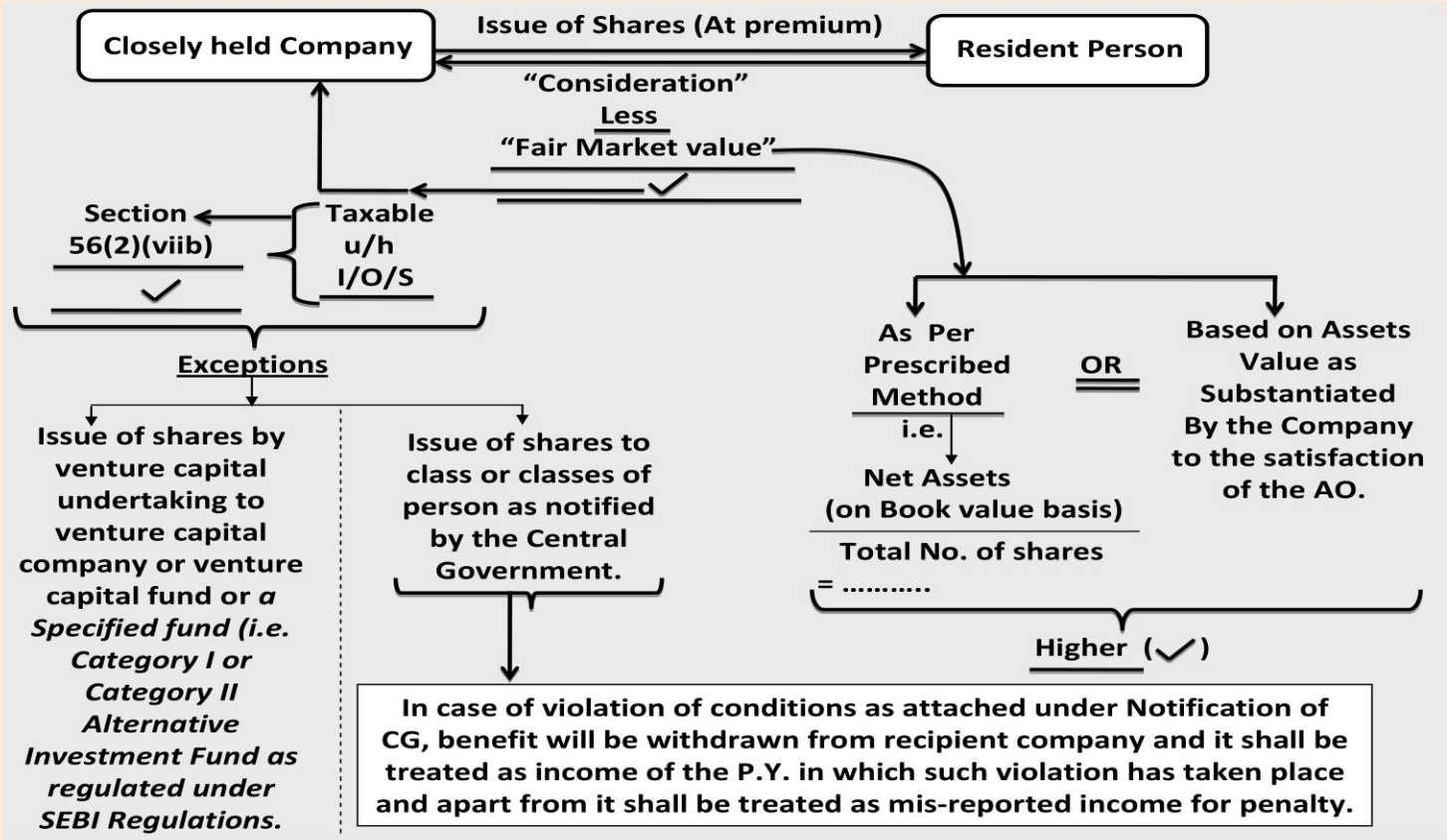


(2) In case of an HUF: *ANY MEMBER THEREOF*

Section 49: *Cost of acquisition of the property acquired u/s 56 (2) (x):-*

Cost of acquisition of property which has been taxed u/s 56(2)(x)	=	**Value (i.e. SDV/FMV) which has been considered for the purpose of section 56(2)(x).**

Section 56(2)(viib): *Share premium in excess of the fair market value to be treated as income:-*



"LATEST JUDICIAL PRONOUNCEMENT"

PCIT v/s Dr. Ranjan Pai (2021)(Kar):

- On the issue **Can bonus shares received by shareholders be taxable under the head 'Income from other sources' as per the provisions of section 56(2)(x), as they are received without consideration**,
- The Court has held that issue of bonus shares by capitalization of reserves is merely a reallocation of the company's funds. There is no inflow of fresh funds or increase in the capital employed, which remains the same. On the other hand, when a shareholder gets bonus shares, the value of the original shares held by him goes down and the market value as well as intrinsic value of the two shares put together will be the same or nearly the same as the value of original share before the issue of bonus shares. Thus, any profit derived by the assessee shareholder on account of receipt of bonus shares is adjusted by depreciation in the value of equity shares originally held by him.
- Accordingly, the High Court held that the bonus shares were not issued in order to evade any tax so to attract the provisions of section 56(2)(x). **Hence, the provisions of section 56(2)(x) would not be attracted in the hands of the recipient shareholders on receipt of bonus shares.**

"TAXATION OF UNIT LINKED INSURANCE POLICY (ULIP)"

Taxation of proceeds of High Premium ULIP: Inserted by Finance Act, 2021 w.e.f. A.Y. 21-22

Existing Legal Position:

- ✓ **Section 10(10D) provides that the sum received under a life insurance policy (including the sum allocated by way of bonus on such policy) shall be exempt** *subject to fulfilment of the following condition:*
  - ➢ In case of policy issued on or after 1/4/2012, **annual premium should not exceed 10%** of the **actual sum assured** (15% for person covered u/s 80U/80DDB, if policy is issued on or after 1/4/2013)**.**
  - ➢ However, in case of policy issued before 1/4/2012 **annual premium should not exceed 20%** of the **actual sum assured.**
- ✓ **Exemption** under this section is **not available to** any sum received under a **"keyman insurance policy".**

Note: Section 10(10D) did not have any specific provision regarding taxation of sum received under ULIP.

Purpose of the amendment (as Explained in Memorandum to the Finance Bill, 2021):

Under the existing provisions of the Act, **there is no cap on the amount of annual premium being paid by any person during the term of the policy.** Instances have come to the notice **where high net worth individuals are claiming exemption under this clause by investing in ULIP with huge premium.** *Allowing such exemption in policy / policies with huge premium defeats the legislative intent of this clause.* **The intention was to provide benefit to small and genuine cases of life insurance.** Hence, it is proposed to provide for the following….

Amendments in Section 10(10D): *Withdrawal of exemption to certain ULIP :-*

(1) Insertion of fourth proviso to section 10(10D):

(i) the exemption shall not apply with respect to any ULIP **if it is issued on or after 1st February, 2021**; and

(ii) the **amount of premium payable** for *any of the previous year* during the term of such policy **exceeds ₹ 2.5 lakhs.**

Explanatory Notes:

(1) The provision is applicable only to ULIP issued on or after 1st February, 2021. **It does not impact the taxability of proceeds from ULIP issued prior to 1st February, 2021** ***even if the policy holder continues to pay the premium for said ULIP after 1st February, 2021.***

(2) The exemption is not available if the amount of premium payable for 'any of the previous year' (that is, any one previous year) during the term of the policy exceeds ₹ 2.5 lakhs**. Hence, the exemption would not be available even if the premium exceeds ₹ 2.5 lakhs in only one previous year and is less than ₹ 2.5 lakhs in all other years.**

(3) If the premium payable for ULIP exceeds the threshold as given u/s 10(10D) like, 10% of the actual capital sum assured, then, **no exemption would be allowed with respect to the sum received under**

	the policy *even if the premium payable does not exceed ₹2.5 lakhs.* **(4) If a ULIP qualifies for 'keyman insurance policy', the sum received on maturity will not be exempt under section 10(10D) even if the amount of premium does not exceed ₹ 2.5 lakhs.**
(2)	**Insertion of fifth proviso to section 10(10D):** – If the premium is payable, by a person, for more than one ULIP, issued on or after 1st February, 2021, – *the exemption under section 10(10D) shall apply* – **only with respect to those insurance policies,** – **where the aggregate amount of premium does not exceed ₹ 2.5 lakhs** in any of the previous year during the term of any of those policies.
	Explanatory Notes: **(i)** As per this 5th proviso, exemption shall apply to those ULIPs **where the aggregate amount of premium does not exceed ₹ 2.5 lakhs.** **(ii) If a policy is not otherwise exempt u/s 10(10D)** on the ground that the annual premium exceeds the threshold as given u/s 10(10D) *like, 10% of the sum assured* or it is a case of keyman insurance policy, in such type of a case, on a reasonable interpretation, **for the purpose of calculating the limit of ₹ 2.5 lakhs, the premium pertaining to the said policy should be excluded.**
(3)	**Insertion of sixth proviso to section 10(10D):** The provisions of the aforesaid fourth and fifth provisos *shall not apply* **to any sum received on the death of a person.**
(4)	**Insertion of seventh proviso to section 10(10D):** If any difficulty arises in giving effect to the provisions of section 10(10D), the CBDT may, with the approval of the Central Government, issue guidelines for the purpose of removing the difficulty and shall be binding on the income-tax authorities and the assessee.
(5)	**Insertion of Explanation 3 to section 10(10D):** The expression "unit linked insurance policy" has been defined as – a life insurance policy **which has components of both investment and insurance,** and – **is linked to a unit** as defined in regulation 3(ee) of the Insurance Regulatory and Development Authority of India (Unit Linked Insurance Products) Regulations, 2019 **(i.e. a specific portion or part of the underlying segregated unit-linked fund which is representative of the policy holders entitlement under such funds).**

Example 1:

Determine whether an exemption is available under section 10(10D) for a single policy purchased by four different persons in the following scenarios: **(₹ in lakhs)**

Particulars	Mr. P	Mr. Q	Mr. R	Mr. S

Date of investment in ULIP	31-12-20	15-01-21	15-02-21	28-02-21
Premium payable every year	2.60	2.00	2.30	2.55
Sum assured	50.00	18.00	20.00	35.00
Whether the amount of premium exceeds 10% of the capital sum assured?	No	Yes	Yes	No
Whether the amount of premium during the year exceeds ₹ 2.5 lakhs?	Not applicable	Not applicable	No	Yes
Whether exemption available under Section 10(10D)?	Yes	No	No	No

Example 2:

Determine whether an exemption is available under section 10(10D) for multiple policies purchased by one person on or after 01-02-2021 in the following scenarios:

Policy	Premium payable every year	Capital sum assured	Whether premium exceeds 10% of capital sum assured?	Whether premium exceeds ₹ 2,50,000	Whether eligible for exemption under section 10(10D)?
A	2.60	26	No	Yes	No
B	2.00	15	Yes	No	No
C	0.60	5	Yes	No	No
D	1.00	11	No	No	Yes*
E	0.60	7	No	No	Yes*
F	0.90	10	No	No	Yes*
G	0.85	9	No	No	Yes*

* Though the last four policies (policies D to G) are individually eligible for exemption u/s 10(10D) but the **exemption can be claimed in respect of only those policies whose aggregate premium during the year does not exceed ₹ 2,50,000** (that is, low premium policies). In these cases, the aggregate premium is ₹ 3.35 lakhs and hence, **the receipt in respect of ALL these Four policies will not be fully exempt under section 10(10D).**

The receipt of any combination of two or three policies among these four policies, **of which aggregate premium doesn't exceed ₹ 2,50,000, can be claimed as exempt u/s 10(10D),** *like,* receipt from policy named as D, E & F, can be claimed as exempt because aggregate premium is ₹ 2,50,000 (i.e. 1.00L + 0.60L + 0.90L).

Amendments in Section 2(14): *Definition of capital Asset :-*

In order to enable levy of capital gains tax on the transfer of ULIP, the definition of capital asset has been amended to provide that **a ULIP [to which exemption u/s 10(10D) of the Act does not apply on account of the applicability of the fourth and fifth proviso]** ***will be treated as capital asset.*** [Section 2(14)(c)]

Insertion of Section 45(1B): *Capital gains arising upon receipt of specified ULIP:-*

Consequent upon the withdrawn of exemption of section 10(10D) in certain cases, this section 45(1B) has been inserted to provide that-

(a) where any person **receives at any time during any previous year any amount under a ULIP,** including the amount allocated by way of bonus on such policy, and

(b) **the exemption under section 10(10D) does not apply to such a receipt on account of the applicability of the fourth and fifth proviso thereof,** then,

- any profits or gains arising from receipt of such amount by such person shall be chargeable to income-tax **under the head "Capital gains";**
- **deemed to be the income of such person of the previous year in which such amount was received**; and
- *the income taxable shall be calculated in such manner as may be provided by rules.*

Thus, the profits and gains arising upon receipt of non-exempt ULIP shall be chargeable as capital gains.

Amendments in Section 112A: *Tax on Capital gains arising upon receipt of specified ULIP:-*

- Section 112A relating to tax on long term capital gains on, *inter alia,* transfer of units of equity oriented fund, has been amended as follows:
- **Explanation to the said section** provides for the **definition of the expression "equity oriented fund".**

The said definition is applicable if the following conditions are fulfilled:

1st Condition: The fund is set-up under a scheme of a mutual fund specified under section 10(23D), and

2nd Condition:

(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 90% of its total proceeds in the equity shares of domestic companies listed on a recognised stock exchange;** and

(ii) in any other case, a **minimum of 65% of the total proceeds of such fund is invested in the equity shares of domestic companies listed on a recognised stock exchange.**

- The said Explanation has been amended to provide that "equity oriented fund" *shall include* ***a fund set up under a scheme of an insurance company comprising ULIPs to which exemption u/s 10(10D) does not apply on account of the applicability of the fourth and fifth proviso thereof.*** (In 1st condition above)
- Further, a second proviso has been inserted to provide **in case of a scheme of an insurance company comprising unit linked insurance policies to which exemption under section 10(10D) does not apply on account of the applicability of the fourth and fifth proviso thereof,** ***the minimum requirement of 90% or 65%, as the case may be, as applicable to a mutual fund, is required to be satisfied throughout the term of such insurance policy.*** (2nd condition above)
- *The provision is made in order to provide parity, between the taxation of the non-exempt ULIP and mutual fund.*

Explanatory Notes:

(1) In view of the aforesaid amendment, **ULIP, receipt of which is taxable, will be treated as units of equity oriented fund.** If assessee holds more than 12 months, then, *it will be case of Long term capital gain* ***to qualify the exemption of 1,00,000/- and concessional taxation @ 10% on excess portion u/s 112A.*** Moreover, **such capital gain will be computed without indexation, actually, that will be derived simply by reducing total premium paid from total amount received on maturity of ULIP.**

(2) **Levy of Security Transaction Tax**:

Consequential amendment has also been made in Chapter of **STT, to make security transaction tax applicable on maturity or partial withdrawal with respect to ULIP issued by the insurance company on or after the 1st February, 2021** ***[to which exemption under clause (10D) of section 10 of the Act does not apply on account of the applicability of the fourth and fifth proviso].***

(3) **Applicability of TDS Provisions:**

Section 194DA provides that **any sum payable to a resident under a life insurance policy which is not exempt under section 10(10D) is liable to tax deduction at source @ 5% on the amount of income comprised in such receipt.** Hence, ***the maturity proceeds of ULIP not exempt under section 10(10D) would be liable to TDS @ 5%.***

Example on Section 10(10D), Section 45(1B) & Section 112A:

Mr. X takes a unit – linked insurance plan on March 6, 2021 [information pertaining to sum assured and annual insurance premium is given in table below]. He wants to know whether (or not) exemption will be available under section 10(10D) at the time of maturity of ULIP. He does not have any other policy and does not intend to take any other ULIP in future. **(₹ in lakh)**

	Situation 1	Situation 2	Situation 3
Sum assured	30	15	30
Annual insurance premium	2.40	2	2.6

Situation 1:

As the annual insurance premium does not exceed 10% of sum assured and annual insurance premium is not more than ₹ 2,50,000, **exemption u/s 10(10D) will be available at the time of maturity of ULIP.**

Situation 2:

As annual insurance premium is more than 10% of sum assured, ***exemption is not available by virtue of threshold given in section 10(10D).*** In this case, annual insurance premium is not more than ₹ 2,50,000, fourth proviso or fifth proviso to section 10(10D), section 45(1B) and section 112A are not applicable.

Situation 3:

Even though annual insurance premium does not exceed 10% of sum assured, but, **annual insurance premium is more than ₹ 2,50,000,** therefore, by virtue of fourth and fifth proviso to section 10(10D), X cannot claim exemption. Capital gain will be taxable u/s 45(1B) and tax will be computed as per section 112A.

Circular No. 2/2022 dated 19.01.2022: Guidelines u/s 10(10D) of the Income-tax Act, 1961:-

Section 10(10D) provides for exemption of the sum received under a life insurance policy, including the sum allocated by way of bonus on such policy subject to the condition that the annual premium does not exceed 10% of actual capital sum assured. However, there was no cap on the amount of annual premium paid by any person during the term of the policy.

In order to deter the practice of high net worth individuals from claiming exemption u/s 10(10D) by investing in ULIPs with huge premium, additional condition has been stipulated u/s 10(10D) in respect of ULIPs issued on or after 1.2.2021.

For this purpose, ULIP means a life insurance policy which has components of both investment and insurance and is linked to a unit defined under IRDA (ULIP) Regulations, 2019 issued by IRDA under the Insurance Act, 1938 and the IRDA Act, 1999.

In case where an assessee has a Single ULIP issued on or after 1.2.2021 - Exemption u/s 10(10D) would not be available with respect to any ULIP issued on or after 1.2.2021, if the amount of premium payable exceeds ₹ 2,50,000 for any of the previous years during the term of such ULIP. Such ULIP would be a specified ULIP, which is a capital asset.

In case where an assessee has multiple ULIPs issued on or after 1.2.2021 - In a case where premium is payable by a person for more than one ULIP issued on or after 1.2.2021 and the aggregate of premium payable on such ULIPs exceed ₹ 2,50,000 for any of the previous years during the term of any such ULIP(s), exemption u/s 10(10D) would be available in respect of any of those ULIPs, at the option of the assessee, whose aggregate premium payable does not exceed ₹ 2,50,000 for any of the previous years during their term. All other ULIPs would be specified ULIPs, which are capital assets under section 2(14)(c). However, to get exemption u/s 10(10D), the condition of annual premium not exceeding 10% of the actual capital sum assured also needs to be satisfied.

Exemption in case of death of a person - In case any sum is received on the death of a person, exemption u/s 10(10D) would be available irrespective of the annual premium payable of the ULIP.

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

Accordingly, the CBDT has with the approval of the Central Government, issued the following guidelines vide this Circular –

Situation 1: No sum including any sum allocated by way of bonus (such sum hereinafter referred as "consideration") is received by the assessee on any ULIPs which are issued on or after 1.2.2021 (such ULIPs hereinafter referred as "eligible ULIPs") during any previous year preceding the current previous year or consideration has been received on such eligible ULIPs in an earlier previous year but has not been claimed exempt. In such a situation, the exemption u/s 10(10D) would be determined as under:

I. Where the assessee has received consideration, during the current P.Y., under one eligible ULIP only

Circumstance	Eligibility for exemption u/s 10(10D)

▪ **If the amount of premium payable on such eligible ULIP does not exceed ₹ 2,50,000 for any of the PYs during the term of such eligible ULIP and annual premium does not exceed 10% of actual capital sum assured.**	***Such consideration would be eligible for exemption u/s 10(10D) [Refer Example 1 given below]***
▪ **If the amount of premium payable on such eligible ULIP > ₹ 2,50,000 for any of the PYs during the term of such eligible ULIP**	***Such consideration would not be eligible for exemption u/s 10(10D) [Refer Example 2 given below]***

Example 1:

ULIP	A
Date of issue	1.4.2021
Annual premium	2,50,000
Sum assured	25,00,000
Consideration received as on 01.11.2031 on maturity	32,00,000
Note – The assessee did not receive any consideration under any other eligible ULIPs in earlier P.Y. preceding the P.Y.2031-32.	

Eligibility for exemption u/s 10(10D) - The consideration received would be exempt u/s 10(10D) in A.Y. 2032-33, since the annual premium payable on the policy does not exceed ₹ 2,50,000 and also does not exceed 10% of actual capital sum assured.

Example 2:

ULIP	A
Date of issue	1.4.2021
Annual premium	5,00,000
Sum assured	50,00,000
Consideration received as on 01.11.2031 on maturity	60,00,000
Note – The assessee did not receive any consideration under any other eligible ULIPs in earlier P.Y. preceding the P.Y.2031-32.	

Eligibility for exemption u/s 10(10D) - The consideration received would not be exempt u/s 10(10D) in A.Y. 2032-33 since the annual premium payable on the eligible ULIP exceeds ₹ 2,50,000.

II. Where the assessee has received consideration, during the current P.Y., under more than one eligible ULIPs

Circumstance	*Eligibility for exemption u/s 10(10D)*
If the aggregate of the amount of premium payable on such eligible ULIPs does not exceed ₹ 2,50,000 for any of the PYs during	***Such consideration would be eligible for exemption under u/s 10(10D) [Refer Example 3 given below]***

the term of such eligible ULIPs and the annual premium ≤ 10% of actual capital sum assured.	
If the aggregate of the amount of premium payable on such eligible ULIPs > ₹ 2,50,000 for any of the PYs during the term of such eligible ULIP.	***Consideration in respect of any of those eligible ULIPs whose aggregate amount of premium payable does not exceed ₹2,50,000 for any of the PYs during their term would be eligible for exemption u/s 10(10D), provided their annual premium≤ 10% of actual capital sum assured. [Refer Examples 4 and 5 given below]***

Example 3:

ULIP	A	B
Date of issue	01.04.2021	01.04.2021
Annual premium	1,00,000	1,50,000
Sum assured	10,00,000	15,00,000
Consideration received as on 01.11.2031 on maturity	12,00,000	18,00,000
Note – The assessee did not receive any consideration under any other eligible ULIPs in earlier P.Y. preceding the P.Y.2031-32.		

Eligibility for exemption u/s 10(10D) – In this case, the aggregate of the annual premium payable for ULIP "A" and ULIP "B" does not exceed ₹ 2,50,000 during the term of these policies.

Further, annual premium payable in respect of ULIP "A" and ULIP "B" does not exceed 10% of actual capital sum assured. Therefore, the consideration received under ULIP "A" and "B" would be exempt u/s 10(10D) in A.Y. 2032-33.

Example 4:

ULIP	A	B	C
Date of issue	1.4.2021	1.4.2021	1.4.2021
Annual premium	1,00,000	1,50,000	3,00,000
Sum assured	10,00,000	15,00,000	30,00,000
Consideration received as on 1.11.2031 on maturity	12,00,000	18,00,000	34,00,000
Note: The assessee did not receive any consideration under any other eligible ULIPs in earlier P.Y. preceding the P.Y.2031-32.			

Eligibility for exemption u/s 10(10D) – In this case, the aggregate of the annual premium payable for ULIP "A", ULIP "B" and ULIP "C" exceeds ₹ 2,50,000 during the term of these policies.

However, the consideration received under ULIPs "A" and "B" would be exempt u/s 10(10D) in A.Y. 2032-33, since aggregate of annual premium payable for these two policies does not exceed ₹ 2,50,000 for any previous year during the term of these two policies and also does not exceed 10% of actual capital sum assured.

Consequently, consideration received under ULIP "C" alone would not be exempt u/s 10(10D) in A.Y. 2032-33.

Example 5:

ULIP	X	A	B	C
Date of issue	1.4.2020	1.4.2021	1.4.2021	1.4.2021
Annual premium	2,50,000	1,00,000	1,50,000	3,00,000
Sum assured	25,00,000	10,00,000	15,00,000	30,00,000
Consideration received as on 01.11.2030 on maturity	30,00,000			
Consideration received as on 01.11.2031 on maturity		12,00,000	18,00,000	34,00,000
Note – The assessee did not receive any consideration under any other eligible ULIPs in earlier P.Y. preceding the P.Y.2031-32.				

Eligibility for exemption u/s 10(10D) - The consideration received under ULIP "X" would be exempt u/s 10(10D) in A.Y. 2031-32 since annual premium does not exceed 10% of the actual capital sum assured. Moreover, as the policy has been issued before 1.2.2021, limit of ₹ 2,50,000 of amount of premium payable is not applicable.

The aggregate of annual premium payable for ULIP "A", ULIP "B" and ULIP "C" (being ULIPs issued on or after 1.2.2021) exceeds ₹ 2,50,000 during the term of these policies.

However, the consideration received under ULIPs "A" and "B" would be exempt u/s 10(10D) in A.Y. 2032-33, since aggregate of annual premium payable for these two policies does not exceed ₹ 2,50,000 for any previous year during the term of these two policies and annual premium payable in respect of these policies does not exceed 10% of actual capital sum assured.

Consequently, consideration received under ULIP "C" alone would not be exempt u/s 10(10D) in A.Y. 2032-33.

Situation 2: Consideration has been received by the assessee under any one or more eligible ULIPs during any P.Y. preceding the current P.Y. and it has been claimed to be exempt u/s 10(10D). Such eligible ULIPs are referred as "Earlier Exempt Eligible ULIPs (EEE ULIPs)" in this paragraph and corresponding examples and reference to eligible ULIPs shall not include EEE ULIPs. The exemption u/s 10(10D) would be determined as under:

I. **Where the assessee has received consideration, during the current P.Y., under one eligible ULIP only**

Circumstance	*Eligibility for exemption u/s 10(10D)*
▪ **If aggregate amount of premium payable on such eligible ULIP and EEE ULIPs does not exceed ₹ 2,50,000 for any of the PYs during the term of such eligible ULIP and annual premium in respect of eligible ULIP does not exceed 10% of actual capital sum assured.**	***Consideration under such eligible ULIP would be eligible for exemption u/s 10(10D) [Refer Example 6]***
▪ **If aggregate amount of premium payable on such eligible ULIP and EEE ULIPs > ₹ 2,50,000 for any of the PYs during the term of such eligible ULIP**	***Consideration under such eligible ULIP would not be eligible for exemption u/s 10(10D) [Refer Example 7]***

Example 6:

ULIP	X	A
Date of issue	1.4.2021	1.4.2022
Annual premium	2,00,000	50,000
Sum assured	20,00,000	5,00,000
Consideration received as on 01.11.2031 on maturity	25,00,000	
Consideration received as on 01.11.2032 on maturity		6,00,000
Note – The assessee did not receive any consideration under any other eligible ULIPs in earlier P.Y. preceding the P.Y.2032-33, except ULIP X in P.Y.2031-32.		

Eligibility for exemption u/s 10(10D) – The consideration under ULIP "X" would be exempt u/s 10(10D) in A.Y. 2032-33, since the annual premium does not exceed ₹ 2,50,000 and also does not exceed 10% of actual capital sum assured.

The consideration received under ULIP "A" will also be exempt u/s 10(10D) in A.Y. 2033-34 since aggregate of the annual premium payable for ULIP "A" and ULIP "X" does not exceed ₹ 2,50,000 for the P.Ys. 2022-23 to 2031-32 and the annual premium of ULIP "A" does not exceed 10% of actual capital sum assured.

Example 7:

ULIP	X	A
Date of issue	1.4.2021	1.4.2022
Annual premium	2,00,000	1,00,000
Sum assured	20,00,000	10,00,000
Consideration received as on 01.11.2031 on maturity	25,00,000	
Consideration received as on 01.11.2032 on maturity		12,00,000
Note – The assessee did not receive any consideration under any other eligible ULIPs in earlier P.Y. preceding the P.Y.2032-33, except ULIP X in P.Y.2031-32.		

Eligibility for exemption u/s 10(10D) – The consideration under ULIP "X" would be exempt u/s 10(10D) in A.Y. 2032-33, since the annual premium does not exceed ₹ 2,50,000 and also does not exceed 10% of actual capital sum assured.

The consideration received under ULIP "A" will not be exempt u/s 10(10D) in A.Y. 2033-34 since aggregate of the annual premium payable for ULIP "A" and ULIP "X" (both ULIPs issued on or after 1.2.2021) exceeds ₹ 2,50,000.

II. Where the assessee has received consideration, during the current P.Y., under more than one eligible ULIP

▪ **If aggregate of the amount of premium payable on such eligible ULIPs and EEE**	***Consideration received would be eligible for exemption under u/s 10(10D)***

ULIPs does not exceed ₹ 2,50,000 for any of the PYs during the term of such eligible ULIPs and annual premium in respect of eligible ULIPs also does not exceed 10% of actual capital sum assured.	
▪ **If aggregate of the amount of premium payable on such eligible ULIPs and EEE ULIPs > ₹ 2,50,000 for any of the PYs during the term of such eligible ULIPs.**	***Consideration in respect of any of those eligible ULIPs (whose aggregate amount of premium along with the aggregate amount of premium of EEE ULIPs does not exceed ₹2,50,000 for any of the PYs during their term) would be eligible for exemption u/s 10(10D)[Refer Examples 8, 9 and 10 given below]***

Example 8:

ULIP	X	A	B	C
Date of issue	1.4.2021	1.4.2022	1.4.2022	1.4.2022
Annual premium	2,00,000	1,00,000	1,50,000	3,00,000
Sum assured	20,00,000	10,00,000	15,00,000	30,00,000
Consideration received as on 01.11.2031 on maturity	25,00,000			
Consideration received as on 01.11.2032 on maturity		12,00,000	18,00,000	34,00,000
Note – The assessee did not receive any consideration under any other eligible ULIPs in earlier P.Y. preceding the P.Y.2032-33, except ULIP X in P.Y.2031-32.				

Eligibility for exemption u/s 10(10D) - The consideration under ULIP "X" would be exempt u/s 10(10D) in A.Y. 2032-33, since the annual premium does not exceed ₹ 2,50,000 and also does not exceed 10% of actual capital sum assured.

In this case, the aggregate of the annual premium payable for ULIP "A", ULIP "B" and ULIP "C" along with the premium for ULIP "X" exceeds ₹ 2,50,000 during the term of these policies. Hence, the consideration received under ULIPs "A", "B" and "C" will not be exempt u/s 10(10D) in A.Y. 2033-34.

Alternative treatment: If the consideration under ULIP "X" was not claimed to be exempt u/s 10(10D) in A.Y. 2032-33 by the assessee, then, the consideration received under ULIP "A" and ULIP "B" would be exempt u/s 10(10D) in A.Y.2033 -34 since the aggregate of the annual premium payable for the ULIPs "A" and "B" together did not exceed ₹ 2,50,000 for any of the previous years during the term of these two policies.

Example 9:

ULIP	X	A	B	C
Date of issue	1.4.2021	1.4.2022	1.4.2022	1.4.2022
Annual premium	1,00,000	1,00,000	1,50,000	3,00,000

Sum assured	10,00,000	10,00,000	15,00,000	30,00,000
Consideration received as on 1.11.2031 on maturity	12,00,000			
Consideration received as on 1.11.2032 on maturity		12,00,000	18,00,000	34,00,000
Note – The assessee did not receive any consideration under any other eligible ULIPs in any earlier P.Y. preceding the P.Y.2032-33, except ULIP X in P.Y.2031-32.				

Eligibility for exemption u/s 10(10D) - The consideration under ULIP "X" would be exempt u/s 10(10D) in A.Y. 2032-33, since the annual premium does not exceed ₹ 2,50,000 and also does not exceed 10% of actual capital sum assured.

In this case, the aggregate of the annual premium payable for ULIP "A", ULIP "B" and ULIP "C" along with the premium for ULIP "X" exceeds ₹ 2,50,000 during the term of these policies.

However, the consideration received under ULIPs "A" or "B" (any one) can be claimed as exempt u/s 10(10D) in A.Y. 2033-34.

If the consideration received under ULIP "A" claimed to be exempt as aggregate of the annual premium payable for ULIP "X" and "A" did not exceed ₹ 2,50,000 for any of the PYs., the consideration received under ULIP "B" would not be exempt.

If the consideration received under ULIP "B" claimed to be exempt as aggregate of the annual premium payable for ULIP "X" and "B" did not exceed ₹ 2,50,000 for any of the PYs., the consideration received under ULIP "A" would not be exempt. Exemption for consideration received under ULIP "B" is preferred as it is more beneficial to the assessee.

Alternative treatment: If the consideration under ULIP "X" was not claimed to be exempt u/s 10(10D) in A.Y. 2032-33 by the assessee, then the consideration received under ULIP "A" and ULIP "B" would be exempt u/s 10(10D) in A.Y. 2033-34 since the aggregate of the annual premium payable for the ULIPs "A" and "B" together did not exceed ₹ 2,50,000 for any of the previous years during the term of these two policies.

It may be noted that in every case, the consideration received for ULIP "C" would not be exempt u/s 10(10D).

Example 10:

ULIP	X	Y	A	B	C
Date of issue	1.4.2021	1.4.2021	1.4.2022	1.4.2022	1.4.2022
Annual premium	1,00,000	1,00,000	1,00,000	1,50,000	3,00,000
Sum assured	10,00,000	10,00,000	10,00,000	15,00,000	30,00,000
Consideration received on surrender as on 1.7.2025	6,00,000				
Consideration received on maturity as on 1.11.2031		12,00,000			
Consideration received as on 1.11.2032 on maturity			12,00,000	18,00,000	34,00,000
Note – The assessee did not receive any consideration under any other eligible ULIPs in any earlier P.Y. preceding the P.Y.2032-33, other than ULIPs "X" and "Y".					

Eligibility for exemption u/s 10(10D) - The consideration under ULIP "X" would be exempt u/s 10(10D) in A.Y.2026-27, since the annual premium does not exceed ₹ 2,50,000 and also does not exceed 10% of actual capital sum assured.

The consideration received under ULIP "Y" would be exempt u/s 10(10D) in A.Y. 2032-33, since the aggregate of annual premium payable for ULIP "X" and "Y" does not exceed ₹ 2,50,000 and annual premium payable for ULIP "Y" does not exceed 10% of actual capital sum assured.

The consideration received under ULIPs "A", ULIP "B" and ULIP "C" would not be exempt u/s 10(10D) in A.Y. 2033-34, since aggregate of annual premium payable for these three policies and ULIP "X" and "Y" exceeds ₹ 2,50,000.

Alternative treatment: If the consideration on surrender under ULIP "X" was not claimed to be exempt u/s 10(10D) in A.Y. 2026-27 by the assessee, then the consideration received under ULIP "Y" would be exempt and the consideration received under ULIP "A" or ULIP "B" (any one) can be exempt u/s 10(10D) in A.Y. 2033 -34. If the consideration received under ULIP "A" claimed to be exempt, as aggregate of the annual premium payable for ULIP "Y" and "A" did not exceed ₹ 2,50,000 for any of the PYs., the consideration received under ULIP "B" would not be exempt.

If the consideration received under ULIP "B" is claimed to be exempt as aggregate of the annual premium payable for ULIP "Y" and "B" did not exceed ₹ 2,50,000 for any of the PYs., the consideration received under ULIP "A" would not be exempt. Exemption for consideration received under ULIP "B" is preferred as it is more beneficial to the assessee.

If the consideration on surrender of ULIP "X" and on maturity of ULIP "Y" were not claimed to be exempt under section 10(10D) in A.Y.2026-27 and A.Y.2032-33, respectively, then consideration received under both ULIP "A" and ULIP "B" would be exempt in A.Y.2033-34 (being ULIPs issued on or after 1.2.2021, whose aggregate consideration does not exceed ₹ 2,50,000).

It may be noted that, in every case, consideration received under ULIP "C" would not be exempt u/s 10(10D).

Note: Some examples [Examples 6 and 7] and some alternative treatments which have been given above are based on the discussion contained in the Circular although they do not form part of the text of the Circular.

Computation of Capital Gains under section 45(1B) [Notification No. 8/2022 dated 18.01.2022]:

Section 45(1B) provides that where any person receives, at any time during any previous year, any amount, under a ULIP issued on or after 1.2.2021, to which exemption under section 10(10D) does not apply on account of premium payable exceeding ₹ 2,50,000 for any of the previous years during the term of such policy, then, any profits or gains arising from receipt of such amount by such person would be chargeable to income-tax under the head "Capital gains" and would be deemed to be the income of the such person for the previous year in which such amount was received.

It may be noted that where more than one ULIP is issued to a person on or after 1.2.2021 and the aggregate of

premium payable on such ULIPs exceed ₹ 2,50,000 for any of the previous years during the term of any such ULIP(s), the consideration under any of those ULIPs, at the option of the assessee, whose aggregate premium does not exceed ₹ 2,50,000 for any of the previous years during their term, would be eligible for exemption u/s 10(10D)1. Any amount received under any other ULIP(s) issued on or after 1.2.2021 (referred to as specified ULIPs) would be taxable u/s 45(1B). A specified ULIP has been defined as a ULIP to which exemption under section 10(10D) does not apply on account of applicability of the fourth and fifth provisos thereof. Such specified ULIP has been included in the definition of capital asset under section 2(14). The income from such specified ULIPs taxable is to be calculated in such manner as may be prescribed.

Accordingly, the CBDT has, vide this notification, notified Rule 8AD to compute capital gains on such specified ULIPs. Where any person receives at any time during any previous year any amount under such specified ULIP, including the amount allocated by way of bonus on such policy, then, —

	Situation	*Capital gains arising from receipt of amount during the previous year in which such amount is received*
(i)	**Where the amount is received for the first time under such specified ULIP during the previous year,**	***A-B*** ***A = the amount received for the first time under such specified ULIP during the previous year, including the amount allocated by way of bonus on such specified policy; and*** ***B = the aggregate of the premium paid during the term of such specified ULIP till the date of receipt of the amount as referred to in "A"***
(ii)	**where the amount is received under such specified ULIP during the previous year, at any time after the receipt of the amount as referred to in (i)**	***C-D*** ***C = the amount received under such specified ULIP during the previous year, at any time after the receipt of the amount as referred to in (i) above, including the amount allocated by way of bonus on such policy.*** ***Note - The amount which has already been considered for calculation of taxable amount during the earlier previous year(s) would not be included in "C".*** ***D = the aggregate of the premium paid during the term of such specified ULIP till the date of receipt of the amount as referred to in "C" as reduced by "B" i.e., the premium that has already been considered for calculation of taxable amount during the earlier previous year(s).***

The capital gains as computed in above table would be deemed to be the capital gains arising from the transfer of a unit of an equity-oriented fund set up under a scheme of an insurance company comprising unit linked insurance policies.

