

**PROFESSIONAL PROGRAMME  
MODULE 1, PAPER 2**

# **PRACTICE QUESTIONS**

## **Advanced Tax Laws**

(Relevant for June, 2022 examination)

### **Direct Tax & International Taxation**



**THE INSTITUTE OF  
Company Secretaries of India**  
**भारतीय कम्पनी सचिव संस्थान**  
**IN PURSUIT OF PROFESSIONAL EXCELLENCE**  
Statutory body under an Act of Parliament  
(Under the jurisdiction of Ministry of Corporate Affairs)

**March, 2022**

**© The Institute of Company Secretaries of India**

All rights reserved. No part of this publication may be translated or copied in any form or by any means without the prior written permission of The Institute of Company Secretaries of India.

**DISCLAIMER**

**Although due care and diligence have been taken in preparation and uploading this Practice Questions, the Institute shall not be responsible for any loss or damage, resulting from any action taken on the basis of the contents of this Practice Questions. Anyone wishing to act on the basis of the material contained herein should do so after cross checking with the original source.**

## CONTENTS

<b>Direct Tax &amp; International Taxation (Part II - 30 Marks)</b>		<b>Page No.</b>
1.	Corporate Tax Planning & Tax Management	4
2.	Taxation of Companies, LLP and Non-resident	14
3.	General Anti Avoidance Rules 'GAAR'	42
4.	Basics of International Taxation	49
5.	Tax Treaties	73
6.	Income Tax Implication on specified transactions	81

## Corporate Tax Planning & Tax Management

### Question 1

*Distinguish between 'tax evasion' and 'tax avoidance'.*

### Answer

Tax evasion means a method of evading tax liability by dishonest means like suppression, conscious violation of rules, inflation of expenses etc. while tax avoidance means planning for minimization of tax burden according to the provisions of the tax laws and within legal framework, though it defeats the basic intention of legislature.

Tax evasion generally begins after the liability of tax has arisen, whereas tax avoidance begins before the actual liability of tax has arisen.

Tax evasion involves use of unfair means while tax avoidance takes into account various lacunas of law.

### Question 2

*Distinguish between tax planning and tax evasion.*

### Answer

Tax planning is carried out within the framework of law by availing the deductions and exemptions permitted by law and thereby minimising the tax liability. Tax planning is an arrangement by which full advantage is taken of the concessions and benefits conferred by the statute, without violation of legal provisions.

Tax evasion on the other hand is an attempt to reduce tax liability by dubious or artificial methods or downright fraud. It is illegal and denies the state its legitimate share of tax.

### Question 3

*Specify with the reason, whether the following acts can be considered as tax planning or tax management or tax evasion or tax avoidance.*

- i. "Mr. P deposit Rs.1 lakh in PPF account so as to reduce his total income from Rs. 6 lakh to Rs. 5 lakh" assuming Mr. P does not opt for concessional tax regime u/s 115BAC of the Income tax Act, 1961.
- ii. To reduce tax payable, Mr. Kunal Sharma, a resident individual, paid Rs. 55,000 as life insurance premium on the policy of his minor son. Assuming Mr. Kunal does not opt for concessional tax regime u/s 115BAC of the Income tax Act, 1961.
- iii. Company claiming depreciation on the motor car which is being used by director for personal purposes.

## **Answer**

- i. The investment of Rs.1 lakh in PPF account so as to reduce his total income from Rs.6 lakh to Rs. 5 lakh is considered as Tax Planning because the same is carried out within the framework of law by availing the deductions permitted by law and thereby minimising the tax liability.
- ii. Premium paid on life insurance policy of minor son is allowed as deduction under section 80C of the Income tax Act, 1961. Therefore, Rs. 55,000 paid, by Mr. Kunal Sharma, as premium on life insurance policy of his minor son is an act of Tax Planning.
- iii. Claiming depreciation on motor car being used for personal purpose is not allowed under section 32 of the Income Tax Act, 1961. Therefore, the depreciation claimed by the company on the motor car which is being used by the director for personal purpose is an act of Tax Evasion.

## **Question 4**

*Indicate whether the following acts can be considered as tax evasion/tax avoidance or otherwise:*

- (i) *Samarth deposits Rs. 65,000 in the term deposit of 5 years with the Post Office to avail tax deduction under section 80C. Assuming Mr. Samarth does not opt for concessional tax regime u/s 115BAC of the Income tax Act, 1961.*
- (ii) *Sushil is using a motor car for his personal purposes, but charges as business expenditure.*
- (iii) *PQR industries Ltd installed an air-conditioner costing Rs. 75,000 at the residence of a director as per terms of his appointment but treats it as fitted in quality control section in the factory. This is with the objective to treat it as plant for the purpose of computing depreciation.*
- (iv) *SQL limited maintains a register of tax deduction at source affected by it to enable timely compliance.*
- (v) *R. Ltd issues a credit note for Rs.90,000 for brokerage payable to Suresh who is son of R, managing director of the company. The purpose is to increase his total income from Rs.1,60,000 to Rs.2,50,000 and reduce it's income correspondingly.*

## **Answer**

- (i) It is neither a tax avoidance nor tax evasion. The claiming of deduction from gross total income under Section 80C by depositing Rs. 65,000 in the term deposit of 5 years with the Post Office falls under the purview of tax planning.
- (ii) It is an unlawful act to treat a personal expenditure as business expenditure, which is disallowed under the law. Sushil is resorting to unfair means to claim deduction by falsification of records. Therefore it is tax evasion and illegal.
- (iii) It is a case of tax evasion as the air-conditioner fitted at residential place is furniture, depreciable at 10% whereas the rate of depreciation applicable for plant and machinery fitted at Quality control section in the factory is 15%. The wrong treatment unjustifiably increases the amount of depreciation and consequently, reduces profit unlawfully.

- (iv) It is tax management because maintaining register of payment subject to TDS helps in complying with the obligations under the Income Tax Act, 1961.
- (v) Net effect of transaction is reduction of tax liability of the company by improper means. The company is liable to tax at the flat rate of 30% whereas Suresh would not be liable to pay tax since income does not exceed the basic exemption limit of Rs.2, 50,000. The issue of credit note to reduce the liability of company amounts to tax evasion.

### **Question 5**

*Suresh is employed in Delhi and is drawing Rs. 50,000 per month as salary. Besides, he got one month salary as bonus. He is given an option by the employer, either to accept HRA or a rent-free accommodation which is owned by the employer. HRA is payable @ Rs. 10,000 per month, while the rent for accommodation in Delhi is Rs. 12,000 per month. Advise Suresh, whether it would be beneficial for him to avail HRA or rent-free accommodation provided by the employer (assuming Mr. Suresh has not opted for section 115BAC of the Income tax Act, 1961).*

### **Answer**

#### **Calculation of Tax Liability of Suresh, in case he accepts rent free accommodation**

<i>Particulars</i>	<i>Amount (Rs.)</i>
Salary (Rs. 50,000 x 12)	6,00,000
Bonus (One month salary)	50,000
Value of rent free accommodation 15% x Rs.(6,00,000 + 50,000)	97,500
Gross salary	7,47,500
Less : Standard deduction u/s16(ia)	(50,000)
Taxable Salary/Total Income	6,97,500
Tax Liability	
On first Rs. 2,50,000	Nil
(Rs. 250000 to Rs. 500000) @5%	12,500
On remaining Rs. 1,97,500@ 20%	39500
Rebate under section 87A	(Nil)
Net Tax	52000
Add: Health & Education Cess @ 4%	2080
Net Tax Liability	54080
Rounded off Tax Liability	54080

#### **Calculation of Tax Liability of Suresh, in case, if he accepts H.R.A**

<i>Particulars</i>	<i>Amount (Rs.)</i>
Salary (Rs. 50,000 x 12)	6,00,000

Bonus (One month salary)	50,000
Taxable HRA (Note 1)	41,000
Gross salary	6,91,000
Less : deduction u/s 16(ia) Taxable	(50,000)
Salary/Total Income	6,41,000
Tax Liability	
On first Rs. 2,50,000	Nil
Rs. 250000 to Rs. 500000 @5%	12,500
On remaining Rs. 1,41,000 @20%	28200
Rebate under section 87A	(Nil)
Net Tax	40700
Add: Health & Education Cess @ 4%	1628
Net Tax Liability	42328
Rounded off Tax Liability	42330

Extra tax paid by Suresh, if Rent free accommodation opted is Rs. (54080- 42330) i.e. Rs. 11,750. **Thus, option II of accepting HRA is better.**

*Notes:*

1. According to section 10(13A) and rule 2A of Income Tax Act, HRA is exempted as least of the following limits:
  - (i) HRA actually received i.e. Rs.1,20,000
  - (ii) 50% of the salary i.e.  $50\% \times \text{Rs.}6,50,000 = \text{Rs.}3,25,000$
  - (iii) Rent paid in excess of 10% of the salary i.e.  $(\text{Rs.}1,44,000 - \text{Rs.}65,000) = \text{Rs.}79000$

Least of the above is Rs. 79,000, is allowed as exemption. Thus, taxable HRA would be :  $(\text{Rs.}1,20,000 - 79,000) = \text{Rs.}41,000$
2. It is assumed that both the houses under HRA and Rent free accommodation are identical.
3. Bonus is not a part of salary for the purpose of computation of HRA.
4. It is assumed that the assessee has not opted for Section 115BAC of the Income tax Act, 1961.

## **Question 6**

*Differentiate between the diversion of income and application of income in context of Income Tax Act.*

### **Answer**

<i>Sr. No.</i>	<i>Diversion of income</i>	<i>Application of Income</i>
1	It is an obligation to apply the income in a particular way before it is received by the assessee or before it has arisen or accrued to the assessee.	It is an obligation to apply income, which has accrued or has arisen or has been received.
2	Obligation is on the source of income.	Obligation is on the receipt of income.
3	The source is charged with an overriding title, which diverts the income.	There is no overriding title in this case.
4	The income is not included in the income of the assessee.	The income is included in the income of the assessee.
5	Since, the income is diverted from the source before coming to the hands of the assessee, hence he is not liable for tax.	Income is said to have accrued/arisen and therefore, is taxable in the hands of assessee.

## **Question 7**

*Peer Ltd. took over the running business of a Ramu, a sole-proprietor by a sale deed. As per the sale deed, Peer Ltd. undertook to pay overriding charges of Rs. 15,000 p.a. to Ramu's wife in addition to the sale consideration. The sale deed also specifically mentioned that the amount was charged on the net profits of Peer Ltd., who had accepted that obligation as a condition of purchase of the going concern. Examine, in the light of a decided case law that whether the payment of overriding charges by Peer Ltd. is in the nature of diversion of income or application of income.*

### **Answer**

The facts of the case are similar to that of the case *Jit & Pal X-Rays (P.) Ltd. v. CIT (2004) 134 Taxman 62 (All)*, where the Allahabad High Court observed that the overriding charge which had been created in favour of the wife of the sole-proprietor was an integral part of the sale deed by which the going concern was transferred to the assessee. The obligation, therefore, was attached to the very source of income i.e. the going concern transferred to the assessee by the sale deed. The sale deed also specifically mentioned that the amount in question was charged on the net profits of the assessee-company and the assessee-company had accepted that obligation as a condition of purchase of the going concern. Hence, it is clearly a case of diversion of income by an overriding charge and not a mere application of income.

Thus, the payment of overriding charges by Peer Ltd to Ramu's wife is a case of diversion of income and hence allowed to be deducted from Income of Peer Ltd.

## Question 8

*Teerath Ltd. is a widely held company. It is currently considering a major expansion of its production facilities and the following alternatives are available:*

Particulars	Alt-1 (Rs.)	Alt-2 (Rs.)	Alt-3 (Rs.)
Share capital	10,00,000	20,00,000	50,00,000
14% Debentures	15,00,000	20,00,000	
18% Loan from Bank	25,00,000	10,00,000	

*Expected rate of return before tax is 30%. Rate of dividend of the company since 2000 has not been less than 22% and date of dividend declaration is 30th June every year. Corporate tax rate is 30%. Which alternative should the company opt with reference to tax planning?*

## Answer

### Analysis of Financing Options for expansion of Teerath Ltd.

Particulars	Amount in Rs.		
	Option 1	Option 2	Option 3
Share Capital	10,00,000	20,00,000	50,00,000
14% Debentures	15,00,000	20,00,000	-
Bank Loan @ 18%	25,00,000	10,00,000	-
Total Capital	50,00,000	50,00,000	50,00,000
PBIT (Expected Rate of Return @ 30% of total Capital)	15,00,000	15,00,000	15,00,000
Less: Interest on debenture@14%	(2,10,000)	(2,80,000)	-
Less: Interest on bank loan @18%	(4,50,000)	(1,80,000)	-
Profit Before Tax	8,40,000	10,40,000	15,00,000
Tax @ 31.20% on PBT	(2,62,080)	(3,24,480)	(4,68,000)
Net Profit After Tax	5,77,920	7,15,520	10,32,000
Rate of Return in % ( Net profit / Share Capital)	57.79%	35.78	20.64

Since, Alternative 1 offers the maximum rate of return. Thus, with reference to tax planning, company should opt for the same.