(A) "FILING OF RETURN OF INCOME"

Section 139(1): *Filing of Return of Income:-*

139	Category of Person	Criteria which makes mandatory filing of return
(1)	(i) **Company / Firm**	**In each & every case** *(ir-respective of their level of income or loss).*
	(ii) **Individual, HUF, AOP/BOI, AJP**	If gross total income (without exemption u/s 54 to 54GB) *exceeds the basic exemption limit.*
	(iii) In case of a person other than covered in clause (i) & (ii) above (e.g. Local Authority)	If total income *exceeds the basic exemption limit.*
	(iv) A person being a **resident (other than not-ordinarily resident)** if otherwise not being liable to furnish return, **is still required to furnish his return of Income or loss…**	If: (a) - holds as a **beneficial owner** or otherwise any asset (including financial interest) outside India, or - has **signing authority in any account located outside India,** OR (b) is a **beneficiary** of any asset (including financial interest) outside India, **But, beneficiary is not required to file his return** if benefit (i.e. income) from such asset is includible in income of person covered in clause (a) above.

Beneficial Owner is:

Individual (+) has provided consideration (directly / indirectly) for asset (+) for the immediate or future benefit of himself or any other person.

Beneficiary is:

Individual (+) derives benefit from asset (+) consideration provided for such asset by any other person.

(v) In case of any person *except company or firm*, if amount / aggregate amount, during the previous year, **of**

- **Current account deposits in one or more account with bank (including co-operative bank) exceeds ₹1 crore**
- **OR**
- **Expense on his or any other person foreign travel exceeds ₹ 2 lakh**
- **OR**
- **Electricity expense exceeds ₹ 1 lakh**
- **OR**
- **met out any other criteria as may be prescribed**.**

**** Notification No. 37/2022 dated 21.04.2022: Requirement of filing return of income u/s 139(1) by certain persons, when the quantum of prescribed transactions exceed the prescribed monetary threshold:**

	Case	**Prescribed transaction(s)**	**Prescribed Monetary threshold**
(i)	*A person **carrying on business***	**His total sales, turnover or gross receipts in the business**	***> ₹60 lakhs during the relevant P.Y.***
(ii)	*A person **carrying on profession***	**His total gross receipts in profession**	***> ₹10 lakhs during the relevant P.Y.***
(iii)	*(a) A **resident individual** who is **aged ≥ 60 years** at any time during the relevant P.Y.*	**The aggregate of TDS and TCS in his case**	***≥ ₹50,000 during the relevant P.Y.***
	(b) Any other person	**The aggregate of TDS and TCS in his case**	***≥ ₹25,000 during the relevant P.Y.***
(iv)	*A person having **savings bank account***	**The deposit in one or more savings bank account of the person, in aggregate**	***≥ ₹50 lakhs during the relevant P.Y.***

Due date for furnishing of Return of Income:- AS AMENDED BY F. A. 2021

(i) Person **who is required to furnish report u/s 92E [including the partners of the firm or the spouse of such partner (if the provisions of section 5A applies to such spouse), if such firm is required to furnish a report referred to in section 92E]** : **30th November**

(ii) In case of an assessee [other than an assessee referred to in clause (i) above]
- **Company**
- **Non-corporate person having requirement of audit**
- **Partner of a firm having requirement of audit (or the spouse of such partner if the provisions of section 5A applies to such spouse)**

: **31st October**

(iii) **In any other case** : **31st July.**

Section 234F: *Fees for default in filing of return of income :-* AS AMENDED BY F. A. 2021

If any person

Who is required to furnish the return **And** Not furnished within the due date u/s 139(1)

Liable to pay a **FEE** of **₹ 5000/-.**

But, if total income is upto ₹ 5 lacs, then fee shall not exceed ₹ 1,000/-.

Section 272A(2):-

In case of person who is required to furnish return u/s 139(4A) or 139(4C), **And** Not furnished return on or before due date ….

Then, in addition to fee u/s 234F, will be liable to pay **penalty** @ **500/- per day** *for the period during which default continues.*

As Amended By F. A. 2022

Exams oriented approach for the Provisions of section 139(3) to 139(4C):-

Sec. 139	Category of Person	Criteria which makes mandatory filing of return
(3)	Any person in case of loss under the head profits and gains of business or profession or Capital Gains, *claims such loss should be carried forward u/s 72, 73, 73A, 74, or 74A.*	MAY furnish return in respect of such loss, **But, As per Section 80: Unless the loss return is filed within the due date, such loss (i.e. u/s 72/73/73A/74/ 74A) can not be carried forward).** **[See EXPLANATORY REMARKS also as given on next page.]**
(4A)	**Charitable or religious trust or institution**	If total income **without allowing the exemption u/s 11 and 12** *exceeds the basic exemption limit.*
(4B)	**Political Party**	If total income **without allowing exemption u/s 13A** *exceeds the basic exemption limit.*
(4C)	**Exempted association or institution u/s 10** (like, Educational / Medical institution, Mutual fund, Tea Board, etc.)	If total income **without allowing exemption u/s 10** *exceeds the basic exemption limit.*

EXPLANATORY REMARKS:-

(1) If loss return has not been furnished upto due date, then, losses u/s 72 / 73 / 73A / 74 / 74A can't be carried forward **[even if assessee has furnished his loss return in pursuance of notice u/s 142(1)].**

(2) Loss from house property, unabsorbed depreciation (i.e. cases not covered u/s 80) can be carried forward **even if he has filed his return belatedly/not filed return of such year.**

Belated return [Section 139(4)]	Revised return [Section 139(5)]
If a person fails to furnish return within time allowed u/s 139(1), may furnish the same belatedly, but within the following time limit…..	**If a person who has furnished his return,** *whether within due date or belatedly,* **discovers any omission or wrong statement there in,** may furnish his revised return, but with in the following time limit ….
Before 3 months prior to the end of the relevant assessment year or before completion of assessment, whichever is earlier	

EXPLANATORY REMARK: *Revised return not only replaces the original return* ***but it replaces from the date***

on which original return was filed. Meaning there by, if assessee has furnished his original return within the due date and files revised return claiming loss / loss at increased amount, **such loss can be carried forward.**

[Dhampur Sugar Mills Limited (All.- HC)]

Section 140: *Who shall verify the return:-* As amended by F. A., 2020

In case of Individual ➢ If *mentally incapacitated* ➢ If *absent from India*, or for any other reason *unable to sign*	**By himself** ➢ *By Legal guardian.* ➢ By *person authorised by him.*
In case of HUF ➢ If Karta is *mentally incapacitated or absent from India*	**By Karta** ➢ By *any other adult member* of the family.
In case of Firm ➢ If there is *no managing partner or if he is unable to sign*	**Managing Partner** ➢ By *any partner of the firm not minor.*
In case of LLP ➢ If there is *no designated partner or if he is unable to sign*	**By the designated partner** ➢ By *any partner* thereof or ***any other person, as may be prescribed for this purpose.***
In case of Company ➢ If there is *no MD or if he is unable to sign* Where the *company is being wound up* ➢ If an application for corporate insolvency process has been admitted by the Adjucating Authority **under I.B.C. 2016:**	**By the managing director** ➢ By *any other director or* ***any other person, as may be prescribed for this purpose.*** ➢ By the *liquidator* of the company. ➢ By the *insolvency professional* appointed by such Adjucating Authority
In case of a political party	By the **Chief Executive Officer** of the party
In case of AOP or BOI	By any **member** there of
In case of any other person	By **person competent to act on his behalf**

Section 140A: *Self Assessment:-*

Where a return is being furnished by the assessee voluntarily or in pursuance of notice of the AO

Then, he **shall pay** the following before filing such return…..

Tax on returned income : ✓ (-) TDS/TCS/Advance tax : ✓ (-) MAT/ AMT credit or Relief u/s 89, 90, 90A, or 91 : ✓ (-) ***Deferred tax on perquisite arising from ESOPs*** : ✓ Amount of tax - required to pay : -	(+)	Interest payable u/s 234A, 234B, 234C	(+)	Fee payable u/s 234F

If, paid amount < aforesaid payable amount

then

Sequence for adjustment:

Ist: Fee u/s 234F; **IInd:** Interest u/s 234A, 234B, and 234C; **IIIrd:** Balance against tax.

☞ In respect of such shortfall, **assessee shall be treated as assessee in default** (also in a case where he has paid nothing against the aforesaid payable amount).

(B) "PROCEDURE FOR ASSESSMENT"

Section 142: *Inquiry before assessment:-*

➢ **Applicability**	**Person who has filed his ROI** OR	**Person in whose case due date u/s 139(1) has expired.**
➢ **AO may issue notice for….**	—	**(i) To file return within the time specified in the notice**
For clause (i), Prescribed authority may also serve notice.	**(ii) To furnish accounts** *(not older than three years prior to the relevant previous year),* **documents, various other information and statement of assets & liabilities.** ✓ To require the statement of assets & liabilities not included in accounts, **approval of Joint Commissioner is needed.**	

➢ To obtain full information about income / loss of assessee, **AO may make necessary inquiry.**

➢ **Special Audit [sub-section (2A) To (2D)]:**

Requirement: If proceedings are pending before the AO and in the interest of revenue, he feels necessary to get the accounts audited.

Grounds on which special audit may be directed to the assessee:

- ☞ **Nature and complexity in the accounts**
- ☞ **volume of the accounts;**
- ☞ **doubts about the correctness of accounts;**
- ☞ **multiplicity of transactions in the accounts; or**
- ☞ **specialized nature of business activity of assessee**

Other relevant points of Special Audit

- Prior to issue of direction...
  - **Opportunity of being heard** (to assessee)
  - **Prior approval** of CCIT/CIT
- Audit expense will be determined by CCIT/ CIT **& will be paid by the CG.**
- Audit will be done by the C.A. nominated by the CCIT/ CIT.
- **If accounts are already audited** → Still AO may issue direction
- **Audit report shall be furnished within time allowed by AO,** that may be extended but aggregate time (i.e. originally allowed + extended) **shall not exceed 180 days.**

➢ If the AO wants to use the result of inquiry as held u/s 142(2) or audit report u/s 142(2A) in an assessment, **an opportunity shall be given to the assessee (except in case of best judgment assessment).**

Nature of default	Consequences
Failure to comply with a notice u/s 142 (1) or Failure to comply with a direction u/s 142(2A)	**Penalty u/s 272A(1): ₹ 10,000** **Prosecution u/s 276D: Any period up to one year (with fine)**

Section 142A: *Estimate by Valuation Officer in certain cases:-*

AO → For the purpose of assessment / re-assessment, **MAY refer** → **V.O.**

Valuation of an asset / investment / property

Whether he is satisfied from accounts or not.

Then, Valuation officer...

- Shall estimate **value after considering all evidence** and **give opportunity of being heard** to the assessee.
- If assessee does not co-operate or comply with his direction → **V.O. will determine the value as per best of his judgment.**
- **Time limit for sending his report:** End of the month in which reference was made by the AO **(+) 6 Months.**

☞ AO **may consider** such report for assessment / re-assessment *after giving an opportunity to the assessee.*

Section 143(1): *Assessment On the Basis of Return:-*

- **If return** u/s 139, or in response to a notice issued u/s 142(1) **has been made**,
- *Total income **shall be computed** after making the **following adjustments** (only):*

Arithmetical Error | **Apparent incorrect claim** (*like,* claim in excess of statutory limit of section 80C, etc.) | Disallowance of loss claimed **if return of year of loss was filed belatedly** | Disallowance of expense or increase in income as *shown in Audit Report* **but not considered in ROI** | Disallowance of deduction u/s 10AA 80IA to 80RRB, **if claimed in belated return**

Before an adjustment,

- ✓ An intimation of such adjustment shall be given.
- ✓ Response received from assessee **shall be considered** before making any adjustment.
- ✓ If no response received within 30 days from date of issue of such intimation – **such adjustment shall be made.**

- ➢ Tax, interest and fee u/s 234F **shall be computed** *on aforesaid adjusted total income.*
- ➢ If, after giving credit of prepaid taxes, **relief u/s 89,** 90, 90A or 91, interest & fee, **any amount is payable / refundable to the assessee** – then, **an intimation* shall be sent.**
- ➢ In case of loss return, **if loss is adjusted** then also intimation* shall be sent (even if no amount is payable or refundable).
- ➢ In any other case, acknowledgement shall be deemed as intimation.

*Time limit for sending the intimation (not for service of such intimation):

End of the year in which the return was filed (+) Nine Months.

EXPLANATORY REMARK:-

- **Section 143(1) is not an assessment;** Intimation u/s 143(1) is not an assessment order. Hence, a revised return can be filed even after the receipt of intimation u/s 143(1), if time is otherwise available u/s 139(5).

[Asstt. CIT v/s Rajesh Jhaveri Stock Brokers (P) Ltd.(SC)]

Section 241A: *Withholding of refund in certain cases:-*

If **refund is due** u/s 143(1) **AND** **Notice u/s 143(2) has been issued** **AND** AO is of the opinion that **grant of refund is likely to adversely affect the revenue**

Then,

After recording the reasons **&** With prior approval of principal commissioner or commissioner

The assessing officer may withhold the refund upto the date of completion of such scrutiny assessment.

Section 143(2): *Requirements for scrutiny assessment:-*

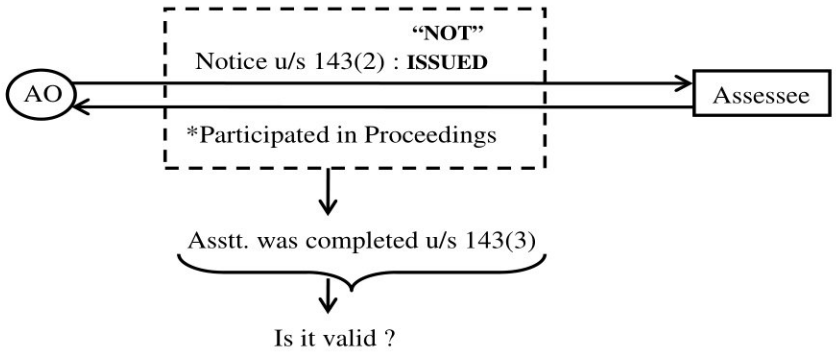
- Assessee **has furnished his return** u/s 139, or in response to a notice issued u/s 142(1).
- Assessing officer or the prescribed authority **consider necessary to ensure about the correctness of the particulars of the return.**
- In this regard, assessing officer or the prescribed authority **shall serve** a notice *within ~~6 months~~ **3 months** from the end of the financial year in which the return is furnished.*

Section 292BB: *Deemed validity of Notice served: -*

- *Where an assessee has -*
  - ***appeared in any proceeding related to an assessment or reassessment, or***
  - ***co operated in any inquiry related to an assessment or reassessment,***
- *It shall be deemed that any notice under any provision of this Act has been duly served upon him in time in accordance with the relevant provision of the Act. Further, such assessee shall be precluded from taking any objection in any proceeding or inquiry under this Act that the notice was,*
  - ✓ *not served upon him; or*
  - ✓ *not served upon him in time ; or*
  - ✓ *served upon him in an improper manner.*

► **Non -applicability:-** ***The above provisions of section 292BB shall not apply where the assessee has raised such objection before the completion of such assessment or reassessment.***

CIT v/s Laxman Das Khandelwal (2019) (Supreme Court):



Supreme Court's Observations: The Supreme Court observed that the law on the point as regards applicability of the requirement of issue of notice under section 143(2) is quite clear. According to section 292BB, if the assessee had participated in the proceedings, by way of legal fiction, notice issued would be deemed to be valid even if there be infractions as detailed in the said section. The scope of the provision is to make service of notice having certain infirmities to be proper and valid if there was requisite participation on the part of the assessee. ***It is, however, to be noted that the section does not save complete absence of issue of notice.*** **For section 292BB to apply, the notice must have emanated from the Department.** It is only the infirmities in the manner of service of notice that the section seeks to cure. The section is not intended to cure complete absence of notice itself.

Supreme Court's Decision: The Supreme Court, accordingly, held that ***non-issuance of notice u/s 143(2) is not a curable defect u/s 292BB inspite of participation by the assessee in assessment proceedings.***

Section 143(3): *Order for scrutiny assessment:-*

Assessing officer shall, after considering all the relevant things, complete such assessment and will determine payable sum or refund, if any, upon the assessee, on the basis of such assessment.

- During the assessment proceedings, the assessee can put forth claim for deduction etc. which were not claimed in the ROI **(but only by way of filing of revised return).** The AO is duty bound to entertain such claims. **[GOETZE (INDIA) LTD. v/s CIT (SC)]**

First Proviso To Section 143(3):- **AS AMENDED BY F. A., 2022**

For assessee, **who has furnished its return u/s 139(4C)** [i.e., Scientific research association, News agency, association or institution referred to in section 10(23A) / 10(23B) / ~~10(23C)~~], if the AO wants to complete assessment without exemption u/s 10, then, it is possible only on the fulfillment of the following two conditions:

(a) **The AO has intimated the violation of conditions of section 10 (on the part of the assessee) to the Central Government or the prescribed authority; and**

(b) **The notification issued or approval granted to such a body has been rescinded or withdrawn.**

~~**But,** in case of an institution as referred to in section 10(23C), **if first proviso to section 2(15) become applicable i.e. commercial receipts exceeds 20% of total receipts during the relevant previous year,** then, *for such previous year, no exemption u/s 10(23C) will be given,* **whether approval granted to such an institution has been withdrawn or not.** **[Third Proviso]**~~

Second Proviso To Section 143(3):- **AS AMENDED BY F. A., 2022**

- where the Assessing Officer is satisfied that
- any fund or institution referred to in section 10(23C)(iv)/(v)/(vi)/(via), or any trust or institution referred to in section 11,
- **has committed any specified violation as defined in Explanation 2 to the fifteenth proviso to clause (23C) of section 10 or the Explanation to sub-section (4) of section 12AB,** as the case may be,
- he ***shall***—
  - (a) **send a reference to the Principal Commissioner or Commissioner to withdraw the approval or registration,** as the case may be; and
  - (b) **no order making an assessment of the total income or loss of such fund or institution or trust shall be made by him without giving effect to the order passed by the Principal commissioner or Commissioner [either for cancellation of approval / registration or refusing to cancel the approval / registration u/s 10(23C) or u/s 12AB(4)(ii)/(iii)].**

Third Proviso To Section 143(3):-

For university, **college or other institution as referred to in section 35(1)(ii) or (iii),** If AO is satisfied that activities are not being carried out as per conditions with which such body has been approved, then, he may, after giving an opportunity to the assessee, recommend to the CG to withdraw the approval.

Section 144: *Best Judgment Assessment or Ex-Parte Assessment:-*

Grounds for best judgment assessment:

- **Failure to furnish a return** u/s 139(1) and has not furnished the return u/s 139(4), ***or an updated return u/s 139(8A),*** *or* **As amended by F. A., 2022**
- **Failure to comply with** a notice issued u/s **142(1),** or
- **Failure to comply with** a direction of audit u/s **142(2A),** or
- **Failure to comply with** a notice issued u/s **143(2).**

Amendments made by Finance Act, 2021 (as applicable from 1st April, 2021):

NEW SCHEME of INCOME ESCAPING ASSESSMENT / REASSESSMENT (u/s 147 to 151A) and ASSESSMENT (u/s 153A to 153D) IN CASE OF SEARCH initiated u/s 132 or REQUISITION u/s 132A, on or after 1st April, 2021:

Section 147: *Assessment /Reassessment/ Recomputation of loss or allowance:-*

- If **any income** chargeable to tax, in the case of an assessee,
- **has escaped assessment** for any assessment year,
- **the Assessing Officer may,** *subject to the provisions of sections 148 to 153,*
- **assess or reassess such income** or recompute the loss or the depreciation allowance or any other allowance or deduction for such assessment year (i.e. relevant assessment year).

Explanation:

- For the purpose of assessment or reassessment or recomputation under this section,
- the **Assessing Officer may assess or reassess the income**
- **in respect of any issue,** *which has escaped assessment,* **and**
- **such issue comes to his notice subsequently** *in the course of the proceedings under this section,*
- ***irrespective of the fact that the provisions of section 148A have not been complied with.***

Section 148: *Requirement in relation of income escaping assessment:-*

- Before making the assessment, reassessment or recomputation under section 147, and
- *subject to the provisions of section 148A,*
- the Assessing Officer **shall serve** on the assessee a notice, **along with a copy of the order passed, if required, under section 148A(d),**
- **requiring him to furnish** within such period, as may be specified in such notice,
- a **return of his income** or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year,
- in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and *the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139:*

➢ **Provided** that no notice under this section shall be issued

- **unless there is information with the Assessing Officer which suggests that**
- **the income chargeable to tax has escaped assessment** in the case of the assessee for the relevant assessment year and
- *the Assessing Officer has obtained prior approval of the specified authority to issue such notice.*

Provided further that **no such approval shall be required** where the Assessing Officer, with the prior approval of the specified authority, has passed an order u/s 148A(d) *to the effect that it is a fit case to issue a notice under this section.* **As inserted by F. A., 2022**

Note: The effect of this proviso is that *once approval is already taken by the AO before passing an order u/s 148A(d),* **no further approval is required for issuing notice u/s 148.**

Explanation 1: **As amended by F. A., 2022**

- For the purposes of this section and section 148A,
- **the information with the Assessing Officer which suggests that the income chargeable to tax has escaped assessment means,—**

(i) **any information** ~~flagged~~ in the case of the assessee for the relevant assessment year **in accordance with the risk management strategy formulated by the Board** from time to time;

(ii) ~~**any final objection raised by the Comptroller and Auditor General of India to the effect that *the assessment in the case of the assessee for the relevant assessment year has not been made in accordance with the provisions of this Act.***~~

(ii) ***any audit objection*** *to the effect that the* ***assessment*** *in case of the assessee for the relevant assessment year* ***has not been made in accordance with the provisions of this Act****; or*

(iii) ***any information received under an agreement*** *referred to in section 90/90A of the Act (i.e. DTAA); or*

(iv) ***any information made available to the Assessing Officer under the scheme notified u/s 135A****; or*

(v) ***any information which requires action in consequence of the order of a Tribunal or a Court.***

Analysis of amendments as made by F.A, 2022:

(1) The word 'flagged' is omitted as it was found to be **superfluous** by the legislature. Accordingly, even if information is not flagged, the same shall be considered as information with the AO, which suggests that income has escaped assessment, provided the same is:

- in the case of the assessee;
- for the relevant assessment year;
- in accordance with the risk management strategy formulated by CBDT.

(2) Earlier final C&AG objection was to be treated as information for the AO to acquire jurisdiction under section 148. Now, as per amended clause (ii), audit objection, **whether by C&AG or internal audit,** will become information enabling the AO to acquire jurisdiction.

(3) Effect of the three new clauses [(iii), (iv) and (v)] as added to Explanation 1 to Section 148 to expand the scope of eligible information to initiate proceedings under Section 148/148A:

(i) The AO may receive information from countries with which India has arrangements for the exchange of information for the prevention of tax evasion and for the avoidance of double taxation provided u/s 90/90A, *Such information, if suggests escapement of income, will also enable the Assessing Officer to assume jurisdiction under Section 148.*

(ii) AO may also receive information u/s 135A which provides that Central Govt. may make a scheme to collect information (as provided u/s 133/133B, etc.) in a faceless manner without the interface of the assessee and income tax authority. *Such information so received will also be information under Explanation 1 to section 148 if it suggests that income has escaped assessment.*

(iii) Order of Tribunal or a Court will also be a source of information if such order requires action in the case of that assessee or other assessee. The expression Tribunal or Court are wide in scope as it will cover not only Income Tax Appellate Tribunal but also any other Tribunal constituted under other law.

Explanation 2:

For the purposes of this section, **where,—**

(i) **a search is initiated** under section 132 **or books of account, other documents or any assets are requisitioned** under section 132A, **on or after 1st April, 2021, in the case of the assessee**; or

(ii) **a survey is conducted** under section 133A, *other than u/s 133A(2A) [i.e. TDS/TCS Survey]* ~~*or u/s 133A(5) [i.e. to collect information about a function/ceremony]*~~ *of that section,* **on or after 1st April, 2021, in the case of the assessee**; or **As amended by F. A., 2022**

(iii) **the Assessing Officer is satisfied,** with the prior approval of the Principal Commissioner or Commissioner, **that any money, bullion, jewellery or other valuable article or thing, seized or requisitioned** under section 132 or section 132A in **case of any other person on or after 1st April, 2021,** ***belongs to the assessee;*** or

(iv) **the Assessing Officer is satisfied,** with the prior approval of Principal Commissioner or Commissioner, **that any books of account or documents, seized or requisitioned** under section 132 or section 132A **in case of any other person on or after 1st April, 2021,** ***pertains or pertain to, or any information contained therein, relate to, the assessee,***

– **the Assessing Officer** ***shall be deemed to have information which suggests that***
– ***the income chargeable to tax has escaped assessment*** in the case of the assessee
– ~~***for the three assessment years immediately preceding the assessment year relevant to the previous year in which***~~ **As amended by F. A., 2022**
– ***the search is initiated or books of account, other documents or any assets are requisitioned or survey is conducted in the case of the assessee or money, bullion, jewellery or other valuable article or thing or books of account or documents are seized or requisitioned in case of any other person.***

Analysis of amendments as made by F.A, 2022:

- The aforesaid amendment of omission of reference "three assessment years immediately preceding the assessment year relevant to the previous year in which" **resulting in widening the scope of reassessment and has far-reaching consequences.**
- *Earlier the scope of deemed information as a result of search/survey was confined to only 3 assessment years immediately preceding the assessment year relevant to the previous year in which search is initiated, etc.* ***Now the concept of deemed information applies to all 10 assessment years as a result of the search/survey.***
- But, it is to be noted that although the scope u/s 148 is widened on account of the amendment in Explanation 2, **the pre-requisite condition** u/s 149(1)(b) of the AO possessing books or other evidence revealing escapement of **income** chargeable to tax **represented in the form of (i) asset, (ii) expenditure in respect of transaction, event or occasion, (iii) an entry in books of account is still to be satisfied.**

Explanation 3: Specified authority means *the specified authority referred to in section 151.*

Section 148A: ***Conducting inquiry, providing opportunity before issue of notice u/s 148:-***

Before issuing any notice under section 148,—

(a) The Assessing Officer **shall conduct any enquiry, if required,** with the prior approval of specified authority, **with respect to the information which suggests that the income chargeable to tax has escaped assessment.**

(b) The Assessing Officer **shall provide an opportunity of being heard** to the assessee,

– ~~*with the prior approval of specified authority,*~~
– **by serving upon him a notice to show cause**

- within such time, as may be specified in the notice,
- **being not less than seven days and but not exceeding thirty days from the date on which such notice is issued,** or such time, *as may be extended by him on the basis of an application* in this behalf,
- ***as to why a notice under section 148 should not be issued*** *on the basis of information which suggests that income chargeable to tax has escaped assessment* in his case for the relevant assessment year.

➢ The notice shall also include **results of enquiry conducted, if any,** as per clause (a).

(c) The Assessing Officer **shall consider the reply of assessee furnished,** if any, in response to the show-cause notice referred to in clause (b);

(d) The Assessing Officer **shall decide,**

- on the basis of material available on record including reply of the assessee,
- **whether or not it is a fit case to issue a notice under section 148,**
- by passing an order,
- *with the prior approval of specified authority,*
- **within one month from the end of the month in which such reply is received** from the assessee, or
- **where no such reply is furnished,**
- ***within one month from the end of the month in which time or extended time allowed to furnish a reply as per clause (b) expires.***

Provided that the provisions of this section shall not apply in a case where,—

(a) **a search is initiated** u/s 132 **or books of account, other documents or any assets are requisitioned** u/s 132A **in the case of the assessee on or after 1st April, 2021**; or

(b) the **Assessing Officer is satisfied,**

- *with the prior approval of the Principal Commissioner or Commissioner* that
- **any money, bullion, jewellery or other valuable article or thing, seized** in a search u/s 132 or **requisitioned** u/s 132A, **in the case of any other person on or after 1st April, 2021;**
- ***belongs to the assessee;*** or

(c) the **Assessing Officer is satisfied,**

- *with the prior approval of the Principal Commissioner or Commissioner* that
- **any books of account or documents, seized** in a search u/s 132 **or requisitioned** u/s 132A, **in case of any other person on or after 1st April, 2021,**
- ***pertains or pertain to, or any information contained therein, relate to, the assessee.***

(d) the Assessing Officer has received any information under the scheme notified u/s 135A pertaining to income chargeable to tax escaping assessment for any assessment year in the case of the assessee.

As inserted by F.A. 2022

Explanatory Note:

➢ The effect of this amendment is that *the procedure prescribed u/s 148A will also not be followed in cases where information has been received under a notified scheme framed u/s 135A pertaining to income chargeable to tax that has escaped assessment.* ***However, the approval of the specified authority will be***

required before issuing notice u/s 148 in all those cases where the procedure u/s 148A is not required to be followed.

- It is respectfully submitted that *provisions of section 135A are not in context to sharing of information, but only meant for the purpose of information collection.*

Explanation:

For the purposes of this section, specified authority means *the specified authority referred to in section 151.*

Insertion of section 148B: *Prior approval for assessment / re-assessment in certain cases:-*

- No order of assessment or re-assessment or recomputation under this Act shall be passed by an Assessing Officer *below the rank of Joint Commissioner,*
- in respect of an assessment year to which clause (i)/(ii)/(iii)/(iv) of Explanation 2 to section 148 apply *(i.e. cases of deemed information)*
- **except with the prior approval of the Additional Commissioner or Additional Director or Joint Commissioner or Joint Director.**

Section 149(1): *Time Limit for ISSUE of a Notice u/s 148:-*

	Income Escaped….	Time Limit
(a)	Any amount of escaped income	**With in 3 years from the end of Relevant Assessment Year.**
(b)	– if Assessing Officer **has in his possession books of accounts or other documents or evidence** which reveal that – the income chargeable to tax, **represented in the form of** **(i) an asset,** ***(ii) expenditure in respect of a transaction or in relation to an event or occasion; or*** ***(iii) an entry or entries in the books of account,*** – which has escaped assessment amounts to or is likely to amount to **₹50 Lakh or more** ~~for that year~~	**With in 10 years from the end of Relevant Assessment Year.**
	For this purposes, **"asset" shall include** *immovable property, being land or building or both, shares and securities, loans and advances, deposits in bank account.*	
(1A)	– Notwithstanding anything contained in sub-section (1), **As inserted by F. A., 2022** – where the income chargeable to tax represented in the form of an asset or expenditure in relation to an event or occasion of ₹50 Lakh or more, has escaped the assessment and – **the investment in such asset or expenditure in relation to such event or occasion has been made or incurred, in more than one previous years relevant to the assessment years within the period referred to in clause (b) of sub-section (1)** i.e. 10 years, – ***a notice u/s 148 shall be issued for every such assessment year*** *for assessment, reassessment or recomputation, as the case may be.*	

Explanatory Remarks:

- *It is now no longer necessary that escaped income of ₹50 lakh should be only in 1 year.* ***It is only to be seen that the aggregate of such escaped income is ₹50 lakh or more, and in such a situation, notice under Section 148 can be issued for all such years.***
- The terms 'asset' and 'expenditure' are separated by 'or', which indicates that the income escaping assessment can be represented either by asset or expenditure or both. Thus, **the threshold of ₹ 50 lakhs towards the income escaping assessment can be represented either by an asset or expenditure or** ***by all assets and expenditure in aggregate.***
- *For example, in Year 1, escaped income of ₹25 lakhs is represented by an asset. In Year 2, escaped income of ₹20 lakhs is represented by expenditure. In Year 3, the escaped income of ₹15 lakhs is represented by an asset.* ***The AO can reopen the assessment under this sub-section for all three years.*** *Further, if expenditure incurred by the assessee in Year 1 is on event 1 (say ₹25 lakhs), in Year 2 it is on event 2 (say ₹20 lakhs), and in Year 3 it is on event 3 (say ₹15 lakhs),* ***the AO will get jurisdiction to reopen the assessment for all the three years.***
- When compared to section 149(1)(b) it is observed that section 149(1A) **does not cover "an entry or entries in the books of account" within its ambit.**

First proviso to section 149(1): **As amended by F. A., 2022**

- No notice under section 148 shall be issued at any time in a case
- **for the assessment year 2020-21 (or for earlier assessment year),**
- ***if such notice could not have been issued at that time***
- ***on account of being beyond the time limit prescribed under old provisions of section 149 or section 153A or 153C,*** *as they stood immediately before the commencement of the Finance Act, 2021.*

Old Time limit as was prescribed before the commencement of the Finance Act, 2021:

	Income Escaped….	Time Limit
(i)	Any amount of escaped income	**With in 4 years from the end of Relevant Assessment Year**
(ii)	If amount of escaped income is **one lac or more**	**With in 6 years from the end of Relevant Assessment Year**

In case of search/requisition, normally, ***six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made.***

Remaining part of amended section 149:

- *For the purposes of computing the time limit for issue of notice u/s 148,*
- ***the time/extended time allowed to the assessee in providing opportunity of being heard*** *u/s 148A(b) or*
- ***the period during which the proceeding under section 148A is stayed by an order of any court,***
- **shall be excluded (i.e. added).**

- Where after excluding the aforesaid period, **time left to the Assessing Officer for passing an order u/s 148A(d)** [i.e. about fitness of a case for issue of notice u/s 148], **is less than seven days,** ***such remaining period shall be extended to seven days and time limit under this section shall be deemed to be extended accordingly.***

Provision illustrated:

The assessing officer issues a show cause notice u/s 148A(b) on 22nd February, 2022 to SMC Ltd. as to why a notice u/s 148 should not be issued on the basis of his information which suggest that ₹45 lakh chargeable to tax has escaped assessment for the assessment year 2018-19. SMC Ltd. has to reply with in 10 days as specified in show cause notice, no extension has been given. After considering the reply of SMC Ltd., the assessing officer passes as order with the approval of specified authority indicating that it is a fit case to issue u/s 148 i.e. for income escaped assessment. After recording his finding, the assessing officer issue a notice on 5th April, 2022 u/s 148 for income escaped assessment in the given case. SMC Ltd. wants to know whether notice u/s 148 is issued by the Assessing officer is within prescribed time limit of section 149(1), or not?

Answer:

Since in the given case, the amount of escaped income as per information of Assessing officer, is less that ₹50 lakh, notice u/s 148 can't be issued after the expiry of three years from the end of the relevant assessment year i.e. time limit as prescribed u/s 149(1)(a), which is expired on 31st March, 2022.

However, time allowed to assessee in providing an opportunity of being heard u/s 148A shall be excluded viz. 10 days time as given for this purpose to the assessee. Consequently, the time limit which was expiring on 31st March, 2022 shall be extended to 10th April, 2022 (i.e. 31st March 2022 + 10 days).

In view of the above, notice as issued on 5th April, 2022 is with in the prescribed time limit of section 149 and hence, valid in law.

Section 151: *Sanctions for issue of Notice:-*

	If notice is being issued . . .	Specified authority for sanction of issue of notice
(1)	*With in 3 years from the end of Relevant Assessment Year*	*Principal Commissioner or Principal Director or Commissioner or Director.*
(2)	*After 3 years (but within 10 years) from the end of Relevant Assessment Year*	*Principal Chief Commissioner or Principal Director General or where there is no Principal Chief Commissioner or Principal Director General, Chief Commissioner or Director General.*

Section 150: *Cases where no time limit for issue of notice:-*

- *Notwithstanding anything contained in section 149,*
- notice u/s 148 may be issued *at any time*
- for the purpose of making of an assessment or re-assessment
- in consequence of or in order to give effect to **any finding or direction**
- contained in an order of **any authority** as passed under any appeal / revision **or** the order of any Court

under any other law.

But, such assessment / re-assessment shall be completed with is 12 months from the end of the month in which **order of appellate authority is received by CIT** or **order is passed by CIT**, as the case may be.

Section 153: *Time limit for completion of assessment or reassessment:-*

(1) For assessment u/s 143(3) or 144	(2) For assessment or reassessment u/s 147	(3) For fresh assessment/fresh order u/s 92CA (if directed by the ITAT / CIT)
9 months from the end of the relevant assessment year	**12 months** from the end of year of service of notice u/s 148	**12 months** from the end of the year in which order is passed by the CIT or order of ITAT is received by CIT, as the case maybe.

(+) 12 Months, If reference to TPO (for determination of ALP) was made during the proceedings. (4)

Time limit to give Appeal / Revision effect: **Section 153(5)**

3 Months from the end of month in which ……..
- Order of Appellate authority is received by the CIT,
  or
- Order is passed by the CIT. [In case of revision effect]

But

- CIT may extend **by 6 months** on request of the AO/TPO *in a genuine case.*
- **If the order of higher authority requires verification of any issue before giving of appeal / revision effect….**

  In such a case, **Time limit will be 12 months** [as given u/s 153(3)]

(5A) If TPO has modified his order: ***Time limit for Assessing officer to pass his modification order:- Two months from the end of the month of receipt of order of TPO.***

Explanation 1 to section 153:-

Following periods shall be added in computing time limit for completion of assessment/re-assessment:

(i) The **period during which the assessment proceedings is stayed by an order of any Court.**

(ii) **Time taken in entertaining the request** of the assessee by the new AO under proviso to section 129.

(iii) **Time taken in receipt of order of withdrawn of notification / approval**, before passing assessment order u/s 143(3) without exemption u/s 10 for association/ institution covered u/s 139(4C).

(iv) Time allowed to assessee **for submission of audit report u/s 142(2A).**

(v) Time taken **in receipt of report from valuation officer** u/s 142A.