## Question 9

Beaker Ltd. wants to acquire a machine on 1st April, 2022. If he purchases the same, it will cost Rs. 60 lakhs, have the expected useful life of 5 years and scrap value will be Rs. 10,000. The company could either purchase the machinery with its own fund or borrowed funds. If the machine is purchased through borrowed funds, rate of interest will be 11.5% per annum and the loan will be repayable at the end of 5 years. If machine is acquired through lease, lease rent would be 16 lakh per annum.

Profit before depreciation and tax is expected to be 4.50 crore every year. Depreciation is charged @ 15% on written down value. Besides, additional depreciation is available in the first year. Investment allowance is, however, not available. Average rate of tax may be taken at 32.445%.

Advice Beaker Ltd. whether it should — (i) Acquire the machine through own funds or borrowed funds; or (ii) Take it on lease.

Present value factor shall be taken @10%. At this rate present values of rupee one are — year 1 : 0.9091; year 2 : 0.8264; year 3 : 0.7513; year 4 : 0.6830; and year 5 : 0.6209.

## Answer

### Purchasing Machine out of own fund

Particulars	Amount in Rs.					
	Year 0	Year 1	Year 2	Year 3	Year 4	Year 5
Profit before Interest, depreciation and tax (PBDT)		4,50,00,000	4,50,00,000	4,50,00,000	4,50,00,000	4,50,00,000
<i>Less:</i> Depreciation (including additional depreciation)		(21,00,000)	(5,85,000)	(4,97,250)	(4,22,663)	(3,59,263)
PBT		4,29,00,000	4,44,15,000	4,45,02,750	4,45,77,337	4,46,40,737
<i>Less:</i> Tax @ 32.445% of PBT		(1,39,18,905)	(1,44,10,447)	(1,44,38,917)	(1,44,63,117)	(1,44,83,687)
Profit After Tax		2,89,81,095	3,00,04,553	3,00,63,833	3,01,14,220	3,01,57,050
<i>Add:</i> Depreciation (including additional depreciation)		21,00,000	5,85,000	4,97,250	4,22,663	3,59,263
Cash Inflows after tax		3,10,81,095	3,05,89,553	3,05,61,083	3,05,36,883	3,05,16,313
<i>Add:</i> Scrap Value						10,000
<i>Less:</i> Cash Outflow	(60,00,000)					
Net cash flow	(60,00,000)	3,10,81,095	3,05,89,553	3,05,61,0833	3,05,36,883	3,05,26,313

Present Value Factor @ 10%	1	0.9091	0.8264	0.7513	0.683	0.6209
Present Value	(60,00,000)	2,82,55,823	2,52,79,207	2,29,60,542	2,08,56,690	1,89,53,788
Net Present Value	11,03,06,050					

### Purchasing Machine out of borrowed fund

Particulars	Amount in Rs.					
	Year 0	Year 1	Year 2	Year 3	Year 4	Year 5
Profit before Interest, depreciation and tax (PBDT)		4,50,00,000	4,50,00,000	4,50,00,000	4,50,00,000	4,50,00,000
<i>Less:</i> Depreciation including additional depreciation		(21,00,000)	(5,85,000)	(4,97,250)	(4,22,663)	(3,59,263)
<i>Less:</i> Interest (60,00,000 x 115)		(6,90,000)	(6,90,000)	(6,90,000)	(6,90,000)	(6,90,000)
PBT		4,22,10,000	4,37,25,000	4,38,12,750	4,38,87,337	4,39,50,737
<i>Less:</i> Tax @ 32.445% of PBT		(1,36,95,035)	(1,41,86,576)	(1,42,15,047)	(1,42,39,247)	(1,42,59,817)
PAT		2,85,14,965	2,95,38,424	2,95,97,703	2,96,48,090	2,96,90,920
<i>Add:</i> Depreciation including additional depreciation		21,00,000	5,85,000	4,97,250	4,22,663	3,59,263
Cash Inflows after tax		3,06,14,965	3,01,23,424	3,00,94,953	3,00,70,753	3,05,07,183
<i>Add:</i> Scrap Value						10,000
<i>Less:</i> Cash Outflow						(60,00,000)
Net cash flows		3,06,14,965	3,01,23,424	3,00,94,953	3,00,70,753	2,40,60,183
Present Value (PV) Factor @ 10%	1	0.9091	0.8264	0.7513	0.683	0.6209
Present Value (Net Cash Flow x PV Factor)	0	2,78,32,065	2,48,81,948	2,26,10,338	2,05,38,324	1,49,38,968
Net Present Value	11,08,01,643					

### Take Machine on lease (Assumption: Lease rental is payable at each year end)

Particulars	Amount in Rs.				
	Year 1	Year 2	Year 3	Year 4	Year 5
Cash Outflow	4,50,00,000	4,50,00,000	4,50,00,000	4,50,00,000	4,50,00,000
PBDT					

Lease rent	(16,00,000)	(16,00,000)	(16,00,000)	(16,00,000)	(16,00,000)
PBT	4,34,00,000	4,34,00,000	4,34,00,000	4,34,00,000	4,34,00,000
Tax @ 32.445% of PBT	(1,40,81,130)	(1,40,81,130)	(1,40,81,130)	(1,40,81,130)	(1,40,81,130)
Net Inflow	2,93,18,870	2,93,18,870	2,93,18,870	2,93,18,870	2,93,18,870
Present Value Factor@10%	0.9091	0.8264	0.7513	0.683	0.6209
Present Value	2,66,53,785	2,42,29,114	2,20,27,267	2,00,24,788	1,82,04,086
Net Present Value	11,11,39,040				

### Advice:

From purely financial perspective, Beaker Ltd. should take the machine on lease instead out of borrowed funds or on lease as the Net Present Value in that case is highest.

### Working Note: Calculation of Depreciation and Additional Depreciation

Particulars	Amount in Rs.		
Depreciation*	Cost/ WDV	Depreciation@15 %	Additional Depreciation @ 20%
For Year 1	60,00,000	9,00,000	12,00,000
For Year 2	39,00,000	5,85,000	-
For Year 3	33,15,000	4,97,250	-
For Year 4	28,17,750	4,22,663	-
For Year 5	23,95,087	3,59,263	-
Scrap Value	10,000		

\*Additional Depreciation is available as per provisions of Income Tax.

\*Assuming this is the only asset in the block.

### Question 10

Specify whether the following acts can be considered as (i) Tax planning; or (ii) Tax management; or (iii) Tax evasion.

- (i) P pays premium of Rs.10,000 for health Insurance policy so as to reduce his total income from Rs. 6,40,000 to Rs. 6,30,000 by claiming deduction u/s 80D (assuming Mr. P has not opted for section 115BAC of the Income tax Act, 1961).
- (ii) SQL Ltd. pays advance tax by estimating his total income in previous year to ensure timely compliance.

- (iii) An individual tax payer making tax saver fixed deposit of Rs. 1,00,000 in a nationalized bank.
- (iv) A bank obtaining declaration from depositors in Form No. 15G /15H and forwarding the same to income-tax authorities.
- (v) Z debits his household expenses as business expenses in the books.

**Answer**

- (i) Paying premium for health insurance policy in order to reduce the total income by claiming deduction u/s 80D and hence reducing tax liability is an act of Tax Planning.
- (ii) Payment of Advance tax by estimation of Total income to enable timely compliance is an act of Tax Management. Therefore, such act of by SQL Ltd. to enable timely compliance is an act of Tax Management.
- (iii) Investment in tax saver fixed deposits is allowed as deduction u/s 80C of the Income Tax Act, 1961 and is an act of Tax Planning. Therefore, depositing Rs. 1,00,000 in tax saver fixed deposit by an Individual tax payer is an act of Tax Planning.
- (iv) Obtaining declaration from depositors by a bank in Form 15G / 15H and forwarding the same to the Income Tax Authorities is an act of Tax Management.
- (v) Claiming the household expenses as business expenses in the books of account is not allowed as deduction u/s 37 of the Income Tax Act, 1961 and is an act of Tax Evasion. Therefore, the act of Z debiting his household expenses as business expenses is an act of Tax Evasion.

**Question 11**

*Examine the doctrine of form and substance in the context of tax planning?*

**Answer**

The following are certain principles enunciated by the Courts on the question as to whether it is the form or substance of a transaction, which will prevail in income-tax matters:

- i. Form of transaction is to be considered in case of genuine transactions – It is well settled that when a transaction is arranged in one form known to law, it will attract tax liability whereas, if it is entered into in another form which is equally lawful, it may not. Therefore in considering whether a transaction attracts tax or not, the form of transaction put through is to be considered and not the substance. However this rule applies only to genuine transactions.
- ii. True Legal relation is crucial element for taxability – It is open for the authorities to pierce the corporate veil and look behind the legal façade at the reality of the transaction. The taxing authority is entitled as well as bound to determine the true legal relation resulting from a transaction. The true legal relation arising from a transaction alone determines the taxability of a receipt arising from the transaction.
- iii. Substance (i.e. actual nature of expenses) is relevant and not the form – In order to determine whether a particular item of expenditure is of revenue or capital nature, the substance and not merely the form should be looked into.

\*\*\*

# Taxation of Companies, LLP and Non-Resident

## Question 1

*There is a two-fold distribution of legislative powers as stipulated in Article 246 read with schedule VII of the Constitution of India. Comment*

### Answer

The statement that "There is a two-fold distribution of legislative powers as stipulated in Article 246 read with schedule VII of the Constitution of India" is incorrect as there is a threefold distribution of legislative powers as stipulated in Article 246 read with Schedule VII. List I of the Union list which comprises of 97 entries containing various subjects over which the Parliament shall have the exclusive powers of legislation, list II of the State list comprises of 66 entries over which the State Legislature shall have the exclusive powers of legislation and list III of the concurrent list comprises of 47 entries over which the Parliament and the Legislatures of States shall have concurrent powers to make laws.

## Question 2

*A non-Indian company is treated as resident, only if the place of effective management is situated wholly in India during the previous year. Comment*

### Answer

All Indian companies within the meaning of Section 2(26) of the Act are always resident in India regardless of the place of effective management of its affairs.

The Finance Act, 2015 has amended the test of residence for foreign companies to provide that a company would be treated as resident in India if its place of effective management at any time during the previous year is in India.

"Place of effective management" to mean a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole are, in substance made[Explanation to section 6(3)]

## Question 3

*XYZ Ltd., a foreign company, has its head office at UK. The Board of Directors (BOD) meetings are held in UK. However, the Board of Directors has delegated major powers to a committee in Delhi and the members of this committee are based in Delhi. The Board of Directors ratified the decisions of the said committee. In the light of above,*

*(1) Discuss the place of effective management (POEM) of XYZ Ltd.*

*(2) Discuss the guiding factors of POEM for Board of Directors delegating authorities to Committee*

### Answer

The location where company's Board of Directors (BOD) regularly meets and makes decisions may be the company's Place of Effective Management (POEM) provided the Board:

1. Retain and exercises its authority to govern the company: and
2. Does, in substance, make the key management and commercial decisions necessary for the conduct of the company's business as a whole.

In given case the board meetings are held in UK, but the same formalise the decisions taken by the committee at Delhi. Hence Place of Board meeting held at UK cannot be POEM, as power is delegated to committee which is based at Delhi.

Guiding factors when Board Delegating Authorities to Committee are as under:

If Board of Director had delegated some or all of its major authorities to one or more committees consisting senior management, then POEM shall be at the place where:

1. Members of executive committee are based and
2. Where committee develops and formulate key decisions for formal approval by Board.  
Hence in given case, POEM of XYZ Ltd. will be Delhi, as discussed above

#### **Question 4**

*A Ltd. incurred an expenditure of Rs. 50 lakhs on glow-sign boards displayed at dealer outlets. Examine with the help of a decided case law, whether the above expenditure is revenue or capital in nature.*

#### **Answer**

The facts of the case are similar with that of the CIT v. Orient Ceramics and Industries Ltd. (2013) 358 ITR 49 where the Delhi High Court noted the following observations of the Punjab and Haryana High Court, in CIT v. Liberty Group Marketing Division (2009) 315 ITR 125, while holding that such expenditure was revenue in nature.

The expenditure incurred on the glow sign boards are revenue in nature as these were incurred with the object of facilitating the business operation and not with the object of acquiring an asset of enduring nature.

Thus, the expenditure incurred by A Ltd. on glow-sign boards are revenue in nature.

#### **Question 5**

*Bace drinks Ltd. was carrying more than one business activity, namely manufacturing soft drink and trading in soft drinks. However, the manufacturing activity was not profitable and was hence, discontinued. The employees who were directly connected with this manufacturing activity were laid off and severance cost was paid to those employees. The same was claimed by the assessee as revenue expenditure. The Assessing Officer disallowed the same treating it as capital expenditure, on the argument that it was incurred as a result of closure of business of the assessee. Discuss what would be the nature of expenditure.*

#### **Answer**

The facts of the case are similar to that of the CIT vs. KJS India P. Ltd. (2012) 340 ITR 380 (Delhi), where the Delhi High Court, held that though one of the business activities was suspended, it cannot be construed that the assessee has closed down its entire business. The assessee still continues to trade in soft drinks. Therefore, the said expenditure will be allowed as revenue expenditure even though it was related to a manufacturing activity which was suspended.

## **Question 6**

*Sharad Hospitals purchased second-hand medical equipment for use as spare parts of existing equipment. Examine with the help of a decided case law, that whether the above expenditure is revenue or capital in nature.*

### **Answer**

The Karnataka High Court, in *Dr. Aswath N. Rao v. ACIT* (2010) 326 ITR 188, held that since the second hand machinery purchased by the assessee was for use as spare parts for the existing old machinery, the same had to be allowed as revenue expenditure.

## **Question 7**

*Sukriti Ltd. incurred expenses of Rs. 76,000 for the issue of shares. However, the public issue could not materialize on account of non-clearance by SEBI. Examine with the help of a decided case law, whether the above expenditure is revenue or capital in nature.*

### **Answer**

The facts of the case are similar to that of the *Mascon Technical Services Ltd. v. CIT* (2013) 358 ITR 545, where the Madras High Court observed that the assessee had taken steps to go in for a public issue and incurred share issue expenses. However, it could not go in for the public issue by reason of the orders issued by the SEBI just before the proposed issue. The High Court observed that though the efforts were aborted, the fact remains that the expenditure incurred was only for the purpose of expansion of the capital base. The capital nature of the expenditure would not be lost on account of the abortive efforts.

Thus, the expenditure incurred by Sukriti Ltd. constitutes capital expenditure.

## **Question 8**

*S Ltd., a subsidiary of H Lts. has been incurring losses year after year. The holding company H Ltd. paid an amount of Rs. 1 crore to S Ltd. as a grant to recoup the losses. The assessing officer contends to consider this receipt as a trading receipt and includes it in the assessable income. Examine the case in the light of provisions of Income Tax Act and decided case law, if any.*

### **Answer**

The facts of the case are similar to *CIT v. Handicrafts and Handlooms Export Corporation of India Ltd.* (2014) 360 ITR 0130 (Delhi), where the assessee was a Government company operating a channelizing agency for sale of handicrafts and handlooms abroad. In the relevant previous year, it received a grant of Rs. 25 lakh from its holding company, the State Trading Corporation of India (STC) to recoup the losses. The Assessing Officer opined that the said amount was a revenue receipt and therefore chargeable to tax.

Tribunal's view: The Appellate Tribunal held that the grant received was not taxable as revenue receipt since the said grant was given to recoup the losses incurred by the assessee and was hence, in the nature of capital contribution.

High Court's Observations: The High Court examined the judgment of the Supreme Court in *Sahney Steel and Press Works Ltd. v. CIT* (1997) 228 ITR 253, which laid down the test for determining whether subsidy received by an assessee is taxable as capital or revenue

receipt. As per the said test, if any subsidy is given, the character of the subsidy in the hands of the recipient - whether revenue or capital - will have to be determined by having regard to the purpose for which the subsidy is given. The point of time, the source and the form of subsidy are immaterial. The object for which the subsidy is given, would, thus determine the nature of subsidy. If it is given by way of assistance to the assessee in carrying on of his trade or business, it has to be treated as trading receipt.

The High Court observed that grant was not paid by a third party or by a public authority but by the holding company. However, it was not on account of any trade or commercial transaction between the subsidiary and holding company. Further, the intention and purpose behind the said payment was to secure and protect the capital investment made by STC Ltd. The payment of grant by STC Ltd. and receipt thereof by the assessee was not during the course of trade or performance of trade, and thus, could not partake the character of a trading receipt. The same was in the nature of a capital grant.

The High Court observed the difference between Government Grant and payment made by STC, as pointed out by the *Division Bench in Handicrafts and Handlooms Corporation Ltd. v. CIT* (1983) 140 ITR 532. The grants given were specific amounts paid by STC to the assessee, in order to enable the assessee, which was its subsidiary and was incurring losses year after year, to recoup these losses and to enable it to meet its liabilities. These amounts, therefore, cannot form part of the trading receipts of the assessee since these were not in the nature of grants received from an outsider or the Government on general grounds such as for carrying on of trade.

Thus, the grant given by the holding company in this case is in the nature of capital receipt since its purpose is to secure and protect the capital investment made in the subsidiary company.

## Question 9

*X Ltd. owns a barren land of 9,000 sq. mtrs., adjacent to the factory premises. It enters into an agreement with Y Ltd. for granting of the above land on lease to Y Ltd. for a period of 12 years.*

*Under the terms of the agreement, Y Ltd. had to build a factory building, pay an annual rent @ Rs.100 per sq. mtr. of the leased land of 9,000 sq. mtrs. and surrender the building to X Ltd. at the end of the lease without any consideration. Y Ltd. complied with the terms and conditions of the lease agreement.*

*The depreciated value of the building surrendered and taken possession by X Ltd. in June, 2021 was Rs. 4.22 crore. Accounts department of X Ltd. is of the opinion that an equivalent amount is to be taken in the accounts of the year 2021-22 as income received. Critically examine the matter in the light of decided case law, if any.*

## Answer

The opinion of the Accounts Department of X Ltd. is incorrect. The depreciated value of the building is of course to be brought into the books of accounts. However, the equivalent amount viz. Rs. 4.22 crores cannot be treated as income from the business or operations. By its very nature it is a capital receipt and is not a revenue income.

The amount cannot be treated as a revenue receipt unless it is conclusively established that

this represented deferred rent as the lease rent was unreasonably low. Further, X Ltd. is not in the business of real estate to treat the benefit as incidental revenue receipt earned during the course of such business. Further, the facts of the case of *CIT v. Elphinstone Dye Works Pvt. Ltd.* 82 ITR 654 were similar and the Bombay High Court held that the written down value of the building in such a situation can be treated only as a capital receipt.

### Question 10

*Examine the taxability of the following receipts with reference to Income tax Act, 1961:*

- a) *Bonus shares received by equity shareholder.*
- b) *Medical allowance received by an employee, the entire amount of which has been spent by him for medical treatment.*
- c) *Gift of a plot of land given to a company secretary by one of his clients. The company secretary has been fully compensated for his services and this gift has been given in appreciation of his personal qualities.*
- d) *Receipt of a cash gift of Rs. 60,000 from a friend on the occasion of wedding anniversary.*
- e) *Contribution to provident fund recovered from an employee by an employer but not deposited in his PF Account.*

### Answer

- (a) Issue of bonus shares to equity shareholders does not amount to distribution of dividend, as there is no release of assets. Therefore, bonus shares received by an equity shareholder are not taxable as deemed dividend.
- (b) Fixed medical allowance received by an employee is taxable under the head "Salaries", even if the entire amount has been spent by him for medical treatment.
- (c) The value of any benefit or perquisite arising from exercise of profession is taxable as income under the head "Profits and gains of business or profession", irrespective of whether the benefits or perquisites are contractual or gratuitous. Therefore, the value of plot of land would be taxable in the hands of the company secretary under the head "Profits and gains of business or profession". However if the gift was only in appreciation of his personal qualities, such receipt of immovable property without consideration from a non-relative would be taxable under section 56(2)(x) under the head "Income from other sources".
- (d) Cash gift of Rs. 60,000 received from a friend on the occasion of wedding anniversary is taxable under the head "Income from other sources", since it represents an amount exceeding Rs. 50,000 received from a non-relative on a occasion other than marriage.
- (e) Contribution of provident fund recovered from an employee but not deposited in his Provident Fund account on or before the due date specified under the relevant provident fund Act is treated as income by virtue of section 2(24)(x) and is taxable in the hands of the employer under the head "Profits and gains of business or profession" or "Income from other sources".

However, the employer can claim deduction under section 36(1)(va) or under section 57(ia), as the case may be, if the same is deposited on or before the due date specified under the relevant provident fund Act. In the present case, the deducted contribution is not deposited by the employer, hence deduction u/s 36(1)(va) will not be allowed.

### **Question 11**

*A corporate assessee, who inadvertently failed to claim deduction under section 80IB during the initial years, cannot claim deduction under the said section for the remaining years during the period of eligibility, inspite of fulfillment of stipulated conditions. Examine the above statement in the light of judicial decision.*

### **Answer**

The provisions contained in Section 80IB of the Income tax Act, nowhere stipulates any condition that such a claim has to be made in the first year failing which there would be forfeiture of such claim in the remaining years. As decided in *Praveen Soni v. Commissioner of Income Tax* (2011) (Delhi), if the assessee fulfils the conditions mentioned under Section 80IB of Income Tax Act, he will be eligible for claiming the deduction for 10 consecutive years. Merely because of the reason that though the assessee was eligible to claim this benefit from a specific year, but did not claim in that year would not mean that he would be deprived from claiming this benefit for the remaining years during his eligibility.

Further, had the assessee claimed this benefit in the year in which he became eligible, he would have been allowed this benefit for 10 consecutive years but now he could claim the benefit only for the remaining period. For example, if the assessee became eligible in assessment year 2012-13, he would have claimed deduction for 10 years up to assessment year 2021-22, but he failed to claim deduction from A/Y 2012-13, now he could start claiming exemption from current AY upto AY 2021-22 only.

### **Question 12**

*Duty drawback receipts cannot be treated as profit derived from business of the industrial undertaking to be eligible for deduction under section 80-IB of Income tax Act. Examine in the light of decided case law.*

### **Answer**

The above statement is correct, in the case of *Liberty India v. Commissioner of Income-tax*, the Supreme Court held that the tax incentives under Chapter VI A are attracted only to the generation of operational profits and the benefit of deduction under section 80- IB will not be available in respect of the receipts, which do not have any direct nexus with the operation of industrial undertaking of the assessee. Thus, the profits derived by way of incentives like duty drawback did not fall within the expression 'profits derived from industrial undertaking' under section 80-IB.

### **Question 13**

*Mobile phones were purchased during the year and were exclusively used for the business purpose. The assessee wants to claim depreciation amounting to Rs. 20 lacs at higher rate of 40% treating them at par with computer. Examine with the help of decided case law.*

### **Answer**

Mobile phones are not computers and therefore, are not entitled to higher depreciation @ 40%. It was so held by the Kerala High Court in the case of *Federal Bank Ltd. v. ACIT* (2011) 332 ITR 319. Therefore, mobile phones would be entitled to depreciation by applying the rate of 15%, being the general rate applicable to plant and machinery.

### **Question 14**

*A Ltd. purchased a new bus for Rs. 12 lacs and donated it to a school where the children of employees were studying. Examine whether A Ltd could claim deduction under section 37(1) of the Income Tax Act, 1961.*

### **Answer**

The expenditure incurred for acquiring a new bus and donating it to the school is for the welfare of the children of staff/workmen of the company. Such expenditure is a part of employee's welfare expenses incurred for the purpose of securing healthy services for staff members. Therefore, such expenses were incurred wholly and exclusively for the purpose of the business.