(vi) Time taken in *receipt of information from foreign tax authority under DTAA **or** 1 year, whichever is less.*

(vii) Time *not exceeding 180 days* **commencing from initiation of search/requisition ending with the date of handing over of the books/ documents, etc.**

(viii) Time taken *in passing an order by PCIT/CIT on reference under the second proviso to section 143(3)* i.e. on any specified violation on part of assessee as referred to in section 11/10(23C)(iv)/(v)/(vi)/(via)

Proviso: if after addition of aforesaid period, time left is less than 60 days, **it will be extended to 60 days.**

Section 154: *Rectification of mistakes:-*

Rectification of **only mistake apparent from record** i.e. prima-facie mistake like:
- ✓ Calculation mistake
- ✓ Mistake arises from retrospective amendment, or
- ✓ Later Supreme Court Judgment, etc.

is possible under this section.

Rectification can be done by an **I.T. Authority** as referred to in section 116 like
- – **AO**
- – **CIT(A)**
- – **CIT,** etc.

Rectification of an
- – **Order** or
- – **Intimation** of income-tax return or TDS / TCS return **is possible under this section.**

Rectification or refusal will be done **by passing an order** under this section **(That may be challenged through appeal or revision).**

Rectification is possible **Suo-motu or on application** of assessee.

Rectification is **not only** of original order **but of rectified order is also possible.**

Hind wire Industries Ltd. (SC)

If result of rectification is
- Prejudicial to assessee → Opportunity of being heard will be given
- New refund due → Will be granted.

Time limit for rectification

For rectification of an order	For filing of rectification application

4 years from the end of the financial year in which order sought to be amended was passed.

But

Time limit for order under this section on assessee's application is:

6 months from the end of month of application (subject to the overall time limit of 4 years as above).

Section 139B: *New scheme to facilitate submission of returns through TRPs:-*

☞ ***This scheme is not applicable for a company or a person to whom 'tax audit' is required.***

➢ ***Tax Return Preparer may be an individual other than the following –***

– *any officer of a scheduled bank in which the assessee maintains current account / has regular dealings;*

– *a legal practitioner / a chartered accountant.*

Section 139AA: *Quoting of Aadhaar number:-*

OBLIGATIONS:

(1) Every person who is eligible to obtain Aadhaar number**, in every application for PAN or ROI,** as filed on or after 1/7/2017, **shall quote Aadhaar number** (if not allotted, then, Enrollment ID of Aadhaar application form shall be quoted).

(2) If PAN has been allotted before 1/7/2017 (i.e. before obtaining Aadhaar number), then, *such person*

shall intimate his Aadhaar number to the prescribed authority upto a notified date.

If a person fails to intimate the Aadhaar number, *the PAN allotted to him* ***shall be made inoperative*** *after such notified date in such manner as may be prescribed.*

Non- Applicability of this section i.e. Quoting of Aadhaar number shall not be mandatory for -

Person who is …….

- **Residing in Assam, J&K, and Meghalaya.**
- **Non-resident**
- **Super senior citizen**
- **Non-Indian citizen**

Section 234H: ***Fees for default relating to intimation of Aadhaar number:-*** As inserted by F. A. 2021

- Without prejudice to the provisions of this Act,
- where a person is required to intimate his Aadhaar number under section 139AA(2) and
- such person fails to do so on or before such date, as may be prescribed (i.e. 31st March, 2022),
- **he shall be liable to pay such fee, as may be prescribed, not exceeding one thousand rupees,**
- at the time of making intimation under section 139AA(2) after the said date.

Notification No. 17/ 2022 dated 23.03.2022: Fee for subsequent intimation of Aadhaar:

CBDT, vide this notification inserted Rule 114(5A), to provide that if such person fails to do so by the date notified in section 139AA(2) i.e., 31st March, 2022, then, at the time of subsequent intimation of his Aadhaar number to the prescribed authority, such person would be liable to pay, by way of fee, an amount equal to,-

(a) **₹ 500,** in a case where such intimation is made within three months from the date referred in section 139AA(2) i.e., by 30.06.2022; and

(b) **₹ 1,000,** in all other cases.

Clarification with respect to relaxation of provisions of Rule 114AAA prescribing the manner of making PAN inoperative:

Section 139AA(2) makes it mandatory for every person who has been allotted a PAN as on 1 st July, 2017 to intimate his Aadhaar Number so that the Aadhaar and PAN can be linked. This is required to be done on or before a notified date, failing which the PAN would become inoperative.

Accordingly, in case of failure to intimate the Aadhaar Number by 31.03.2022, the PAN allotted to the person would be made inoperative. Further, section 234H provides that where a person who is required to intimate his Aadhaar under section 139AA(2) fails to do so on or before a notified date, he would be liable to pay a fee not exceeding ₹ 1,000, as may be prescribed, at the time of making intimation under section 139AA(2) after the said date.

Further, Rule 114AAA provides that if PAN of a person has become inoperative, he will not be able to furnish, intimate or quote his PAN and would be liable to all the consequences under the Act for such failure.

This will have a number of implications such as:-

(i) The person would not be able to file return using the inoperative PAN

(ii) Pending returns will not be processed

(iii) Pending refunds cannot be issued to inoperative PANs

(iv) Pending proceedings as in the case of defective returns cannot be completed once the PAN is inoperative

(v) Tax will be required to be deducted at a higher rate as PAN becomes inoperative

In addition to the above, the tax payer might face difficulty at various other fora like banks and other financial portals, as PAN is one of the important KYC criterion for all kinds of financial transactions.

As per Rule 114AAA(2), where a person, whose PAN has become inoperative under Rule 114AAA(1), is required to furnish, intimate or quote his PAN, it would be deemed that he has not furnished, intimated or quoted the PAN, as the case may be, in accordance with the provisions of the Act. Consequently, he would be liable for all the consequences under the Act for not furnishing, intimating or quoting the PAN.

In order to have smooth application of section 234H and existing rule 114AAA, it is clarified that the impact of Rule 114AAA(2) would come into effect from 1st April, 2023; and the period from 1st April, 2022 to 31st March, 2023, would be the period during which Rule 114AAA(2) would not have its negative consequences.

However, the tax payer would be liable to pay a fee in accordance with section 234H read with Rule 114(5A).

SECTION 144C: REFERENCE TO DISPUTE RESOLUTION PANEL:-

AO

In case of **any variation** which is **prejudicial** to assessee…

Shall forward Draft order to…

Eligible Assessee viz.
- **Foreign company or oher non-resident**
- **Any other person in whose case Transfer pricing Adjustments (on the basis of order of TPO) are proposed.**

shall file within 30 days from the date of receipt of draft order.....

"Collegium comprising of 3 CITs constituted by the Board"

his acceptance to..

AO

"Shall complete Assessment" (on the basis of draft order)

Time limit for completion of Asstt:-

Sec.153: Not Relevant

Special Time limit:-

"One month"

(+)

End of the month in which:

Acceptance Received

or

Period of filing objections expires.

Same treatment will be provided when if neither acceptance nor objection is received from assessee with in the prescribed period of 30 days.

his objections to. . .

Dispute Resolution Panel

Shall issue Fit and Appropriate directions…

Before issuing such directions

DRP may make further enquiry OR May cause further enquiry for A.O & Report the results.

After considering:-
- ⇨ Draft order
- ⇨ Objections & Evidence furnished by Assessee
- ⇨ Other reports & record
- ⇨ Evidence & result of of enquiry made by DRP.

DRP may confirm or reduce / enhance** the variance proposed

But DRP shall not.....

Set-aside any variation **Or** issue any direction to AO for….

Further enquiry **and** Passing Asstt. order

Opportunity Being Heard to .....

Assessee: If directions are prejudicial to assessee.

AO: If directions are prejudicial to Revenue.

Member of DRP differ in opinion: Issue shall be decided & directions shall be issued on majority basis.

Time limit (for DRP):-

"9 Months"

(+)

End of the month in which Draft order is forwarded to the assessee.

Binding upon Assessing Officer

** Power to enhance **shall include** the power to consider **new matter** relating to the draft order, whether or not such matter was raised or not by the eligible assessee.

AO

Finally, shall proceed for Completion of Assessment

Sec. 153

Not Relevant

Special T/L:-

"One month"

(+)

"End of the month in which directions are recd from DRP".

Must be in conformity with directions.

Section 144B: NEW FACELESS ASSESSMENT SCHEME

Prepared by:
CA Satish Mangal

New Establishments | Cases covered | Procedural Aspects | Other Considerable Points

1. New Establishments:
(As set up by the Board)

National Faceless Assessment Centre (NFAC) → It shall facilitate the conduct of Faceless assessment in centralised manner.

ASSESSMENT UNIT (AU):
To perform the functions of making assessment:

- **To identify Points / issues.**
- **To seek informations or clarifications.**
- **To analyse of material furnished.**
- To perform any other required function for such assessment.

and then, Assessment unit will **make Income/Loss determination Proposal and assessment order.**

VERIFICATION UNIT (VU):
To perform the functions of verification:

- **Enquiry and cross verification.**
- **Examination of books of accounts.**
- **Examination of witnesses and recording of statements.**
- To perform any other required function for such verification.

TECHNICAL UNIT (TU):
To perform the functions of providing technical assistance:

- **To provide assistance or advice on legal, accounting, forensic, information technology, valuation, transfer pricing, data analytics, management or any other technical matter under this Act or an agreement entered into u/s 90 / 90A.**

REVIEW UNIT (RU):
To perform the functions of review of Income/Loss determination Proposal, to check:

- **whether the relevant and material evidence has been brought on record.**
- **whether the relevant points of fact and law have been duly incorporated in the Proposal.**
- **whether the issues requiring addition or disallowance have been incorporated in proposal.**

➢ **Assessment Unit / Verification Unit / Technical Unit / Review Unit, shall refer to an Assessing Officer having powers so assigned by the Board.**

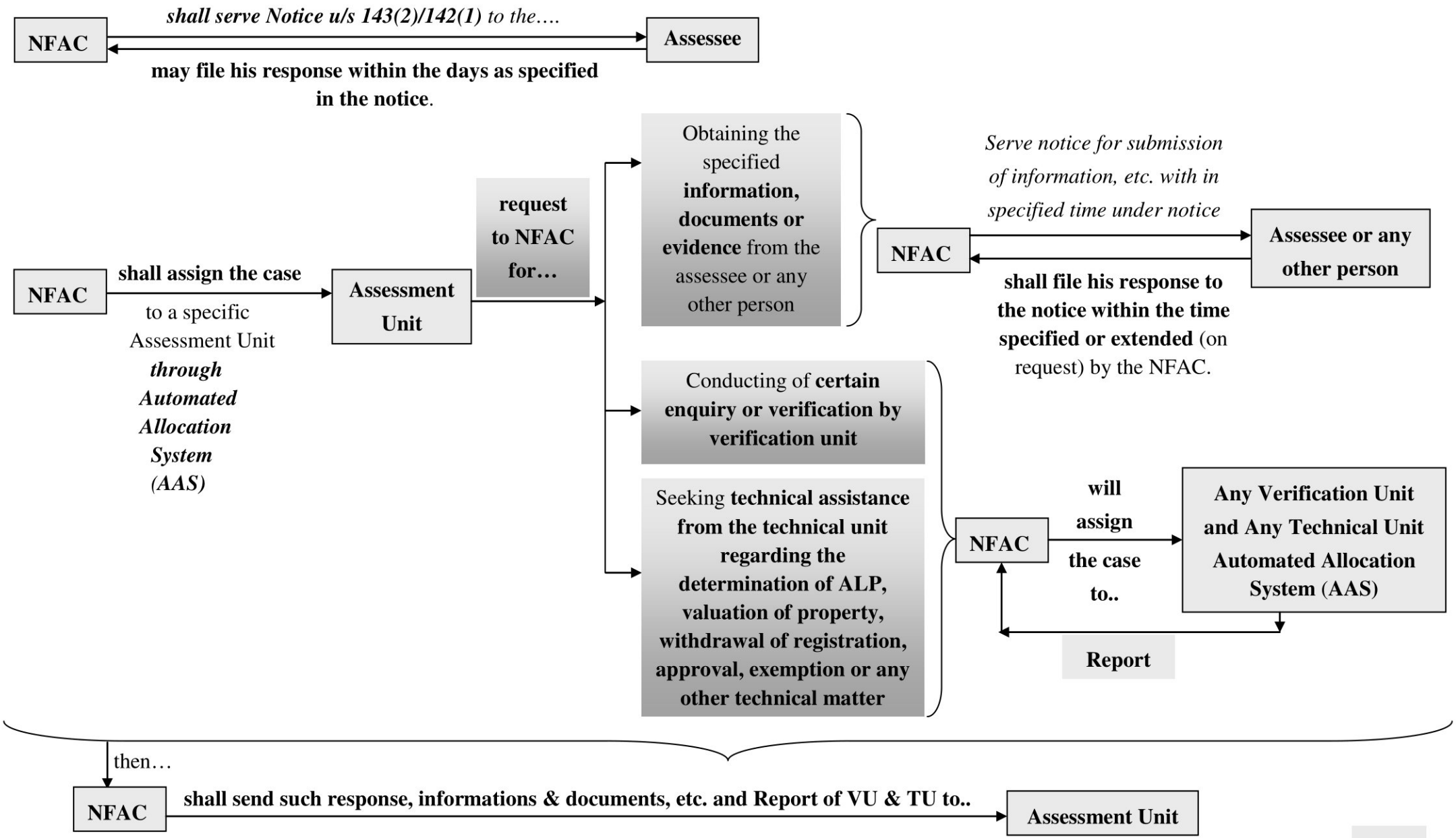
2. Cases covered:

- **SCRUTINY ASSESSMENT u/s 143(3) or BEST JUDGEMENT ASSESSMENT u/s 144 or ASSESSMENT/REASSESSMENT/RECOMPUTATION u/s 147.**
- **NFAC shall intimate to the assessee that ASSESSMENT SHALL BE COMPLETED AS PER THIS SCHEME.**

Prepared by:
CA Satish Mangal

3. Procedural Aspects:

Part-I:



Prepared by:
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Part-II:

On FAILURE upon the part of Assessee in….

- **Submitting the informations, etc. as asked by the NFAC**
- OR
- **Complying with earlier notice issued u/s 143(2) or 142(1)**

NFAC shall serve a **SCN of BJA to** **Assessee** against such notice..

- **File his response** → **NFAC** → **shall forward such response** to the…. → **Assessment Unit**
- **Not file his response** → **NFAC** → **shall intimate such failure** to → **Assessment unit**

Part-III:

Assessment Unit — On the basis of assessee's available relevant material including report of VU & TU → Shall prepare **Income/Loss determination Proposal**

- **Where no prejudicial variation (to the assessee) is proposed** → **Assessment Unit will send such "Income or Loss determination Proposal" to NFAC.**
- **Where such prejudicial variation is proposed** → **AU** shall send a **SCN** stating such prejudicial variation and calling him to submit as to ***why the prejudicial variation should not be made to…*** → **NFAC** → **shall forward such SCN** to the… → **Assessee** → shall file his reply with in allowed or extended time to → **NFAC**

shall forward such reply, or intimate in case no reply, to → **AU** *after considering*

- Reply of assessee, or intimation of no reply from assessee, as the case may be *and* **All relevant material available on record**

AU shall prepare → **Income / Loss determination Proposal** → AU will send it to → **NFAC**

211D

Part-IV:

Upon receipt of the Income / Loss determination Proposal….

NFAC

on the basis of Guidelines issued by the Board…

may convey to the Assessment Unit
To Prepare a DRAFT ORDER
(As per Income/Loss determination Proposal)

then

Assessment Unit shall prepare DRAFT ORDER and will forward it to…

NFAC

may assign such **Income/Loss determination Proposal to a review unit**, through an automated allocation system, **for conducting review of such Proposal**

then

Review Unit

After conducting review of such Proposal, **shall prepare Review Report** and send to

NFAC

shall forward such Review Report to..

Assessment Unit
(which had proposed the income or loss determination proposal)

then

Assessment Unit

After considering such review report

Accept or reject some or all of the modifications proposed therein **and** After recording reasons in case of rejection of such modifications

Shall prepare DRAFT ORDER, and will send it to the NFAC.

Prepared by:
CA Satish Mangal

Part-V:

Upon receipt of DRAFT ORDER….

If there is no prejudicial variation (to the assessee) is proposed

NFAC

shall convey, for passing the **final assessment order** as per draft order, to

Assessment Unit

shall pass & send **final assessment order** and initiate penalty proceedings, if any, to..

NFAC

shall serve the copy of such **final assessment order** with SCN for penalty proceedings, if any, and **demand notice** or **refund,** if any, on the basis of such assessment, to….

Assessee

If there is a proposal to make any prejudicial variation (to the assessee)

If assessee is NOT Eligible assessee u/s 144C (DRP)

If assessee is an Eligible assessee u/s 144C (DRP)

NFAC will forward draft order to assessee

If assessee files objections to the DRP

NFAC

shall intimate about the same (along with a copy of objections filed) to…..

Upon receipt of directions from DRP, will forward these directions to….

Assessment Unit

shall pass the assessment order, ***in conformity with the directions issued by the DRP,*** *with in time limit of 1 month, as given u/s 144C*

shall initiate penalty proceedings, if any

shall send the order to the NFAC

If assessee files its acceptance or case of deemed acceptance (i.e. No objection with in time limit as given u/s 144C)

NFAC

shall, **to complete the assessment** *on the basis of the draft order,* intimate to

Assessment Unit

shall pass the assessment order, *as per relevant draft order with in time limit of 1 month as given u/s 144C*

shall initiate penalty proceedings, if any

shall send the order to the NFAC

Then, NFAC **shall serve** the copy of such **final assessment order** with SCN for penalty proceedings, if any, and **demand notice** or **refund,** if any, on the basis of such assessment, to the assessee.

4. Other Considerable Points relating to FACELESS ASSESSMENT SCHEME:

(1) Direction for Special Audit:

- **Assessment Unit to refer the case to NFAC:**

  If at any stage of the proceedings, the Assessment Unit having regard to the **nature and complexity or volume of the accounts, doubts about the correctness of accounts, multiplicity of transactions in the accounts, or specialised nature of the business activity of the assessee, and the interests of the revenue is of the opinion** *that it is necessary to do so,* ***it may,*** *upon recording its reasons in writing,* ***refer the case to the NFAC stating that the provisions of special audit under section 142(2A) may be invoked.***

- **NFAC to refer the case to jurisdictional authority:**

  The Principal CCIT or the Principal DG, as the case may be, in charge of the NFAC shall, in accordance with the procedure laid down by the Board in this regard, if he considers appropriate that the provisions of section 142(2A) may be invoked in the case, **forward the reference received from an assessment unit to the Principal CCIT or CCIT or Principal CIT or CIT having jurisdiction over such case,** *and inform the assessment unit accordingly.*

- Where such a reference has been received by the Principal CCIT or CCIT or Principal CIT or CIT, **he shall direct the Assessing Officer, having jurisdiction over the case, to invoke the provisions of section 142(2A).**

- Where a reference has not been forwarded to the Principal CCIT or CCIT or Principal CIT or CIT, having jurisdiction over the case, ***the assessment unit shall proceed to complete the assessment in accordance with the procedure laid down in this section.***

---

(2) **All communications** → **among** assessment unit, review unit, verification unit or technical unit or **with** the assessee or any other person.

shall be through the National Faceless Assessment Centre only.

Whether between..

- **NFAC** ↔ **AU / VU / TU / RU**
- **NFAC** ↔ **Assessee, or his authorised representative, or any other person**

shall be exchanged exclusively by electronic mode.

(3) **NFAC** ↔ **Assessee**

shall send notice/order/any other electronic communication to assessee's registered account

shall send file his response against such notice, etc. through his registered account

(4) No personal appearance is allowed before any Unit set up under this Scheme.

- ✓ In a case where any variation is proposed **and** an opportunity is provided to the assessee, then, he **may request for personal hearing** so as to make his oral submissions or present his case before the income-tax authority of the relevant unit.
- ✓ In this case, the income-tax authority of the relevant unit shall allow such hearing through NFAC, but, **such personal hearing shall be conducted exclusively through video conferencing or video telephony.**
- ✓ Board shall establish suitable facilities for video conferencing or video telephony so as to ensure that the assessee or any other person is not denied the benefit of faceless assessment *merely on the consideration that they do not have access to video conferencing or video telephony at their end.*

(5) NFAC shall, after completion of assessment, transfer all the electronic records of the case to the Assessing Officer having jurisdiction over the said case for such action as may be required under the Act.

(6) The Principal Chief Commissioner or the Principal Director General in charge of NFAC at any stage of the assessment, if considered necessary, **transfer the case to the Assessing Officer** having jurisdiction over such case, *with the prior approval of the Board.*

"UPDATED RETURN OF INCOME"

Section 139(8A): *New provisions to allow filing of an Updated Return:-*

- Any person,
- **whether or not he has furnished a return u/s 139(1), 139(4) or 139(5),**
- for an assessment year (herein referred to as the relevant assessment year),
- *may furnish an updated return* of his income or the income of any other person in respect of which he is assessable under this Act,
- for the previous year relevant to such assessment year, in the prescribed form, verified in such manner and setting forth such particulars as may be prescribed,
- at any time **within twenty-four months from the end of the relevant assessment year:**

Provided that the provision of this sub-section shall not apply, **if the updated return,—**

(a) **is a return of a loss;** or

(b) **has the effect of decreasing the total tax liability** determined on the basis of return furnished u/s 139(1), 139(4) or 139(5); or

(c) **results in refund or increases the refund due** on the basis of return furnished u/s 139(1), 139(4) or 139(5),

of such person under this Act for the relevant assessment year:

Provided further that a person **shall not be eligible to furnish an updated return** under this sub-section, where:

(a) a **search has been initiated** under section 132 or **books of account or other documents or any assets are requisitioned** under section 132A **in the case of such person**; or

(b) a **survey has been conducted under section 133A, other than sub-section (2A)** [i.e. TDS/TCS Survey], **in the case such person**; or

(c) a **notice has been issued to the effect that any money, bullion, jewellery or valuable article or thing, seized or requisitioned** under section 132 or section 132A **in the case of any other person belongs to such person**; or

(d) a **notice has been issued to the effect that any books of account or documents, seized or requisitioned** under section 132 or section 132A **in the case of any other person, pertain or pertains to, or any other information contained therein, relate to, such person**,

for the assessment year relevant to the previous year in which such search is initiated or survey is conducted or requisition is made and ***any assessment year preceding such assessment year:***

Provided also that **no updated return shall be furnished** for the relevant assessment year, where—

(a) an **updated return has been furnished** by him under this sub-section for the relevant assessment year; or

(b) any **proceeding for assessment or reassessment or recomputation or revision of income under this Act is pending or has been completed** for the relevant assessment year in his case; or

(c) the **Assessing Officer has information in respect of such person** for the relevant assessment year in his possession under

- *the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 or*
- *the Prohibition of Benami Property Transactions Act, 1988 or*
- *the Prevention of Money-laundering Act, 2002 or*
- *the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015*

and the same has been communicated to him, prior to the date of furnishing of return under this sub-section; or

(d) **information for the relevant assessment year has been received under an agreement referred to in section 90 or section 90A in respect of such person** *and the same has been communicated to him, prior to the date of furnishing of return under this sub-section;* or

(e) **any prosecution proceedings have been initiated for the relevant assessment year in respect of such person,** *prior to the date of furnishing of return under this sub-section;* or

(f) he is **such person or belongs to such class of persons, as may be notified by the Board** in this regard:

Provided also that **if any person has sustained a loss in any previous year and has furnished a return of loss** in the prescribed from within due date u/s 139(1) and verified in the prescribed manner and containing such other particulars as may be prescribed, **he shall be allowed to furnish an updated return where such updated return is a return of income:**

Provided also that

- **if the loss or any part thereof carried forward** under Chapter VI or **unabsorbed depreciation carried forward** u/s 32(2) or
- **tax credit carried forward under section 115JAA or under section 115JD**
- is to be reduced for any subsequent previous year *as a result of furnishing of return of income under this sub-section for a previous year,*
- ***an updated return shall be furnished for each such subsequent previous year."***

Section 140B: *Tax on updated return:-*

(1) **Where no return of income u/s 139(1) or 139(4) has been furnished** by an assessee, **he shall,** before furnishing the updated return u/s 139(8A), **be liable to pay tax together with interest and fee payable** under any of the provisions of this Act **for any delay in furnishing the return or any default or delay in payment of advance tax, along with the payment of additional income-tax** computed in accordance with sub-section (3). The tax payable shall be computed, *after taking into account,—*

(i) *the amount of tax, if any, already paid as advance tax;*
(ii) *any tax deducted or collected at source;*
(iii) *any relief of tax claimed u/s 89/90/90A/91;*
(iv) *any tax credit (AMT/MAT credit) claimed u/s 115JAA or section 115JD*

- *Proof of payment of such tax, additional income-tax, interest & fee must be attached with updated return.*

(2) **Where, return of income u/s 139(1) or 139(4) or 139(5) [referred to as earlier return] has been furnished** by an assessee, **he shall,** before furnishing the updated return u/s 139(8A), **be liable to pay the tax together with interest payable** under any provision of this Act **for any default or delay in payment of advance tax along with the payment of additional income-tax,** as computed in accordance with sub-section (3), **as reduced by the amount of interest paid under the provisions of this Act in the earlier return.** The tax payable shall be computed, *after taking into account,—*

(i) the amount of relief or **tax referred to in section 140A(1),** *the credit for which has been taken in the earlier return;*

(ii) **tax deducted or collected at source on any income** *which is subject to such deduction or collection and which is taken into account in computing total income* ***and which has not been included in the earlier return;***

(iii) any **relief of tax or deduction of tax claimed u/s 90 /90A/91** on account of tax paid in a country outside India **on such income** ***which has not been included in the earlier return;***

(iv) any **tax credit** (AMT/MAT credit) **claimed, to be set off** in accordance with the provisions of section 115JAA or section 115JD, ***which has not been claimed in the earlier return.***

- The aforesaid tax shall be increased **by the amount of refund, if any, issued in respect of such earlier return.**
- The **updated return shall be accompanied by proof of payment** of such tax, additional income-tax, interest and fee.

(3) For the purposes of sub-sections (1) and (2), **the additional income-tax payable** at the time of furnishing the return u/s 139(8A) **shall be calculated as follows:**

(i)	**If updated return is furnished after expiry of the time available u/s 139(4)/(5) and before completion of the period of 12 months from the end of the relevant assessment year**	**25% of aggregate of tax and interest payable,** as determined in sub-section (1) or (2).
(ii)	**If such return is furnished after the expiry of 12 months from the end of the relevant assessment year but before completion of the period of 24 months from the end of the relevant assessment year**	**50% of aggregate of tax and interest payable,** as determined in sub-section (1) or sub-section (2), as the case may be.

(4) **Where an earlier return has been furnished,** interest payable under section 234B shall be computed **on an amount equal to the assessed tax or,** as the case may be, **on the amount by which the advance tax paid falls short of the assessed tax.**

For this purpose,, **"assessed tax" means** the tax on the total income as declared in updated return *after taking into account,-*

(i) the amount of relief or **tax referred to in section 140A(1),** *the credit for which has been claimed in the earlier return;*

(ii) **tax deducted or collected at source on any income** *which is subject to such deduction or collection and which is taken into account in computing total income* ***and which has not been included in the earlier return;***

(iii) any **relief of tax or deduction of tax claimed u/s 90 /90A/91** on account of tax paid in a country outside India **on such income** ***which has not been included in the earlier return;***

(iv) any **tax credit** (AMT/MAT credit) **claimed, to be set off** in accordance with the provisions of section 115JAA or section 115JD, ***which has not been claimed in the earlier return.***

- The aforesaid tax shall be increased **by the amount of refund, if any, issued in respect of such earlier return.**

Explanatory Note:

- ✓ Unlike charging interest u/s 234A, for which a specific clause (i) is available in the Explanation to section 140B (as given at end of this section), the law **does not provide any clarity** as to *how the interest u/s 234B be computed at the time of furnishing of updated return* ***where no earlier return is filed by the assessee.***
- ✓ In the absence of any provision in this regard in Section 140B, it is submitted that an assessee may be liable to pay interest under section 234B at the time of filing of updated return:
  - ***On the amount of assessed tax (i.e. tax on the total income as declared in the updated return*** *after adjustment of prepaid taxes). In other words,* at the time of furnishing of updated return, the interest u/s 234B should be computed **on the self-assessment tax payable u/s 140B.**
  - The interest should be charged for the **period** *commencing from 1st April of the relevant assessment year and ending on the date on which assessed tax is paid before filing of updated return.*

    Where the taxes are paid in parts before filing of the updated return, the interest shall be computed for the broken period considering the taxes paid in each parts.

Explanation:

For the purposes of this section,—

(i) **If no earlier return has been furnished,** interest payable under section 234A shall be computed ***on the amount of tax on the total income as declared in the updated return*** *after adjustment of prepaid taxes.*
In other words, at the time of furnishing of updated return, the interest u/s 234A shall be computed **on the self-assessment tax payable u/s 140B.**

- The interest shall be charged for the **period** *commencing from the date immediately following the due date for filing the original return of income and ending with the date on which the updated return is furnished.*

Note: A person shall not be required to pay interest u/s 234A at the time of furnishing of updated return ***if he has already filed the original, revised, or belated return for the relevant assessment year.***

(ii) **If earlier return has been furnished,** interest payable under section 234C shall be computed ***after taking into account the total income furnished in the updated return as the returned income.***

(iii) For the purposes of additional tax, interest payable shall be *the interest chargeable under any provision of this Act, on the income as per updated return,* ***as reduced by*** *interest paid, in accordance with the earlier return, if any. However,* interest paid in the earlier return shall be nil if no earlier return has been furnished.

Section 234A and 234B: Consequential changes *in relation to computation of interest under section 234A and Section 234B in respect of tax payable on filing of updated return:-*

The Finance Act, 2022 has made the following consequential amendments:

Section 234A:

(a) Sub-section (1) is amended **to provide for a levy of interest under section 234A in case of an updated return** (if no earlier return has been furnished);

(b) **Explanation 2** is substituted to provide that **tax on total income as determined u/s 143(1) or under regular assessment** shall not include ***the additional income tax, if any, payable u/s 140B.***
Thus, interest u/s 234A shall not be levied on the amount of additional income tax payable u/s 140B.

Section 234B:

- Explanation 3 to section 234B is substituted to provide that **interest shall not be charged on the amount of additional income-tax payable under section 140B.**

OTHER AMENDMENTS RELATING TO UPDATED RETURN:

1.	**Insertion of additional clause (*ca*) in section 139(9):** *To treat an updated return* ***as defective*** *if proof of payment of tax is not furnished.*
2.	**Amendment in Section 144:** *To provide that non-filing of an updated return* ***can result in best judgment assessment*** *as in case of non-filing of normal/belated return.*
3.	**Insertion of new sub-section (1A) in section 153:** *To provide for a specific time limit of* ***9 months*** *from the end of the financial year in which the updated return was filed for completion of assessment in respect of an updated return.*
4.	**Amendment in Section 276CC:** *To provide immunity from prosecution for non-filing of return* ***when an updated return is filed.***

"APPEALS & REVISIONS"

Section 246A: *Appeal against the following orders of AO can be filed to the CIT (Appeals): -*

- Order passed by the AO u/s 143(3) / 144 / 147 / 153A [i.e. assessment or re-assessment order **except as passed under directions of Dispute Resolution Panel (DRP)**] or *an order against the assessee where the assessee denies his liabilities be assessed under this Act.*
- Rectification / refusal **order u/s 154.**
- **Intimation u/s 143(1) / 200A / 206CB** (i.e. Intimation generated after processing of ITR /TDS/TCS return).
- **Penalty order passed by the AO** (including order of penalty & interest for failure to deduct/pay TDS/TCS)

Section 248 : *Appeal by person denying liability to deduct tax:-*

- *Any person who is responsible for paying any income* **to the non-resident**
- **agreed to born tax deductible** (u/s 195) on such income **and having paid such tax**, **but**
- **claims that no tax was deductible** on such income, then, he may file an appeal to the CIT(A).

Hitherto, **a taxpayer had no recourse to approach the Assessing Officer to obtain a refund of the tax** so deducted and paid. The taxpayer had to follow the appellate process by filing an appeal before the Commissioner (Appeals) to obtain a refund of such tax deducted and deposited to the Central Govt.

The Finance Act, 2022 addresses this concern by inserting a new Section 239A which reads as under:

Section 239A: *Refund for denying liability to deduct tax in certain cases:-*

(1)	– Where under an agreement or other arrangement, *in writing,* – the tax deductible on any income, other than interest, u/s 195 **is to be borne by the payer,** and – **such person having paid such tax to the credit of the Central Government** – **claims that no tax was required to be deducted on such income,** – **may,** *within a period of thirty days from the date of payment of such tax,* – **file an application before the Assessing Officer for refund of such tax** in such form and such manner as may be prescribed.
(2)	The Assessing Officer **shall,** by an order in writing, allow or reject the application. **Provided** that no application under sub-section (1) shall be rejected *unless an opportunity of being heard has been given to the applicant."*

Further, **a sun-set clause is inserted in section 248 as under:**

"Provided that no appeal shall be filed where tax is paid to the credit of the Central Government on or after the 1st day of April, 2022."

Section 249: *Procedure for filing an appeal:-*

Appeal

Assessee → CIT (A)

Presentation & attachment requirements (in 2 copies):

In Form No. 35

(+) Grounds of appeal

(+) Statement of facts

(+) Copy of order of AO

(+) Notice of demand in original, if any.

Appeal filing fee

If **subject matter of appeal** is

- **Assessed income***
  - If, A/I* ≤ 1lac: ₹250
  - 1L< A/I ≤ 2L : ₹500
  - A/I > 2lacs : ₹1000
- **Otherwise** → ₹250/-

Time limit for appeal: 30 days**

If appeal is filed……

- **u/s 248** → from Date of Payment of Tax (+) 30 days**
- against Asstt. or Penalty order → from Date of receipt of notice of demand (+) 30 days**
- In any other case → from Date of receipt of such order or Intimation (+) 30 days**

CIT(A) may admit belated appeal.

Pre-payment of tax (MUST)

- If ROI has been filed → **Tax due on returned income**
- If ROI has **not** been filed → **Tax determined by the AO**

However, **CIT(A) may exempt the assessee from the condition of payment of such tax for filing of appeal before him but on application of assessee and for good and sufficient reasons to be recorded in writing.** **[Proviso]**

Section 220 (6): *"Stay Of Demand":-*

If appeal is pending before…..

CIT (A)

In such a case..

- AO
- CIT (A)

May grant stay of demand **which will be valid till the disposal of appeal before CIT(A).**

Meaning there by, ***assessee will not be treated as assessee in default*** *even if normal time limit for payment of 30 days has been expired.*

ITAT

In such a Case,

- Stay of demand can be granted by the ITAT **which will be valid for 180 days** from the date of stay order *provided assessee deposits 20% of tax, interest, fee, penalty, or any other sum payable under this Act, or furnishes security of equal amount in respect thereof.*
- But, if appeal has not been disposed off within this period **and** delay in disposal of appeal is not because of assessee and he has complied with the aforesaid condition of 20% payment/security, then, ITAT **may extend the period of stay of demand.**
- However, Aggregate of stay period (i.e. originally allowed + extended) ⩾ 365 days from the date of first stay order by the ITAT.
- After the expiry of aforesaid 365 days, even if such appeal is in continuance, order of stay shall stand vacated, and assessee will be liable to pay such demand.
- ✓ Fee for stay petition before the ITAT : **₹500/-.**

HC/SC

No stay of demand is possible because prepayment is must (as per **section 265**) before filing of appeal before the High Court.

Important Ruling: DCIT v/s Pepsi Foods Ltd (2021)(SC):

Issue:

Would automatic vacation of stay order upon expiry of extended period of stay of 365 days be valid, **where the delay in disposing of the appeal is *not* attributable to the assessee?**

Decision:

As per third proviso to section 254(2A), where the appeal filed before the ITAT is not disposed of within the period of stay or extended period of stay granted by the Tribunal, the order of stay shall stand vacated after the expiry of 365 days, **even** if the delay in disposing of the appeal is **not** attributable to the assessee.

The Apex Court also pointed out that the said proviso would result in the automatic vacation of a stay upon the expiry of 365 days, even if the Appellate Tribunal could not take up the appeal in time for no fault of the assessee. Further, vacation of stay in favour of the Department would ensue even if the Department is itself responsible for the delay in hearing the appeal. In this sense, the proviso is manifestly arbitrary being a provision which is capricious, irrational and disproportionate so far as the assessee is concerned.

Accordingly, the Apex Court held that the third proviso to section 254(2A) has to be read without the word **"even"** and the word **"not"** after the words "delay in disposing of the appeal". **Thus, any order of stay shall stand vacated after the expiry of the period or periods mentioned in the section, only if the delay in disposing of the appeal is attributable to the assessee.**

Section 250: *Order by CIT (A):*

- CIT(A) will dispose off the appeal by passing a **speaking order (i.e. having decision along with reasons).**
- **Time limit (RECOMMENDATORY): 1 year** from the end of the year in which such appeal is filed.
- In a case, **where new ground is raised during the appeal:**

If earlier omission of that ground was **not** willful or unreasonable:	If earlier omission of that ground was **without any reasonable cause:**
CIT(A) may entertain such ground **if it bonafide, and became available because of change in law or circumstances.** **[Jute corporation of India v/s CIT (Supreme Court)]**	**CIT(A) cannot entertain such ground.** **[ACIT v/s Gurjar gravures (P) Ltd. (SC)]**

Section 251: *Power of Commissioner (Appeals):*

In case of appeal against Assessment order / Penalty order	In any other case
CIT(A) may **confirm, reduce, enhance or cancel** such assessment order / penalty order.	He may pass order **as he thinks fit.**

Rule 46A: Assessee can produce / CIT(A) can admit additional evidence ONLY in the following cases:-

Where the **AO has refused to admit evidence** which should have been admitted.	Where the **assessee was prevented by sufficient cause** from producing: (a) Evidence called for by AO, or (b) Any other evidence.	Where an AO has made an order **without giving sufficient opportunity to the appellant to produce evidence** relevant to the ground of appeal.

Section 253: *Appeals to Appellate Tribunal:-*

☞ An **assessee** may file an appeal to the ITAT **against the following orders:**

CIT(A)	CIT	AO	DG /Dir. / CCIT
- **Final order** u/s 250 - **Rectification order** u/s 154 - **Penalty order.**	- **Revision order u/s 263** - **Rectification order** u/s 154 - **Penalty order** - Refusal order / Cancellation order u/s **12AA/12AB/80G(5)(vi)/10(23C)**	Order of assessment or re- assessment as passed **under directions of DRP** or rectification order in respect of such order.	**Penalty order** u/s 272A.

☞ Against the order of CIT(A), *the **Commissioner may also direct the AO** for filing of an appeal to the ITAT.*

☞ **Time limit for appeal: 60 days** from date of receipt of order which is sought (i.e. need) to be appealed.

Memorandum of cross objections:

☞ **If against the order of CIT(A), an appeal has been filed by one party (i.e. Appellant),**

– ITAT shall send a notice to other party (i.e. Respondent) **to inform about the filed appeal.**

– **Then, such other party (i.e. Respondent) may file a memorandum of cross objections**

– *in Form 36A, **within 30 days from date of receipt of such notice from ITAT.***

☞ ITAT **may admit** belated appeal / memorandum of cross objections.

☞ **Appeal filing fee (which is payable only when appeal is filed by assessee, not by Department):**

If assessed income (as computed by the AO)……			If appeal **not relates** with assessed income
≤ 1 Lac	1 Lac < AI ≤ 2 Lacs	AI > 2 Lacs	₹500/-
₹500/-	₹1500/-	1% of AI or 10000 whichever is less	

Section 254 : *Order of the Appellate Tribunal :-*

(1) The ITAT may, **after giving an opportunity** to both the parties of appeal, pass such order as it think fit.

☞ **Time limit (RECOMMENDATORY): 4 years** from the end of the year in which such appeal is filed.

Rectification of mistake apparent from record by the ITAT:

Suo-motu

On application → **Application filing fee:** ₹50/- (for assessee).

→ ITAT **shall entertain** such application.

Time limit for rectification order…..	Time limit for rectification application……	Time limit for rectification order on application……
6 months from the end of the month in which final order was passed by the ITAT.		

—	But, if application has been filed timely, then, **rectification order may be passed belatedly.** [Sree Ayyanar spinning & weaving mills Ltd. (SC)]

Prejudicial rectification order will be passed only after giving an opportunity of being heard to the assessee.

ITAT cannot admit additional evidence or re-appreciate the evidence already produced **during rectification proceedings** (i.e. amount to re-view on already produced evidences).

Section 255: *Procedure of Appellate Tribunal:-*

- Appeal filed before the ITAT **shall be heard** by a sitting bench of two members → One Judicial member. / One Accountant member.
- **Appeal shall be decided by their majority.** If there is no majority, in such a case, **point on which they differ,** will be referred to the president of the ITAT who will appoint one or more member in such bench, and then, such point will be decided as per the majority of the members who have heard the case.
- **If total income as computed by the AO doesn't exceed ₹50Lacs,** such case / appeal may be disposed by **single member bench (President / any other member as authorised by the Central Government).**
- **In a special case,** president may constitute **a special bench of three or more members.**

"POWERS OF ITAT"

ITAT Can ……

Permit for raising of any ground **which has not been raised before the AO or CIT(A).**	Entertain any issue **even if it has not been raised by the assessee or department.**	– **Increase / decrease the income** – **Allow / disallow a deduction; or** – **Exempt / tax an item** as depends upon the facts or circumstances of the case.	Admit additional evidence which it requires; or for which, income tax authorities have not given sufficient opportunity.

Section 260A: *Appeal to the High Court:-*

Condition	Case must involve a **substantial question of law** (To be **"substantial"**, a question of law – must be **debatable**; **not previously settled**; **having material impact and considerable**).
Appeal by…	Assessee / Department (CCIT or CIT).
Time limit	**120 days** from date of receipt of order of ITAT. However, **HC may admit belated appeal.**
Hearing	Where the HC is satisfied that a substantial question of law is involved in any case **it shall *formulate* that question.** The appeal shall be heard ***only on the question so formulated,*** and the respondents shall, at the time of hearing of the appeal, be allowed to argue that the case does not involve such question. Then, the HC may hear the appeal on any other substantial question of law, if it is satisfied that the case involves such question.

Power to decide….	– Issue **which has not been determined by the ITAT**; or – Issue **which has wrongly been determined by the ITAT.**
Filing of appeal…	**Procedural requirement** relating to filing of appeal **will be governed by the C.P.C. 1908.** (like, presentation & attachment requirement, appeal filing fee, etc.)

Section 260B: *Case before the HC to be heard by not less than two judges :*

- Appeal **shall be heard** by a sitting bench of 2 judges and ***will be decided as per their majority.***
- **If differ,** *such point will be referred to one or more other judges, and* ***will be decided as per the majority of all judges.***

Section 261: *Appeal to the Supreme Court :-*

An appeal shall lie to the Supreme Court against any judgment of the High Court delivered u/s 260 A in any *case which the High Court certifies to be a fit one for appeal to the Supreme Court.*

Section 262 : *Hearing before the Supreme Court :-*

- Supreme Court shall after hearing the petitioner and respondent pass an order deciding the question of law.
- *The Provisions of the Code of Civil Procedure, 1908 relating to the Appeal to the Supreme Court shall apply in the case of Appeal u/s 261.*

Section 268A: *Filing of appeal by income-tax authority:-*

- The Board may fix monetary limits for filing of appeal by any I.T. Authority (i.e. on behalf of Department).

If appeal has not been filed by any I.T. Authority **on an issue** in case of an assessee for an assessment year

Due to specified monetary limit

Then, department may file appeal on the same issue **subsequently in case of:**

- **Same assessee for any other A.Y.;** or
- **Any other assessee for any A.Y.**

OR

Otherwise

Department **can not file appeal** on same issue ***neither*** *in case of same assessee* ***nor*** *in case of other person.*

[Berger Paints India Ltd. (SC)]

CIRCULAR NO. 17/2019, DATED 08-08-2019

Appeals **shall not be filed** in cases where the tax effect does not exceed the monetary limits given hereunder:

Appeals in Income-tax matters ⟶	Before ITAT	Before High Court	Before Supreme Court
Monetary Limit (in ₹) ⟶	50,00,000/-	100,00,000/-	2,00,00,000/-

"Revisions by the Chief Commissioner / Commissioner"

Section 263: *Revision of order prejudicial to revenue :-*

CCIT or CIT — **MAY REVISE** → Any **order passed by the AO/TPO** viz.:

- **Erroneous** (i.e. incorrect) **(+)** **Prejudicial to the interest of the revenue**
- e.g.:
  - AO/TPO has not done **necessary inquiry or verification.**
  - AO/TPO has not followed **Board Circular or Decision** of Jurisdictional High Court or SC.

For this purpose,
CCIT/CIT may call for and examine the **record** of such order related proceedings.

- Record shall include **all records which is available @ revision by the CCIT/CIT.** Meaning thereby, if any record (like, report of valuation officer, Court decision, etc.) which becomes available *after the completion of asstt. but before revision by CCIT/CIT* ***will be included here.***

CCIT/CIT may pass such order as he deems fit (like, enhance the assessment, cancel the assessment and direct for fresh assessment **or an order modifying the order u/s 92CA; or cancelling the order and directing a fresh order u/s 92CA.**

Time limit for revision order:

- **2 years** from the end of the financial in which order sought to be revised (i.e. order of AO/TPO) was passed.

Opportunity of being heard will be given to the assessee before revision order passed by the CCIT/CIT.

☞ If an appeal had been filed against the order of the AO/TPO, the **CCIT/CIT can revise matter which had not been considered and decided in such appeal.**

Section 264: *Revision of Other Orders:*

CCIT / CIT

Suo-motu (i.e. on his own motion) **OR** **On application of assessee**

May revise any order of the AO **except the order to which section 263 applies.**

- CCIT/CIT may entertain **new ground** not raised before the AO.
- For this purpose, CCIT/CIT may call for the record of such order related proceedings
- CCIT/CIT may pass such order **as he deems fit.**
  - Such order should **not** be prejudicial to the assessee.
  - **Time limit for passing such revision order:**

CCIT/CIT **shall not revise** the order in the following cases:

- If such order is appealable but neither time limit for filing of appeal has been expired nor assessee has waived his right to appeal.
- If an appeal has been filed **on any issue** of such order of AO. (*Meaning there by,* **assessee cannot avail both remedy i.e. Appeal & Revision in respect of same order of AO** even if issues are different).

Suo-motu (i.e. on his own motion)

One year from the date of order of AO.

On application

Time limit for revision application:

One year from the date of receipt of order of A.O.

(However, CCIT/CIT may admit **belated application also**)

Time limit for order by CCIT/CIT on assessee's application:

- **One year** from the end of the F.Y. in which application is made by the assessee.
- **No time limit** if any finding or direction of ITAT/ HC / SC is involved in such revision.

Additional considerable points:

1. **Application filing fee u/s 264: ₹500/-**
2. **Appeal against order of CCIT/CIT u/s 264 is not possible.**

Section 158AA: *Procedure for appeal by revenue when same issue is pending before SC:-*

In case of an assessee

For an earlier A.Y. (e.g. A.Y. 2010-11) [here in after referred as **other case**]

High court passed its order **in favour of the assessee** (like, allowed Expense "P")

Against which Department (i.e. CIT) has filed an appeal to the Supreme Court and **which is pending……**

And

For current / relevant A.Y. (e.g. A.Y.2016-17) [here in after referred as **relevant case**]

CIT (A) passes its order **in favour of assessee** (like, allowed Expense "P")

In such a case,

CIT → instead direct for appeal to ITAT → **AO**

MAY DIRECT**

for an **application to the ITAT**

- To the effect that appeal may be filed after SC decision in **other case** (e.g. A.Y.: 2010-11)
- Time limit for application: 60 days from date of receipt of order of the CIT(A)
- It is possible **only when** an acceptance is received from the assessee to the effect that issue in **other case** and **relevant case is identical.**

If assessee refuses:

CIT can not direct to the AO for application, only option for CIT is appeal to ITAT against the order of CIT(A).

Subsequently, Supreme Court, in other case (A.Y.: 2010-11), decided the appeal in favour of revenue (like, disallowed "Exp. P")

Then, CIT may direct the AO for filing of appeal against the order of CIT(A) in **relevant case** (e.g. A.Y: 2016-17) to the ITAT **with in 60 days** from the date of receipt of order of SC in other case (e.g. A.Y. 2010-11).

"*Provided that no such direction shall be given on or after the 1st April, 2022".* **AS INSERTED BY F. A., 2022

- **Since a comprehensive scheme for litigation management has been formulated u/s 158AB,** *aforesaid sunset clause by way of a proviso is introduced in section 158AA.*

Section 158AB: *New scheme introduced for the avoidance of repetitive appeals:-*

➢ The Finance Act, 2022 by inserting a new section 158AB **has extended the suspension of the appeal of the assessee in relevant A.Y.** ***if an identical question of law in other A.Y. is pending in the case of any other assessee also.*** The new litigation management scheme as follows:

(1)	*Notwithstanding anything contained in this Act,* where the **collegium is of the opinion** that–		
	(a)	*any question of law arising in the case of an assessee for any assessment year* (such case being herein referred to as the **relevant case**) *is identical with a question of law arising,—*	
		(i)	*in **his case** for any other assessment year;* or
		(ii)	**in the case of any other assessee for any assessment year;** and
	(b)	*such question is pending before the jurisdictional High Court or the Supreme Court, **against the order of the Appellate Tribunal or the jurisdictional High Court,*** as the case may be, w***hich is in favour of such assessee*** (such case being herein referred to as the **other case**),	
	the collegium may, decide and inform the Principal Commissioner or Commissioner not to file any appeal, at this stage, to the Appellate Tribunal or to the jurisdictional High Court **in the relevant case** *against the order of the Commissioner (Appeals) or the Appellate Tribunal, as the case may be.*		
(2)	The Principal Commissioner/Commissioner **shall,** *on receipt of a communication from the collegium,* **direct the Assessing Officer to make an application to the Appellate Tribunal or the jurisdictional High Court,** as the case may be, in such form as may be prescribed (i.e. Form No. 8A) *within a period of 120 days from the date of receipt of the order of the Commissioner (Appeals) or of the Appellate Tribunal,* as the case may be, **stating that an appeal on the question of law arising in the relevant case may be filed when the decision on such question of law becomes final in the other case.**		
(3)	The Principal Commissioner or Commissioner shall direct the Assessing Officer to make such application **only if an acceptance is received from the assessee to the effect that the question of law in the other case is identical to that arising in the relevant case;** and in case no such acceptance is received, *the Principal Commissioner shall proceed in accordance with the provisions contains in section 253(2)/260A.*		
(4)	**Where the order of the Commissioner (Appeals) or the order of the Appellate Tribunal,** as the case may be, referred to in sub-section (1) **is not in conformity with the final decision on the question of law in the other case, as and when such order is received,** *the Principal Commissioner or Commissioner may direct the Assessing Officer to appeal to the Appellate Tribunal or the jurisdictional High Court,* as the case may be, *against such order.*		
(5)	**Every such appeal shall be filed within a period of 60 days to the Appellate Tribunal or 120 days to the High Court** as the case may be, *from the date on which the order of the jurisdictional High Court or the Supreme Court in the other case is communicated to the Principal Commissioner or the Commissioner (having jurisdiction over the relevant case).*		

Explanation: For the purposes of this section, **"collegium" means** a collegium *comprising of two or more Chief Commissioners or Principal Commissioners or Commissioners,* as may be specified by the Board in this behalf.'.

"RECENT JUDICIAL PRONOUNCEMENTS"

(1)	On the issue that **is appellate remedy by way of appeal before Commissioner (Appeals) u/s 246A available to a company denying its liability to pay additional income-tax @ 20% on the distributed income u/s 115QA,** the Supreme Court has decided that the situations referred to in section 246A(1)(a) of the Income-tax Act, 1961 are: (i) An order against the assessee, where the assessee denies his liability to be assessed under the Act,or (ii) An intimation u/s 143(1), where the assessee objects to the making of adjustments, or (iii) Any order of assessment u/s 143(3)/144, where the assessee objects to the amount of income assessed, or to the amount of tax determined, or to the amount of loss computed, or to the status under which he is assessed. The contingencies detailed in (ii) and (iii) hereinabove arise out of assessment proceedings but the first contingency is a standalone postulate and is not dependent purely on the assessment proceedings either u/s 143 or section 144. The expression "denies his liability to be assessed" is quite comprehensive to take within its fold every case where the assessee denies his liability to be assessed under the Act. **Any determination u/s 115QA, be it regarding quantification of the liability or the question whether such company is liable or not, would fall within the ambit of the first postulate referred to hereinabove i.e., "an order against the assessee, where the assessee denies his liability to be assessed under this Act". Accordingly, an appeal u/s 246A to Commissioner (Appeals) would be maintainable against the determination of liability u/s 115QA.** **[Genpact India Pvt. Ltd. v/s DCIT & Ors (2019) (SC)]**
(2)	On the issue that **whether delay in filing appeal u/s 260A can be condoned where the stated reason for delay is the pursuance of an alternate remedy by way of filing an application before the ITAT u/s 254(2) for rectification of mistake apparent on record,** The Court refused to accept the submission that the application before the ITAT u/s 254(2) was an alternate remedy to filing of the application u/s 260A. The former is an application for rectifying a 'mistake apparent from the record' which is much narrower in scope than the latter. Under section 260A, an order of the ITAT can be challenged on substantial questions of law. The Court stated that the appellant had the option of filing an appeal u/s 260A while also mentioning in the Memorandum of Appeal that its application u/s 254(2) was pending before the ITAT. **The time period for filing an appeal u/s 260A does not get suspended on account of the pendency of an application before the ITAT u/s 254(2) of the Act,** *accordingly, the Supreme Court dismissed the application for condonation of delay.* **[Spinacom India (P.) Ltd. v/s CIT [2018](SC)]**
(3)	On the issue that **Can the Tribunal exercise its power of rectification u/s 254(2) to recall its order in entirety, where there is a mistake apparent from record,** the Court has held that One of the important reasons for giving the power of rectification to the Tribunal is to see that no prejudice is caused to either of the parties appearing before it by its decision based on a mistake apparent from the

	record. When prejudice results from an order attributable to the Tribunal's mistake, error or omission, then, it is the duty of the Tribunal to set it right. In that case, the Tribunal had not considered the material which was already on record while passing the judgment. The Apex Court took note of the fact that the Tribunal committed a mistake in not considering material which was already on record and the Tribunal acknowledged its mistake and accordingly, rectified its order. **The Tribunal, while exercising the power of rectification u/s 254(2), can recall its order in entirety if it is satisfied that prejudice has resulted to the party which is attributable to the Tribunal's mistake, error or omission and the error committed is apparent.** **[Lachman Dass Bhatia Hingwala (P) Ltd. v/s ACIT (2011)(Delhi)]**
(4)	**Reliance Telecom Ltd. / Reliance Communications Ltd. (2022) (SC):** **Issue:** Can the powers under section 254(2) be exercised by the Tribunal to recall an order and rehear the entire order on merits? **Analysis and Decision:** **Relevant Provision of Income-tax Act, 1961:** Section 254(1) empowers the Appellate Tribunal to pass such order thereon as it thinks fit, after giving both the parties to the appeal an opportunity of being heard. Under section 254(2), the Appellate Tribunal, may amend an order passed by it u/s 254(1) with a view to rectifying any mistake apparent from the record. Such amendment may be suo moto or if the mistake is brought to its notice by the assessee or the Assessing Officer. **Facts of the Case:** The Department filed an appeal before the Tribunal against the order of Commissioner (Appeals). By a detailed order dated September 6, 2013, the Tribunal allowed the Department's appeal. Against this order, the assessee filed a miscellaneous application for rectification u/s 254(2). The contentions of the applicants in the miscellaneous applications, briefly summarized, were that in the initial order of the Tribunal on the income-tax appeals dated September 6, 2013, there are inadvertent errors and which need to be modified/rectified. The first main heading 'Agreement and general terms and conditions of purchase'. The complaint of the assessee is that it was not considered in arriving at the final conclusion. Then comes heading No. 2 which reads thus: 'Mistake in reading the ratio of the Delhi High Court's decision in the case of DIT v. Ericsson A. B. reported in [2012] 343 ITR 470'. The third main heading is 'Ignoring the decisions of the co-ordinate Benches and not constituting larger Bench in case a different view is taken'. Such application was made to the Tribunal seeking correction of the mistakes which are styled as 'apparent from the record'. On being served with such applications, the petitioner-Department raised an objection to the maintainability thereof. Simultaneously, the assessee also filed an appeal before the High Court against the Tribunal's order dated September 6, 2013. By order dated November 18, 2016, the Tribunal allowed the assessee's miscellaneous application filed under section 254(2) and recalled its original order dated September 6, 2013. Immediately thereafter, the assessee withdrew the appeal preferred before the High Court against the original order

	dated September 6, 2013. Against the order passed by the Tribunal allowing the miscellaneous application under section 254(2) of the Act and recalling its order dated September 6, 2013, the Department preferred a writ petition before the High Court. The High Court dismissed the writ petition observing that, inter alia, the Department itself had gone into the merits of the case in detail before the Tribunal and the parties had filed detailed submissions based on which the Tribunal passed its order recalling its earlier order. **Analysis:** The order dated November 18, 2016 passed by the Tribunal recalling its earlier order dated September 6, 2013 was beyond the scope and ambit of the powers u/s 254(2). While allowing the application u/s 254(2) and recalling its earlier order dated September 6, 2013, the Tribunal had reheard the entire appeal on the merits as if the Tribunal was deciding the appeal against the order passed by the Commissioner (Appeals). A detailed order was passed by the Tribunal on September 6, 2013 holding in favour of the Department. That order could not have been recalled by the Appellate Tribunal in exercise of powers u/s 254(2). If the assessee was of the opinion that the order passed by the Tribunal was erroneous, either on the facts or in law, the only remedy available to the assessee was to prefer an appeal before the High Court. In this case, the assessee had already filed appeal before the High Court, and the same was withdrawn by it after the Tribunal, by order dated November 18, 2016, recalled its earlier order dated September 6, 2013. **Decision:** The order passed by the Tribunal dated November 18, 2016 recalling its earlier order dated September 6, 2013 was unsustainable, and ought to have been set aside by the High Court. **Note:** In this case, the Supreme Court directed that the original order passed by the Tribunal dated September 6, 2013 passed in the respective appeal preferred by the Department be restored; and that the assessee may prefer appeal before the High Court against the original order dated September 6, 2013.
(5)	**Wipro Finance Ltd. v/s CIT (2022)(SC):** **Issue:** Would the loss incurred in foreign currency fluctuation at the time of repayment of loan taken for financing acquisition of plant and machinery on lease/hire purchase by Indian enterprises with whom the assessee-company has lease/hire purchase agreement be treated as allowable revenue expenditure? Can the Tribunal entertain a fresh claim for the first time in exercise of its powers under section 254? **Analysis and Decision:** **Relevant provision of law:** Under section 37, any expenditure (not being in the nature of expenditure described in sections 30 to 36), and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing income chargeable under the head "Profits and gains of business or profession". Section 254(1) empowers the Appellate Tribunal to pass such orders as it thinks fit, after giving both the parties to the appeal an opportunity of being heard.

Facts of the case:

The assessee-company, which was in the leasing business, obtained a loan in foreign currency from Commonwealth Development Corporation (CDC), having its registered office in the United Kingdom, to be utilised by the assessee for financing the procurement of capital equipment by existing Indian enterprises on hire purchase or lease basis. While repaying the loan, due to the difference in the rates of foreign exchange, the assessee had to pay a higher amount, resulting in loss to the assessee. For the relevant assessment year, the assessee declared, inter alia, a loss of `1.11 crores owing to fluctuation in the rates of foreign exchange.

The assessee in its return had taken a conscious explicit plea with regard to part of the claim being ascribable to capital expenditure (`2.46 crores) and partly to revenue expenditure (`1.11 crores). Thereafter, for the first time before the Tribunal it pleaded that the entire claim must be treated as revenue expenditure. The Tribunal was conscious that this claim was made by the assessee for the first time before it and the same was contrary to the stand taken in the return filed by the assessee for the assessment year including the notings made by the officials of the assessee. Yet, the Tribunal entertained the claim as permissible, relying on the dictum of the Court in **National Thermal Power Co. Ltd. v/s CIT [1998] (SC),** wherein it was held that the Tribunal has the power to entertain question raised for the first time. The Tribunal is not confined only to the issues arising out of the appeal before the Commissioner (Appeals). It has the power to allow the assessee to urge any ground not raised before the Commissioner (Appeals). However, the relevant facts in respect of such ground should be on record.

Accordingly, in this case, the Tribunal held that the entire loan and the utilisation thereof was in trading operations of the company more profitably leaving the fixed capital untouched and hence the expenditure was on revenue account and allowable. The Tribunal allowed the entire claim of ₹3.57 crores.

Analysis:

The activity of the assessee of financing existing Indian enterprises for procurement or acquisition of plant, machinery and equipment on lease and hire purchase basis, was an independent transaction or activity being the business of the assessee. The transaction of loan between the assessee and CDC was in the nature of borrowing money by the assessee, which was necessary for carrying on its business of financing. It was not for creation of an asset of the assessee as such or acquisition from a country outside India for the purpose of its business. In such a scenario, the assessee would be justified in availing of deduction of the entire expenditure or loss suffered by it in connection with such a transaction in terms of section 37. The loan was wholly and exclusively used for the purpose of business of financing existing Indian enterprises, which in turn, had to acquire plant, machinery and equipment to be used by them. It was a different matter that they may do so because of the leasing and hire purchase agreement with the assessee. That would, nevertheless, be an activity concerning the business of the assessee. The Supreme Court held that the analysis and the conclusion arrived at by the Tribunal in respect of the claim of the assessee were correct.

As regards the restriction in powers to accept a new claim for the first time, such limitation on accepting new claims would apply to the "assessing authority", but would not impinge upon the plenary powers of the Tribunal bestowed under section 254.

	Decision: As a result of allowing the entire claim of the appellant to the tune of ₹3.57 crores being revenue expenditure, suitable amendment will have to be effected in the final assessment order passed by the Assessing Officer for the concerned assessment year, thereby treating the consequential benefits such as depreciation availed of by the appellant-assessee in relation to the stated amount towards exchange fluctuation related to leased assets capitalized (being ₹2.46 crores), as unavailable. **Note:** The crux of this case is that the assessee was engaged in leasing business. The assessee also financed the enterprises with whom it had entered into a lease agreement to enable them to obtain the plant, machinery on lease from it. For such financing, the assessee had obtained loan in foreign currency and incurred loss on account of currency fluctuation while repaying the loan. It was held that since the loan was borrowed for the financing activity, which was an activity concerning the business of the assessee, the loss was allowable under section 37. It was not a loan borrowed for acquisition of asset, in which case, the loss would have had to be adjusted against the actual cost of the asset.
(6)	It was held that High Courts under article 215 of the Constitution of India, the power of review would inhere in them. Further, it was also noted that in the case of **Shivdeo Singh v/s State of Punjab**, while dealing with power of review of writ petitions filed under article 226, the Supreme Court had observed that there is nothing in article 226 of the Constitution to preclude a High Court from exercising the power of review which inheres in every court of plenary jurisdiction **to prevent miscarriage of justice**. The Supreme Court further observed that Section 260A states that all the provisions that would apply qua appeals in the Code of Civil Procedure would apply to appeals under section 260A. That does not in any manner suggest either that the other provisions of the Code of Civil Procedure are necessarily excluded or that the High Court's inherent jurisdiction is in any manner affected. **[CIT v/s Meghalaya Steels Ltd. (2015) (SC)]**
(6)	On the issue that **Considering the procedure as prescribed u/s 260A, is the High Court justified in not framing any substantial question of law itself and adjudicating merely on the questions put forth by the appellant,** the Court has held that there lies a distinction between the questions proposed by the appellant for admission of the appeal to the High Court and the questions framed by the High Court. The substantial questions of law, which are proposed by the appellant fall u/s 260A(2)(c) whereas the substantial question of law is required to be framed by the High Court fall u/s 260A(3). **U/s 260A(4), the appeal is heard on merits only on the substantial question of law framed by the High Court u/s 260A(3).** If the High Court is of the view that the appeal did not involve any substantial question of law, it should have recorded a categorical finding to that effect saying that the questions proposed by the appellant either do not arise in the case or/and are not substantial questions of law so as to attract the rigour of section 260A for its admission and accordingly should have dismissed the appeal *in limine*. However, this was not done. Instead, ***the appeal was heard only on the questions urged by the appellant u/s 260A(2)(c), which is not in line with the requirement contained in section 260A(4). The High Court, therefore, did not decide the appeal in conformity with the mandatory procedure prescribed in section 260A.*** **[CIT v/s A.A. Estate Pvt. Ltd. (2019)(SC)]**

"POWERS OF INCOME TAX AUTHORITIES"

Section 119:- *Powers of the Central Board of Direct Taxes:-*

CBDT

May issue orders, instructions and directions to other I.T. authorities and they shall comply with those circulars.

EXCEPTION

CIT(A) is **not bound** by a circular **which affects his appellate discretion,** he is only bound by a circular of administrative nature.

May direct any I.T. Authority [Except CIT(A)] to admit a **belated claim or application** *for loss or refund or any other benefit* under the Act.

CIRCULAR 9/2015, DATED 9-6-2015: Condonation of delay in filing refund claim and claim of carry forward losses:-

If the amount of such claims is…….	Powers of acceptance / rejection of such applications / claims shall be vested with…….
Upto ₹ 10,00,000	CIT or PCIT
₹ 10,00,001- ₹ 50,00,000	CCIT or PCCIT
₹ 50,00,001 and above	Central Board of Direct Taxes

Section 132: *Power of search and seizure:-*

Eligible Authorities for authorizing search and seizure (i.e. for issuing search warrant)	Director General or Director or Chief Commissioner or Commissioner or *such Additional Director or Additional Commissioner or Joint Director or Joint Commissioner as may be empowered by the Board.*
Grounds for authorisation of search	If any of the aforesaid authorities has **reason to believe** about– ➢ Non-compliance of summon u/s 131 or notice u/s 142(1) to produce books of account or other documents; or ➢ The person is in possession of such money, bullion, or jewellery or other valuable article or thing **which represents his undisclosed income (i.e. Black Money).**
Eligible Authority as referred above may authorize any officer subordinate to him for the following……. [i.e. Any officer who is authorized for search	**(i) Enter and search** any building or place where it is suspected that books of account, other documents, and assets are kept; **(ii) Break open the lock** of any door, box, locker, safe, almirah, *where the keys thereof are not available;* **(iii) Search any person** who (a) has got out of, or (b) is about to get into, or (c) is in the building or place, if the authorised officer has reasons

(herein after referred as Authorized Officer) MAY.....]	to suspect that ***such person has secreted about his person any useful papers, documents or valuable articles / things.*** **(iv) Require any person, in whose possession or control books maintained in the form of electronic record is found, to afford the necessary facility to inspect such books.** **(v) Seize any such books of account,** other documents, money, bullion, Jewellery or other valuable article or thing found as a result of search **(except** bullion, Jewellery, or other valuable article or things **held as stock in trade.** **(vi) Place identification marks on books** inspected by him. **(vii) Make a note or inventory** or list of assets found as a result of search.
DEEMED / CONSTRUCTIVE SEIZURE:-	
When (Situation)	**Due to volume, weight, other physical characteristics or dangerous nature,** it is not practicable / possible to take physical possession on any valuable article / thing.
Manner	Authorized officer may serve an order on the assessee **to the effect that such item will not be removed or otherwise deal with without his permission,** *such action shall be deemed to be a seizure of such item.*
Exception	**Such order can not be served in respect of Stock in trade.**
ORDER OF RESTRAINT:-	
When (Situation)	Due to any reason *other than given in deemed seizure* it is not practicable or possible to take physical possession on books, money or other assets.
Manner	Authorized officer may serve an order on the assessee **to the effect that such item will not be removed or otherwise deal with without his permission**, ***but this action shall not be deemed seizure of such item.***
Time limit	**Such order will be valid for 60 days** from the date of such order.

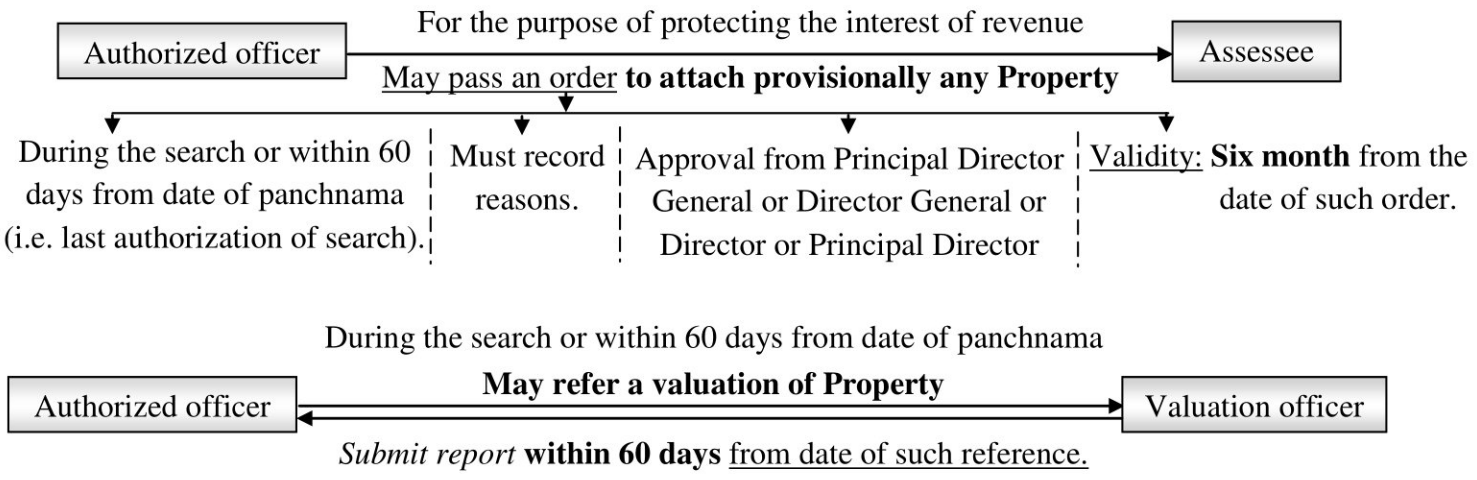
Other Relevant Provisions:-

Presumptions regarding books of accounts / other documents, and assets found in the possession of a person during search: it may be presumed that-

(i) Such books and assets *belongs to such person;*

(ii) Content of such books / other documents *are true;* and

(iii) Signature and every other part of such books / other document which purports (i.e. appears / seems) to be in handwriting of any particular person **are in that person's handwriting.** Similarly, in case of a document stamped, executed or attested will be presumed as done by the person **by whom it purports to have been done.**



Section 132B: *Application of seized or requisitioned assets:-*

Following may be recovered from the seized assets:

(i) Existing liability under this Act (i.e. outstanding dues) : ✓

(ii) Liability determined **on completion of asstt./reasstt.** (including liability relating to the year of search) : ✓

Explanation:

The **existing liability does not include advance tax payable** in accordance with the provisions of the Act.

If any seized asset to which the nature and source of its acquisition is explained to the satisfaction of the AO and assessee makes an application within 30 days from the end of the month of seizure for release of such asset, then, *the AO has to release* ***within 120 days from the date of panchnama with the prior approval of CCIT/CIT:***

Amount of explained asset : ✓

(-) Amount of existing liability : ✓

Aitaben R. Shah v/s DCIT(Guj. HC):

- Where assessee made an application within time limit for release of seized articles and no sufficient reasons were given for retention of seized articles, it was held that order rejecting the application was not valid.

Other Relevant Provisions:-

(1)	**Seized money will be first utilized in the discharge of liability** as referred to in (i) & (ii) above.
(2)	**If such money is not sufficient to meet the aforesaid liability** then ***balance liability may be recovered by sale of seized asset.*** If any excess proceed is there, that will be refunded to the assessee *with interest @ 0.5% per month or part of the month* **for the period** which will start from the expiry of 120 days from the date of panchnama (i.e. date of completion of search) to the date of completion of assessment.

"RECENT JUDICIAL PRONOUNCEMENT"

- Consequent to a search in the premises of the assessee, some gold bars were seized from the locker. The

assessee voluntarily disclosed some income during the course of search. The assessee filed an application for sale of the gold bars and adjustment of tax liability on undisclosed income out of the sale proceeds. This would obviate his liability to pay interest under sections 234B and 234C.

- Section 132B(1)(i) uses the expression "the amount of any existing liability" and "the amount of the liability determined". The words "existing liability" postulates a liability that is crystallized by adjudication; Likewise, "a liability is determined" only on completion of the assessment. **Until the assessment is complete, it cannot be postulated that a liability has been crystallized.**
- As per the first proviso to section 132B(1)(i), the assessee may make an application to the Assessing Officer for release of the assets seized. However, he has to explain the nature and source of acquisition of the asset to the satisfaction of the Assessing Officer. *Therefore, in the present case, the first proviso to section 132B(1)(i) would not be attracted.* **[Hemant Kumar Sindhi & Another v/s CIT (All)]**

Section 133: *Power to call for information:-*

The AO or CIT (Appeals) may-

(6)	require any person, including a **banking company,** to furnish information or furnish account statement which will be useful or relevant to any **inquiry or proceedings** under the Act. However the power in respect of an **inquiry**, in a case where no proceeding is pending, shall not be exercised by the assessing officer, (other than Joint Director, an Assistant Director or a Deputy Director), **with out the prior approval of Director or Commissioner.**

Section 133A: *Power Of Survey:-*

Eligible place of survey:

Any place at which business or profession or an **activity for charitable purpose** is carried on.

Explanation:

☞ **Any place at which books or other documents or assets relating to business / profession or charitable activity are kept** will be deemed as place of business / profession or charitable activity.

Limitation / Timing restriction on entry for survey:

(i)	At place of business / profession: may enter **in business hours only;**
(ii)	At any other place: may enter **after sunrise but before sunset.**
	☞ Survey proceedings may be continued **after the aforesaid timing.** **[N.K. Mohnot (Madras -HC)]**

Survey conducting authority, during the survey, may –

(1)	Require the person concerned **for providing necessary facilities** – in inspection of books, – in checking / verification of cash, stock or other assets as available there, and for providing of **useful / relevant informations** as required.
(2)	**Place identification marks** on inspected books / other documents by him.

(3)	**Impound and retain inspected books or other documents** → Subject to …… → **Recording of Reasons** **AND** **If period of Retention > 15 working days** → **Approval of CIT or above is required.**
(4)	Make a **list of cash, stock or other assets checked / verified by him.**
(5)	**Record the statement of any person** which may be relevant or useful for any proceeding under the Act.

The income-tax authorities would also have the power **to collect information and record the statements of any of the persons concerned** at any time **after any function, ceremony or event,** if they are of the opinion that having due regard to the nature and extent of the expenditure incurred, **it is necessary to do so.** **Section 133A(5)**

❖ **An income-tax authority conducting a survey shall on no account, remove or cause to be removed from the place wherein he has entered, any cash, stock or other valuable article or thing.**

TDS / TCS SURVEY: SECTION 133A(2A)

➢ An income tax authority has the power to conduct survey **for the purpose of verifying that TDS/ TCS has been made as per the provision of TDS / TCS chapter.**

➢ For this purpose, he may enter at any place of business / profession **after sunrise but before sunset.**

➢ **Survey conducting authority may:**

- ☞ require the deductor / collector or other concerned person for providing necessary facilities in inspection of books / other documents; require information in relation to such matter.
- ☞ Place identification marks on inspected books / other documents.
- ☞ **Record the statement** of any person which may be relevant or useful for any proceeding under the Act.

But, survey conducting authority shall not:

- impound and retain any books / other documents; or make a list of any cash, stock, other assets.

Explanation:

"Income tax authority" means ***an income-tax authority sub-ordinate to Principal Director General or Director-General or Principal Chief Commissioner or Chief Commissioner, as the case may be, specified by the Board.*** **As amended by F. A., 2022**

Section 133B: *Power to collect certain information:-*

- For the purpose of collecting relevant or useful information **as prescribed by the Board,**
- An income tax authority may enter at any place of business or profession and require the concerned available person for furnishing of the same.