Further, since the bus has been donated to the school, no benefit of enduring nature was derived by the company as the right of ownership was transferred to school. Hence, it is not a capital expenditure. Thus, A Ltd. is entitled to claim deduction in full under section 37(1). The same was also held by the Rajasthan High Court in *CIT v. Rajasthan Spinning and Weaving Mills Ltd.* (2006) 281 ITR 408.

### **Question 15**

*The assessee, purchased a running business from M/s R.G.K. At the time of acquiring the business, the assessee had paid certain amount in respect of trade name, goodwill and for all other business and commercial rights and claimed depreciation on said amount. The Assessing Officer rejected the assessee's claim holding that goodwill could not be treated as intangible asset and, therefore, not depreciable. Decide.*

### **Answer**

As per Section 32(1)(ii) of Income tax Act, depreciation is allowable in respect of knowhow, patent, copyrights, trademarks, licenses, franchises or any other business or commercial rights of similar nature being intangible assets. Scanning the anatomy of this section, it can safely be stated that the provision allows depreciation on both tangible and intangible assets and clause (ii) enumerates the intangible assets on which depreciation is allowable. The assets which are included in the definition of 'intangible assets' under Section 32(1)(ii) includes, along with other things, any other business or commercial rights of similar nature.

To effectively understand what would constitute an intangible asset, certain aspects, like the nature of goodwill involved, how the goodwill has been generated, how it has been valued, agreement under which it has been acquired, what intangible asset it represents, namely, trademark, right, patent, etc. and further whether, it would come within the clause, namely, 'any other business or commercial rights which are of similar nature are to be borne in mind.

Yet, allowability of depreciation on goodwill has been a matter of debate before various Courts/Tribunal. In various cases, it has been held that depreciation is not allowable on goodwill because it is not of similar nature to that of intangible assets viz. know-how, patents, trademarks, licences, franchise, etc. as specified under Section 32 of the Income-tax Act, 1961 (the Act).

The Supreme Court in the case of Smifs Securities Ltd. has put the above controversy at rest and held that the goodwill being a difference between the amount paid and cost of shares in case of amalgamation scheme, is an asset eligible for depreciation under Section 32 of the Act. The Supreme Court has applied the principle of *ejusdem generis* and held that the expression 'any other business or commercial rights of a similar nature includes goodwill for the purpose of allowability of depreciation.

### **Question 16**

*Mr. Buddhadev is carrying on a business as sole proprietor. He died on 31<sup>st</sup> March, 2022 and on his death, the same business was continued by his legal heirs, by forming a firm. As on 31<sup>st</sup> March 2022, a determined business loss of Rs. 4 lakhs is to be carried forward under the Income-tax Act, 1961. Does the firm consisting of all legal heirs of Mr. Buddhadev, get a right to have this loss adjusted against its current income? Examine in the light of provisions of the Act and decided case law.*

### **Answer**

Section 78(2) provides that where a person carrying on any business or profession has been succeeded in such capacity by another person, otherwise than by inheritance, then, the successor is not entitled to carry forward and set-off the loss of the predecessor against his/her income. This implies that generally, set-off of business losses should be claimed by the same person who suffered the loss and the only exception to this provision is when the business passes on to another person by inheritance.

The facts of case given in the question are similar to the case of *CIT v. Madhukant M. Mehta* (2001) 247 ITR 805, where the Supreme Court has held that if the business is succeeded by inheritance, the legal heirs are entitled to the benefit of carry forward of the loss of the predecessor. Even if the legal heirs constitute themselves as a partnership firm, the benefit of carry forward and set off of the loss of the predecessor would be available to the firm.

In the given case, the business of Mr. Buddhadev was continued by his legal heirs after his death by constituting a firm. Hence, the exception contained in section 78(2) along with the decision of the Apex Court discussed above, would apply in this case. Therefore, the firm is entitled to carry forward the business loss of Rs. 4 lakhs of Mr. Buddhadev.

### **Question 17**

*Examine the taxability or allowability or otherwise in the following cases while computing income under the head "Profits and gains from business or profession" to be declared in the return of income for the assessment year 2022-23:*

- (a) *The amount of margin money forfeited by a bank on the failure of its constituents of not taking the delivery of the shares purchased by such bank on their behalf.*
- (b) *Amount received towards power subsidy with a stipulation that the same is to be adjusted in the electricity bills.*
- (c) *Profit derived by an assessee engaged in carrying on the business as dealer in shares, on exchange of the shares held as stock in trade of one company with the shares of another company.*
- (d) *Donations received by a person in the course of carrying on vocation, from his followers.*

### **Answer**

- (a) Since the bank is purchasing shares on behalf of the constituents, the forfeiture of margin money by the bank from the constituents for not paying the balance amount of purchase price and not taking delivery of shares purchased by the bank on their behalf is in the normal course of its banking business and hence, the forfeited amount is assessable as business income of the bank. The forfeited amount being revenue in nature cannot be adjusted against the purchase price of the shares. The Supreme Court has, in the case of *CIT v. Lakshmi Vilas Bank Ltd.* (1996) 220 ITR 305, confirmed this view.
- (b) As per section 2(24)(xviii) of Income tax Act, assistance in the form of subsidy or grant or cash incentive by the Central Government or a State Government or any authority or body or agency in cash or kind is chargeable to tax as income. Also, ICDS VII seeks admission of such grant as income. Government grants should not be recognized until there is reasonable assurance that (i) the person shall comply with the conditions attached to them, and (ii) the grants shall be received. However, recognition of such grant shall not be postponed beyond the date of actual receipt. Since power subsidy has been received by the assessee, it is revenue in nature and therefore chargeable to tax.
- (c) The difference between the price of shares of the first company and the market value of shares of the new company on the date of such exchange has to be treated as "profit" derived by the dealer in shares (on exchange of shares held as stock-in-trade of the first company with the shares of the new company) in the normal course of business, and hence such profit is taxable as business income. It was so held by the Supreme Court in *Orient Trading Co. Ltd. v. CIT* (1997) 224 ITR 371.
- (d) Donations received by a person from his followers in the course of carrying on vocation for the furtherance of the objects of his vocation are receipts arising from carrying on of his vocation and are not casual or non-recurring receipts. The Supreme Court, in *Dr. K. George Thomas v. CIT* (1985) 156 ITR 412, has held that such donations are taxable as business income as there is a direct nexus between the vocation carried on by the assessee and the receipt of such donations.

### Question 18

***Income & Expenditure A/c of Lawyers & Co. for the year ending  
March 31, 2022***

Particulars	Amount Rs.	Particulars	Amount Rs.
To Expenses	1,50,000	By Professional	
To Depreciation	20,000	Receipts	3,80,000
To Remuneration to partners	1,50,000	By Other fees	90,000
Interest on Capital to partners @ 20 per cent	20,000		
To Net Profit	1,30,000		
<b>Total</b>	<b>4,70,000</b>		<b>4,70,000</b>

*Other Information:*

1. Expenses include Rs. 18,000 and Rs. 12,000 paid in cash as brokerage to a single party on a single day.
  2. Depreciation calculated as per section 32 is Rs. 40,000
- Compute the total income of the firm.*

### Answer

**Computation of Total Income of Lawyers & Co. for A. Y. 2022-23**

Particulars	Amount Rs.
Net profit as per profit and loss account	1,30,000
<i>Add : Expenses not allowable</i>	
Section 40A(3)- Cash payments to a broker exceeding Rs. 10,000 (Note 1)	30,000
Section 40(b)-Excess interest on capital to partners 20%-12% i.e. (20000*8/20) (Note 2)	8,000      38,000
<i>Add : Remuneration to partners debited to profit and loss account</i>	1,50,000
<i>Less : Depreciation u/s 32</i> (Rs. 40,000-Rs. 20,000 debited in profit and loss account)	(20,000)

Book profit (Note 3)		2,98,000
Maximum permissible remuneration(lower of the two :		
(i.e. 90 per cent of Rs. 2,98,000)		2,68,200
Actual	1,50,000	(1,50,000)
Business Income of the Firm		1,48,000
Tax Liability (30% of 1,48,000)		44,400
<i>Add : Health &amp; Education Cess @ 4%</i>		1,776
<b>Total Tax Liability</b>		<b>46,176</b>

*Notes :*

- As per section 40A(3) of the Act, if the aggregate payment made (otherwise than by an account payee cheque/draft) to the same person during a day exceeds Rs. 10,000/- the entire amount of such payment is disallowed.
- As per section 40 (b) of the Act, if the interest payable to the partners exceeds simple interest of 12% per annum, the excess amount is not deductible.
- It is assumed the partners are working partners. The remuneration paid to the working partners cannot exceed the permissible limits specified under section 40 (b) of the Act.

### Question 19

*Alpha Ltd., a manufacturing company, which maintains accounts under mercantile system, has disclosed a net profit of Rs.12.50 lakhs for the year ending 31st March, 2022. You are required to compute the taxable income of the company for the Assessment year 2022-23, after considering the following information, duly explaining the reasons for each item of adjustment:*

- (i) *Advertisement expenditure debited to profit and loss account includes the sum of Rs. 60,000 paid in cash to the sister concern of a director, the market value of which is Rs. 52,000.*
- (ii) *Legal charges debited to profit and loss account include a sum of Rs. 45,000 paid to consultant for framing a scheme of amalgamation duly approved by the Central Government.*
- (iii) *Repairs of plant and machinery debited to profit and loss account include Rs. 1.80 lakhs towards replacement of worn out parts of machineries.*
- (iv) *A sum of Rs. 6,000 on account of liability foregone by a creditor has been taken to general reserve. The same was charged to the Revenue Account in the A.Y. 2012-13.*
- (v) *Sale proceeds of import entitlements amounting to Rs.1 lakh has been credited to Profit & Loss Account, which the company claims as capital receipt not chargeable to income-tax.*

(vi) Being also engaged in the biotechnology business, the company incurred the following expenditure on in-house research and development as approved by the prescribed authority:

(a) Research equipments purchased Rs. 1,50,000.

(b) Remuneration paid to scientists Rs. 50,000.

The total amount of Rs. 2,00,000 is debited to the profit and loss account. Assume Tax Rate 30%

### **Answer**

#### **Computation of total income of Alpha Ltd. for A.Y. 2022-23**

Particulars	Amount (Rs.)
Net profit as per profit and loss account	12,50,000
<i>Add : Items debited to profit and loss A/c but not deductible</i>	
1. Payment of advertisement expenditure of Rs. 60,000	
(i) Rs. 8,000, being the excess payment to a relative disallowed under section 40A(2)	8,000
(ii) As the payment is made in cash and since the remaining amount of Rs. 52,000 exceeds Rs. 10,000, 100% shall be disallowed under section 40A(3)	52,000
2. Legal charges for framing amalgamation scheme (deductible under section 35DD in five years). 1/5th of Rs.45,000 i.e. Rs. 9,000 to be allowed in the current year. Balance Rs. 36,000 (Rs. 45,000 - Rs.9,000)is to be added back (Note)	36,000
3. Under section 31, expenditure relatable to current repairs regarding plant, Machinery or furniture is allowed as deduction.	

The test to determine whether replacement of parts of machinery amounts to repair or renewal is whether the replacement is one which is in substance replacement of defective parts or replacement of the entire machinery or substantial part of the entire machinery [CIT v. Darbhanga Sugar Co. Ltd. [1956] 29 ITR 21 (Pat)].

Here expenditure on repairs does not bring in any new asset into existence. Such replacement can only be considered as current repairs.

Hence, no adjustment is required.

*Add: Items chargeable as business income but not credited to profit and loss A/c*

- |   |       |
|---|-------|
| 4. Liability foregone by creditor [taxable under section 41(1)]   | 6,000 |
| 5. Sale proceeds of import entitlements. The sale of the rights gives rise to profits or gains taxable under section 28(iiia). As the amount has already been credited to profit and loss account, no further |       |

adjustment is necessary.

—

6. Expenditure on in-house research and development is entitled to a weighted deduction of 150% of the expenditure (both capital and revenue) so incurred under section 35(2AB)(1) = Rs. 2 lakhs x 150% = Rs. 3 lakhs  
(1,00,000)

Expenditure of Rs. 2,00,000 has already been debited to Profit & Loss Account, therefore only additional deduction of Rs. 1 lakh further to be allowed.

Taxable Income	12,52,000
Tax Liability (30% of 12,52,000)	3,75,600
<u>Add : Health &amp; Education cess @ 4%</u>	<u>15024</u>
Total Tax Liability R/O	390620

*Note:* As per section 35DD, any expenditure incurred wholly and exclusively for the purpose of amalgamation, would be allowed as a deduction in 5 successive years (1/5th each year) commencing from the year in which the amalgamation takes place.

## **Question 20**

*XYZ LLP is being liquidated. Examine the liability of its partners in respect of its tax dues?*

### **Answer**

Section 167C of the Income Tax Act, 1961 provides for the liability of partners of LLP in the event of its liquidation. In case of liquidation of an LLP, where tax due from the LLP cannot be recovered, every person who was a partner of the LLP at any time during the relevant previous year will be jointly and severally liable for payment of tax unless he proves that non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the LLP. This provision would also apply where tax is due from any other person in respect of any income of any previous year during which such other person was a LLP.

## **Question 21**

*XYZ LLP has an income of Rs. 72,00,000 under the head 'profits and gains of business or profession'. One of its business is eligible for deduction @ 100% of profits under section 80-IB for the assessment year 2021-22. The profit from such business included in the business income is Rs. 58,00,000. Compute the tax payable by the LLP, assuming that it has no other income during the previous year 2022-23.*

### **Answer**

#### **Computation of Tax payable by XYZ LLP for AY 2022-23**

<i>Particulars</i>	<i>Amount (Rs.)</i>
Total Income	72,00,000
Less : Deduction under section 80 IB	(58,00,000)
Taxable Income	14,00,000
Tax @ 30%	4,20,000
Health & Education Cess @4%	16800
<b>Total Tax</b>	<b>4,36,800</b>

#### **Computation of Alternate Minimum Tax**

<i>Particulars</i>	<i>Amount (Rs.)</i>
Total Income	72,00,000
AMT on adjusted Total Income @ 18.5%	13,32,000
Health & Education Cess @4%	53280
<b>Total Tax</b>	<b>13,85,280</b>

Since, the regular income tax payable is less than AMT, the adjusted total income would be deemed to be the income of LLP and it would be liable to tax @ 18.5% plus cess and Tax payable will be higher of AMT or Normal tax i.e. Rs. 13,85,280. Further, the LLP would be eligible for credit in 15 subsequent years to the extent of difference between the AMT and Normal Tax i.e. Rs. 9,48,480, in the year in which the tax payable under regular provisions exceeds the AMT.

## Question 22

Mr. X, carrying on the business of operating a warehousing facility for storage of sugar, has a total income of Rs. 80 lakh. In computing the total income, he had claimed deduction under section 35AD to the tune of Rs. 70 lakh on investment in building (on 1.4.2020) for operating the warehousing facility for storage of sugar. Compute his tax liability for A.Y.2022-23. Show the calculations of Alternate minimum Tax also.

### Answer

#### Computation of Tax payable by Mr. X for AY 2022-23

##### Computation of Normal Tax

Particulars	Amount (Rs. in lakh)
Tax liability under the normal provisions of the Income-tax Act, 1961	22.125
Add: Health & Education Cess @4%	0.885
Total Tax Liability	23.01

##### Computation of Alternate Minimum Tax

Particulars	Amount (Rs. in lakh)
Adjusted Total Income	80.00
Add : Deduction under section 35AD	70.00
Less : Depreciation under section 32	(7.00)
Adjusted Total Income	143.00
AMT @18.5%	26.455
Surcharge @ 15% (since adjusted total income > Rs. 100 lakh)	3.968
Tax	30.423
Add: Health & Education cess @4%	1.216
Total tax Liability	31.639

Since, the regular income tax payable is less than the AMT payable, the adjusted total income of Rs. 143 lakhs shall be deemed to be the total income of Mr. X and tax is payable @18.5% thereof plus surcharge @ 15% and cess @4%. Therefore, tax liability is 31.639 lakhs.

However, Mr. X would be eligible for credit in 15 subsequent years to the extent of difference between the AMT and Normal Tax i.e. Rs. 8.629 lakhs.

### **Question 23**

*Minimum Alternate Tax (MAT) is attracted under section 115JB, on account of tax on total income being less than 15% of net profit as per the profit and loss account for the relevant previous year. Comment*

### **Answer**

The statement is incorrect as, the minimum alternate tax (MAT) is attracted under section 115JB, on account of tax on total income being less than 15% of book profit. Chapter XII-B is a self contained code for computation of book profit. The net profit as per the profit and loss account for the relevant previous year prepared in accordance with the provisions of Companies Act, 2013, as increased/reduced by the specified adjustments provided for in Explanation 1 to section 115JB would be the book profit for levy of MAT under section 115JB.

*The rate of MAT has been reduced from 18.5% to 15% vide amendment in sub-section (1) of section 115JB by the Taxation Laws (Amendment) Act applicable for FY 2019-20 onwards.*

### **Question 24**

*"The provisions of section 115JB are not applicable in case of foreign companies". Examine in the context of the provisions contained in the various Chapters of the Income Tax Act, 1961.*

### **Answer**

The statement is incorrect; since, there is no provision in section 115JB restricting its applicability to only domestic companies and therefore, section 115JB is applicable to both domestic and foreign companies. The provisions of section 115JB are applicable in the case of an assessee, being a company, where 15% of its book profit exceeds the tax payable on the total income computed under the normal provisions of the Act. Therefore, the provisions of section 115JB would be attracted both in the case of a domestic as well as a foreign company, if the tax payable on its total income is less than 15% of its book profit.

However, section 115JB will not be applicable to a foreign company which has no presence or permanent establishment in India - *Timken Company, In re. (2010) 326 ITR 193 / 193 Taxman 20 (AAR- New Delhi)*.

*The rate of MAT has been reduced from 18.5% to 15% vide amendment in sub-section (1) of section 115JB by the Taxation Laws (Amendment) Act applicable for FY 2019-20 onwards.*

### **Question 25**

*Parul Pvt. Ltd. made a provision of Rs. 50 lakhs for doubtful debts by debit to profit and loss account. The Assessing Officer, while computing book profit under section 115JB, disallowed the provision for doubtful debts. Is the action of Assessing Officer justified? Comment.*

## **Answer**

Explanation 1 under section 115JB(2) has been amended to provide that the net profit should also be increased by, inter alia, the amount set aside as provision for diminution in the value of any asset, if the same has been debited to profit and loss account, for computing the book profit.

Therefore, the Assessing Officer is justified in disallowing (adding back) the provision of Rs.50 lakhs for doubtful debts while computing book profit.

## **Question 26**

*ABC Ltd. has invested in bonds of National Highway Authority of India within the prescribed time and claimed exemption on the income from long-term capital gains under section 54EC. Further, it also claimed exclusion of long-term capital gains in the computation of "book profit" under section 115JB because of exemption available on it by virtue of section 54EC.*

*The Assessing Officer however, reckoned the book profit including long-term capital gains for the purpose of levy of minimum alternate tax payable under section 115JB. Is the action of the Assessing Officer justified? Comment.*

## **Answer**

The issue under consideration in this case is whether long-term capital gain exempted by virtue of section 54EC can be included in the book profit computed under section 115JB for levy of minimum alternate tax.

As long-term capital gains are part of the profits included in the profit and loss account prepared in accordance with the provisions of Companies Act, capital gains cannot be excluded unless provided under Explanation 1 to section 115JB.

Since, Explanation 1 to section 115JB does not provide for deduction in respect of capital gain in course of investment in bonds of National Highways Authority of India within the prescribed time, the long term capital gains so exempt would still be taken into account for computing book profit under section 115JB for levy of MAT. The same was so held by the *Kerala High Court in N. J. Jose and Co. (P.) Ltd. v. ACIT (2010) 321 ITR 0132*.

Therefore, the action of the Assessing Officer is justified in law.

## **Question 27**

*Whether MAT credit admissible under section 115JAA has to be set-off against the assessed tax payable before calculating interest under sections 234A, 234B and 234C? Comment.*

## **Answer**

The right to carry forward and set-off MAT credit under section 115JAA arises as soon as the tax is paid by the assessee under section 115JB. The tax credit allowable can be set-off by the assessee while computing advance tax/self assessment tax payable for the year.

Hon'ble Supreme Court in the case of *CIT v. Tulsyan NEC Ltd.* (2011) 330 ITR 226 decided that MAT Credit admissible under section 115JAA has to be set-off against the Assessed tax payable, before calculating interest under section 234A, 234B and 234C.

### Question 28

*Compute the net income and tax liability of X Ltd. For the assessment year 2022-23 assuming that X Ltd. has a deemed long-term capital gain of Rs. 60,000 under proviso (i) to section 54D(2) which is not credited in profit and loss account.*

Particulars	Amount (Rs.)
<i>Sale proceeds of goods (domestic sale)</i>	<i>22,23,900</i>
<i>Sale proceeds of goods (export sale)</i>	<i>5,76,100</i>
<i>Amount withdrawn from General Reserve (created by debiting the P&amp;L a\c)</i>	<i>2,00,000</i>
<i>Amount withdrawn from revaluation reserve</i>	<i>1,50,000</i>
<i>Total</i>	<i>31,50,000</i>
<i>Less:</i>	
<i>Business Expenses</i>	<i>2,10,000</i>
<i>Depreciation (normal)</i>	<i>6,16,000</i>
<i>Depreciation (extra depreciation because of revaluation)</i>	<i>2,70,000</i>
<i>Salary &amp; wages</i>	<i>2,85,820</i>
<i>Income-tax</i>	<i>3,50,000</i>
<i>Outstanding customs duty (not paid as yet)</i>	<i>17,500</i>
<i>Proposed Dividend</i>	<i>60,000</i>
<i>Consultation fees paid to a tax expert</i>	<i>1,39,000</i>
<i>Other expenses</i>	<i>21,000</i>
	<i>(19,69,320)</i>
<i>Net profit</i>	<i>11,80,680</i>

*The company wants to claim/ set off the following:-*

1. *Deduction under section 80-IB (30% of Rs. 11,80,680)*
2. *Depreciation under section 32 (Rs. 5,36,000)*
3. *Bought forward the loss of 2013-14 being Rs. 14,80,000 for tax purposes and Rs. 40,00,000 for accounting purpose.*
4. *Unabsorbed depreciation being Rs. 70,000 for accounting purpose.*
5. *Assume Tax rate at 25%*

### **Answer**

#### **Computation of the net income and tax liability of X Ltd. for the assessment year 2022-23**

##### **Tax Liability under normal provisions of Income Tax Act**

<i>Particulars</i>	<i>Amount (Rs.)</i>	<i>Amount (Rs.)</i>
Net profit as per P&L A/c		11,80,680
<i>Add:</i>		
Excess depreciation	3,50,000	
[i.e., Rs. 6,16,000+Rs. 2,70,000 – Rs. 5,36,000]		
Income Tax	3,50,000	
Customs Duty which is not paid	17,500	
Proposed dividend	60,000	
		7,77,500
<i>Less:</i>		
Amount withdrawn from General reserve	2,00,000	
Amount withdrawn from Revaluation reserve	1,50,000	
Unabsorbed loss	14,80,000	(18,30,000)
Business Income		1,28,180
Long term capital gain		60,000
Deductions under section 80-IB (30% of 1,28,180)		(38,454)
Net Income		1,49,726
Tax Liability		38929

**Computation of Book Profits and Tax Liability as per MAT provisions  
under section 115 JB of the Act**

<i>Particulars</i>	<i>Amount (Rs.)</i>	<i>Amount (Rs.)</i>
Net Profit		11,80,680
Add:		
Depreciation (Rs. 6,16,000+Rs. 2,70,000)	8,86,000	
Income Tax	3,50,000	
Proposed dividend	60,000	12,96,000
<i>Less:</i>		
Amount withdrawn from general reserve	2,00,000	
Unabsorbed depreciation	70,000	
Normal depreciation	6,16,000	
Amount withdrawn from revaluation reserve to the extent it does not exceed extra depreciation because of revaluation	1,50,000	(10,36,000)
Book Profit		14,40,680
Tax Liability @ 15.6% (15% plus HEC @ 4%)		2,24,746

X Ltd. will pay Rs. 2,24,746 as tax for the A.Y 2021-22 as per section 115JB. Tax credit however is available in respect of excess tax (Rs. 1,85,817) under section 115JBB).