➢ For the aforesaid purpose, income tax authority **may enter only in business hours,** and *shall not remove any books or assets from such place.*

"PENALTIES AND PROSECUTIONS"

Section 270A: *Penalty for under reporting and misreporting of income:-*

- **Assessing officer, CIT(A) or CIT** may levy penalty **on a person who has under reported his income.**
- **Quantum of penalty:** 50% of tax on under-reported income. However, if case of under-reported income falls under the specified circumstances of misreporting of income, then, instead 50%, **200% penalty shall be levied.**

S. No.	CASES OF UNDER-REPORTED INCOME	QUANTUM OF UNDER-REPORTED INCOME	MANNER OF COMPUTATION OF TAX ON UNDER-REPORTED INCOME
(1)	**If Return has been furnished and income has been assessed for the first time (i.e. assessment made for first time)** **AND** Income assessed > Income determined u/s143(1)	Income assessed **(-)** Income determined u/s 143(1)	Tax on [Under-reported Income + Income determined u/s 143(1)] **(-)** Tax on Income determined u/s 143(1).
(2)	**If No return has been furnished *or return has been furnished for the first time u/s 148* and assessment made for first time** **AND** Income assessed > Basic Exemption Limit	**(a)** In case of assessee other than individual or HUF: Amount of income assessed **(b)** In case of Individual or HUF: Amount of Income assessed (-) BEL	**(a)** Tax on under reported income **as if it were the total income.** **(b)** Tax on (under-reported income + BEL) **as if it were total income of assessee**
(3)	**Where income is not assessed for first time i.e. case of re-assessment** **AND** **Reassessed Income > Earlier assessed Income**	**Reassessed Income** **(-)** **Earlier assessed Income**	Tax on [Under-reported Income + Earlier assessed Income] **(-)** Tax on Earlier assessed Income.
(4)	**If Returned income is a Loss but on assessment:** **(i) Loss is reduced, or** **(ii) is converted into income.**	**(i)** Assessed loss **(-)** Loss as per section 143(1) **(ii)** Assessed income **(-)** Loss as per section 143(1)	Tax on under-reported income as if it were total income of the assessee.

(5)	**In case of reassessment and on reassessment Loss in assessment immediately before such reassessment is reduced or converted into income.**	Loss /Income reassessed **(-)** Loss assessed in preceding assessment order	Tax on under-reported income as if it were total income of the assessee.

Case of under-reported income arising out of intangible addition: Section 270A(4)&(5)

If in any year any unexplained investment, etc. found, for which, assessee claims that it has been created out of intangible addition made in past years, then,

(i) If intangible addition of latest preceding year is more than such unexplained item:

Intangible addition *upto the extent of such unexplained item* ***will be treated as under-reported income of such latest preceding year (i.e. first preceding year).***

(ii) If intangible addition of first preceding year in less than such unexplained item:

- Intangible addition of first preceding year will be treated as under reported income of that first preceding year, and
- Intangible addition made in year immediate preceding to the first proceeding year which is sufficient to cover the balance unexplained item ***will the treated as under reported income of that immediate preceding year, and so on.***

Section 270A(6):

Exclusions from under-reported income
(i.e. Cases not liable for penalty u/s 270A)

I — **Assessee offered explanation (+) I.T. Authority is satisfied** that:
- Such explanation is bonafide. **&**
- Assessee has disclosed all material facts related theirto.

II — Addition made **on account of estimate** (like, due to lower G.P. Rate)

III — **In case of an expense incurred for personal and business purpose (i.e. composite expense)**
Assessee on his own disallowed certain portion of such expense in computation of his income
But
Income tax authority has enhanced such disallowance.

IV — **Addition made on the basis of report of TPO** whereas assessee maintained record u/s 92D and reported such transaction u/s 92E.

V — **Where undisclosed income is detected in search and penalty is leviable u/s 271AAB.**

Section 270A(9):

Cases of misreporting of income

Where facts have been suppressed or misrepresented	Any investment has not been recorded in books.	Expense claimed not substantiated by any evidence (i.e. claim of bogus expense)	Any false entry recorded in the books of A/C	If any receipt is not recorded	Where report u/s 92E has not furnished in respect of international transaction or specified domestic transaction.

➢ **Double penalty is not possible in respect of same amount.**

Section 270AA: *Immunity from imposition of penalty, etc.:-*

Assessee may make **application for immunity from….**	**Penalty u/s 270A and Prosecution u/s 276C or 276CC.**
Relevant conditions for application….	(i) **Assessee has paid the demand of tax and interest** as raised under an order of assessment or re-assessment u/s 143(3) or 147, and (ii) **He has not filed an appeal** against such order of assessment or re-assessment.
Time Limit for application….	**One month** from the end of the month of receipt of such order of assessment or re-assessment.
If conditions of pre-payment of tax & interest and non-filing of appeal are satisfied……..	AO Shall: Grant Immunity **AND** Pass his order after the expiry of time limit of appeal. Then, Assessee against Order u/s 143(3) or 147 → Appeal (×) / Revision (×) Application
In case of misreporting of income…	AO **shall NOT grant immunity** i.e. reject such application.

Acceptance / Rejection order by AO u/s 270AA

Time limit	**In case of rejection order…**	**Shall be Final.**
One month from the end of the month in which application for immunity is received.	will be passed only after giving an **opportunity of being heard** to assessee.	

Note: **If application for immunity is rejected,** then, assessee may file appeal against such assessment / re-assessment order as passed u/s 143(3)/ 147, and, for this purpose, time limit for appeal will be extended by the period ***commencing from date of application and ending on the date on which rejection order u/s 270AA is received by the assessee.*** **[Part of Section 249]**

Section 271AAC (i.e. Exception to section 270A): Penalty in respect of certain income:-

Applicability	In case of **deemed income, as referred to in section 68, 69, 69A, 69B, 69C, and 69D** (like, unexplained investment, unexplained money, etc.)
Quantum of Penalty	**10% of tax payable u/s 115BBE.**
Exceptions	**(1)** If such assessee → **Disclosed such income in current year return,** **AND** **Paid tax as per section 115BBE up to the end of current year.**
	(2) If penalty is leviable u/s 271AAB (i.e. detection has been made during the search)**.**

Section 271AAB:- *Penalty where search has been initiated:-*

Section 271AAB → Applicability in case of initiation of search u/s 132

As found in course of search means Undisclosed income of **Specified Previous Year**:

- **Year of search;**
- **Year** → Expired…. → **But** Due date for ROI - Not expired…. → **Before the date of search**
- **Year** → Expired…. → **And** Assessee has **not** filed his ROI…. → **Before the date of search**

Undisclosed income:

- Assets / entry in personal diary, etc. which represents the income of specified previous year - **not recorded in officially maintained books** of account or other documents;
- **Bogus expense**

(a) 30% — **Applicable only if such assessee…**

(b) 60% — **If case is not covered in clause (a).**

In a statement as given during search:

- Admit such undisclosed income,
- Specify the manner of deriving such income & prove it.

AND

Pays tax & interest on such undisclosed income **&** Files ROI including such undisclosed income

up to **specified date** viz.

- **For year of search** → Due-date u/s 139(1)
- **For expired i.e. immediate preceding year** → Date on which time allowed in notice u/s 153A (for filing of ROI) expires.

Section 271AAD: *Penalty for false entry, etc., in books of account:-* F.A. 2020

(1) Without prejudice to any other provisions of this Act, **if during any proceeding under this Act, it is found**

that in the books of account maintained by any person there is—

a false entry; or an omission of any entry which is relevant for computation of total income of such person, the AO may direct that such person shall pay by way of **penalty a sum equal to such false or omitted entry.**

(2) Without prejudice to the provisions of sub-section (1), the AO may direct that **any other person, who causes the person referred to in sub-section (1) in any manner to make a false entry referred to in that sub-section,** shall pay by way of **penalty a sum equal to the aggregate amount of such false or omitted entry.**

Explanation: For the purposes of this section, **"false entry" includes** use or intention to use—

(i) *forged /falsified documents such as a false invoice or, in general, a false piece of documentary evidence; or*

(ii) *invoice in respect of supply or receipt of goods or services or both issued by the person or any other person without actual supply or receipt of such goods or services or both; or*

(iii) *invoice in respect of supply or receipt of goods or services or both to or from a person who does not exist.*

Common Amendment for section 271AAB, 271AAC and 271AAD: Inserted by F.A. 2022

With effect from 1st April, 2022, the **Commissioner (Appeals) will have power to levy penalty** under these sections 271AAB, 271AAC and 271AAD *along with the Assessing officer.*

Section 275 : *Time Limit for Passing the Penalty order :-*

Time limit for passing of penalty order by the AO

- **In case of Penalty for under-reporting of income**
  - **Situations**
    - If against assessment order (having such under-reported income)…
      - **Appeal (✓)**
        - If such appeal is **finally ended on CIT(A) Level** → **One year** from the end of the financial year in which order of CIT(A) is received by the CIT OR **31st March** of year of completion of assessment proceedings, whichever is later**
        - **If further appeal is filed to ITAT** (i.e. matter gone to ITAT level) → **Six months** from the end of month in which order of ITAT is the received by the CIT, OR **31st March** of year of completion of assessment proceedings,** whichever is later
      - **Revision application is filed u/s 264** → **Six months** from the end of the month in which order is passed by the CIT.
      - **Neither appeal nor revision has been filed** → **Six months** from the end of the month of initiation of penalty proceedings (SCN) OR **31st March** of year of completion of assessment proceedings → whichever is later
- **In any other case** → **Six months** from the end of the month in which penalty proceedings have been initiated.

Section 273A: *Power to reduce or waive penalty in certain cases:-*

(1)

CIT — MAY → Suo-motu or On application of assessee → Reduce or Waive → **Penalty u/s 270A** which has been → Imposed (✓) **or** Imposable (✓)

→ **But , Shall exercise this power if he is Satisfied that – assessee……**

- has **co-operated** in assessment's enquiry (+)
- has **paid**/made satisfactory arrangement for payment of **tax and interest** (+)
- Before detection of his under reported income by AO: **Assessee has made full and true disclosure of such income.**

(2)

IF → Under-reported income > 5 Lacs **or** Aggregate amount of under-reported income > 5 Lacs [If application relates to more than one year] → Then → CIT shall his order with the approval of DG/ CCIT.

(3)

CIT — once → Under section 273A(1) (+) In favour of assessee → Order Pass (✓) → after that.. → *Assessee shall not be entitled to any relief **under this section.***

(4)

CIT → On application **and** After recording reasons → **MAY** → Reduce / waive **ANY PENALTY** payable under this Act, Or Stay / Compound of recovery proceedings.

But → **shall exercise this power if he is satisfied that –**

- Non-exercising of power would cause genuine hardship (+)
- Assessee has co-operated in assessment's enquiry and recovery proceedings.

☞ IF → Amount of penalty > 1 Lac **or** Aggregate amount of penalties > 1 Lac [If application relates to more than one penalty] → then → CIT shall pass his order with the approval of DG/CCIT.

Time limit for passing order u/s 273A(4): 12 months from the end of the month of receipt of application.

THE VARIOUS DEFAULT AND RELATED PENALTIES ARE GIVEN IN THE FOLLOWING TABLE:		
Section	**Nature of default**	**Penalty leviable**
271A	**Failures to keep and maintain books, document, etc., as required 44AA.**	**₹ 25000/-**
271B	**Failure to get accounts audited** or furnish a report of audit as required **u/s 44AB.**	**½ % of total sales,** turnover, or gross receipts, etc. **or ₹ 1,50,000, whichever is less.**
271C	**Failure to deduct tax at source, wholly or partly, under section 192 to 196D or failure to pay wholly or partly the tax required under proviso to section 194B.**	**Amount equal to tax not deducted or paid.**
271CA	**Failure to collect tax at source as per the provisions of chapter of TCS**	**Amount equal to tax not collected.**
271D	**Taking or accepting certain loan and deposit or specified sum in contravention of the provisions to section 269SS.**	**Amount equal to loan or deposit or specified sum taken or accepted.**
271DA	**Receipt of any sum in contravention of the provisions to section 269ST.**	**Amount equal to such receipt.**
271DB	**Fails to provide facility for accepting payment through the prescribed electronic modes u/s 269SU**	**₹ 5,000/- for every day during which such failure continues.**
271E	**Repaying any loan or deposit or specified advance referred to in section 269T in contravention of its provisions.**	**Amount equal to loan or deposit or specified advance so repaid.**
271FA	Failure to furnish **Statement of financial transaction or reportable account** as required u/s 285BA(1) with in the prescribed time (i.e. 31st May).	**₹ 500/-** for every day during which the failure continues, **₹ 1,000/- for each day for the period beyond the time allowed under the notice issued u/s 285BA(5) for furnishing such statement.**
271FAA	**Failure to furnish Accurate Statement of financial transaction or reportable account**	**₹ 5,0000**
271H	**(a) Failure to deliver a copy of quarterly statement of TDS / TCS u/s 200(3) / 206C(3), OR** **(b) Furnishing incorrect information in the statement which is required to be**	**Minimum Penalty : 10,000/-** **Maximum Penalty : 1,00,000/-** But no penalty shall be levied for the failure referred to in clause (a), if the person proves that after depositing TDS/TCS along with the fee and interest,

	delivered under sub-section (3) of section 200 or section 206C.	if any, he had delivered the statement referred to in section 200(3)/206C(3) with in one year from the time prescribed for delivering such statement.
271-I	Failure to furnish information u/s 195(6) or Furnishing incorrect information	₹ 1,00,000
271-J	**Where AO or CIT (A) finds that a Chartered Accountant or a Merchant Banker or a Registered Valuer has furnished incorrect information in any report or certificate furnished under any provision of the Act or Rules**	**₹ 10,000 for each failure / default**
271K Applicable from 1st April, 2021	**Failure to -** ➢ **deliver a statement** (i.e. a statement to prescribed Income tax Authority about donations received during the year) – by research association, university, college or other institution as referred to in section 35(1)(ii) / (iia) / (iii), **as required u/s 35(1A)(i),** or – by the institution or fund **as required u/s 80G(5)(viii)**; or ➢ **furnish a certificate** (i.e. a certificate of donations to the donors) **as required u/s 35(1A)(ii), or u/s 80G(5)(ix)**	**Minimum Penalty : 10,000/-** **Maximum Penalty : 1,00,000/-**
272A	➢ **Failure to comply with summon issued u/s 131** (Issued for books / attendance). ➢ Failure to comply with a notice or u/s **142** (1) or u/s **143(2)** or direction u/s **142(2A)**	**₹ 10,000**
	➢ Failure to furnish TDS or TCS certificate ➢ **Failure to furnish the return of income u/s 139(4C)/139(4A)** or to furnish within the time allowed therein.	**₹ 500** per day during which the failure continues. However, in respect of penalty for failures in relation to TDS or TCS certificate shall not exceed the amount of TDS or TCS as the case may be.
272B	**Failure to comply with the provisions of section 139A** (i.e. PAN) in any manner.	**₹ 10,000**
272BB	**Failure to comply with section 203A i.e. Tax Deduction Account Number (TAN).**	**₹ 10,000**

RELEVANT CIRCUMSTANCES - WHEN ASSESSEE BECOMES LIABLE FOR PROSECUTION

Section	Nature of Offence	Rigorous Imprisonment and Fine	
		Minimum	Maximum
275A	Dealing with seized assets in contravention of order of Deemed / constructive seizure or order of restraint under section 132.	Any period up to 2 years (and fine also)	
275B	Failure to afford facility to inspect records maintained on electronic media.		
276B	Failure to deposit – tax deducted at source or tax payable under proviso to section 194B.	3 months (with fine)	7 years (with fine)
276BB	Failure to deposit tax collected at source u/s 206C		
276C(1)	Attempt to evade any tax, penalty or interest Case I : If such amount involved exceeds ₹ 25 Lacs	6 months (with fine)	7 years (with fine)
	Case II: In any other case	3 months (with fine)	2 years (with fine)
276C(2)	Attempt to evade the payment of any tax, penalty or interest.	3 months (with fine)	2 years (with fine)
276CC	Failure to file return in time u/s 139(1), or in response to notice u/s 142(1) / u/s 148 /u/s 153A Case I: If tax tried to be evaded exceeds ₹ 25 Lacs	6 months (with fine)	7 years (with fine)
	Case II: In any other case	3 months (with fine)	2 years (with fine)
	Note: No prosecution if – (a) The return is filed before the expiry of the assessment year **or a return is furnished by him u/s 139(8A) within the time provided in that sub-section**; or **AS AMENDED BY F. A., 2022** (b) Tax payable by such person, **not being a company,** on regular assessment as reduced by TDS, **TCS,** advance tax and **self assessment tax paid before the expiry of assessment year** does not exceed **₹ 10,000/-**. **AS AMENDED BY F. A., 2019**		
276D	Failure to produce books and documents as required u/s 142(1) or willful failure to comply with direction u/s 142(2A) to get accounts audited.	Any period up to one year (with fine)	1 year (with fine)
277A	Falsification of books of accounts / documents, etc. to enable any other person any tax, penalty or interest chargeable / leviable under the Act.	3 months (with fine)	2 years (with fine)

AMENDMENT MADE BY FINANCE ACT, 2022: *Inclusion of Section 276BB under the ambit of sections 278A and 278AA -*

Background:

- **Section 278A** provides for the prosecution of a person who has been convicted and is again convicted for the same offence. **For the second and subsequent offences, he shall be punishable for a term that shall not be less than 6 months but may extend to 7 years and with a fine.**
- **Section 278AA** provides that ***no person shall be punishable for failure***, *if he proves that there was reasonable cause for such failure.*

Amendment by the Finance Act, 2022:

Both the sections have reference of section 276B, *i.e.,* prosecution if a person fails to deposit TDS. *However, the reference to Section 276BB, which deals with prosecution if a person fails to deposit (TCS), was not there.*

- Accordingly, this Finance Act has inserted reference of Section 276BB in Section 278A and Section 278AA.

"RECENT JUDICIAL PRONOUNCEMENT"

On the issue that **can penalty under section 271C be levied for the non- remittance of the tax deducted at source under Chapter of TDS to the credit of the Central Government,** the High Court has held that so far as failure on the part of the assessee to remit the tax recovered at source is concerned, there cannot be any justifying circumstance for delay in remittance because the assessee cannot divert tax recovered for the Government towards working capital or any other purpose. Thus, the defence available under section 273B does not cover failure in payment of recovered tax.

Hence, **penalty u/s 271C for both non-deduction of tax at source and non-remittance of tax deducted at source would be attracted.** **[CIT (TDS) v/s Eurotech Maritime Academy Pvt. Ltd.(Ker)]**

Note: Section 271C provides that if any person fails to

(a) deduct the whole or any part of the tax as required by or under the provisions of Chapter of TDS; or

(b) pay the whole or any part of the tax as required by or under the second proviso to section 194B,

then, such person shall be liable to pay, by way of penalty, a sum equal to the amount of tax which such person failed to deduct or pay as aforesaid.

On a plain reading of section 271C, it appears that penalty under this section is attracted only if a person fails to deduct the whole or any part of the tax as required to be deducted at source under any provision of Chapter of TDS. ***For failure to remit tax deducted at source to the credit of the Central Government, prosecution u/s 276B would be attracted.*** *As per section 276B, such offence would be punishable with rigorous imprisonment for a term which shall not be less than three months but may extend to seven years and with fine.*

However, the Kerala High Court has decided that penalty under section 271C is also attracted for failure to remit tax deducted at source. It has also opined that section 273B relief will not be applicable for such failure. This may lead to an inference that both penalty under section 271C and prosecution u/s 276B would be attracted where there is a failure to remit tax deducted at source.

Section 269SS

If amount of Loan / deposit / specified sum* (individually / in aggregate) from any person is **₹20,000/- or more**

OR

If **outstanding sum** of Loan / deposit / specified sum in relation to any person is **₹ 20,000 or more**, then, **any fresh loan/deposit/specified sum*** from such person…

OR

If **Aggregate of outstanding sum of loan / deposit / specified sum** in relation to any person **and fresh loan /deposit / specified sum* is ₹ 20,000 or more**

Then

Such loan / deposit / specified sum* **must be taken** through account payee cheque/ account payee demand draft / ECS **/ Such other electronic mode as may be prescribed.** *In otherwise case,* it will be treated as violation **liable for penalty of equivalent amount u/s 271D.**

***Specified sum mean** sum **in relation to transfer of im-movable property,** *whether or not transfer takes place.*

Exceptions: Receipt of aforesaid loan/deposit/special sum from/by:

- Government
- **or**
- Banking company
- Post Office saving bank
- Co-operative Bank
- **or**
- Statutory Corporation
- **or**
- Govt. Co.
- **or**
- Any body/class of bodies as notified by the CG

Section 269T

If **repayable sum** of any loan/deposit/specified advance *(along with interest)* from any person is **₹ 20,000 or more,**

OR

If **aggregate amounts** of loans/deposits as made by any person **either in his own name or jointly with any other person** (along with interest) is **₹ 20,000 or more**

OR

If **aggregate amount of specified advances received by assessee either in his own name or jointly with any other person** (along with interest) is **₹ 20,000 or more**

Then

Repayment of any sum out of such loan/deposit/specified advance must be through A/C payee cheque or A/C payee demand draft /ECS or prescribed electronic mode. *In otherwise case, it will be treated as violation liable for penalty of equivalent amt. (i.e. paid amt.)* ***u/s 271E.***

Exceptions:

(1) If **payer is branch** of banking company / co-operative bank **and repayment is made by crediting of such sum to the payee's saving bank A/c or current A/c with such branch.**

(2) If aforesaid loan/deposit/specified advance is taken/accepted **FROM:**

Government **or** ➢ Banking company ➢ Post Office saving bank ➢ Co-operative Bank **or** Statutory Corporation **or** Govt. Co. **or** Any body/class of bodies as notified by the CG

(3) **Specified advance means**: Any sum of money in relation to transfer of an im-movable property *whether or not the transfer takes place.*

Section 269ST

If **aggregate amount** of receipt ….

From a person *in a day* **or** In respect of a *single transaction* **or** In respect of transaction**s** *relating to one event/occasion* from a person

is

₹ 2,00,000 or more

Then

Such sum must be received through A/C payee cheque or A/C payee bank draft or ECS **or through other prescribed electronic mode.**
In otherwise case, it will be treated as violation **liable for penalty** (of equivalent amount) **u/s 271DA.**

Exceptions:

(1) Any receipt **by Govt. / Banking Company / Post office savings bank / Co-operative bank.**

(2) Any receipt in form of loan / deposit / specified sum **as referred to in section 269SS.**

(3) Any person / class of persons/ receipts as notified by the CG.

Section 269SU:

- Every person, **carrying on business,**
- ***shall, provide facility for accepting payment through the prescribed electronic modes***
- in addition to the facility for other electronic modes of payment, if any, being provided by such person,
- if his total sales, turnover or gross receipt in business
- **exceed ₹50 crore** *during the immediately preceding previous year.*

Section	Nature of default	Penalty leviable
271DB	Fails to provide facility for accepting payment through the prescribed modes u/s 269SU	₹ 5,000/- for every day during which such failure continues.

"DISPUTE RESOLUTION"

Background:

➢ In order to provide **early tax certainty** to small and medium taxpayers, with effect from 1st April, 2021, **new scheme of Dispute Resolution has been formulated for constitution of one or more Dispute Resolution Committee(s) (DRC).**

Section 245MA: *DISPUTE RESOLUTION COMMITTEE :-*

(1) Constitution of Dispute Resolution Committee:

✓ The Central Government is empowered to constitute, **one or more Dispute Resolution Committees.**

- Dispute Resolution Committee would resolve dispute
- in the case of **such persons or class of persons, as may be specified by the CBDT,**
- *who opt for dispute resolution under this Chapter*
- in respect of dispute arising from any variation in the **specified order** in his case and
- **who fulfils the specified conditions.**

(2) Meaning of Specified order:

➢ Specified order means such order, including draft order, *as may be specified by the CBDT,* **and,**

(i) **aggregate sum of variations** proposed or made in such order **does not exceed ₹ 10 lakhs.**

(ii) such order is **not based on**

- **search** initiated under section 132 or
- **requisition** under section 132A in the case of assessee or any other person or
- **survey** under section 133A or
- **information received under an agreement referred to in section 90 or section 90A.**

(iii) **where return has been filed** by the assessee for the assessment year relevant to such order, **total income as per such return does not exceed ₹ 50 lakh.**

(3) Specified Conditions:

Specified conditions in relation to a person means a **person who fulfils the following conditions:**

(i) **He should not be a person,**

(A) **in respect of whom an order of detention has been made** under the provisions of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.

➢ **Such order of detention should not have been revoked** *before the expiry of the time stipulated under the relevant provisions of such Act,* either on the basis of report of Advisory Board or review under the relevant provisions of that Act.

➢ Further, **such order of detention should not have been set aside** by a court of competent jurisdiction. [Proviso to clause (a)(I)(A) of Explanation to section 245MA]

		(B)	**in respect of whom prosecution has been instituted and he has been convicted for any offence punishable under** the provisions of- ➢ **Indian Penal Code,** ➢ **Unlawful Activities (Prevention) Act,** 1967, ➢ **Narcotic Drugs and Psychotropic Substances Act,** 1985, ➢ **Prohibition of Benami Transactions Act,** 1988, ➢ **Prevention of Corruption Act**, 1988 or ➢ **Prevention of Money-laundering Act**, 2002;
		(C)	**in respect of whom prosecution has been initiated by an income-tax authority for any offence punishable under** – **this Act** or – **the Indian Penal Code** or – **for the purpose of enforcement of any civil liability under any law**, or ➢ such person has been convicted of any such offence consequent upon the prosecution initiated by an income-tax authority;
		(D)	**who is notified under section 3 of the Special Court (Trial of Offences Relating to Transactions in Securities) Act,** 1992;
	(ii)	*He should fulfill such other conditions, as may be prescribed.*	
(4)	***Powers to reduce or waive any penalty imposable under this Act or grant immunity from prosecution:*** ➢ The Dispute Resolution Committee shall have the powers **to reduce or waive any penalty imposable under the Income-tax Act, 1961** or **grant immunity from prosecution for any offence punishable under the Act** in case of a person whose dispute is resolved under this Chapter.		
(5)	**Faceless Scheme for Dispute Resolution:** ➢ The Central Government may make a scheme, by notification in the Official Gazette, for dispute resolution under this Chapter, so as to impart greater efficiency, transparency & accountability by – (a) eliminating the interface between the Dispute Resolution Committee and the assessee in the course of dispute resolution proceedings to the extent technologically feasible; (b) optimising utilisation of the resources through economies of scale and functional specialization; (c) introducing a dispute resolution system with dynamic jurisdiction.		

Amendment by the Finance Act, 2022: *Power of AO to give effect to order of DRC:-*

Purpose of amendment:

After the resolution of the dispute by the DRC, the assessed income of the person, who had applied to DRC, has to be determined which will be followed by, inter-alia, initiation of penalty proceedings, if any, and issuance of demand notice under section 156. **However, the existing provisions of the said section do not contain any provision which will enable the Assessing Officer to pass an order giving effect to the order or directions of**

the Dispute Resolution Committee under the said section.

Therefore, it is proposed to insert a new sub-section (2A) to this section to enable the Assessing Officer to pass an order giving effect to the resolution of the dispute by the DRC which provides as follows:.

– Notwithstanding anything contained in section 144C,
– **upon receipt of the order of the Dispute Resolution Committee** under this section,
– the Assessing Officer *shall,–*

(a) in a case where the specified order is a draft of the proposed order of assessment u/s 144C(1), **pass an order of assessment, reassessment or recomputation; or**

(b) in any other case, **modify the order of assessment, reassessment or recomputation,**

– in conformity with the directions contained in the order of the Dispute Resolution Committee
– within a period of one month from the end of the month in which such order is received".

Note: Although DRC is an alternate dispute resolution mechanism itself, a taxpayer may opt for approaching either the Dispute Resolution Panel under section 144C or the DRC under section 245MA, and the AO shall pass the final order in conformity with the order by the DRC even in the case of an eligible assessee."

Notification No. 26/2022 and 27/2022 dated 05.04.2022: *Dispute Resolution Committee and E-Dispute Resolution Scheme, 2022:-*

In order to provide early tax certainty to small and medium taxpayers, a new scheme of Dispute Resolution has been formulated with effect from 1st April, 2021 for constitution of one or more Dispute Resolution Committees (DRCs). Under section 245MA, the Central Government is empowered to constitute one or more dispute resolution committees, in accordance with the Rules made under the Act.

Accordingly, Part IX-AA Dispute Resolution Committee has been inserted in the Income-tax Act, 1961, which comprises of Rules 44DAA, 44DAB, 44DAC and 44DAD.

Rule 44DAA – Constitution of Dispute Resolution Committee:

(1) **Constitution of DRC -** The Central Government would constitute a Dispute Resolution Committee (DRC) for every region of Principal Chief Commissioner of Income-tax for dispute resolution.

(2) **Composition of DRC** - Each DRC would consist of 3 members, as under:-

i. 2 members would be retired officers from the Indian Revenue Service (Income-tax), who have held the post of Commissioner of Income-tax or any equivalent or higher post for five years or more; and

ii. 1 serving officer not below the rank of Principal Commissioner of Income-tax or Commissioner of Income-tax as specified by the Board.

(3) **Time period -** The members would be appointed by the Central Government for a period of 3 years.

(4) **Fee to be paid to member -** The Central Government may fix a sum to be paid as fee to a member, who is retired officer, on a per case basis, along with a sitting fee, so decided by the Board.

(5) **Decision of DRC -** The decision of the DRC shall be by majority.

(6) **Removal of member -** The Central Government may remove any member from the DRC after recording reasons in writing and after giving an opportunity of being heard.

Rule 44DAB – Application for resolution of dispute before the DRC:

Such persons or class of persons, as may be specified by the Board, and who fulfill the specified conditions may opt for dispute resolution under Chapter XIX-AA in respect of dispute arising from any variation in the specified order in his case. Such person has to make an application for resolution of dispute before the DRC in the prescribed form accompanied by a fee of ` 1,000.

Meaning of specified condition - Person fulfilling the specified conditions means –

(i) a person in respect of whom the conditions mentioned otherwise in section 245MA are satisfied; and

(ii) proceedings under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 have not been initiated for the assessment year for which resolution of dispute is sought.

Time limit for filing application - Such application has to be filed –

	Case	Time limit
(i)	In cases where appeal has already been filed and is pending before the Commissioner (Appeals)	within such time from the date of constitution of the Dispute Resolution Committee, as may be specified by the Board
(ii)	in any other case	within one month from the date of receipt of specified order

Meaning of specified order

"Specified order", in relation to a dispute under section 245MA, means:—

(a) a draft order as referred to in section 144C(1) in respect of a person in whose case variation arises as a consequence to order of the TPO passed under section 92CA(3) or a non-corporate non-resident;

(b) an intimation under section 143(1) after processing income-tax returns or under section 200A(1) after processing of TDS statements or section 206CB(1) after processing of TCS statements, where the assessee or the deductor or the collector objects to the adjustments made in the said order;

(c) an order of assessment or reassessment, except an order passed in pursuance of directions of the Dispute Resolution Panel;

(d) a rectification order made under section 154 having the effect of enhancing the assessment or reducing the loss; or

(e) an order made under section 201 or an order made under section 206C(6A) deeming a person as an assessee-in-default for failure to deduct/collect tax at source or remit the same as required under the Act, after deduction/collection [the variation in the specified order relating to default in deduction or

collection of tax at source would refer to the amount on which tax has not been deducted or collected in accordance with the Act]

and in respect of which the following conditions are satisfied, namely:—

(A) the aggregate sum of variations proposed or made in such order does not exceed ` 10 lakh;

(B) the return has been furnished by the assessee for the assessment year relevant to such order and the total income as per such return does not exceed ` 50 lakhs; and

(C) the order in the case of the assessee is not based on,—

(I) search initiated under section 132 or requisition made under section 132A in the case of the assessee or any other person; or

(II) survey carried out under section 133A; or

(III) information received under an agreement referred to in section 90 or 90A.

Screening of application by DRC

(i) **Examination of application -** The DRC has to examine the application with respect to the specified conditions and criteria for specified order. Upon such examination, where the DRC considers that the application for dispute resolution should be rejected, it has to serve a notice calling upon the assessee to show cause as to why his application should not be rejected, specifying a date and time for filing a response.

(ii) **Provision of opportunity of being heard -** The assessee can request for an opportunity of being heard. If the DRC receives a request from the assessee, it has to provide him an opportunity of being heard through video telephony or video conferencing facility, to the extent technologically feasible.

(iii) **Furnishing response to SCN within the specified date -**The assessee has to furnish a response to the show-cause notice referred to in (i) above within the specified date and time or such extended time as may be allowed on the basis of application made in this behalf, to the DRC;

(iv) **Rejection of application by DRC -** The DRC may, after considering the response furnished by the assessee, reject the application or proceed to decide the application on merits in accordance with the procedure laid out in (v) and (vi) below. Where no such response is furnished by the assessee, the DRC may reject the application [In such a case, the assesee may file an appeal to the Commissioner (Appeals). The period taken by the DRC in deciding on the admission has to be excluded from the period available to file such appeal].

(v) **Communication of decision of DRC to assessee -** The decision of the DRC that the application for dispute resolution should be allowed to be proceeded with or rejected, has to be communicated to the assessee on his registered e-mail address;

(vi) **Submission of proof of withdrawal of appeal/application before DRP -** Within 30 days of receipt of

the communication that the application is admitted, the assessee is required to submit a proof of withdrawal of appeal filed under section 246A or withdrawal of application before the Dispute Resolution panel, if any, to the DRC or convey th at there is no aforesaid proceeding pending in his case. If the assessee fails to do so, the DRC may reject the application.

Procedure to be followed by the DRC

(i) **Calling for records for further examination -** Upon admission of the application and subsequent to the receipt of the response of the assessee, the DRC may call for records from the income-tax authority and further examine, as it may deem fit, with respect to the issues covered in the application;

(ii) **Seeking report from Assessing Officer -** The DRC may seek a report from the Assessing Officer on the issues covered in the application or on any other issue arising during the course of proceedings;

(iii) **Calling for further information -** The DRC may before disposing off the application, call for further information from the assessee or any other person by sending an email to his registered email address;

(iv) **Submission of response within specified time -** The assessee has to electronically submit its response to the DRC, within the time specified or such time as may be extended by the DRC on the basis of an application in this behalf;

(v) **Decision of DRC -** After considering the material available on record, including any further information or evidence received from the assessee, income-tax authority or any other person, the DRC may decide-

(a) to make modifications to the variations in specified order, which are not prejudicial to the interest of the assessee, and decide for waiver of penalty and immunity from prosecution in accordance with the provisions of rule 44DAC, and pass an order of resolution, accordingly; or

(b) to not make modifications to the variations in the specified order. However, the DRC may decide to waive penalty and grant immunity from prosecution provisions in accordance with the provisions of rule 44DAC, and pass an order of resolution accordingly. Such an order will be treated as an order not prejudicial to the interest of the assessee; or

(c) to not make any modification to the specified order, and pass an order disposing off the application. Such an order will be treated as an order 'not prejudicial to the interest of the assessee',

within six months from the end of the month in which application for dispute resolution is admitted by the DRC. The order of the DRC for the resolution of a dispute has to be in accordance with the provisions of the Act.

(vi) **Serving copy of order to AO and assessee -** The DRC has to serve a copy of the order of resolution or order disposing off the application, as the case may be, upon the assessee and also the Assessing Officer for giving effect to the same, if so required;

(vii) **No appeal or reference will lie against the modified order -** Where the specified order is an order of the eligible assessee as referred to in section 144C(1), the assessee will not be eligible to file any reference to the DRP or an appeal to the Commissioner (Appeals) against the modified order.

(viii) **Serving copy of modified order to assessee –** The Assessing Officer has to serve a copy of the modified order along with notice of demand upon the assessee specifying a date for making payment of demand. No appeal or revision would lie against the modified order.

(ix) **Assessee to furnish proof of payment of demand -**The assessee has to furnish proof of payment of the said demand to the DRC and also to the Assessing Officer.

(x) **Grant of immunity from prosecution and waiver of penalty –** The DRC shall, on receipt of confirmation of payment of demand, by an order in writing, grant immunity from prosecution and waiver of penalty if applicable, in accordance with the provisions of rule 44DAC.

Termination of dispute resolution proceedings

The DRC may, at any stage of the dispute resolution proceedings, if considered necessary, for reasons to be recorded in writing and after giving an opportunity of being heard to the assessee, decide to terminate the dispute resolution proceedings if, -

(i) the assessee fails to cooperate during the course of dispute resolution proceedings; or

(ii) the assessee fails to respond to, or submit any information in response to, a notice issued to him; or

(iii) the Committee is satisfied that the assessee has concealed any particular material to the proceedings or had given false evidence.

(iv) the assessee fails to pay the demand as required in notice of demand.

Where the dispute resolution proceedings are terminated, the DRC has to intimate the income - tax authority for taking necessary action as per the provisions of the Act.

Rule 44DAC – Power to reduce or waive penalty imposable or grant immunity from prosecution or both under the Income-tax Act, 1961:

Conditions for grant of waiver of penalty or immunity from prosecution - The DRC, upon receipt of confirmation from the assessee of payment of demand, should grant to the person who made the application for dispute resolution under section 245MA, waiver of penalty imposable or immunity from prosecution or both, in respect of the order which is the subject matter of resolution, if it is satisfied that such person has,

- paid the tax due on the returned income in full if available; and
- co-operated with the DRC in the proceedings before it.

Reasons to be recorded in writing - The DRC would grant such waiver of penalty or immunity from prosecution or both, subject to such conditions as it may think fit to impose for the reasons to be recorded in writing.

No immunity if prosecution proceedings were initiated before application - No immunity would, however, be granted by the DRC in a case where the proceedings for the prosecution for an offence have been initiated before the date of receipt of the application for dispute resolution from the assessee fulfilling the specified conditions.

Withdrawal of immunity - An immunity granted to a person would stand withdrawn, if such person fails to comply with any of the conditions subject to which the immunity was granted. On such withdrawal, the provisions of the Income-tax Act, 1961 would apply as if such immunity or waiver had never been granted.

QYUESTIONS FOR YOUR PRACTICE

Question 1:

What is the need for constitution of Dispute Resolution Committee (DRC)? Can an assessee make an application before DRC against an order which is based on information received under an agreement referred to in section 90 or section 90A?

Answer:

In order to provide early tax certainty to small and medium taxpayers, with effect from 1st April, 2021, new scheme of Dispute Resolution has been formulated for constitution of one or more Dispute Resolution Committee(s).

Specified order does not include an order which is based on information received under an agreement referred to in section 90 or section 90A. Thus, an assessee can not opt for dispute resolution before DRC in respect of an order which is based on information received under an agreement referred to in section 90 or 90A.

Question 2:

Can an assessee opt for dispute resolution before DRC if prosecution for any offence punishable under the provisions of the Indian Penal Code has been instituted against him and he has been convicted in respect of the same under the said Act?

Answer:

Dispute Resolution Committee would resolve dispute in the case of such persons or class of persons, as may be specified by the Board, who may opt for dispute resolution under this Chapter in respect of dispute arising from any variation in the specified order in his case **and who fulfils the specified conditions.**

Specified conditions in relation to a person means a person who **inter alia** is not a person in respect of whom prosecution for any offence punishable under the provisions of the Indian Penal Code has been instituted and he has been convicted of any offence punishable under the said Act.

Thus, a person in respect of whom any prosecution has been instituted and who is convicted of any offence punishable under the Indian Penal Code, cannot opt for resolution of dispute before DRC.

Question 3:

Mr. Vijay furnished his return of income for A.Y.2022-23 declaring total income of ₹ 28,00,000. He received an assessment order under section 143(3) on 26.11.2023 enhancing the total income for the A.Y.2022-23 by ₹ 5,00,000. He is aggrieved by the said order and is desirous of knowing whether he can file an application before the Dispute Resolution Committee (DRC). He informs you that no order of detention has been made and no prosecution proceedings have been initiated or instituted against him under any law for the time being in force. However, penalty under section 271D has been levied on him for failure to

comply with the provisions of section 269SS. Can Mr. Vijay file an application before the DRC?

(i) **If yes, what is the time limit for making an application to DRC against such order under the Income-tax Act, 1961. He is also keen to know, whether, in case he is aggrieved by the order passed by the DRC, can he file appeal against such order of DRC?**

(ii) **Would your answer be different, if assessment order is based on information received under a DTAA with Country X?**

Answer:

Dispute Resolution Committee (DRC) would resolve dispute in the case of a person who opts for dispute resolution under this Chapter in respect of dispute arising from any variation in the specified order in his case and who fulfils the specified conditions. Specified order includes an assessment order passed under section 143(3), where the aggregate sum of variations made vide such order does not exceed ₹ 10 lakh; the total income as per such return furnished by the assessee for the assessment year relevant to such order does not exceed ₹ 50 lakhs and such order is not based on search or requisition or survey or any information received under a DTAA.

Accordingly, in the present case, Mr. Vijay can file an application before DRC, since the assessment order received on 26.11.2023 is a specified order and he satisfies the specified conditions on account of no order of detention being made and no prosecution proceedings being initiated against him. Non-levy of penalty under income-tax law is not a specified condition, therefore, the levy of penalty u/s 271D on him does not result in non-compliance with the specified condition. Mr. Vijay has to file an application for resolution of dispute in the prescribed form on or before 26.12.2023 i.e., within one month from the date of receipt of the specified order *(by excluding the day on which order of Assessing officer was received, in view of the provisions of section 268).*

However, once a modified order is passed by the DRC, no appeal or revision would lie against such order.

If assessment order is based upon the information received under an DTAA entered with India, Mr. Vijay, will not be eligible to make an application before DRC, since it is not a specified order.

"ADVANCE RULINGS"

Section 245-N: *Definitions*:-

(a)

ADVANCE RULING
↓
means
↓
Determination by the Board for Advance Rulings
↓
in relation to …...

Transaction of a non-resident applicant,	**OR**	**Tax liability of NR** arising out of a transaction **between resident applicant and such NR,**	**OR**	**Tax liability of resident applicant** arising out of a transaction of him,	**OR**	An issue which is **pending** before an Income-tax authority or ITAT.

(b)

APPLICANT:			
(i) Non-resident	**(ii) Resident dealing with such NR**	**(iia) Notified resident** (i.e. resident whose tax liability arising out of **one or more transactions valuing ₹100 crores or more)**	**(iii) Notified resident** (i.e. Public sector company)

Section 245-OB: *Constitution of Board for Advance Rulings:-*

(1) The **Central Government shall constitute one or more Boards for Advance Rulings,** as may be necessary, **for giving advance rulings under this Chapter** on or after such date as the Central Government may, by notification in the Official Gazette, appoint.

(2) The Board for Advance Rulings shall consist of two members, each being an officer not below the rank of Chief Commissioner, as may be nominated by the Board.

Section 245-Q: *Application for Advance Rulings : -*

☞ An applicant desirous of obtaining an advance ruling under this Act, may make an application in such form and in such manner as may be prescribed, *stating the question on which the advance ruling is sought.*

☞ Application shall be in **quadruplicate** (i.e. in four copies) and **accompanied by the following fee:**

(1) If applicant is **public sector company** [as referred to in section 245N(b)(iii)]	**₹ 10,000**
(2) In any other case, **if transaction(s) value, in respect of which ruling is sought, -**	
(i) Does not exceed 100 crores	₹ 2,00,000
(ii) Exceeds 100 crores but doesn't exceed 300 crores	₹ 5,00,000
(iii) Exceeds 300 crores	₹ 10,00,000

☞ **An applicant may withdraw an application within 30 days from the date of application.**

The *Authority for Advance Rulings*, in the case of **M.K. Jain AAR No. 644 of 2004,** has observed that though section provides that an application may be withdrawn by the applicant within 30 days from the date of the application this, however, does not preclude the AAR from permitting withdrawal of the application after the said period with the permission of the AAR, *if the circumstances of the case so justify.*

Note: Aforesaid ruling will also be applicable under the new scheme i.e. **Board for Advance Rulings.**

☞ Where an application for advance ruling is made on or before 31.8.2021, in respect of which no order has been passed or no advance ruling has been pronounced under section 245R before 1.9.2021 by the Authority for Advance Rulings, **such application along with all the relevant records, documents or material, on the file of the Authority would be transferred to the Board for Advance Rulings and shall be deemed to be the records before the Board for Advance Rulings for all purposes.**

Section 245-R : *Procedure on receipt of application : -*

- Authority will send a copy to the Commissioner and necessary records may be called for.
- The Authority may, after examining the application and records, allow or reject the application.

But, in the FOLLOWING CASES, Board for Advance Rulings SHALL REJECT the application:-

(i) If raised question in the application in **already pending** as on the date of application **in the case of applicant If**

- **Non-resident or resident** [except public sector company as referred to in section 245N(b)(iii)] → **In case of pendency before any I.T. Authority or ITAT or Court.**
- **Public sector company** → **In case of pendency before the Court.**

(ii) If raised question relates to determination of FMV of any property

(iii) If raised question **relates to a transactions which is designed for avoidance to tax.** This will not apply in case application is made by public sector company [245N(b)(iii)].

If application is REJECTED, in such a case-

- *Before rejection, an **opportunity of being heard** will be given to the applicant.*
- ***Reasons for rejection** will be given in rejection order.*
- ***Copy of such order** shall be sent to Applicant & CIT.*

If application is ALLOWED, in such a case-

- *After considering all the things, **BAR shall pronounce its advance ruling** on raised question in application.*
- On request of applicant, BAR shall provide opportunity to applicant before its pronouncement of ruling.

- **Time-limit for pronouncement of Advance Ruling: 6 months from the date of application.**
- ***Copy of such ruling*** *shall be sent to Applicant & CIT.*

Section 245-RR: *Appellate authority not to proceed in certain cases: -*

An Income tax Authority or the Appellate tribunal **shall not proceed to decide the issue for which an application has been made by the resident applicant** (like, public sector company).

Section 245-S: *Applicability of advance ruling :-* *Deleted w.e.f. 1st September, 2021*

~~Advance ruling shall be binding only on…~~

~~the **applicant** who had sought it~~ **and** ~~On the **transaction** to which the ruling had been sought.~~ **and** ~~On the **AO, CIT & CIT(A)** in relation their to.~~

☞ ~~**The advance ruling shall be binding as aforesaid unless there is a change in law or facts on the basis of which the advance ruling has been pronounced.**~~

Section 245-W: *Appeal to High Court:-*

(1)	The **applicant,** or the *Assessing Officer, on the directions of the Principal Commissioner / Commissioner,* **may appeal to the High Court** against any ruling pronounced or order passed by the Board for Advance Rulings **within sixty days** from the date of the communication of that ruling or order, in such form and manner, as may be prescribed. However, **HC may admit belated appeal also (but upto 30 days beyond the aforesaid time limit of 60 days).**
(2)	The Central Government may make a scheme, by notification in the Official Gazette, **for the purposes of filing appeal to the High Court** under sub-section (1) by the Assessing Officer, so as to impart greater efficiency, transparency and accountability by— (a) optimising utilisation of the resources through economies of scale and functional specialisation; (b) introducing a team-based mechanism with dynamic jurisdiction.

Section 245- T: *Advance ruling to be void in certain circumstances :-*

Where the Authority finds, on a representation made to it by the Commissioner or otherwise, that an advance ruling pronounced by it has been obtained by the applicant by fraud or misrepresentation of facts, *it may, by an order declare such ruling to be void-ab-initio.*

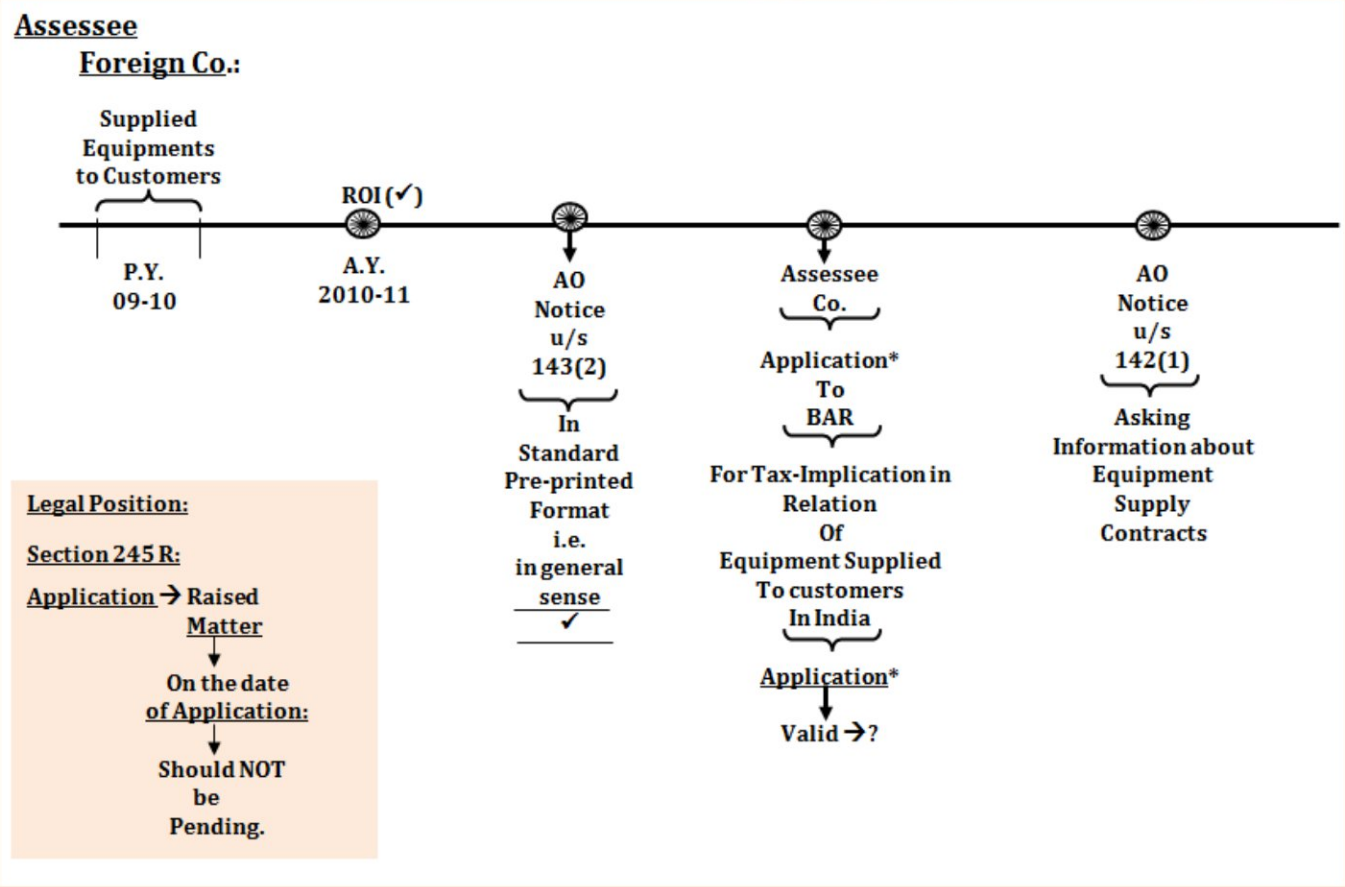
Thereupon, all the provisions of the Act shall apply (after excluding the period beginning with the date of such advance ruling and ending with the date of the order declaring the advance ruling as void) to the applicant *as if such advance ruling has never been made.*

"RECENT JUDICIAL PRONOUNCEMENTS"

(1) If prior to application before Board for advance rulings, **AO has issued notice in standard pre-printed format** i.e. in general sense **(not specifically mentioning about the subsequently raised issue in the**

application), In such a case, **such raised issue will not be treated as already pending,** thus, application can't be rejected by the Board for advance rulings on the ground of pendency.

[Hyosung Corporation v/s AAR [2016] (Delhi)]



"DEDUCTIONS TO BE MADE IN COMPUTING THE TOTAL INCOME"

Section 80-IA: *Deduction in respect of profits and gains to Infrastructure Developer:-*	
Eligible Assessee	**Indian Company** or group of Indian companies or any statutory body.
Eligible Business	**Developing, or operating and maintaining, or developing, operating and maintaining any infrastructure facility.**
Sunset date	Such development or operation and maintenance of infrastructure facility **must start on or before 31st March, 2017.** **Note:** **In case of 1st April, 2017 onwards,** ***deduction u/s 35AD may be claimed.***
Quantum of deduction	**100% of profits** derived such business.
Period of deduction	**10 consecutive years out of 20 years** (15 years in case of port, airport, inland port) from the year in which assessee develops and begins to operate such infrastructure facility.

- **Audit** of accounts of eligible business **is mandatory** and **audit report must be furnished one month prior to due date of filing of Return of income.**
- This deduction is available to developer, **not work contractor.**
  Meaning there by, *if eligible business of this section is executed as a work contract awarded by any other person, then,* ***deduction will not be available to the person who executed the same.***

"COMMON RELEVANT POINTS IN RELATION TO DEDUCTIONS u/s 80IA-80RRB and 10AA"

(1) Computation of profit for the purpose of deduction:

- **It shall be deemed that such eligible business were the only source of income** during the tax holiday period (which will start from initial assessment year that would mean the first year from which deduction has been claimed).

Important Case Laws:

CIT v/s Swarnagiri Wire Insulations Pvt. Ltd. (2012)(Kar.)

Issue:

Can unabsorbed depreciation of a business of an industrial undertaking eligible for deduction under section 80-IA be set off against income of another non- eligible business of the assessee?

Decision:

The deeming provision contained in section 80-IA cannot override the provisions of section 70. The assessee had incurred loss in eligible business after claiming depreciation. Hence, section 80-IA becomes insignificant, since there is no profit from which this deduction can be claimed. It is thereafter that section 70 comes into play, whereby the assessee is entitled to set off the losses from one source against income from another source under the same head of income. Therefore, **assessee was entitled to the benefit of set**

off of loss of eligible business against profits of non-eligible business.

However, once set-off is allowed u/s 70(1) against income from another source under the same head, a deduction to such extent is not possible in any subsequent assessment year i.e., the loss (arising on account of balance depreciation of eligible business) so set-off u/s 70(1) has to be first deducted while computing profits eligible for deduction u/s 80-IA in the subsequent year.

CIT v/s Reliance Energy Ltd. (2022)(SC):

Issue:

Does profit-linked deduction under Chapter VI-A have to be restricted to income computed under the head "Profits and gains of business or profession"?

Analysis and Decision:

Relevant provisions of Income-tax Act, 1961:

Section 80-IA(1) provides for deduction@100% of the profits and gains derived from eligible business referred to in section 80-IA(4), where the gross total income of an assessee includes any profits and gains derived by an undertaking or enterprise from such eligible business.

Section 80-IA(5) requires computation of profits and gains of such eligible business as if such eligible business is the only source of income of the assessee for the purpose of determining the quantum of deduction.

Section 80AB provides that for the purpose of allowing deduction under any section included in Chapter VI-A under the heading "C - Deductions in respect of certain incomes" in respect of any income of the nature specified in that section which is included in the gross total income of the assessee, then, for the purpose of computing the deduction under that section, the amount of income of that nature as computed in accordance with the provisions of the Act (before making any deduction under Chapter VI-A) shall alone be deemed to be the amount of income of that nature which is derived or received by the assessee and which is included in his gross total income. This is notwithstanding anything contained in the respective sections of Chapter VI-A.

Section 80A(1) stipulates that in computation of the "total income" of an assessee, the deductions specified in section 80C to section 80U shall be allowed from his "gross total income".

Section 80A(2) provides that the aggregate amount of deductions under Chapter VI-A shall not, in any case, exceed the gross total income.

Analysis:

A plain reading of section 80AB shows that the provision pertains to determination of the quantum of deductible income in the "gross total income". Section 80AB cannot be read to be curtailing the width of section 80-IA. It is relevant to take note of section 80A(1) which stipulates that in computation of the "total income" of an assessee, deductions specified in section 80C to section 80U shall be allowed from his "gross total income". Section 80A(2) provides that the aggregate amount of the deductions under Chapter VI-A shall not exceed the "gross total income" of the assessee. Thus, section 80AB which deals with determination of deductions under Part C of Chapter VI-A is with respect only to computation of deduction on the basis of "net income".

The essential ingredients of section 80-IA(1) are :

(a) the "gross total income" of an assessee should include profits and gains;

(b) those profits and gains should derived by an undertaking or an enterprise from a business referred to in sub-section (4).

(c) the assessee is entitled to deduction of an amount equal to 100% of the profits and gains derived from such business for ten consecutive assessment years; and

(d) in computing the "total income" of the assessee, such deduction shall be allowed.

The import of section 80-IA is that the "total income" of an assessee is computed by taking into account the allowable deduction in respect of the profits and gains derived from the "eligible business". The scope of section 80-IA(5) is limited to determination of quantum of deduction u/s 80- IA(1) by treating "eligible business" as the "only source of income". Sub-section (5) cannot be pressed into service for reading a limitation of the deduction under sub-section (1) only to income under the head "Profits and gains of business and profession".

For the purpose of calculating profit-linked deduction under any section of Chapter VI-A, loss sustained in other divisions or units cannot be taken into account, as only profits from the eligible business have to be taken into account as if it was the only source of income. Profits and gains from eligible business cannot be reduced by the loss suffered in any other business owned by the assessee.

Decision:

The net profit made by the assessee from the "eligible business" covered under sub-section (4) (i.e., from the assessee's business unit involved in generation of power) represented income from the "eligible business" under section 80-IA and was the only source of income for the purposes of computing deduction under section 80-IA. The deduction admissible under section 80-IA could not be limited to income under the head "Profits and gains of business or profession", by setting-off losses from non- eligible business against profits from eligible business.

Note: The issue arises in a case where loss from non- eligible business is being set-off against profits from eligible business, which results in income under the head "Profits and gains of business and profession" being lower than the profits from eligible business. In such a case, deduction under Chapter VI-A in respect of profits from eligible business would not be restricted to income computed under the head "Profits and gains of business and profession". The same would however be restricted to gross total income as per the requirement in section 80A(2).

For example, let us take the case of XYZ Ltd., an Indian company, for P.Y.2021-22. The following are the particulars relating to the said company -

(i) Profits from eligible business - ₹90 lakhs,

(ii) Loss from non-eligible business - ₹20 lakhs (which is set-off against profits from eligible business)

(iii) Income under the head "PGBP" – ₹70 lakhs [₹90 lakhs – ₹20 lakhs]

(iv) Gross total income – ₹85 lakhs

In this case, assuming deduction under section 80-IA is the only deduction under Chapter VI-A for XYZ

	Ltd., the same would not be restricted to ₹70 lakhs (being the income under the head "Profits and gains of business or profession"). However, the same would be restricted to ₹85 lakhs, being the gross total income as per the requirement in section 80A(2). If, in the above example, the gross total income was ₹95 lakhs (instead of ₹85 lakhs), then, the entire profits of ₹90 lakhs from eligible business would be allowed as deduction u/s 80-IA. This is the crux of the above Supreme Court ruling.
	☞ **In case of transfer of goods or services between eligible business and non-eligible business (i.e. inter unit transfer), if consideration does not match with market value,** then, profit shall be computed ***as if the transfer had been made at market value.*** ☞ **Due to close connection or for any other reason, if transaction with any person, produces profit more than the ordinary expected profit,** then, *reasonable profit will be considered for the purpose of deduction.*
(2)	**In a common case (i.e. business eligible for profit based deduction u/s 80IA to 80RRB or u/s 10AA, as well as investment based deduction u/s 35AD),** if deduction has been claimed under section 80IA to 80RRB or u/s 10AA, then, no deduction u/s 35AD for same or any other year in respect their of.
(3)	**Deduction must be claimed in return of income,** and no double deduction shall be allowed in respect of same amount u/s 80IA to 80RRB or 10AA. **[Section 80A]**
(4)	For claiming deduction in respect of "Profit derived" from eligible business – ➢ Export incentives, interest on FDRs, insurance claim **will not be considered.** **But,** Transport subsidy, interest subsidy, power subsidy, insurance subsidy which are re-imbursement of manufacturing cost, **will be considered.** **[Meghalaya Steels Ltd. (SC)]**
(5)	**CBDT Circular:** **If, in respect of eligible business** (Profit of which is eligible for deduction u/s 80IA to 80RRB or 10AA), **assessing officer enhanced the profit by disallowance u/s 40(a), 40A, 43B, etc.,** then, deduction under chapter VI-A or 10AA is admissible **on the profits so enhanced by the disallowance also.** Meaning there by, **effect of disallowance will be tax neutral for the assessee, on account of the enhanced profit linked deduction available to him.** ✓ This has also been affirmed by the **Bombay HC** in the case of CIT v/s Sunil Vishwambharnath Tiwari.
(6)	**Section 80AC:** To claim deduction u/s 80IA to 80RRB, *ROI must be filed on or before due date as specified u/s 139(1).* Meaning there by, Deduction u/s 80IA to 80RRB is not available to a person who files his return belatedly. ✓ It may be noted here that this restriction is **not applicable** *in case of claim of deduction u/s 10AA.*

Section 80-IAC: *Special provision in respect of specified business:-*

Eligible assessee	**ELIGIBLE START-UP** ↓ i.e. **Company or LLP engaged in eligible business** and **Incorporated** between 1/4/2016 to 31/3/**2023** (+) **Turnover does not exceed ₹100 crores** in the P.Y. relevant to the A.Y. for which deduction is claimed under this section (+) Having **certificate of eligible business** from Inter-ministerial board of certification
Eligible business	It means – a business **carried out by an eligible start-up** – engaged in **innovation, development or improvement of products or processes or services** or – a **scalable business model with a high potential of employment generation or wealth creation.**
Quantum of deduction	**100% of profit** derived from such business.
Period of deduction	**3 Consecutive years (out of 10 years from the year of its incorporation).**
Conditions for deduction	(i) **New business** [subject to exception of **revival of closed business** under circumtances of section 45(1A) *like*, earthquake, etc., **with in 3 years].** (ii) **New P&M** (subject to exception of **Imported P&M or 20% old block).**
Section 80-IBA: *Deductions in respect of profits and gains from housing projects:-*	
Eligible Assessee	**Any person**
Eligible Business	**Developing and building housing projects**
Quantum of deduction	**100% of profit** (ir-respective of number of years in which such profit is derived).
Eligible housing project	**Housing project which fulfils the following conditions:** **(a)** Must be **approved** from competent authority after 1/6/2016 but before 1/4/2022. **(b)** Must be **completed within 5 years** from date of approval (in case of more than once approval in respect of such housing project, then, from first approval date). **(c)** Carpet area of shops and other commercial establishment **should not exceed 3%** of aggregate carpet area. **(d)** **Minimum plot size** (on which such housing project is only situated) should be: (i) In case of Delhi NCR ***(limited to Delhi, Noida, Greater Noida,***

	Ghaziabad, Gurugram, Faridabad), Mumbai, Chennai, Kolkata, ***Hyderabad, Bengaluru:*** **1000 sq. meters.** (ii) If housing project is located at any other place: **2000 sq. meters.** **(e) Carpet area of each residential unit should not exceed –** (i) In case of Delhi NCR ***(limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurugram, Faridabad),*** Mumbai, Chennai, Kolkata, ***Hyderabad, Bengaluru:*** **60 sq. meters.** (ii) If housing project is located elsewhere: **70 sq. meters.** **(ea)** The stamp duty value of a residential unit in the project doesn't exceed ₹ 45lakh. **(f) If a residential unit is allotted to an individual,** then.. → No other unit → shall be allotted to… → Such individual, or / Spouse, or / Minor children → of such Individual. **(g) The project utilize –** **(i) At least 90% of floor area ratio** – If project is located in Delhi NCR ***(limited to Delhi, Noida, Greater Noida, Ghaziabad, Gurugram, Faridabad),*** Mumbai, Chennai, Kolkata, ***Hyderabad, Bengaluru.*** **(ii) At least 80% of floor area ratio** – In any other case. **(h) Separate books of accounts** should be kept in respect of such housing project.

Additional considerable points:

(1)	**Floor Area Ratio =** (Total covered area of ALL floors in such housing project X 100) ÷ Area of plot.
(2)	**This deduction is for actual developer, not for a person who executes the housing project as a work contract awarded by any other person.**
(3)	**If deduction in respect of a housing project has been claimed in one or more previous years, but subsequently such housing project is not completed within the prescribed time limit of 5 years,** Then, **total deduction allowed will be deemed as taxable business income of the previous year in which the aforesaid time limit of 5 years expires.**

INSERTION MADE BY FINANCE ACT, 2021:

- *To help migrant labourers and to promote affordable rentals,* this Finance Act has inserted a new sub-section (1A) in section 80-IBA **to allow deduction under this section to the rental housing projects.**
- Accordingly, if the gross total income of an assessee includes any profit and gains derived from the business of developing and building rental housing project, then he is allowed 100% deduction in respect of profits and gains derived from such business, **subject to fulfilment of the conditions specified in the notification to be issued by the Central Government.**
- For this purpose, **"rental housing project" means:**

	– a project which is notified by the Central Government in the Official Gazette on or before 31-3-2022; **and** – *fulfils such conditions as may be specified in the said notification.*
Section 80LA: *Deduction in respect of certain incomes of off-shore banking units:-*	
Eligible Assessee	(i) Schedule bank —having→ Branch in SEZ (+) Permission has been obtained in respect theirof from RBI. (ii) Foreign bank —having→ Branch in SEZ (+) Permission has been obtained in respect theirof from RBI. (iii) **Unit of an International Financial Service Centre (IFSC).**
Eligible incomes	**(1) Any income from offshore banking unit (i.e. earned at branch level)** from banking business with – (i) Undertaking which is located in special economic zone, or (ii) Undertaking which develops, operate & maintain, or develop, operate and maintain a special economic zone. **(2) Income of unit of IFSC.** **(3) Income arising from the transfer of an asset, being an aircraft *or a ship*, which was leased by a unit of IFSC and such unit has commenced operation on or before the 31st March, 2024.** AS INSERTED BY F. A., 2022
Quantum of deduction	**(i) For first 5 years** from the year in which permission for such branch has been obtained under Banking Regulation Act/SEBI Act**: 100% of such income** **(ii) For next 5 years: 50% of such income.** In case of a unit of International Financial Services Centre, **deduction has been increased to 100% for any 10 consecutive years** out of 15 years *beginning with the year in which the permission under the Banking Regulation Act / SEBI Act / **IFSC Authority Act, 2019** is obtained.* AS AMENDED BY F. A., 2021
Other Conditions	ROI (+) Copy of aforesaid permission & Certificate of C.A. (in Form 10CCF).
Section 80QQB: *Deduction in respect of royalty income of authors:-*	
Eligible Assessee	**Resident individual (+) Author /** Joint author
Eligible Incomes	– **Royalty or copy right fees,** derived by him in the exercise of his profession – whether received lump sum or otherwise, – in respect of his authored **book** *(which is of literary, artistic or scientific nature).*
	Additional considerable points: **(1) "Books" shall not include** brouchers, pamphlets, tracts, news papers, journals, magazines, diaries, text books for schools, guides, commentaries and other publications of similar nature by whatever name called.

	(2) If such income is not received in lump sum, then, **receipt in excess of 15% of sale value of books sold** during the P.Y. ***shall not be eligible for deduction.***
Quantum of deduction	**Eligible income OR ₹ 3,00,000 (whichever is less).**
If such income earned outside India	Deduction shall be allowed on so much of the income as is **brought in India within 6 months** from the end of the P.Y. or with in permissible extended period (by RBI).

Section 80RRB: *Deduction in respect of royalty on patent:-*

Eligible Assessee	**Resident Individual (+) Owner / co-owner of Patent.**
Eligible Income	**Royalty income derived from patent.**
Quantum of deduction	**Such income OR ₹ 3,00,000/-, (whichever is less).**
If such income earned outside India	Same as in case of Section 80QQQB.

Section 80P: *Deduction in respect of co-operative society:-*

Eligible assessee	**Co-operative society *other than co-operative bank.***

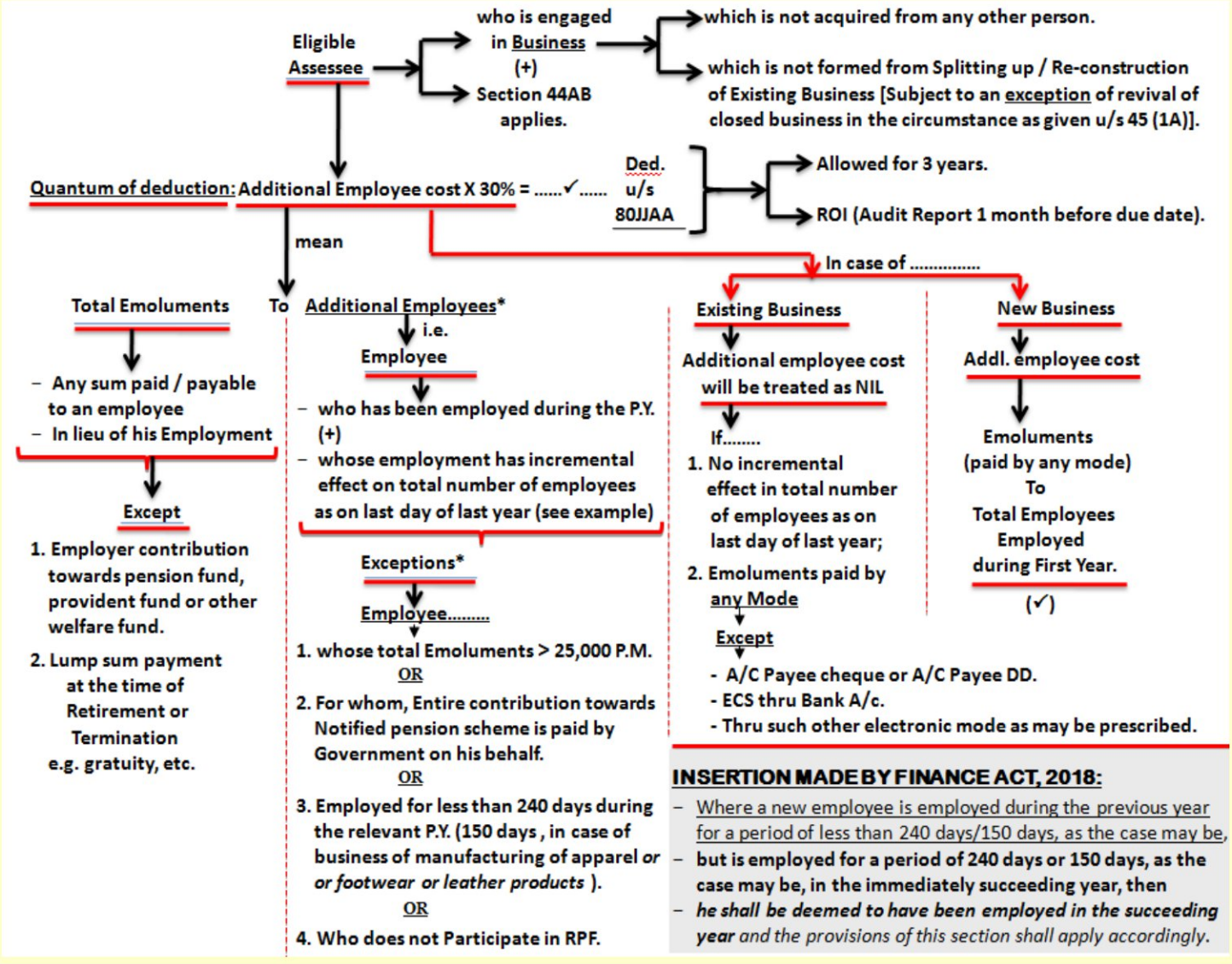
	Eligible Income	**Quantum of deduction**
(1)	Income of co-operative society engaged in: - business of banking or providing credit facilities to its members, or - **marketing of agricultural produce grown by its members**, or - **purchase of agricultural implements**, seeds, livestock or other articles intended for agriculture **for the purpose of supplying them to its members,** or - **processing, without the aid of power, of the agricultural produce of its members**, or - **collective disposal of the labour of its members,** or - **fishing or allied activities.**	**100%**
(2)	Income by way of **interest / dividend from other co-operative society**	**100%**
(3)	Income from **letting out of godown or warehouse**	**100%**
(4)	Income from **other activities**	**₹ 50,000/-**
(5)	In case of **consumer co-operative society for other activities**	**₹ 1,00,000/-**

Section 80PA: *Deduction in respect of certain income of Producer Companies:-*

Eligible assessee	**Producer Company** (i.e. Company **registered as producer company** under the Companies Act).
Conditions	**(1)** Its **total turnover is less than ₹ 100 crores.**

for claiming deduction under this section	**(2) Its GTI includes profits and gains derived from eligible business.** Eligible business means: **(i) Marketing of agricultural produce grown by the members**; or **(ii) Purchase of agricultural implements**, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to the members; or **(iii) Processing of the agricultural produce of the members.**
Quantum of deduction	100% of profits and gains attributable to eligible business, **But,** if assessee is entitled for any other deduction under this Chapter (i.e. u/s 80C to 80U), *the deduction under this section shall be allowed from the gross total income* ***as reduced by such other deductions.***
Period of deduction	**From Assessment year 2019-20 to Assessment year 2024-25.**

Section 80JJAA: *Deduction in respect of employment of new workmen:-*



Section 80M: *Deduction in respect of certain inter-corporate dividends:-*

- Where the gross total income of a **domestic company** in any previous year includes
- *any income by way of dividends*
- from any other domestic company or a foreign company or a business trust,
- there shall, in accordance with and subject to the provisions of this section, be allowed
- in computing the total income of such domestic company,
- a deduction of an amount equal to so much of the amount of *income by way of dividends*
- **received from such other domestic company or foreign company or business trust**
- ***as does not exceed the amount of***
- ***dividend distributed by it on or before the due date.***

➢ Where any deduction, in respect of the amount of dividend distributed by the domestic company, has been allowed under this section in any previous year, **no deduction shall be allowed in respect of such amount in any other previous year.**

➢ Explanation: For the purposes of this section, the expression **"due date" means** *the date one month prior to the date for furnishing the return of income u/s 139 (1).*

Section 80TTA: *Deduction in respect of interest on deposits in savings account:-*

Eligible assessee	**Individual (other than senior citizen) or HUF.**
Eligible income	Interest on savings account with *banking company, co-operative bank, or post office.*
Quantum of deduction	**Such eligible income or ₹ 10,000/-, whichever is less.**

Section 80TTB: *Deduction in respect of interest on deposits in case of senior citizens:-*

Eligible assessee	**Senior citizen [i.e. Resident individual (+) who is age of ≥ 60 years].**
Eligible income	Interest on deposits with a bank/ co-operative bank/ post office (it may be interest on fixed deposits, interest on savings account or any other interest).
Quantum of deduction	**Such eligible income or ₹ 50,000/-, whichever is less.**

Section 80U: *Deduction in case of a person with disability:-*

Eligible assessee	**Resident disabled Individual.** **Disabled means: Person who is suffering, not less than 40% from any disability.**
Quantum of deduction	₹ 75,000/-, **But, in case of Person with severe disability (i.e. disabled 80% or more from any disease) : ₹ 1,25,000/-**

"PAYMENT BASED DEDUCTIONS"