### **Question 28**

*A non-resident Indian acquired shares on 01.02.2009 for Rs. 2,00,000 in foreign currency. These shares are sold by him on 01.02.2021 for Rs. 6,00,000. He invests Rs. 6,00,000 in shares on 31.03.2021 and these shares are sold by him on 30.06.2021 for Rs. 7,00,000. Discuss the tax implications. Ignore the effect of first proviso to section 48.*

### **Answer**

**Computation of Long term Capital Gains for AY 2021-22**

<b>Particulars</b>	<b>Amount (Rs.)</b>
Sale Consideration	6,00,000
Less: Cost of Acquisition	2,00,000
Long Term Capital Gains	4,00,000
Less: Exemption u/s 115F	4,00,000
Long Term Capital Gains	Nil

### **Long Term Capital Gain for AY 2022-23:**

LTCG of Rs. 4,00,000 which was exempt in AY 2021-22 becomes taxable.

STCG of Rs. 1,00,000 is also taxable in AY 2022-23.

### **Question 29**

*During the Financial Year 2022-23, a badminton professional and a non-Indian citizen participated in India in a badminton tournament and won prize money of Rs. 30 lakhs. He contributed articles on the tournament in a local newspaper for which he was paid Rs. 2 lakh. Although his expenses were met by sponsors, he had incur Rs. 6,00,000 towards his travel costs to India. He was non-resident for tax purposes in India.*

*What would be his tax liability in India for AY 2022-23? Is he required to file his return of income?*

### **Answer**

As per the provision of Section 115BBA, where the total income of an assessee being a sportsman (including an athlete), who is not a citizen of India and is a non-resident, includes any income received or receivable by way of—

- (i) participation in India in any game (other than a game the winnings wherefrom are taxable under section 115BB) or sport; or
- (ii) advertisement; or
- (iii) contribution of articles relating to any game or sport in India in newspapers, magazines or journals;

the income-tax payable by the assessee shall be the aggregate of the amount of income-tax calculated on income referred above at the rate of 20% and the amount of income-tax with which the assessee would have been chargeable had the total income of the assessee been reduced by the amount of income referred above.

Further, no deduction in respect of any expenditure or allowance shall be allowed under any provision of this Act in computing the income referred above.

It shall not be necessary for the assessee to furnish under sub-section (1) of section 139 a return of his income if his total income in respect of which he is assessable under this Act during the previous year consisted only of income referred above and tax deductible at source under the provisions of Chapter XVII-B has been deducted from such income.

Accordingly, both the receipts in India i.e. prize money of Rs. 30 lakhs and amount received from newspaper of Rs. 2 lakhs are chargeable to tax u/s 115BBA is @ 20% plus surcharge (if applicable) and 4% health and education cess. The total tax liability is Rs. 6,65,600. Further, he is not required to file his return of Income his total income in India consists only of income arising u/s 115BBA and tax have been deducted.

### **Question 30**

*Write short note on tax on distributed income by a company for buy-back of unlisted shares. Also comment would there be any tax implication in the hands of the shareholders.*

### **Answer**

As per section 10 (34A) of Income Tax Act, any income arising on account of buy back of

shares by the company as referred to in section 115QA shall be exempt in the hands of shareholders. However, the company shall be liable to pay tax @ 20% plus surcharge @12% and health and cess @ 4% on such distributed income on account of buy back of shares. For the purpose of the said section, distributed income means the consideration paid by the company on buy-back of shares as reduced by the amount which was received by the company for issue of such shares.

The income arising to the shareholders in respect of such buyback of unlisted shares by the Company would be exempt under section 10(34A) in their hands.

### **Question 31**

*Lal Ltd., a domestic company, purchases its own unlisted shares on 17<sup>th</sup> August, 2021. The consideration for buyback amounted to Rs. 18 lakh, which was paid on the same day. Lal Ltd. had received Rs. 11 lakh on issue of these shares one year back. Compute the additional income-tax payable by Lal Ltd. Further, determine the interest, if any, payable if such tax is paid to the credit of the Central Government on 7<sup>th</sup> November, 2021. Discuss.*

### **Answer**

#### **Computation of Tax Liability of Lal Ltd.**

<i>Particulars</i>	<i>Amount (lakh Rs.)</i>
Consideration for Buy-Back	18.000
<i>Less : Amount received on Issue of shares</i>	(11.000)
Distributed income	7.000
Tax @ 20%	1.400
Surcharge @ 12% of Rs. 1.4 lakhs	0.168
Total tax and surcharge	1.56800
Health & Education Cess @ 4% of Rs. 1.568 lakhs	0.06272
<b>Tax Liability</b>	<b>1.63072</b>

The additional income-tax was payable on or before 31<sup>st</sup> August, 2021. However, the same was paid only on 7<sup>th</sup> November, 2021. Thus, interest under section 115QB is attracted @1% for every month or part of the month on the amount of tax not paid or short paid for the period beginning from the date immediately after the last date on which such tax was payable and ending with the date on which the tax is actually paid.

In this case, the period for which interest @1% per month or part of a month is leviable is calculated as under for 3 months (September-November):

$$\text{Interest} = \text{Rs. } (1,63,072 \times 1/100 \times 3) = \text{Rs. } 4,892.$$

## **Question 32**

*Explain which income received by a foreign company, be taxable in India. Also mention the basic tax rate applicable to a foreign company which is based in US.*

### **Answer**

A non-resident company be chargeable to tax in India in respect of following incomes:

- (i) Income received or deemed to be received in India.
- (ii) Income accruing or arising or deemed to accrue or arise in India.

The basic tax rate applicable in respect of the above incomes for the US based company which is a foreign company is 40% in India. Further, surcharge @ 2% is applicable in case the taxable income exceeds Rs. 1 crore and is up to Rs. 10 crore, and @5% if the income exceeds Rs. 10 crore in the previous year. The Health & Education cess @ 4% are also payable.

## **Question 33**

*Determine the tax liability of income of Japan based company Fujistu Ltd., in India on entering following transactions during the financial year 2022-23:*

- a) Rs. 5 lakhs received from an Indian domestic company for providing technical know how in India.
- b) Rs. 6 lakhs from an Indian firm for conducting the feasibility study for the new project in Finland.
- c) Rs. 4 lakhs from a non-resident for use of patent for a business in India.
- d) Rs. 8 lakhs from a non-resident Indian for use of know how for a business in Singapore.
- e) Rs. 10 lakhs for supply of manuals and designs for the business to be established in Singapore.

*Assume there is no Double Avoidance Tax Agreement and all foreign Income are taxable in India only.*

### **Answer**

#### **Computation of Tax Liability of Fujitsu Ltd.**

<i>S. No</i>	<i>Particulars</i>	<i>Amount in lakhs (Rs.)</i>
a)	Amount received from an Indian domestic company for providing technical know how in India (From Business Connection in India, therefore taxable in India)	5.00
b)	Amount received from Indian firm for conducting the feasibility study for the new project in Finland	Nil

	(Not taxable in India as it is for the business outside India)	
c)	Money received from a non resident for use of patent for a business in India	4.0
	(Amount received for business set up in India is taxable in India)	
d)	Money received from a non resident Indian for use of know-how for a business in Singapore	Nil
	(The business is outside India, therefore non taxable in India)	
e)	Payment made for supply of manuals and designs for the business to be established in Singapore	Nil
	(Business is to be established outside India, thus not taxable in India)	
	Tax on Total Income	9.0
	Tax @ 40%	3.6
	Surcharge	-
	Health and Education Cess @4%	.144
	Total tax Liability	3.744

### **Question 34**

*Would non-resident match referees and umpires in the games played in India fall within the meaning of sportsmen to attract taxability under the provisions of section 115BBA of Income Tax Act, 1961? Discuss briefly with the help of decided case law, if any.*

#### **Answer**

In the case of *Indcom v. CIT*, the High Court has held that the payment made to non-resident match referees & umpires is “income” which has accrued & arisen in India, however, the same are not taxable under section 115BBA of Income Tax Act as the Umpires and Match Referee are neither sportsmen (including an athlete) nor they are non-resident sports association or institution so they do not attract the provisions contained in said section and the payments made to them do not come within the purview of Section 115BBA.

### **Question 35**

*In the context of provisions contained in the Income Tax Act, 1961 examine the correctness of the following statements:*

*“Liaison office maintained in India to explore the opportunity of business in India does not constitute business connection”.*

#### **Answer**

The statement is correct. If a liaison office is maintained solely for the purpose of carrying out activities which are preparatory or auxiliary in character, and such activities are approved by the Reserve Bank of India, then no business connection is established. In this case the liaison office is maintained for the purpose of exploring the business opportunity which is in the nature of preparatory or auxiliary activity. It is assumed that such activities are approved by the Reserve Bank of India. Since it does not undertake any commercial, trading on industrial activity, directly or indirectly, the liaison office does not constitute a business connection in this case.

### **Question 36**

*X Ltd., a company incorporated in USA has entered into an agreement with Y Ltd. an Indian company for rendering technical services to the latter for setting up a fertilizer plant in Orissa. As per the agreement, X Ltd. rendered both off-shore and on-shore services to Y Ltd at a fees of Rs. 50 lakhs and 1 crores respectively. X Ltd. is of the view that it is not liable to tax in India in respect of fee of Rs. 50 lakhs as it is for rendering services outside India. Discuss the correctness of the view of X Ltd.*

#### **Answer**

The explanation below section 9(2) clarifies that income by way of, inter alia, fees for technical services from services utilized in India would be deemed to accrue or arise in India under section 9(1)(vii) in case of non-resident and be included in his total income, whether or not such services were rendered in India.

In this case, the technical services rendered by the foreign company, X Ltd, were for setting up fertilizer plant in Orissa. Therefore the services were utilized in India. Consequently, as per section 9(2), the fees of Rs. 1.5 crores for technical services rendered by X Ltd. (both off-shore and on-shore) to Y Ltd. is deemed to accrue or arise in India and includable in the total income of X LTD.

Therefore, the view of X Ltd. that it is not liable to tax in India in respect of fee of Rs. 50 lakhs (as it is for rendering service outside India) is not correct.

### **Question 37**

ABC & Co. is a partnership firm consisting of four partners. The partnership deed provides for remuneration of Rs. 4,00,000 to partners and interest to partners at 12%. Profit for the year ended 31st March, 2022 is Rs. 1,00,000 after arriving the following adjustments :

Particulars	Amount Rs.
Remuneration to partners	4,00,000
Interest to partners on capital account @ 12%	20,000
Municipal tax of house property	5,000
Rent received on house property	50,000

Compute the book profit and remuneration deductible under section 40(b) of the Income tax Act, 1961.

### **Answer**

#### **Computation of book profit for AY 2022-23 and remuneration allowed under section 40(b) of Income-Tax Act, 1961**

Particulars	Amount (Rs.)	Amount (Rs.)
Net Profit as per Profit and Loss Account		1,00,000
<b>Add:</b> Remuneration to Partners	4,00,000	
<b>Add:</b> Municipal Tax of House Property	5,000	4,05,000
<b>Total</b>		<b>5,05,000</b>
<b>Less :</b> Rent received on House Property		(50,000)
<b>Book Profit as per section 40(b)</b>		<b>4,55,000</b>

**Remuneration allowed is lower of the amount as per partnership deed (Rs. 4,00,000) or amount actually paid (Rs. 4,00,000) or the amount computed as under:**

**Maximum amount deductible on account of payment of remuneration to partners**

<b>Particulars</b>	<b>Amount</b>
First Rs. 300000 @ 90%	2,70,000
Balance of Rs.155000@ 60%	93,000
<b>Total</b>	<b>3,63,000</b>

**Lower of above i.e. Rs. 363000 is the maximum remuneration permissible u/s 40(b).**

### **Question 38**

*Briefly explain the provision of section 115 BBG of the Income Tax Act, 1961, regarding taxability of income earned from transfer of "Carbon Credits"?*

#### **Answer**

Tax on Income from transfer of Carbon Credits [Section 115BBG]: Where the total income of an assessee includes any income by way of transfer of carbon credits, the income-tax payable shall be the aggregate of:

- (a) amount of income-tax calculated on the income by way of transfer of carbon credits, at the rate of 10%; and
- (b) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the amount of income referred to in clause (a).

Notwithstanding anything contained in this Act, no deduction in respect of any expenditure or allowance shall be allowed to the assessee under any provision of this Act in computing his income referred to in clause (a) of sub-section (1).

Explanation : "carbon credit" in respect of one unit shall mean reduction of one tonne of carbon dioxide emissions or emissions of its equivalent gases which is validated by the United Nations Framework on Climate Change and which can be traded in market at its prevailing market price.