Section 80C: *Deduction in respect of life insurance premia, contributions to PPF, etc.:-*	
Eligible assessee	**Individual or HUF.**
Eligible investment or contribution	➢ **Life insurance premium** for himself, spouse and children (in case of HUF- for any member). In case of policy issued on or after 1/4/2012, **premium in excess of 10%** of the **actual sum assured** (15% for person covered u/s 80U/80DDB, if policy is issued on or after 1/4/2013) **shall not be eligible for deduction.** However, in case of policy issued before 1/4/2012, **premium in excess of 20%** of the **actual sum assured shall not be eligible for deduction.** ➢ **Contribution** to statutory / recognized / superannuation fund. ➢ **Contribution** to *public provident fund* in his own/spouse/any child account (in case of HUF assessee, any member's account). ➢ **Subscription to NSC and interest accrued thereon** (deemed to be reinvested). ➢ **Repayment of loan for purchase or construction of a residential house property** taken from Central/State Govt./Any other bank/LIC/ National Housing Bank/his employer (provided such employer is public company or public sector company or local authority or co-operative society). It may additionally be noted here that **if such loan has been taken for construction of house,** in such a case, to **claim deduction for repayment of loan here, such** construction must be completed. ➢ **Tuition fees** for *full time education, for any two children* of such individual, to any university, college, school or other educational institution situated in India. ➢ Term deposit (i.e. **FDR**) for a period of 5 years or more with a **scheduled bank** as per the scheme of the Central Government) or with **Post office.** ➢ Sum deposited in a Sukanya Samridhi Account, by an individual. ➢ Contribution by an *employee of the Central Government* to a **specified account of the pension scheme referred to in section 80CCD** (i.e. Tier II NPS A/C) for a fixed period of not less than **3 years** & which is as per notified scheme of the CG.
Maximum Limit	**₹ 1,50,000/-**
Section 80CCC: *Deduction in respect of contribution to certain pension fund :-*	
Eligible assessee	**Individual.**
Eligible Contribution	**Payment under pension fund** (as setup by LIC or any other insurance company) **for receiving pension.**
Maximum Limit	**₹ 1,50,000/-**
Section 80CCD: *Deduction in respect of contribution to pension scheme of CG:-*	

Eligible assessee	**Individual** (whether under employment or not)**.**		
Eligible contribution	Payment under **Notified Pension Scheme (NPS) or Atal Pension Yojana (APY).**		
Quantum of deduction	**For Employee**		**For any other person**
	In respect of employee contribution	In respect of employer contribution **As amended by F. A., 2022**	**Upto 20% of GTI** [i.e. actual contribution or 20% of GTI (whichever is less)]
	Upto 10% of salary	In case of employee of CG **or SG:** **Upto 14% of salary** In case of other employee: Upto 10% of salary	
	Additional deduction: ₹ 50,000 (in addition to aforesaid deduction) in respect of contribution. **[Section 80CCD(1B)]**		

Section 80CCE: ***Limit on deductions under sections 80C, 80CCC and 80CCD:-***

Deduction under section 80C
(+) Deduction under section 80CCC
(+) Deduction u/s 80CCD **(Except employer contribution & additional deduction of ₹ 50,000)**
⟩ 1,50,000

Section 80D: ***Deduction in respect of medical insurance premia :-***

Deduction allowable to…..→		**Individual**		**HUF**
For whose benefit payment can be made:		Family	Parents*	Any member of HUF
A.	**a. Medi-claim insurance premium**	Eligible	Eligible	Eligible
	b. Contribution to Central Govt. Health Scheme (CGHS) or notified scheme	Eligible	-	-
	c. Preventive health check-up payment	Eligible	Eligible	-
	Maximum deduction- - **General deduction** [for (a), (b) and (c)] - **Additional deduction** [applicable only in case of (a) when Medi-claim policy is taken on the life of a senior citizen (i.e. age of resident person ≥ 60 years)	₹ 25,000 **₹ 25,000**	₹ 25,000 **₹ 25,000**	₹ 25,000 **₹ 25,000**
B.	**Medical expenditure on the health of a person who is a senior citizen** (i.e. age of resident person ≥ 60 years) **if medi-claim insurance is not paid for such person**	**Eligible**	**Eligible**	**Eligible**
	Maximum deduction in respect of (B)	**₹50,000**	**₹ 50,000**	**₹ 50,000**

C.	Maximum deduction in respect of (A)& (B)	₹50,000	₹ 50,000	₹ 50,000

- **Family means:** Individual + Spouse + Dependent children only. (*Parent may be dependent or not)
- The aforesaid payments should be made by any mode other than cash. **However, preventive health check-up expense can be paid by any mode including cash, (but will be allowed upto ₹5,000/- in totality).**
- **Where the medical insurance premium is paid in lumpsum** (i.e. cases of single premium health insurance policies having cover of more than 1 year), then deduction under this section **(subject to the maximum amount permissible under this section)** shall be allowed for each of the relevant previous year as follows:

Amount paid in lumpsum	Period (in number of years) beginning with the previous year in which such amount is paid and including the subsequent previous year or years during which the insurance shall have effect or be in force

Section 80DD: *Deduction in respect of medical treatment of a dependent disabled person:-*

Eligible assessee	**Resident individual or resident HUF.**
Eligible expenditure	(a) **Expenditure on medical treatment** of ***dependent disabled relative*** or (b) **Deposit any amount for maintenance of such person** under a **scheme** of LIC or any other insurance company. ➢ **Scheme** referred to in clause (b) must provide for payment of annuity or lump sum amount for the benefit of a dependent disabled relative,— **(i)** in the event of the death of the individual or the member of the Hindu undivided family in whose name subscription to the scheme has been made; or **(ii) on attaining the age of sixty years or more by such individual or the member of the Hindu undivided family,** and ***the payment or deposit to such scheme has been discontinued.*** **As inserted by F. A., 2022**
Quantum of deduction	**₹ 75,000/-** (ir-respective of amount incurred / deposited), But, in case of person with severe disability (i.e. disabled 80% or more from any disease): **₹ 1,25,000/-.**
Relative Means	**Parents, Spouse, Brother/ Sister, Children. In case of HUF: any member of HUF**
Other relevant point	- If the **dependent disabled relative predeceases** the individual or the member of the Hindu undivided family in whose name subscription to the scheme has been made, - an amount equal to the amount paid or deposited under the aforesaid scheme for which deduction has been claimed, - **shall be deemed to be the income of the assessee** - of the previous year in which such amount is received by the assessee and - shall accordingly be chargeable to tax as the income of that previous year.

	➢ But, **this provision shall not apply to the amount received by the dependent disabled relative before his death, by way of annuity or lump sum by application of the condition referred to in sub-clause (ii) above** (i.e. on attaining the age of 60 years or more by depositor in whose name subscription to the scheme has been made). **As inserted by F. A., 2022**
Section 80DDB: *Deduction in respect of medical treatment of specified disease:-*	
Eligible assessee	**Resident individual or resident HUF.**
Eligible expenditure	Expenditure incurred on medical treatment of any disease, *as specified by the Board,* for himself or for dependent relative or member of HUF.
Quantum of deduction	☞ **₹ 40,000/- (₹ 1,00,000/-, if amount is paid in respect of senior citizen).**
Other relevant point	**Deduction to the extent of receipt of insurance claim or re-imbursed by the employer will be ignored.**
Section 80E: *Deduction in respect of repayment of loan taken for higher education :-*	
Eligible assessee	**Individual**
Eligible expense	Interest on education loan taken for higher education (> 12th) of himself / his relative.
Quantum of deduction	**Total interest** paid during the previous year.
Period of deduction	**8 years** *from the year in which payment of interest on such loan begins.*
Section 80EEA: *Deduction in respect of interest on loan taken for residential house:-*	
Eligible assessee	**Individual**
Eligible amount	**Interest on LOAN** → **Taken** → **For acquiring residential house.**; **From bank / housing finance company.** **Sanctioned** → **Between 1st April 2019 to 31st March 2022.**; Not owner of any residential house on this date (i.e. date of sanction of loan). ➢ **Stamp duty value of house** should not exceed ₹ 45Lacs. **Maximum amount of deduction: ₹ 1,50,000/-.**
➢ **No double deduction** in respect of *same amount of interest.*	
Section 80EEB: *Deduction in respect of intt. on loan taken for purchase of electric vehicle:-*	
Eligible assessee	**Individual.**

Eligible amount	**Interest on LOAN** → **Taken** → **For purchase of an electric vehicle.**; ***From a Bank or NBFC.*** **Sanctioned** → During the period 1/4/2019 to 31/3/2023.; Not owner of any electric vehicle on this date (i.e. date of sanction of loan). **Maximum amount of deduction: ₹ 1,50,000/-.**

➢ **No double deduction** in respect of *same amount of interest.*

Section 80G: *Deduction in respect of donations to certain funds, institutions, etc. :-*

100% of donated amount in respect of donation to:	**50% of donated amount** in respect of donation to:
(i) National Defence Fund **(ii) Prime minister's National relief Fund** **(iii) PM CARES FUND** **(iv) PM's Armenia Earth Quake Relief Fund** **(v) National Sports Fund** **(vi) National Cultural Fund** **(vii) National foundation for communal harmony** **(viii) National Children's Fund** **(ix) Swachh Bharat Kosh** **(x) Clean Ganga Fund** **(xi) National Fund for Control of Drug Abuse**	**(i) Jawaharlal Nehru Memorial Fund** **(ii) Prime Minister's Drought Relief Fund** **(iii) Indira Gandhi Memorial Trust** **(iv) Rajiv Gandhi Foundation.**
100% of donated amount or 10% of Adjusted GTI (whichever is less) in respect of donation to:	**50% of donated amount or 5% of Adjusted GTI (whichever is less)** in respect of donation to:
(1) Govt. or any approved local authority, institution or association to be utilized for promoting family planning. **(2) Any sum paid by a company to Indian Olympic Association or to any other Indian association (notified by the CG) for development of infrastructure for sports and games in India or for sponsorship of sports or games in India.**	**(1)** Govt. or any approved local authority, institution or association **to be utilized for any charitable purpose other than promoting family planning.** **(2) Any authority or corporation for the benefit of minority community** **(3) Any authority engaged in housing development or in planning, development or improvement of cities, towns and villages or in both.** **(4) Any *notified* temple, mosque, gurudwara, church or any other place.**

☞ **If Donation amount is more than ₹2000/-,** then, that must be paid other than cash, otherwise no deduction.

☞ **Adjusted GTI means: GTI (-) other deductions except 80G (-) Incomes covered u/s 115A to 115-**

Requirement to file statement of Donations:

- With effect from 1-4-2021, trust or institution as approved under this section is **required to file a statement of donation received** in Form 10BD upto 31st May after the end of the relevant financial year and also **to issue the certificate to the donor** in Form 10BE upto 31st May after the end of the relevant financial year. In case of delay in filing such statement, a late fee of ₹ 200 per day shall be applicable u/s section 234G.
- Deduction on account of the donation under this section shall be allowed to the donor **only on the basis of the statement filed by the donee trust or institution.** Hence, if a statement is not filed, the donor will not get a deduction for the donation.

Section 80GG: *Deduction in respect of rent paid:-*

Eligible assessee	**Individual (whether self employed or employee who is not in receipt of HRA).**
Eligible expenditure	**Payment of rent for his residential accommodation.**
Quantum of deduction	**Least of the following three:** (i) Rent paid (—) 10% of Adjusted Total income, (ii) 25% of Adjusted Total income, (iii) ₹ 5,000/- Per month. **Adjusted Total income means:** **GTI (-) other deductions except 80GG (-) Incomes covered u/s 115A to 115-I.**
Condition for deduction	**Such individual / his spouse/ minor child/ HUF of which he is member does not own any resident house** at the place of his ordinary residence or place of work.

Section 80GGA: *Deduction in respect of donations for research or rural development:-*

Eligible assessee	**Any person (Except having income under the head PGBP).**
Eligible amount	Donation to: (i) Approved institution for use in scientific research or statistical research, etc. (ii) Notified rural development fund or National Urban poverty eradication fund.
Quantum of deduction	**100% of donated amount.**
Condition for deduction	In case of donation exceeding ₹ 2,000, ***must be paid by any mode other than cash.***

Section 80GGB and 80GGC: *Deduction of contribution by any person to political parties : -*

	Section 80GGB	**Section 80GGC**
Eligible assessee	**Indian Company**	**Any person (other than Indian Co.)**
Eligible Contribution	**Donation to any political party or an Electoral trust.**	
Quantum of deduction	**100% of donated amount (which should be made other than cash).**	

"DEDUCTION U/S 10AA"

Section 10AA: *Special provisions in respect of newly established Units in SEZ:-*		
Eligible Assessee	*Any person* who starts **manufacturing / production** of any item or **providing services in any special economic zone (SEZ)** *on or before 31st March 2021.*	
Period of deduction	**15 years** from the year of start of manufacturing or providing services.	
Quantum of deduction	***In first 5 years***	**100% of export profit.**
	In next 5 years	**50% of export profit.**
	In next 5 years	Amount debited to profit and loss account and **credited** to SEZ re-investment allowance **reserve** account **OR** **50% of export profit,** (whichever is less).
Utilization of reserve	**For purchase of plant & machinery** *which should be first put to use within 3 years from the end of the year of creation of such reserve.*	
Withdrawal of deduction	**Situation**	**Year of taxation**
	If reserve has been wrongly utilized	Such mis-utilized amount will be **deemed as income for the year of such mis-utilization.**
	If reserve has not been utilized	Such unutilized amount will be **deemed as income for the next year immediately following the period of said 3 years.**
Manner for, or stage of, allowance of this deduction	Compute total income ignoring about this deduction, and from such total income, *deduction in respect of export profit (100% or 50% or transferred amount to reserve, as the case may be) will be allowed* ***but subject to a maximum of such total income.***	
Computation of Export profit	$\text{Profit from the business located in SEZ} \times \frac{\text{Export turnover of such business}}{\text{Total turnover of such business}}$ **Export turnover:** Consideration received in India against such export ***less**** freight, telecommunication charges, insurance or other expense *attributable from foreign delivery of goods/foreign services providing. (Same adjustment* in* ***total turnover*** *also)*	
Conditions for deduction	(i) **New business** [subject to exception of **revival of closed business** under circumtances of section 45(1A) *like*, earthquake, etc., **with in 3 years].** (ii) **New P&M** (subject to exception of **Imported P&M or 20% old block).** (iii) ***Report from chartered accountant*** *is mandatory one month prior to duedate of ROI.*	
Other special points	Loss & unaboserbed depreciation from such business ***can be carried forward or setoff.***	
	In case of amalgamation/demerger: Unavailed benefit of unexpired period (out of 15 years) will be allowed to transferee company from the year of amalgamation / demeger.	

"SET OFF; OR CARRY FORWARD & SET OFF OF LOSSES"

Section 70

Inter source adjustment

Meaning

Setoff of loss *from one source with income of another source* within the same head in same previous year.

Example

Adjustment of loss of any normal business from income of another business.

Exceptions

(1) **Speculation Loss.**
(2) **Long term capital loss.**
(3) **Loss from the activity of owning and maintaining of race horses.**
(4) **Loss from specified busi. u/s 35AD.**

Section 71

Inter head adjustment

Meaning

Setoff of loss *computed under one head with income of another head* in same previous year.

Example

Adjustment of loss from normal business with income from house property.

Exceptions

—
—
—

(5) **Short term capital loss.**
(6) Loss under the head I/H/P **in excess of ₹ 2L.**
(7) Loss under the head PGBP against salary.

Section 71B to 74A (Carry forward & Set-off of losses)

Section	Loss eligible to the carried forward….	Period for which such loss can be carried forward….	Income against which setoff in subsequent year will be possible…	
71B	**Loss from House Property**	***Next 8 years***	*Income from house property only.*	
72	**Loss under the head PGBP** **Except:** ☞ Speculation loss, ☞ Loss from specified business u/s 35AD.	***Next 8 years***	*Income of PGBP head only.*	
73	**Speculation loss**	***Next 4 years***	*Speculation income only*	
73A	**Loss from specified business u/s 35AD**	***Infinitely*** i.e. without anytime limit	*Income from any specified business only*	
74	**Capital gains**	***Next 8 years***	**LTCL** ↓ against LTCG **Only.**	**STCL** ↓ against ST/ LT CG **both**
74A	**Loss from the activity of owning and maintaining of racehorses**	***Next 4 years***	*Income from activity of owning & maintaining of race horses.*	

OTHER RELEVANT POINTS:

I. In relation to business loss:

(1)	**Continuity of loss relating business *is not necessary*.**

(2) **Priority / Order of setoff of brought forward business loss:**

(I) Current year depreciation.

(II) Brought forward business loss.

(III) Brought forward unabsorbed depreciation.

(3) Assessee who incurred the loss and who wants to claim the carry forward of such loss **MUST BE SAME.**

Important Rulings:

(A) **Where legal heirs of a deceased proprietor (of speculation business) enters into partnership carries on the same business,** there is succession by inheritance and ***assessee firm is entitled to carry forward and setoff of deceased business loss.*** **[Madhukant M. Mehta (Supreme Court)]**

(B) **Running business of firm is succeeded by its partners who carries on such business as sole proprietary concern, and wants to claim the loss suffered by firm,** since this is not a case of succession by inheritance, ***hence not possible.*** **[Promod Mittal v/s CIT(Delhi- HC)]**

(4) **Section 41(5):**

If business or profession **cease to exist** → **and subsequently** → **Deemed income** u/s 41(1) / 41(3) /41(4) / 41(4A) **arise** → **then** → **Loss of such business as relates from such year of discontinuance** can be setoff from such deemed income *ir-respective of time limit of 8 years.*

(5) **Proviso to section 72(1):**

If **business is discontinued in the circumstances referred to in section 45(1A)** [*like,* flood, typhoon, etc.] **And** is **re-established within 3 years** from the end of P.Y. of such discontinuance

→ then

Loss of such business (including brought forward loss)

→ *can be setoff from profit of re-established business* ***upto 8 years from the year of such re-establishment.***

II. In relation to loss from speculation business:

Meaning of speculation transaction – **Section 43(5)**

Transaction → **For purchase & sale of any commodity *including* stock & shares,** and

→ **which is settled ultimately *otherwise than by actual delivery.***

But, an **eligible transaction** shall not be treated as speculative transaction *(even if no actual deliveries are effected).*

↓ mean

Trading in derivatives in securities and currency futures	**Trading in derivatives in commodity** *which is chargeable to CTT* ***except*** *in case of trading in agriculture commodity derivatives*
↓ Provided	↓ Provided

It is carried out **electronically on screen based system.**	
It is carried out through **duly registered stock broker or sub-broker.**	It is carried out through **duly registered member/intermediary.**
It is carried out on a **recognized stock exchange.**	It is carried out on a **recognized association.**
It is **supported by a duly stamped contract note** issued by intermediary.	
Contract note indicates the **Unique client identity number** and **PAN.**	
☞ **Intraday trading i.e. transaction of purchase/sale is squared off in the same day without delivery:** **Income / loss shall be treated as arise from speculation business.**	

Explanation to section 73:

If **part of business** of company → consists → **Purchase and sale of shares**

↓ then

Company shall be deemed to be carrying on speculation business to that extent.

↓

Exceptions

- **Investment Company** (i.e. having mainly income under the head I/H/P, CG, & I/O/S)
- Company having principal **business of banking** or of granting loans/advance
- Company whose principal business of **trading in shares.**

Section 72A: *Exceptional provisions relating to carry forward and set off of the accumulated losses and unabsorbed depreciation allowance in amalgamation or demerger, etc:-*

Exceptional Cases ↓	**Accumulated loss or unabsorbed depreciation must relate from….**	**Benefit will be Allowed to….**	**Essential conditions which are need to be fulfilled**	**Eligible period for carry forward…**
(1) Amalgamation of- **(i)** Company **owning**: - Mfg./Production unit - Ship / Hotel / Mining business - Telecommunication service providing business. **(ii) Banking Co.** with Nationalized Bank. **(iii) Public sector co. with any other public sector company.**	Amalgamating company	Amalgamated company	See the column below	**For Loss:** ***Fresh life of 8 years will be available.*** **For unabsorbed depreciation:** *No time limit i.e. Infinitely.*

(iv) An erstwhile public sector company with one or more company or companies,

- *if the share purchase agreement entered into under strategic disinvestment*
- restricted immediate amalgamation of the said public sector company and
- the amalgamation is carried out **within five years from the end of the previous year in which the restriction on amalgamation in the share purchase agreement ends.**

However, the deemed loss or allowance for unabsorbed depreciation of the amalgamated company **shall not be more than the accumulated loss and unabsorbed depreciation of the public sector company as on the date on which the public sector company ceased to be a public sector company as a result of strategic disinvestment.**

Conditions to be satisfied by the amalgamating company :

(i) Such loss / unabsorbed depreciation related **business must be at least 3 years old.**

(ii) Out of total book value of fixed assets as was existing two years before the date of amalgamation, **at least 75% book value constituting fixed assets must be continuously held till the date of amalgamation.**

Conditions to be satisfied by the amalgamated company:

(i) **At least 75% book value constituting fixed assets** (out of total assets as received under amalgamation) must continuously be held till 5 years from the date of amalgamation.

(ii) **Business of amalgamating company must be continued for 5 years from the date of amalgamation.**

(iii) **Other prescribed conditions must also be fulfilled.**

Exceptional Cases ↓	Accumulated loss or unabsorbed depreciation must relate from….	Benefit will be Allowed to….	Essential conditions which are need to be fulfilled….	Eligible period for carry forward…
(2) Demerger	Demerged company ↓ **Amt. of loss /depreciation allowable to resulting co.:** ➢ Entire loss / unabsorbed depreciation relating to undertaking transferred, ➢ Proportionate loss / dep. in other loss / dep. of demerged company as calculated in assets ratio in the following manner: Assets retained by demerged co. : Assets transferred to resulting co.	Resulting company	Conditions as may be notified by the Central Govt. must be satisfied.	**For Loss:** Unexpired Period out of 8 years will be available. **For unabsorbed depreciation:** **No time limit** i.e. Infinitely.

Exceptional Cases ↓	Accumulated loss or unabsorbed depreciation must relate from….	Benefit will be Allowed to….	Essential conditions which are need to be fulfilled….	Eligible period for carry forward…
(3) **Succession of firm or proprietary concern by a company**	Predecessor firm or proprietary concern	Successor Company	**Conditions as given u/s 47(xiii)/47(xiv) must be fulfilled.**	**For Loss: Fresh life of 8 years will be available.** **For unabsorbed depreciation: No time limit** i.e. Infinitely.
(4) **Conversion of Private company or unlisted public company into LLP**	Predecessor Company	Successor LLP	**Conditions as given u/s 47(xiiib) must be satisfied**	Same as above

Note: In all aforesaid cases, after availing benefit, any attached condition is violated, then *allowed benefit will be deemed as income of the transferee* ***for the year of such violation.***

For the purpose of section 72A, 72AA, 72AB, Accumulated loss means:

Loss relating to… → (+) Transferor; PGBP head (except speculation loss); (+) Year of transfer (and) Last 7 years period.

Section 72AA: ***Carry forward and set off of accumulated loss and unabsorbed depreciation allowance in scheme of amalgamation in certain cases:-*** **F.A. 2020**

☞ ***This section overrules the provisions of section 2(1B) i.e. definition of amalgamation, or section 72A.***

Covered Exceptional Cases ↓	Accumulated loss or unabsorbed depreciation must relate from….	Benefit will be allowed to…	Conditions which are need to be fulfilled	Eligible period for carry forward
Amalgamation of one or more banking company with any other banking institution	**Banking company or companies**	**Banking institution**	Such amalgamation must be **under the scheme of Central Government**	For Loss: **Fresh 8 years** For Un. Dep.: **Infinitely.**
Amalgamation of one or more corresponding new bank or banks with any other corresponding new bank	**Amalgamating corresponding new bank or banks**	**amalgamated corresponding new bank**		

Amalgamation of one or more Government company or companies with any other Government company	Amalgamating Government company or companies (having Insurance Business)	amalgamated Government company (same line of Business)		

Section 72AB: *Provisions relating to carry forward and set off of accumulated loss and unabsorbed depreciation allowance in business reorganisation of co-operative banks:-*

Exceptional Cases ↓	Accumulated loss or unabsorbed depreciation must relate from….	Benefit will be Allowed to….	Essential conditions which are need to be fulfilled….	Eligible period for carry forward…
Business reorganisation (i.e. amalgamation or demerger) of a co-operative bank with another co-operative bank	**Predecessor co-operative bank** (i.e. amalgamating or demerged co-operative bank)	**Successor co-operative Bank** (i.e. amalgamated or resulting co- op. bank)	**Conditions are same as discussed u/s 72A**	For Loss: **Unexpired life out of 8 years (even in case of amalgamation)** For Un. Dep.: **Infinitely.**

Section 79: *Carry forward and set off of losses in case of certain companies:-*

➢ **This section over-rides all other provisions of this chapter** and applies in a case change in share holding.

Applicability	*Any closely held company*
Condition for claiming the benefit of loss	– ***At least 51% voting power*** – **as on the last day of year in which loss was incurred,** and – **as on the last day of the year in which company wants to setoff such loss** – **must be held by same persons.** **But, in case of a closely held company *being* an eligible startup as referred to in section 80IAC,** even if the aforesaid condition of 51% is not satisfied, still benefit shall be allowed on the fulfillment of the following conditions: **(1) All the shareholders of the last day of the year in which loss was incurred** – shall continue to hold those shares – **on the last day of the previous year** – **in which company wants to setoff such loss.** It may be noted here that, in between, **due to fresh issue by company,** what proportion such shareholders have remained in total voting power of company ***is completely ir-relevant.*** **(2)** Such loss must relate from **7 years from the year of incorporation.**

Sec. 79:- "Applicability"

Closely held company

"Year in which Loss was incurred" — "Year of Loss"

"Year in which such company wants to set off such Loss" — " Year of setoff"

51% V.P. → Must be held by Same person (s) → 51% V.P.

In otherwise case → C/f & Setoff

Proviso to Section 79 (b) :-

Assessee must be → Closely Held Co. (i.e. Private Co. / Unlisted Public Co.) (+) Eligible Start up (✓)

(+) Loss → Year of Loss : Last day → Share holding of ALL Sh. holders

Year of Set off : Last day ← Continue (✓)

Setoff (✓) — Loss — Profit — % in Sh. holding

1/10/19 | 1 | 2 | 3 | 4 | 5 | 6 | 7

Date of Incorporation (Presume) P.Y. 19-20

P.Y. 20-21

Co. → Sh. Cap. 15L → Mr. A : 5L, Mr. B : 5L, Mr. C : 5L = 15L

New Sh. Cap. 45L → Issued to Mr. D

P.Y. 22-23

Year of setoff

Co. → Sh. Cap. 60L → Mr. A : 5L, Mr. B : 5L, Mr. C : 5L (25%), Mr. D : 45L (75%) = 60L

P.Y. 25-26

"Completely" Ir-relevant

Exceptions	*The provisions of this section **shall not apply:*** **(1)** In case of **death of shareholder** or change is due to **gift of shares to relatives.** **(2)** To any change in shareholding in Indian subsidiary co. *due to amalgamation / demerger of foreign holding **co.** provided at least 51% shareholders of amalgamating / demerged foreign co. continue to shareholder of amalgamated/resulting foreign co.* **(3)** To any change in shareholding **pursuant to a resolution plan approved under IBC, 2016, *after affording an opportunity of being heard to the jurisdictional PCIT/CIT.*** **(4)** To those companies, and their subsidiary and the subsidiary of such subsidiary, where – the NCLT on a petition moved by the Central Govt. u/s 241 of the Companies Act **has suspended the Board of Directors of such company and has appointed new directors, who are nominated by the Central Govt.** u/s 242; and – a **change in shareholding of such company and its subsidiaries and the subsidiary of such subsidiary, has taken place in a previous year pursuant to a resolution plan approved by NCLT** u/s 242 of the Companies Act, *after affording an opportunity of being heard to the jurisdictional PCIT/ CIT.* **(5)** ***to a company to the extent that a change in the shareholding has taken place during the previous year on account of relocation referred to in section 47(viiac)/(viiad).*** **(6)** ***to an erstwhile public sector company*** subject to the condition that **the ultimate holding company of such company, immediately after the completion of strategic disinvestment, continues to hold,** directly or through its subsidiary or subsidiaries, **at least 51% of the voting power of such company in aggregate.** **But, this relaxation shall cease to apply *from the previous year in which the ultimate holding company of such erstwhile public sector company, immediately after completion of the strategic disinvestment, ceases to hold, directly or through its subsidiary or subsidiaries, 51% of the voting power of the erstwhile PSU.***

Section 79A: *No set-off of loss against undisclosed income discovered during search:-*

Applicability	Where total income **includes any undisclosed income consequent to a search u/s 132 or a requisition u/s 132A or a survey u/s 133A** [other than TDS/TCS survey].
Restrictions	**No set off, against such undisclosed income of any loss,** *whether brought forward or otherwise,* **or unabsorbed depreciation u/s 32(2) shall be allowed.**

"Undisclosed income" means-

Assets / entry in personal diary, etc. which represents the income of specified previous year - **not recorded in officially maintained books** of account or other documents;

Bogus expense

As found in course of search

"CLUBBING OF INCOME"

Section 60: *Transfer of income without transfer of assets:-*

If any person *transfers income* **without transferring the ownership of the asset,** such income is taxable in the hands of the transferor.

Section 61: *Revocable transfer of assets:-*

Income from *asset transferred under revocable transfer* shall be taxable in the hands of transferor except the case where t*ransfer under trust* which is **not revocable during the life time of transferee / beneficiary.**

Section 64(1)(ii): *Remuneration of spouse:-*

An individual is chargeable to tax **in respect of any remuneration received by the spouse from a concern in which the individual has substantial interest.**

However, *clubbing is not attracted in case* ***spouse possesses technical or professional qualification and remuneration is received in exercise of that knowledge or qualification.***

Section 64(1)(iv): *Income from assets transferred to spouse:-*

Where an asset ***(other than house property)*** **is transferred** by an individual **to his /her spouse** directly or indirectly, any income from such assets shall be deemed to be the income of transferor.

But, clubbing is NOT attracted if:

(a) Assets are transferred for adequate consideration.

(b) Assets are transferred in connection with an agreement to live apart.

(c) Relationship of spouse does not exist either at the time of transfer or at the time of accrual of income.

Note: ***When the identity of transferred asset is changed, such as where cash is gifted by an assessee to his wife and the latter invests the same in deposits, interest income is includible in the assessee's total income.***

Explanation to section 64(1):

For the purpose of clubbing u/s 64(1)(iv) where the assets transferred, directly or indirectly, by an individual to his spouse are invested by the transferee in the nature of contribution of capital as a partner in a firm, *proportionate* ***interest on capital*** *will be clubbed with the income of the transferor.* Such proportion has to be computed by taking into account the **value of the aforesaid investment as on the first day of the previous year** to the total investment by way of capital contribution as a partner in the firm as on that day.

Section 64(1)(vi) : *Income from assets transferred to son's wife:-*

If an individual, directly or indirectly, **transfers assets** without adequate consideration **to son's wife,** income arising from such assets included in the total income of the transferor.

Section 64(1A): *Income of minor child:-*

Income of minor child shall be included-

- Where the marriage of his parents subsists, in the income of that parent **whose total income** (before including income of child) **is greater**; or
- Where the marriage of his parents does not subsist, in the income of that parent **who maintains the minor child in the previous year,**

However, income derived by the minor-
- *from manual work, or*
- *from any activity involving his talent or specialized knowledge and experience, or*
- *income of minor child suffering from any disability,*

shall not be included in the income of his parent.

- The parent in whose hands such income is clubbed is entitled to exemption **u/s 10(32)**: ₹1500 per child.

Section 64(2): *Conversion of individual property into HUF property:-*

Where a member of Hindu Undivided Family has converted or transferred self acquired property for inadequate consideration into joint family property or thrown it into the common stock of the family, income arising there from is taxable as the income of transferor member.

If the converted property is subsequently partitioned amongst the members of the family, the income derived from such converted property as is received by the spouse of the transferor will be taxable as the income of the transferor.

OTHER RELEVANT POINTS WHICH ARE NEED TO BE REMEMBERED:

(1) Under this chapter, *if the transferee sells the transferred assets*, then capital gains shall also be clubbed with the income of transferor.

(2) ***Income on the asset transferred is clubbed but not the income on accretion to the asset*** (e.g. capital gains on bonus shares, interest on FDR made out of interest income on debentures transferred).

IMPORTANT JUDICIAL PRONOUNCEMENTS

(1) **Where assessee settled 1/4th share of his property under a trust for the education and maintenance of his minor daughter and under the terms of the trust deed, the income accruing to the trust, after meeting the expenses of maintenance and education of daughter, was to be accumulated and paid over to her on attaining majority, the Assessing Officer assessed the income arising from 1/4th share of the property, settled for benefit of daughter, in the hands of assessee.**

On these facts, the **Supreme Court** held that where the income from the trust was to be accumulated until the child attained majority, the clubbing provisions would not get attracted; this is so since no benefit (in such accumulated funds) accrues to the minor child during the period when such child is a minor.

However, in this case, the minor daughter is eligible for the benefit during the period when she is a minor, since income from the trust is being used for meeting her education and maintenance expenses.

Only the remaining income is to be accumulated and paid over to her on her attaining majority. Therefore, ***since benefits under the terms of the trust deed is accruing, even though to a limited extent, to the minor***

	daughter during the period when she is a minor, the clubbing provisions under section 64(1A) will get attracted to that extent. **[CIT v/s M.R. Doshi (SC)]**
(2)	Clubbing will take place even if the assets are ***indirectly transferred*** or transferred through *cross transfer.* **[CIT v/s Keshavji Morarji (SC)]**
(3)	*For the purpose of this chapter,* ***income includes "loss".*** Therefore losses are also to be clubbed. **[CIT v/s Harprasad & Co. (P) Ltd.(SC)]**

"TONNAGE TAX SCHEME (TTS)"

Section 115VA: *Computation of profits and gains from the business of operating qualifying ships (i.e. charging section):-*

- Notwithstanding anything contained in section 28 to 43C
- in the case of a ***qualifying company,***
- the income from the business of operating ***qualifying ships*** , may,
- **at its option ,**
- be computed in accordance with the provisions of this chapter and
- such income shall be deemed to be the profits and gains of such business chargeable to tax under the head profits & gains of business or profession.

Section 115VG: *Computation of tonnage income:-*

Income taxable under this scheme shall be the ***aggregate*** *of the tonnage income computed for* ***each qualifying ship*** *as follows –*

Tonnage income for Each qualifying ship = Daily tonnage income** based on net tonnage of the qualifying ship × The no. of days in the previous year OR The number of days for which the ship operates as a qualifying ship during the previous year if the ship is so operated for part of the year (as the case may be)

** ***The Daily Tonnage Income based on Tonnage Capacity for each Qualifying Ship is as follows:-***

Tonnage capacity	Amount of daily tonnage income
Up to 1000 tons	₹ 70 for each 100 tons
On next 9000 tons	₹ 53 for each100 tons exceeding 1000 tons
On next 15000 tons	₹ 42 for each100 tons exceeding 10000 tons
Exceeding 25000 tons	₹ 29 for each 100 tons exceeding 25000 tons

The tonnage shall be rounded off to the nearest multiple of 100 tons and *for this purpose*:-

- ***Any tonnage consisting of kilograms shall be ignored.***
- Further, if such tonnage is not a multiple of 100 and -
  - (i) **If the last figure in that amount is 50 or more ,** the tonnage shall be increased to the next higher tonnage which is a multiple of 100 , and
  - (ii) **If the last figure is less than 50 tons ,** the tonnage shall be reduced to the previous lower tonnage which is a multiple of hundred.

❖ ***No deduction or set off under any other provision of this Act, shall be allowed in computing the tonnage income under this chapter.***

Section 115 VO *: Exclusion from sec. 115 JB (i.e. MAT):-*

The book profit or loss derived from activities of a tonnage tax company from the qualifying ships, shall be excluded from the book profit of the company for the purpose of section 115 JB.

Section 115 VK: *Depreciation:-*

- Although depreciation is not allowed separately from tonnage income, it is necessary to bifurcate the qualifying ships & Non qualifying ships at the time of a company joins the scheme.
- Section 115 VK provides manner for such bifurcation, which is as follows –

$$\text{WDV of Non Qualifying Ships} = \frac{\text{Tax WDV of Block of ships} \times \text{Aggregate Book WDV of non-qualifying ships}}{\text{Aggregate Book WDV of all ships}}$$

WDV of Qualifying Ships = *Tax WDV of Block of ships **less** WDV of non-qualifying ships as computed above.*

Section 115 VP: *Method and time of opting for tonnage tax scheme :-*

- *A qualifying company may opt for the tonnage tax scheme by making an application with in three months from the date on which it becomes qualifying company to the **Joint Commissioner** having jurisdiction over the company.*
- ***Every order granting or refusing the approval shall be passed before the expiry of one month from the end of the month in which the application was received.***

Section 115 VQ: *Period for which tonnage tax option to remain in force:-*

Once a company opts for the scheme, the option remains in force for **ten** assessment years ***except in following circumstances:***

i. *The qualifying company **ceases to be a qualifying company;***
ii. *A **default is made in complying with the provisions contained in section 115VT (regarding creation and utilization of reserves) or section 115VU (regarding minimum training requirement) or section 115VV (regarding limit for charter in tonnage);***
iii. *The tonnage tax company is **excluded from the TTS under section 115VZC** for entering into transactions for avoidance of tax;*
iv. *The qualifying company **furnishes to the Assessing Officer, a declaration** in writing to the effect that the provisions of this Chapter may not be made applicable to it.*

Section 115 VT: *Transfer of profits to Tonnage Tax Reserve Account: -*

- A tonnage tax company shall be required to credit to Tonnage Tax Reserve Account an amount not less than **20% of the book profit** derived from the business of qualifying ships in each previous year to be utilized in the manner prescribed.

  Explanation: For the purposes of this section, "book profit" shall have the same meaning as in the *Explanation* to sub-section (2) of section 115JB.

- Notwithstanding anything contained in any other provision of this Chapter, where the amount credited to the Tonnage Tax Reserve Account is less than the minimum amount required to be credited under this section, an amount which bears the same proportion to the total relevant shipping income (i.e. actual shipping income), as the shortfall in credit to the reserves bears to the minimum reserve required to be credited under this section shall not be taxable under the tonnage tax scheme and shall be taxable under the other provisions of this Act.

Section 115 VU: *Minimum training requirement for tonnage tax company:-*

A tonnage tax company after its option has been approved under section 115VP, shall comply with the minimum training requirement in respect of trainees, officers in accordance with the guidelines framed by the Director-General of Shipping and notified in the Official Gazette by the Central Government.