### **Question 39**

*An individual has business income of Rs. 35,00,000 for previous year 2021-22. He for the previous year 2020-21 was subject to Alternate Minimum Tax (AMT) because of claiming deduction under section 80-IE of Income Tax Act, 1961. He has an AMT credit of Rs. 5,00,000.*

*Calculate the tax to be paid by him for assessment year 2022-23 assuming assessee has not opted for section 115BAC of the Income tax Act, 1961. Also work out the amount of balance of available AMT credit.*

**Answer****Computation of Tax Liability for AY 2022-23 of an Individual**

Particulars	Amount (Rs.)
Normal Tax Liability on Income of Rs. 35,00,000	
On Rs. 2,50,000 – Nil	Nil
On (Rs. 5,00,000 – Rs. 2,50,000) @ 5%	12,500
On (Rs. 10,00,000 – Rs. 5,00,000) @ 20%	1,00,000
Balance (Rs. 35,00,000 – Rs. 10,00,000) @ 30%	7,50,000
Total Tax Liability (excluding cess)	8,62,500
Add : Health and Education Cess @ 4%	34,500
<b>Total Tax Liability</b>	<b>8,97,000</b>
Alternate Minimum Tax 'AMT' @ 19.24% (18.5% + 4% cess) on Rs. 35,00,000	6,73,400

The tax payable by the assessee shall be Rs. 6,73,400 out of total tax liability of Rs. 8,97,000 after taking credit of AMT of Rs. 2,23,600. The Assessee will carry forward the balance AMT of Rs. 2,76,400 (Rs. 5,00,000 – Rs. 2,23,600)

\*\*\*

## **General Anti Avoidance Rules**

### **Question 1**

*What is General Anti Avoidance Rules 'GAAR' and its applicability?*

### **Answer**

GAAR refers to General Anti-Avoidance Rules. These rules target any transaction or business arrangement that is entered into with the objective of avoiding tax. The objective is to check aggressive tax planning.

It may be noted that the GAAR provisions would be applicable to all taxpayers irrespective of their residential or legal status (i.e. resident or non-resident, corporate entity or non-corporate entity). The provisions also apply to all transactions and arrangements irrespective of their nature (i.e. business or non-business) if, the tax benefit accrues to the taxpayer and he fails to establish that the main purpose of entering into that transaction/arrangement was not to obtain tax benefit. For GAAR provisions, it is also not relevant whether transactions/ arrangements are entered into with group concerns or third parties and whether they are domestic or cross-border transactions.

For calculation of threshold of INR 30 million (that is, Rs 3 Crores as per the Rules), only the tax benefit enjoyed in Indian jurisdiction due to the arrangement or part of the arrangement is to be considered. Such benefit is assessment year specific. GAAR is with respect to an arrangement or part of the arrangement and limit of INR 30 million cannot be read in respect of a single taxpayer only

### **Question 2**

*What is the Implication of GAAR implementation?*

### **Answer:**

- The implication of GAAR is that the Income-tax department will have powers to deny tax benefit if a transaction was carried out exclusively for the purpose of avoiding tax.
- For example, if an entity is set up in Mauritius with the sole intention of claiming exemption from capital gains tax, the tax authorities have the right to deny the claim for exemption provided under the India-Mauritius tax treaty.

### **Question 3**

*When can an arrangement be declared as an Impermissible Avoidance Arrangement (IAA)?*

**Answer:**

The Income Tax Commissioner will be empowered to declare an arrangement as an Impermissible Avoidance Arrangement (IAA) if:

- (a) creates rights, or obligations, which are not ordinarily created between persons dealing at arm's length;
- (b) results, directly or indirectly, in the misuse, or abuse, of the provisions of this Act;
- (c) lacks commercial substance or is deemed to lack commercial substance under section 97, in whole or in part; or
- (d) is entered into, or carried out, by means, or in a manner, which are not ordinarily employed for bona fide purposes.

This is so far reaching in nature that almost each and every transaction, which results in saving tax could be regarded as an IAA.

This means that GAAR enables tax authorities to declare any arrangement entered into by a taxpayer as an IAA. If it is so declared, then the tax authorities can disregard, combine or re-characterize any step of such arrangement or the entire arrangement, disregard any accommodating party involved in such arrangement, treat the transaction as if it had not been entered into or carried out, reallocate any income or expenditure, look through any arrangement by disregarding any corporate structure, re-characterize debt as equity or vice-versa and so on.

In effect, for tax purposes, any transaction can be treated in a manner different from the manner in which it is carried out if it is regarded as an IAA.

**Question 4**

*Difference between Tax Avoidance and Tax Evasion?*

**Answer:**

Tax Evasion and Tax avoidance are two different things. While Avoidance is legal management to avoid tax, evasion is illegal means to reduce tax liabilities, i.e. falsification of books, suppression of income, overstatement of deductions, etc.

Tax planning, as opposed to tax evasion which is illegal, is an accepted practice whereby the tax-payer uses provisions of the law or loopholes to minimise his tax liability.

Some countries, in addition to GAAR, have Specific Anti-Avoidance Rules (SAAR) to plug particular loopholes in the law or prevent some types of transactions that result in loss to Revenue. GAAR has been a part of the tax code of Canada since 1988, Australia since 1981, South Africa from 2006 and China from 2008. Australia and China also have SAAR in place to check abuse of tax treaties and transfer pricing.

**Question 5**

*What is Round Trip Financing?*

**Answer:**

Section 97(2) of the Income Tax Act defines round trip financing to include any arrangement in which, through a series of transactions, funds are transferred among the

parties to the arrangement and such transactions do not have any substantial commercial purpose other than obtaining the tax benefit.

### **Question 6**

Difference between General Anti Avoidance Rules 'GAAR' and Specific Anti Avoidance Rules 'SAAR'?

#### **Answer:**

Specific Anti Avoidance Rules 'SAAR'

- These are specific and help reduce time and costs involved in tax litigation
- These provide certainty to any tax payer while formalising specific arrangements
- These don't provide any discretion to the tax authorities
- There is always a possibility that the tax payers find loopholes and circumvent these limited application, specific provisions

General Anti Avoidance Rules 'GAAR'

- These involve necessarily granting the discretion to the tax authorities to invalidate the arrangements as impermissible tax avoidance
- They have a far broader application and hence interpreted in a more extensive manner
- GAAR has the potential to counter more effectively and outsmart the tax payers in their "out of the box thinking" and their approach in devising new means of tax avoidance

### **Question 7**

*Exclusion from GAAR ?*

#### **Answer:**

#### **Exclusions from GAAR**

Rule 10U of the Income-tax Rules provides for certain exclusions from the provisions of GAAR, which are discussed below:

- a) Monetary Threshold: As discussed above, there is a monetary threshold of INR 3 crores for the applicability of GAAR. The threshold has to be seen with respect to each assessment year. Also, the threshold is not taxpayer-specific and it has to be determined with regard to all the parties to the arrangement.
- b) Exemption to Foreign Institutional Investors (FII) and Foreign Portfolio Investors: The Rules provide that the provisions of GAAR are not applicable to an FII
- c) Exclusion for P-Notes/Investments in FIIs: The provisions of GAAR shall not apply to a person who is a non-resident in relation to investment made by him by way of offshore derivative instruments or otherwise, directly or indirectly in a FII. The term 'offshore derivative instruments' mainly indicates investments made by way of P-Notes. Further, there is no threshold in respect of this investment. Even de minimis stakes are grandfathered by this clause.

## **Question 8**

Discuss in brief some distinguishing features of General Anti-Avoidance Rules (GAAR) and Specific Anti-Avoidance Rules (SAAR)?

### **Answer:**

Distinguishing features of General Anti Avoidance Rules (GAAR)

1. These involve necessarily granting the discretion to the tax authorities to invalidate the arrangements as impermissible tax avoidance.
2. They have a far broader application and hence interpreted in a more extensive manner.
3. GAAR has the potential to counter more effectively and outsmart the tax payers in their "out of box thinking" and their approach in devising new means of tax avoidance.

Distinguishing features of Specific Anti Avoidance Rules (SAAR)

1. These are specific and help reduce time and cost involved in tax litigation.
2. These provide certainty to any taxpayer while formalising specific arrangements.
3. These don't provide any discretion to the tax authorities. 4. There is always a possibility that the tax payer may find loopholes and circumvent the limited applications of specific provisions.

### **Circular No. 7 of 2017 - Clarifications on implementation of GAAR provisions under the Income Tax Act, 1961**

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 be applied to deny treaty eligibility in a case where there is compliance with LOB test of the treaty?

Answer: Adoption of anti-abuse rules in tax treaties may not be sufficient to address all tax avoidance strategies and the same are required to be tackled through domestic anti-avoidance rules. If a case of avoidance is sufficiently addressed by LOB in the treaty, there shall not be an occasion to invoke GAAR.

Question No. 3: 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. 4: Will GAAR provisions apply where the jurisdiction of the FPI is finalised based on nontax commercial considerations and such FPI has issued P-notes referencing Indian securities? Further, will GAAR be invoked with a view to denying treaty eligibility to a Special Purpose Vehicle (SPV), either on the ground that it is located in a tax friendly jurisdiction or on the ground that it does not have its own premises or skilled professional

on its own roll as employees.

Answer: For GAAR application, the issue, as may be arising regarding the choice of entity, location etc., has to be resolved on the basis of the main purpose and other conditions provided under section 96 of the Act. GAAR shall not be invoked merely on the ground that the entity is located in a tax efficient jurisdiction. If the jurisdiction of FPI is finalized based on non-tax commercial considerations and the main purpose of the arrangement is not to obtain tax benefit, GAAR will not apply.

Question No. 5: 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 consolidation 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 the hands of the same investor would also be eligible for grandfathering under Rule 1011(1 )(d) of the Income Tax Rules.

Question No. 6: The expression "investments" can cover investment in all forms of instrument – whether in an Indian Company or in a foreign company, so long as the disposal thereof may give rise to income chargeable to tax. Grandfathering should extend to all forms of investments including lease contracts (say, air craft leases) and loan arrangements, etc.

Answer: Grandfathering is available in respect of income from transfer of investments made before 1st April, 2017. As per Accounting Standards, 'investments' are assets held by an enterprise for earning income by way of dividends, interest, rentals and for capital appreciation. Lease contracts and loan arrangements are, by themselves, not 'investments' and hence grandfathering is not available.

Question No. 7: 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. 8: 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. 9: Will a Fund claiming tax treaty benefits in one year and opting to be

governed by the provisions of the Act in another year attract GAAR provisions? An example would be where a Fund claims treaty benefits in respect of gains from derivatives in one year and in another year sets-off losses from derivatives transactions against gains from shares under the Act.

Answer: GAAR provisions are applicable to impermissible avoidance arrangements as under section 96. In so far as the admissibility of claim under treaty or domestic law in different years is concerned, it is not a matter to be decided through GAAR provisions.

Question No. 10: How will it be ensured that GAAR will be invoked in rare cases to deal with highly aggressive and artificially pre-ordained schemes and based on cogent evidence and not on the basis of interpretation difference?

Answer: The proposal to declare an arrangement as an impermissible avoidance arrangement under GAAR will be vetted first by the Principal Commissioner / Commissioner and at the second stage by an Approving Panel, headed by judge of a High Court. Thus, adequate safeguards are in place to ensure that GAAR is invoked only in deserving cases.

Question No. 11: Can GAAR lead to assessment of notional income or disallowance of real expenditure? Will GAAR provisions expand the scope of charging provisions or scope of taxable base and/or disallow the expenditure which is actually incurred and which otherwise is admissible having regard to diverse provisions of the Act?

Answer: If the arrangement is covered under section 96, then the arrangement will be disregarded by application of GAAR and necessary consequences will follow.

Question No. 12: A definite timeline may be provided such as 5 to 10 years of existence of the arrangement where GAAR provisions will not apply in terms of the provisions in this regard in section 97(4) of the IT Act.

Answer: Period of time for which an arrangement exists is only a relevant factor and not a sufficient factor under section 97(4) to determine whether an arrangement lacks commercial substance.

Question No. 13: It may be ensured that in practice, the consequences of a transaction being treated as an 'impermissible avoidance arrangement' are determined in a uniform, fair and rational basis. Compensating adjustments under section 98 of the Act should be done in a consistent and fair manner. It should be clarified that if a particular consequence is applied in the hands of one of the participants, there would be corresponding adjustment in the hands of another participant.