Section 115 VV: *Limit for charter in tonnage:-*

In the case of a tonnage tax company, not more than 49% of the net tonnage of the qualifying ships shall be **chartered in** (i.e. To give space on hire to a person for a particular purpose).

Section 115 VZB : *Avoidance of tax :-*

The tonnage tax scheme **shall not apply** where a tonnage tax company is a party to any transaction or arrangement which amounts to an abuse of the tonnage tax scheme.

A transaction or arrangement shall be considered an abuse if the entering into or the application of such transaction or arrangement results in a tax advantage being obtained for –

(1) *A person other than a tonnage tax company* ;

(2) *A tonnage tax company in respect of it's non-tonnage tax activities.*

Section 115 VZC: *Exclusion from tonnage tax scheme:-*

- Where a tonnage tax company is a party to any transaction or arrangement for avoidance of tax referred to above,
- the assessing officer ***shall*** by an order in writing exclude such company from the tonnage tax scheme.

➢ *However, an opportunity shall be given by the assessing officer by issuing a show cause notice to that effect.*

➢ ***No such order can be passed without the previous approval of the Chief Commissioner.***

➢ **Where such an order has been passed,** the option for tonnage tax scheme shall cease to be in force from the first of the previous year in which the transaction or arrangement was entered into.

➢ *A company can avoid action under this section by showing to the satisfaction of the assessing officer* that the transaction or arrangement was a bonafide commercial transaction and had not been entered into for obtaining tax advantage.

"GENERAL ANTI-AVOIDANCE RULES (GAAR)"

- **These provisions have been designed to deal with the case of TAX AVOIDANCE (Except the cases where there are specific provisions under the Act for anti avoidance)**
- **These provisions have NOT been designed to deal with the case of TAX PLANNING / TAX EVASION.**
- The Act contained only **Specific Anti-Avoidance Rules (SAARs)** to prevent tax avoidance. SAAR targets known tax planning schemes which are commonly used by taxpayers but are not acceptable owing to misuse or abuse of tax laws, or they result in a consequence unintended in the law.

In the Act, the following may, inter alia, be considered specific examples of SAAR –

(i) **Section 40A(2)** on excessive or unreasonable payments to related parties not deductible

(ii) **Section 80-IA(8)** on transactions with tax exempt entities to be valued at market value.

(iii) **Sections 92 to 92F** on transfer pricing regulations applicable to international transactions. These provisions also made applicable to specified domestic transactions by the Finance Act, 2012.

(iv) **Explanations 1 to 13 to section 43(1)** on determination of actual cost of assets ignoring agreements, etc., in certain cases.

Section 95: *Applicability of General Anti-Avoidance Rule:-*

- **An arrangement entered into by an assessee may be declared to be an impermissible avoidance arrangement** and the consequence in relation to tax arising there from may be determined *subject to the provisions of this Chapter.*
- **Arrangement means** any step in, or a part or whole of, any transaction, operation, scheme, agreement or understanding, whether enforceable or not, **and includes** the alienation of any property in such transaction, operation, scheme, agreement or understanding;

Section 96: *Impermissible Avoidance Agreement:*

(1) **An impermissible avoidance arrangement (IAA) means** an arrangement,

- the main purpose or one of the main purposes of which is **to obtain a tax benefit****

and

- also **any of the following tests** is satisfied:

(a) The transaction creates rights, or obligations, which are not normally created between persons dealing at arm's length i.e. simply non-arm's length dealings.

Example:

Facts:

Y Tech Ltd. is a company resident of country C1. It enters into an agreement with Z Energy Ltd., an Indian company for setting up a power plant in India. It is a composite contract for an agreed price of US$ 100 million. The payment has been split in the following parts as per separate agreements.

(i) US$ 10 million for design of power plant outside India (payment for which is taxable at 10% on gross basis)

(ii) US$ 70 million for offshore supplies of equipment etc. (not taxable as no role is played by any PE in India. There are not subject to import duty)

(iii) US$ 20 million for local supplies and installation charges (taxable on net income basis)

It is found that the fair market value of offshore design is about USD 30 million; therefore it is under invoiced. On the other hand, offshore supplies were over invoiced. The arrangement resulted in significant tax benefit to the taxpayer. Can GAAR be invoked in such a case?

Interpretation:

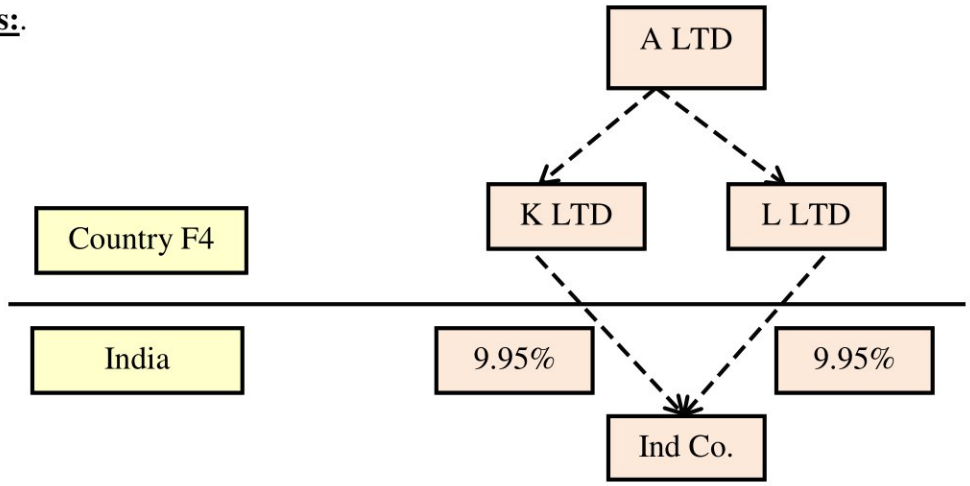
The allocation of price to different parts of the contract has been decided in such a manner as to reduce tax liability of the foreign company in India. Both conditions for declaring an arrangement as impermissible are satisfied. (1) The main purpose of this arrangement is to obtain tax benefit; and (2) the transactions are not at arm's length. Consequently, GAAR may be invoked and prices would be reallocated. However, determination of arm's length price should be based on transfer pricing regulations under the Act.

(b) It results, directly or indirectly, in the misuse, or abuse, of the provisions of this Act.

It implies cases where the law is followed in letter or form but not in spirit or substance, or where the arrangement results in consequences which are not intended by the legislation, revealing an intent to misuse or abuse the law.

Example:

Facts:.



Under the provisions of a tax treaty between India and country F4, any capital gains arising from the sale of shares of Indco, an Indian company would be taxable only in F4 if the transferor is a resident of F4 except where the transferor holds more than 10% interest in the capital stock of Indco. A company, A Ltd., being resident in F4, makes an investment in Indco through two wholly owned subsidiaries (K Ltd. and L Ltd.) located in F4. Each subsidiary holds 9.95% shareholdings in the Indian Company, the total adding to 19.9% of equity of Indco. The subsidiaries sell the shares of Indco and claim exemption as each is holding less than 10% equity shares in the Indian company. Can GAAR be invoked to deny treaty benefit?

Interpretation:

The above arrangement of splitting the investment through two subsidiaries appears to be with the intention

of obtaining tax benefit under the treaty. Further, there appears to be no commercial substance in creating two subsidiaries as they do not change the economic condition of investor A Ltd. in any manner (i.e. on business risks or cash flow), and reveals a tainted element of abuse of tax laws. Hence, the arrangement would be treated as an impermissible avoidance arrangement by invoking GAAR. Consequently, treaty benefit would be denied by ignoring K and L, the two subsidiaries, or by treating K and L as one and the same company for tax computation purposes.

(c) It lacks commercial substance or is deemed to lack commercial substance, in whole or in part; (Dealt with in detail below)

(d) It is entered into, or carried out, in a manner, which is normally not employed for bonafide purposes. In other words, it means an arrangement that possesses abnormal features. This is not a purpose test but a manner test.

****The term "tax benefit" has been defined as under –**

(a) A reduction or avoidance or deferral of tax or other amount payable under this Act; or
(b) An increase in a refund of tax or other amount under this Act; or
(c) A reduction or avoidance or deferral of tax or other amount that would be payable under this Act, as a result of a tax treaty; or
(d) An increase in a refund of tax or other amount under this Act as a result of a tax treaty; or
(e) A reduction in total income or
(f) An increase in loss,

In the relevant previous year or any other previous year.

Section 97: *Arrangement to lack commercial substance:-*

(1) An arrangement will be deemed to lack commercial substance if –

(a) **Substance of an arrangement is different from what is intended to be shown by the form of the arrangement,** (then tax consequence of a particular arrangement should be assessed based on the – substance of what took place).

(b) It involves or includes –

(i) Round trip financing;
(ii) An accommodating party;
(iii) Elements that have effect of offsetting or cancelling each other; or
(iv) A transaction which is conducted through one or more persons and disguises the value, location, source, ownership or control of funds which is the subject matter of such transaction.
In other words, **such arrangements have an element of deceit as regards funds; or**

(c) It involves the *location of an asset or of a transaction or of the place of residence of any party which is without any substantial commercial purpose other than obtaining a tax benefit for a party.*

(d) It does not have a significant effect upon the business risks or net cash flows of any party to the arrangement apart from any effect attributable to the tax benefit that would be obtained.

(2) Sub-clause (i) of clause (b) deems an arrangement, which includes round tripping of funds, to lack commercial substance. For this purpose, the phrase round trip financing has been further defined. **Round trip financing includes** any arrangement in which, through a series of transactions –

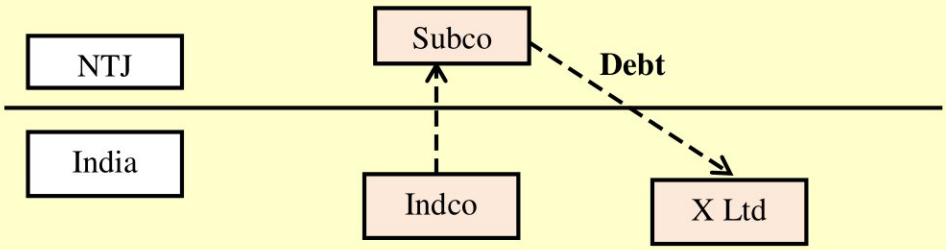
(a) Funds are transferred among the parties to the arrangement; and

(b) Such transactions do not have any substantial commercial purpose other than obtaining the tax benefit.

Example:

Facts:

Can GAAR be invoked in the following case?



Interpretation:

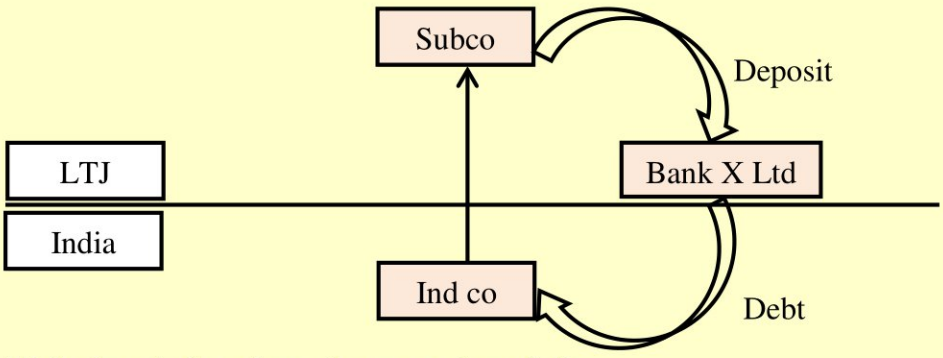
The arrangement appears to be to avoid payment of tax on interest income by Indco in case loan is directly provided by Indco to X Ltd. The arrangement involves round tripping of funds even though the funds emanating from Indco are not traced back to Indco in this case. Hence. The arrangement may be deemed to lack commercial substance.

Consequently, in the case of Indco, Subco may be disregarded and the interest income may be taxed in the hands of Indco.

(3) Sub-clause (ii) of clause (b) deems an arrangement which includes an accommodating party to lack commercial substance. For this, where a party is included in an arrangement mainly for obtaining tax benefit to the taxpayer, then such party may be treated as an accommodating party and consequently the arrangement shall be deemed to lack commercial substance. Also, it is not necessary that such party should be connected to the taxpayer.

Example:

Facts:



- **Can GAAR be invoked to deny the treaty benefit?**

Interpretation:

This is an arrangement whose main purpose is to bring money out of reserves in Subco to India without payment of due taxes. The tax benefit is saving of taxes on income to be received from Subco by way of dividend or deemed dividend. The arrangement disguises the source of funds by routing it through X bank Ltd. which may also be treated as an accommodating party. Hence, arrangement shall be deemed to lack commercial substance.

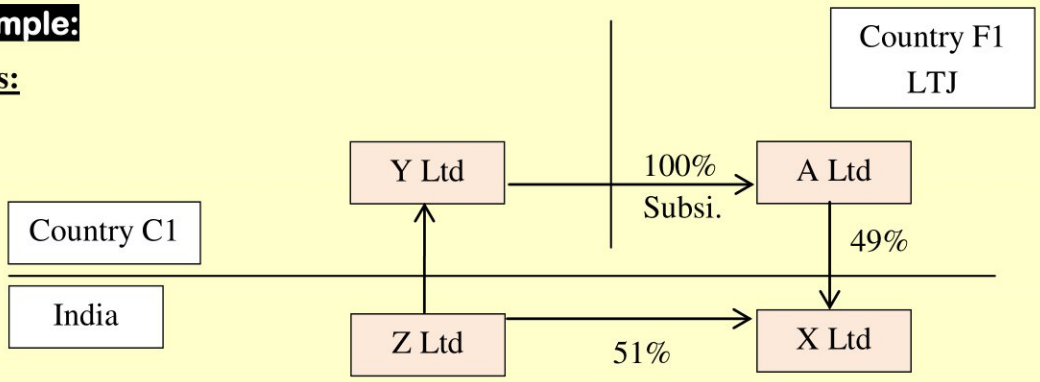
Consequently, in the case of Indco, the loan amount would be treated as dividend income received from Subco to the extent reserves are available with Subco; and no expense by way of interest would be allowed.

In the case of X bank Ltd, exemption from tax on interest under the DTAA may not be allowed as X Ltd. is not a beneficial owner of the interest, provided the DTAA has anti-avoidance rule of the beneficial ownership. If such anti-avoidance rule is absent in DTAA, then GAAR may be invoke to deny treaty benefit as arrangement will be perceived as an attempt to hide the source of funds of Subco.

(4) As per clause (c) if a particular location is selected for an asset or transaction or residence, **and such selection has no substantial commercial purpose,** then such arrangement shall be deemed to lack commercial substance.

Example:

Facts:



Can GAAR be invoked to deny the treaty benefit?

Interpretation:

The arrangement of routing investment through country F1 results in a tax benefit. Since there is no business purpose in incorporating company A Ltd. in country F1 which is a LTJ, it can be said that the main purpose of the arrangement is to obtain a tax benefit. The alternate course available in this case is direct investment in X Ltd. joint venture by Y Ltd. The tax benefit would be difference in tax liabilities between the two available courses.

The next question is, does the arrangement have any tainted element? It is evidence that there is no commercial substance in incorporating A Ltd. as it does not have any effect on the business risk of Y Ltd. or cash flow of Y Ltd. As the twin conditions of main purpose being tax benefit and existence of a tainted element are satisfied, GAAR may be invoked.

Additionally, as all rights of shareholders of X Ltd. are being exercised by Y Ltd instead of A Ltd. it again shows that A Ltd lacks commercial substance

Hence, GAAR can be invoked.

Section 98: *Consequence of impermissible avoidance arrangement:-*

If an arrangement is declared to be an impermissible avoidance arrangement, then the consequences of the arrangement in relation to tax (which may include denial of tax benefit or a benefit under a tax treaty) can be determined having regard to circumstances of the case.

Certain illustrations are:

(a) Disregarding, combining or re-characterizing any step of the arrangement;

(b) Treating the arrangement as if it had not been entered into or carried out.

(c) Disregarding or combining any party to the arrangement.

(d) Deeming persons who are connected persons in relation to each other to be one and the same person for the purposes of determining tax treatment of any amount;

(e) Reallocating expenses and income amongst the parties to the arrangement

(f) Reallocating place of residence of any party or transaction or situs of an asset to a place other than the place as provided under the arrangement; or

(g) Considering or looking through any arrangement by disregarding any corporate structure.

(h) Re-characterizing Equity into Debt, Receipt of capital nature into Revenue, etc.

Section 101: *Framing of guidelines under Income-tax Rules:-*

The provisions of Chapter XA shall be applied in accordance with such guidelines and subject to such conditions as may be prescribed.

Rule 10U & 10UA:

(1) Threshold of ₹ 3 crores in respect of tax benefit in a relevant assessment year arising in aggregate to all parties to the arrangement.

(2) GAAR not to apply to Foreign Institutional Investors ("FII") subject to satisfaction of certain conditions.

(3) As per the new GAAR notification by CBDT, the investment made before 1st April 2017 will be grandfathered.

"CIRCULAR NO. 7, DATED 27-1-2017"

CLARIFICATION ON CERTAIN QUERIES ABOUT IMPLEMENTATION OF GAAR:-

Question no.1:

Will GAAR be invoked if SAAR applies?

Answer:

It is internationally accepted that specific anti avoidance provisions may not address all situations of abuse and there is need for general anti-abuse provisions in the domestic legislation. The provisions of GAAR and SAAR can coexist and are applicable, as may be necessary, in the facts and circumstances of the case.

Question no.2:

Will GAAR interplay with the right of the taxpayer to select or choose method of implementing a transaction?

Answer:

GAAR will not interplay with the right of the taxpayer to select or choose method of implementing a transaction.

Question no.3:

Will GAAR provisions apply to (i) any securities issued by way of bonus issuances so long as the original securities are acquired prior to 01 April, 2017 (ii) shares issued post 31 March, 2017, on conversion of Compulsorily Convertible Debentures, Compulsorily Convertible Preference shares (CCPS), Foreign Currency Convertible Bonds (FCCBs), Global Depository Receipts (GDRs), acquired prior to 01 April, 2017; (iii) shares which are issued consequent to split up or consideration of such grandfathered shareholding?

Answer:

Grandfathering under Rule 10U(1)(d) will be available to investments made before 1st April 2017 in respect of instruments compulsorily convertible from one form to another, at terms finalized at the time of issue of such instruments. Shares brought into existence by way of split or consolidation of holdings, or by bonus issuances in respect of shares acquired prior to 1st April 2017 in hands of the same investor would also be eligible for grandfathering under Rule 10U(1)(d) of the Income Tax Rules.

Question no.4

Will GAAR apply if arrangement held as permissible by Authority for Advance Ruling?

Answer:

No The AAR ruling is binding on the PCIT/CIT and the Income Tax Authorities subordinate to him in respect of the applicant.

Question no.5

Will GAAR be invoked if arrangement is sanctioned by an authority such as the Court, National Company Law Tribunal or is in accordance with judicial precedents etc.?

Answer:

Where the Court has explicitly and adequately considered the tax implication while sanctioning an arrangement, GAAR will not apply to such arrangement.

Question no.7

Will a contrary view be taken in subsequently years if arrangement held to be permissible in an earlier year?

Answer:

If the PCIT/Approving Panel has held the arrangement to be permissible in one year and facts and circumstances remain the same, as per the principle of consistency, GAAR will not be invoked for that arrangement in a subsequent year.

SECTION 144BA: *PROCEDURE FOR INVOKING GAAR:-*

Bench of 3 Members including a chairperson (as constituted by the Central Government). The chairperson shall be a sitting judge / ex-judge of High Court. One member shall be member of IRS not below the rank of CCIT. One member shall be academic or scholar having special knowledge of matters such as direct taxes, business accounts, and international trade practices.

AO ⇒ If at any stage of assessment / reassessment proceedings, *on the basis of material & Evidence available,* consider necessary **to declare an arrangement as IAA & to determine its consequences**

Shall make a reference to...

CIT — On framing the opinion to invoke GAAR provisions, **shall issue notice to assessee…** → **Assessee**

To submit his objections and providing an opportunity of being heard with in such period, not exceeding 60 days, as may be specified in the notice…

Objection filed

CIT

Satisfied with Assessee's Explanation

CIT to communicate the same to the AO by an order in writing with a copy to the assessee

Consequently the AO will proceed to complete the assessment without GAAR.

Not Satisfied with Assessee's Explanation

CIT — To make reference to the…….....

For declaration of arrangement as IAA

Approving Panel

To give Opportunity of being heard to the assessee and AO

May direct CIT to make further inquiry & furnish report

May call for and examine records

May require assessee to furnish documents & evidences

Binding upon Assessee, CIT & Subordinate authorities

No appeal shall lie against such directions

"6 Months" (+) End of the month of receipt of reference from CIT

Time limit

Shall issue directions…

For declaration of an arrangement as IAA

&

Specifying the previous year(s) in respect of which it is so declared

No Objection filed

CIT

To issue direction for declaration of an arrangement as IAA

AO

Shall Complete Assessment in accordance with such directions & provisions of GAAR

Prior approval of CIT is required for passing assessment order, if any tax consequences determined as per GAAR provisions

"Taxation Scheme for VIRTUAL DIGITAL ASSET"

Insertion of Section 2(47A): *Meaning of Virtual Digital Asset (VDA):-*

- **This section** provides an *exhaustive meaning* of the term virtual digital asset.
- *Broadly speaking,* it covers the following three classes of VDA:
  - **(a) Information or code or number or token generated through cryptographic means, providing a digital representation of value *that can be digitally traded or transferred and used for payment or investment purposes*;**
  - **(b) Non-fungible token except *whose transfer results in transfer of ownership of underlying tangible asset and the transfer of ownership of such underlying tangible asset is legally enforceable.*; and**
  - **(c) Any other digital asset** as may be specified by the Central Government.

Exceptions:

- **Gift card or vouchers, Mileage points, reward points or loyalty card, usable in obtaining goods/services or availing discount on goods or services; and Subscription to websites or platforms or application.**

Insertion of Section 115BBH: *Tax on income arising from transfer of Virtual Digital Asset:-*

(1)	- Where the total income of an assessee includes - ***any income from the transfer of any virtual digital asset,*** - *notwithstanding anything contained in any other provision of this Act,* - *the income-tax payable shall be the aggregate of-* (a) *the amount of income-tax calculated on the income from transfer of such virtual digital asset at* ***the rate of thirty per cent*** *(+ surcharge + HEC, as applicable); and* (b) *the amount of income-tax with which the assessee would have been chargeable, had the total income of the assessee been reduced by the income referred to in clause* (a).
(2)	*Notwithstanding anything contained in any other provision of this Act,—* (a) *no deduction in respect of any expenditure* ***(other than cost of acquisition, if any)*** *or allowance or set off of any loss shall be allowed to the assessee under any provision of this Act in computing the income referred to in clause* (a) *of sub-section (1); and* (b) ***no set off of loss from transfer of the virtual digital asset computed*** *under clause* (a) *of sub-section (1)* ***shall be allowed*** *against income computed under any provision of this Act* ***and such loss shall not be allowed to be carried forward to succeeding assessment years.***

Explanatory Notes:

(1) Nature of income arising from the transfer of VDA:

- There is no particular provision under this scheme on nature of income arising from the transfer of VDAs. Therefore, when an entity holds VDAs for sale in the ordinary course of business (*i.e.*, trading asset/held as

SIT), **the profits arising therefrom should be taxed under the head PGBP.** Whereas, if the VDAs are held as a capital asset (*i.e.*, not held as SIT), **the income shall be taxed under the head "capital gain".**

(2) Computation of income arising from the transfer of VDA:

As the Law provides while computing the capital gains or business income, **except the cost of acquisition,** no other deduction or exemption shall be allowed. **Thus, the following items shall be ignored while computing the income from the transfer of virtual digital assets:**

(i) ***Indexation of cost of acquisition of a virtual digital asset;***

(ii) ***Cost of improvement relating to a virtual digital asset;***

(iii) ***Expenditure incurred in connection with the transfer of a virtual digital asset;***

(iv) ***Exemption under Section 54F;***

(v) ***Depreciation and Other expenses.***

(3) Benefit of maximum exemption limit and Rebate under section 87A:

Where an income is subject to tax at a special rate specified in Chapter XII (i.e. Section 110 to 115BBI), the maximum exemption limit shall not be allowed from such special income **unless specifically allowed in the respective Section.**

For example, Section 111A, Section 112 and Section 112A allow a resident individual and HUF to claim the maximum exemption limit from the income taxable under these provisions.

Therefore, the income computed u/s 115BBH shall be taxable at a flat rate of 30% **without giving the benefit of the maximum exemption limit.**

Rebate under Section 87A is allowed to all resident individuals (whose total income during the previous year does not exceed ₹ 500,000) **unless it is expressly prohibited.** *For example*, Section 112A prohibits rebate under Section 87A from an income taxable under this provision.

As Section 115BBH does not prohibit such rebate, and it is neither a deduction nor allowance, ***it should be allowed to a resident individual from the tax computed under this provision.***

Amendment of Section 56(2)(x): *Receipt of Virtual Digital Asset without/Inadequate consideration:*

Section 56(2)(x), inter alia, provides that where a person receives specified movable property without consideration (i.e. as a gift), and the aggregate FMV of such benefit exceeds ₹ 50,000, the whole of the aggregate FMV shall be taxable in the hands of the recipient u/s 56(2)(x) as income from other sources.

Similarly, if such property is received for a consideration which is less than the aggregate fair market value of the property by an amount exceeding ₹ 50,000, then, the difference between aggregate fair market value and consideration is chargeable to tax in the hands of recipient.

NEW ENTRY inserted by the Finance Act, 2022 in the definition of "property":

With effect from the assessment year 2023-24, the Finance Act, 2022 inserted **'virtual digital assets' in the meaning of property.** ***Accordingly, the aforesaid provisions will also be applicable in the case of virtual digital asset by gift or for inadequate consideration.***

"LIABILITY IN SPECIAL CASES"

Amendment in Section 170: *Assessment in case of succession of business otherwise than on death :-*

(1) Where a person carrying on any business or profession has been succeeded therein by any other person who continues to carry on that business or profession:

(a) the predecessor shall be assessed in respect of the income of the previous year in which the succession took place upto the date of succession ; and

(b) successor shall be assessed in respect of income of the previous year after the date of succession.

(2) **Liability of Successor:-**

When the predecessor cannot be found the assessment of the income (including capital gains accruing to the predecessor from the transfer of the business) of the previous year in which the succession took place up to the date of succession and of the previous year preceding that year shall be made on the successor in like manner and to the same extent as it would have been made on the predecessor ,Further when any sum payable in respect of the income for the aforesaid period cannot be recovered from predecessor, the Assessing Officer shall record a finding to that effect and such sum shall be payable by and recoverable from the successor, however he is entitled to recover any sum so paid from the predecessor.

(2A) **INSERTION MADE BY FINANCE ACT, 2022:**

Challenges in pre-amendment section 170:

- Once an entity starts the succession process by applying with the adjudicating authority or any High Court, the period involved in concluding such succession is a long-drawn process and is not time-bound. **The succession often is from a prior date.** During the pendency of the court proceedings, the income tax proceedings and assessments are carried on and often completed on the predecessor entities only. ***Courts have held that such proceedings and consequent assessments are illegal since the predecessor assessee has ceased to exist pursuant to a perfectly valid and legal proceeding.***
- But, the memorandum explaining the provisions of the Finance Bill 2022 provides that:
- *Till the decision of the court is received, the proceedings of the Act have to be continued in the case of the predecessor only and* ***such proceedings once completed, cannot become illegal as a result of subsequent order of any court.***
- *Therefore, with a view to clarify that such proceedings under the Act are valid, it is proposed to insert a new sub-section (2A) to section 170, to provide that -*
  - Notwithstanding anything contained in sub-sections (1) and (2),
  - *where there is a succession,*
  - **the assessment or reassessment or other proceedings, made or initiated on the predecessor**
  - **during the course of pendency of such succession,**
  - ***shall be deemed to have been made or initiated on the successor*** and
  - all the provisions of this Act shall, so far as may be, apply accordingly.

Explanation:

For the purposes of this sub-section, the term "pendency" means ***the period***

- ***commencing from the date of filing of application for such reorganisation of business*** *before the High Court or tribunal or the date of admission of an application for corporate insolvency resolution by the Adjudicating Authority as defined in section 5(1) of the Insolvency and Bankruptcy Code, 2016 and*
- ***ending with the date on which the order of such High Court or tribunal or such Adjudicating Authority,*** *as the case may be,* ***is received by the Principal Commissioner or the Commissioner.'.***

After this amendment, it has been explicitly clarified that **the assessment or other proceedings pending, completed or initiated on the predecessor in the event of a succession *shall be deemed to have been made or initiated on the successor.***

Insertion of Section 170A: *Filing of modified return by successor entity:-*

- **Post a business reorganisation, the affairs of the successor entity go through a complete change with effect from the date from which such reorganisation takes place.** *However, due to the indefinite timeline involved in issuing such reorganisation orders, there is a gap between the effectiveness of such order and the date on which competent authority issues such order.* **This also affects the final accounts of such entities as they are unable to modify their already filed returns in accordance with the reorganisation.**
- Hence, *to remove this anomaly,* this new section 170A is inserted which enables the entities going through such business reorganisation to file modified returns for the period between the date of effectivity of the order and the date of issuance of the final order of the competent authority. This section 170A provides that-

- *Notwithstanding anything to the contrary contained in section 139,*
- *in a case of* ***business reorganisation,***
- ***where prior to the date of order*** *of a High Court or tribunal or an Adjudicating Authority as defined in clause (1) of section 5 of the Insolvency and Bankruptcy Code, 2016, as the case may be,*
- ***any return of income has been furnished by the successor*** *under the provisions of section 139*
- ***for any assessment year relevant to the previous year to which such order applies,***
- *such* ***successor shall furnish,***
- *within a period of* ***six months from the end of the month in which the said order was issued,***
- *a* ***modified return*** *in such form and manner, as may be prescribed**,*
- ***in accordance with and limited to the said order.***

Explanation: *In this section, the expressions-*

(i) *"business reorganisation" means the reorganisation of business involving the amalgamation or demerger or merger of business of one or more persons;*

(ii) *"successor" means all resulting companies in a business reorganisation, whether or not the company was in existence prior to such business reorganisation.*

**Rule: 12AD: *Return of income under section 170A:-*

(1) The modified return of income to be furnished by a successor entity to a business reorganisation for an assessment year, **shall be in the Form ITR-A** and verified in the manner specified therein.

(2) Such return of income *shall be furnished electronically under digital signature.*

Assessment on the basis of modified return [Rule 12AD(3) & (4)]:

	Status of Assessment or reassessment proceedings for an A.Y. relevant to a P.Y. to which the order of the business reorganisation applies	**Completion of Assessment by the A.O. on the basis of modified return**
(i)	***Completed proceedings*- If proceedings have been completed on the date of furnishing of the modified return** in accordance with the provisions of section 170A	**The A.O. has to pass an order modifying the total income** of the relevant A.Y. determined in such assessmentor reassessment proceedings in accordance with the order of the business reorganisation and the modified return so furnished.
(ii)	***Pending proceedings* - If the proceedings are pending on the date of furnishing of the modified return** in accordance with the provisions of section 170A	**The A.O. has to proceed to complete the assessment or reassessment proceedings in accordance with the order of the business reorganisation and the modified return so furnished.**

Insertion of Section 156A: *Modification of demand order in insolvency resolution process:-*

- **To ensure the future viability of sick entities acquired in business reorganisation,** *the Court, Tribunal or Adjudicating Authority* ***recast the entire liability.*** **In this process, they modify the demand created** ***vide*** **various proceedings in the past,** ***including those by the Income Tax department.***
- *However, there is no procedure or mechanism in the Act to reduce such demands from the outstanding demand register.*
- Hence, to remove this anomaly, this new Section 156A has been inserted **to give effect to the orders of the competent authority and to modify such demands in accordance with such directions.**

Section 156A so inserted reads as under:

(1) - Where any tax, interest, penalty, fine or any other sum
- *in respect of which a notice of demand has been issued under section 156,*
- is reduced as a result of an order of the Adjudicating Authority as defined in section 5(1) of IBC, 2016,
- the Assessing Officer **shall modify the demand payable in conformity with such order** and
- **shall** hereafter **serve** on the assessee a **notice of demand specifying the sum payable**, if any, and
- *such notice of demand shall be deemed to be a notice under section 156 and the provisions of this Act shall accordingly, apply in relation to such notice.*

(2) **Where the order referred to in sub-section (1) is modified by the National Company Law Appellate Tribunal or the Supreme Court,** as the case may be, ***the modified notice of demand as referred to in sub-section (1), issued by the Assessing Officer shall be revised accordingly."***

"INCOME FROM SALARIES"

"TAX FREE PERQUISITES"

Amendment in section 17(2): *Medical facility:-*

The value of the following medical facility provided or expenditure incurred in favour of an employee or any member of his family by the employer is not treated as a perquisite and therefore not taxable:

Medical treatment in India:-

(i) In any hospital maintained by the employer.

(ii) Any expenditure actually incurred by the employee in any hospital-

a) Maintained by Govt. local authority or in an approved hospital under CHS; or

b) Approved by the CCIT, for the medical treatment of the prescribed diseases or ailments,

c) in respect of any illness relating to COVID-19 subject to such conditions as the Central Government may, by notification in the Official Gazette, specify in this behalf **As inserted by F. A., 2022**

Provided the employee must attaches with his ROI,

- A certificate from the hospital specifying the disease/ailment for which medical treatment was required and
- The receipt for the amount paid to the hospital.

(iii) Group medical insurance taken by the employer for his employees or reimbursement of medical insurance premium paid by the employee u/s 80D;

Medical treatment out side India:-

Actual expenditure incurred by the employer on-

- **Medical treatment** of the employee or any member of the family : Exempt to the extent permitted by the RBI;
- **Stay abroad** of the patient and one attendant : Exempt to the extent permitted by the RBI;
- **Travel abroad** of the patient and one attendant shall be exempt only in the case of an employee whose GTI as computed before including therein the said travel expenditure does not exceed ₹2,00,000.

- Family means Spouse + Children + Dependent Parents & Brothers & Sisters of the individual.

"MISCELLANEOUS AMENDMENTS"

Amendment in Section 14A: *Expenditure incurred in relation to exempt income, not deductible:-*

- Notwithstanding anything to the contrary contained in this Act,
- for the purposes of computing the total income under this Chapter,
- **No deduction shall be allowed in respect of expenditure incurred** by the assessee
- in relation to income which does not form part of the total income under the Act.

➢ *In the case of composite business*, expenditure pertaining to income exempt from tax **shall be determined** as per prescribed method **(i.e., Rule 8D)**.

Explanation: **As inserted by F. A., 2022**

For the removal of doubts, it is hereby clarified that notwithstanding anything to the contrary contained in this Act, **the provisions of this section shall apply** and shall be deemed to have always applied **in a case where the income, not forming part of the total income under this Act, has not accrued or arisen or has not been received during the previous year** relevant to an assessment year **and the expenditure has been incurred during the said previous year in relation to such income not forming part of the total income.**

Amendment in Section 94(8): *Bonus Stripping*:-

Where *any person*

Acquires any **securities or** units (i.e. original **securities or** units) within **3** months prior to the record date	**AND**	He is **allotted Bonus securities or units**	**AND**	Such person transfers **all or any of the original securities or units** within **9** months after such date	**AND**	He **continues to hold all or any of the Bonus securities or units**

THEN,

Loss arising from the transfer of original securities or units shall be ignored

and

It shall be deemed to be the cost of acquisition of such Bonus securities or units ***held on the date of such transfer***

➢ **"Record Date" means:**

- Such date as may be fixed by
- a Company or a Mutual Fund or the Administrator of the specified undertaking or the specified company (i.e. Parts of UTI) or ***a business trust*** **or** ***an Alternative Investment Fund***

– *for purposes of entitlement of the holder of the securities or unit, to receive dividend, income, or additional securities or units without any consideration.*

Amendment in Section 285B: *Submission of statements by producers of cinematograph films or persons engaged in specified activity:-*

- This section was introduced to check the excessive expenditure shown by film producers and enable the Income-tax Department to get information about the recipients of payments for necessary action in their cases.
- Under this section, the producer of cinematographic films is required to furnish a statement of particulars of the payment made by him or due from him of a sum more than ₹ 50,000 in aggregate to each person (employee or otherwise) engaged by him in such production. Such statement was required to be furnished electronically to the assessing officer in Form 52A within 30 days from the end of the financial year or within 30 days from the date of completion of production, whichever was earlier.
- **The scope of this section has been extended to include persons engaged in specified activities.** The Finance Act, 2022 substitutes this section 285B as under:

– *Any person* carrying on the production of a cinematograph film or *engaged in any specified activity, or both,*
– during the whole or any part of any financial year
– **shall,** in respect of the period during which such production or specified activity is carried on by him in such financial year,
– **furnish** within the prescribed period, a **statement** in the prescribed form
– to the prescribed income tax authority in the prescribed manner,
– *containing particulars of* ***all payments of over fifty thousand rupees in the aggregate*** *made by him or due from him* ***to each such person as is engaged by him in such production or specified activity.***

Explanation:
For the purposes of this section, **"specified activity" means** any **event management, documentary production, production of programmes** *for telecasting on television or over the top platforms or any other similar platform,* **sports event management, other performing arts or any other activity** as the Central Government may, by notification in the Official Gazette, specify in this behalf.

Amendment in Section 2(12A): *Enlargement of the scope of "Books of account":-*

Section 2(12A) define the term **"books or books of account"** which includes ledgers, day-books, cash books, account-books and other books, *whether kept* ~~in the written form or as print-outs of data stored in~~ ***in the written form or in electronic form or in digital form or as print-outs of data stored in such electronic form or in digital form or in*** *a floppy, disc, tape or any other form of electro-magnetic data storage device.*

Explanatory Note:
The pre-amendment definition covered only books of account **kept in written form or as print-outs** of computerised books of account. But, after the amendment, **it also covers books or books of account or data kept in electronic form or in digital form.** Moreover, *having books of account in hard copies were necessary for an assessee.* Now, it does not matter whether print-outs of such data/books/records have been taken or not.