Answer: Adequate procedural safeguards are in place to ensure that GAAR is invoked in a uniform, fair and rational manner. In the event of a particular consequence being applied in the hands of one of the participants as a result of GAAR, corresponding adjustment in the hands of another participant will not be made. GAAR is an anti-avoidance provision with deterrent consequences and corresponding tax adjustments across different taxpayers could militate against deterrence.

Question No. 14: Tax benefit of INR 3 crores as defined in section 102(10) may be

calculated in respect of each arrangement and each taxpayer and for each relevant assessment year separately. For evaluating the main purpose to be obtaining of tax benefit, the review should extend to tax consequences across territories. The tax impact of INR 3 crores should be considered after taking into account impact to all the parties to the arrangement i.e. on a net basis and not on a gross basis (i.e. impact in the hands of one or few parties selectively).

Answer: The application of the tax laws is jurisdiction specific and hence what can be seen and examined is the 'Tax Benefit' enjoyed in Indian jurisdiction due to the 'arrangement or part of the arrangement'. Further, such benefit is assessment year specific. Further, GAAR is with respect to an arrangement or part of the arrangement and therefore limit of Rs. 3 crores cannot be read in respect of a single taxpayer only.

Question No. 15: Will a contrary view be taken in subsequent 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.

Question No. 16: No penalty proceedings should be initiated pursuant to additions made under GAAR at least for the initial 5 years.

Answer: Levy of penalty depends on facts and circumstances of the case and is not automatic. No blanket exemption for a period of five years from penalty provisions is available under law. The assessee, may at his option, apply for benefit u/s 273A if he satisfies conditions prescribed therein.

\*\*\*

# Basics of International Taxation

## Part I: Transfer Pricing

### Question 1

*Discuss the meaning of the term 'associated enterprise' as defined under section 92A (1).*

### Answer

Transfer pricing provision applies only to transaction between associated enterprises.

As per Section 92A(1) an associated enterprise in relation to another enterprise means:

- a) An enterprise which participates directly or indirectly or through one or more intermediaries in the management or control or capital of the other enterprise or
- b) An enterprise in respect of which one or more persons who participate directly or indirectly or through one or more intermediaries in its management or control or capital are the same persons who participates directly or indirectly or through one or more intermediaries in the management and control or capital of other enterprise.

Further, sub-clause (2) of Section 92A(1) states the purposes of Section 92(A)(1), two enterprises shall be deemed to be associated enterprises if at any time during the previous year any of the conditions prescribed under this sub clause are satisfied. Section 92A(2) enlists 13 situations in which two enterprises shall be deemed to be associated enterprises if the prescribed conditions are satisfied.

### Question 2

*Discuss the meaning of the term 'deemed associated enterprise' as defined under section 92A (2).*

### Answer

Two enterprises shall be deemed to be associated enterprises if, at any time during the previous year, any of the conditions prescribed below are satisfied. Section 92A(2) enlists 13 situations in which two enterprises shall be deemed to be associated enterprises as follows:

- (a) one enterprise holds, directly or indirectly, shares carrying not less than twenty-six per cent of the voting power in the other enterprise; or
- (b) any person or enterprise holds, directly or indirectly, shares carrying not less than twenty-six per cent of the voting power in each of such enterprises; or
- (c) a loan advanced by one enterprise to the other enterprise constitutes not less than fifty-one per cent of the book value of the total assets of the other enterprise; or
- (d) one enterprise guarantees not less than ten per cent of the total borrowings of the other enterprise; or

- (e) more than half of the board of directors or members of the governing board, or one or more executive directors or executive members of the governing board of one enterprise, are appointed by the other enterprise; or
- (f) more than half of the directors or members of the governing board, or one or more of the executive directors or members of the governing board, of each of the two enterprises are appointed by the same person or persons; or
- (g) the manufacture or processing of goods or articles or business carried out by one enterprise is wholly dependent on the use of know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature, or any data, documentation, drawing or specification relating to any patent, invention, model, design, secret formula or process, of which the other enterprise is the owner or in respect of which the other enterprise has exclusive rights; or
- (h) ninety per cent or more of the raw materials and consumables required for the manufacture or processing of goods or articles carried out by one enterprise, are supplied by the other enterprise, or by persons specified by the other enterprise, and the prices and other conditions relating to the supply are influenced by such other enterprise; or
- (i) the goods or articles manufactured or processed by one enterprise, are sold to the other enterprise or to persons specified by the other enterprise, and the prices and other conditions 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 relative of such individual; or
- (k) where one enterprise is controlled by a Hindu undivided family, the other enterprise is controlled by a member of such Hindu undivided family or by a relative of a member of such Hindu undivided family 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 not less than ten per cent interest in such firm, association of persons or body of individuals; or
- (m) there exists between the two enterprises, any relationship of mutual interest, as may be prescribed.

### **Question 3**

*Explain in the following cases whether the entities shall be deemed to be 'associated enterprises' under section 92A(2) of the Income tax Act, 1961 :*

- (i) *Run India Ltd has 12 directors on its Board, out of which 6 directors are appointed by Race Ltd.*
- (ii) *Cane UK Ltd. possesses 25% of the voting power in Bane (India) Pvt. Ltd.*
- (iii) *Joy India's total borrowings amounted to Rs. 1000 crore, out of which guarantee has been given by Chapple India Ltd., for a borrowing of Rs. 400 crore.*

### **Answer**

- (i) Two enterprises shall be deemed to be Associated Enterprises, if more than half of the directors or members of the board of one enterprise are appointed by other enterprise.

In the given case:-

Race Ltd. has appointed only half (6 out of 12) of the directors on the Board of Run India Ltd. Thus, both are not Associated Enterprises.

- (ii) Two enterprises shall be deemed to be Associated Enterprises, if one enterprise holds, directly or indirectly, shares carrying not less than twenty-six per cent of the voting power in the other enterprise.

In the given case, the volume of voting power possessed by Cane UK Ltd. in Bane (India) Pvt. Ltd. is less than 26%, thus they are not Associated Enterprises.

- (iii) Two enterprises shall be deemed to be Associated Enterprises, if one enterprise guarantees not less than ten per cent of the total borrowings of the other enterprise;

Here, as the percentage of borrowings guaranteed by Chapple India Ltd. is 40% (Rs. 400 crore out of Rs 1000 crore) is more than the prescribed limit thus, Joy India Ltd. and Chapple India Ltd., are deemed to be Associated Enterprises.

### **Question 4**

*Brat Inc. of U.K. holds 9% shares in Pit Ltd. of India. The total book value of Assets of Pit Ltd., is Rs. 57,25,000. Brat Inc. of U.K. has given a loan to Pit Ltd. of Rs. 30,00,000. Examine whether Brat Inc and Pit Ltd. are associated enterprises.*

### **Answer**

Two enterprises shall be deemed to be Associated Enterprises, if a loan advanced by one enterprise to other constitutes not less than 51% of the book value of total assets of other enterprise.

In the given case:-

Total book value of Pit Ltd. is Rs. 57,25,000/-

51% of Rs. 57,25,000/- = Rs. 29,19,750/-

Loan given by the UK company = Rs. 30,00,000/-

Since, the loan amount is more than 51% of the book value of the total assets of the Indian company, Brat Inc. and Pit Ltd. are deemed to be Associated Enterprises.

### **Question 5**

*Coco Ltd. supplied consumables and raw material of Rs. 300 crore to Parrot Ltd. Total consumables and raw materials consumed by Parrot Ltd. was Rs. 400 crore.*

### **Answer**

Two enterprises shall be deemed to be Associated Enterprises, if, 90% or more of the raw materials and consumables required for the manufacture or processing of goods or articles

carried out by one enterprise, are supplied by the other enterprise, or by persons specified by the other enterprise, and the prices and other conditions relating to the supply are influenced by such other enterprise.

Here, Coco Ltd. supplied 75% of the raw material (i.e. raw material worth Rs. 300 crore out of Rs. 400 crore) to Parrot Ltd. Therefore, Coco Ltd. and Parrot Ltd. would not be associated enterprises.

### Question 6

*Indira Ltd, an Indian Company supplied billets to Charles Ltd. an UK based company which holds 40% of the shares of Indira Ltd., during the previous year 2021-22. Indira Ltd. also supplied the same product to another UK based company, Vales Ltd., an unrelated entity. The transactions with Charles Limited are priced at Euro 400 per MT (FOB), whereas the transactions with Vales Ltd. are priced at Euro 700 per MT (CIF). Insurance and Freight amounts to Euro 200 per MT. Compute the arm's length price for the transaction with Charles. Limited.*

### Answer

Here, since the foreign company, Charles Ltd., holds more than 26% shares in Indira Ltd., both be deemed to be associated enterprises within the meaning of section 92A.

As Indira Ltd. supplies similar product to an unrelated entity, Vales Ltd. UK, the transactions between Indira Ltd. and Vales Ltd. can be considered as comparable uncontrolled transactions for the purpose of determining the arm's length price of the transactions between Indira Ltd. and Charles Ltd.

Thus, Comparable Uncontrolled Price (CUP) method of determination of arm's length price (ALP) would be applicable in this case.

Transactions with Chalres Ltd. are on FOB basis, whereas transactions with Vales Ltd. are on CIF basis. This difference has to be adjusted before comparing the prices.

Particulars	Amount (in Euro)
Price per MT of billets to V Ltd.	700
Less : Cost of insurance and freight per M.T.	(200)
Adjusted price per M.T.	500

Since, the adjusted price for Vales Limited, UK is greater than the price fixed for Charles Ltd., the arm's length price be Euro 500 per MT.

### Question 7

*Transfer pricing rules shall have no implication where the income is computed on the basis of book profits. Comment.*

## **Answer**

The statement is correct. For the purpose of computing book profit for levy of minimum alternate tax, the net profit shown in the profit and loss account prepared in accordance with the companies that can be increased/decreased only by the addition / deductions specified in explanation to section 115JB. No other adjustments can be made to arrive at the book profit for the levy of MAT, except where:

- a) it is discovered that the profit and loss account is not drawn up in accordance with the relevant schedule of the Companies Act
- b) incorrect accounting policies and or accounting standards have been adopted for preparing such accounts and
- c) the method and rate of the depreciation adopted is not correct.

Therefore transfer pricing adjustment cannot be made while computing book profit for levy of MAT.

## **Question 8**

*Explain how the arm's length price in relation to an international transaction is computed under 'resale price method' as per rule 10B(1)(b) of the Income-tax Rules, 1962.*

## **Answer**

Rule 10B (1) (b) of Income tax Rules, 1962 prescribes Resale Price method under which arm's length price is determined in the following manner:

- (a) The price at which property purchased or services obtained by the enterprise from an associated enterprise is resold or are provided to an unrelated enterprise is identified;
- (b) Such resale price is reduced by the amount of a normal gross profit margin accruing to the enterprise or to an unrelated enterprise from the purchase and resale of the same or similar property or from obtaining and providing the same or similar services, in a comparable uncontrolled transaction, or a number of such transactions;
- (c) The price so arrived at is further reduced by the expenses incurred by the enterprise in connection with the purchase of property or obtaining of services;
- (d) The price so arrived at is adjusted to take into account the functional and other differences, including differences in accounting practices, if any, between the international transaction and the comparable uncontrolled transactions, or between the enterprises entering into such transactions, which could materially affect the amount of gross profit margin in the open market;
- (e) The adjusted price arrived as under (d) is taken to be an arm's length price in respect of the purchase of the property or obtaining of the services by the enterprise from the associated enterprise.

*Example:* A sold a machine to B (Associated Enterprise) and in turn B sold the same machinery to C (an independent party) at sale margin of 30% for Rs. 4,00,000 but B has incurred expenses of Rs. 4000 in sending the machine to C. Here Arm's length price would be calculated as:

Sales price to B = Rs. 4,00,000

*Less : Gross Margin = Rs. 4,00,000 × 30% = Rs.1,20,000*

*Less : Expenses incurred by B = Rs.4,000*

Arm's length price = Rs. 2,76,000

### **Question 9**

*Write a short note on Advance Pricing Agreement (APA).*

### **Answer**

“An APA is an agreement between a tax payer and tax authority determining the transfer pricing methodology for pricing the tax payer’s international transactions for future years.”

### **Types of APA's**

- Unilateral APA: an APA that involves only the tax payer and the tax authority of the country where the tax payer is located.
- Bilateral APA (BAPA): an APA that involves the tax payer, associated enterprise (AE) of the tax payer in the foreign country, tax authority of the country where the tax payer is located, and the foreign tax authority.
- Multilateral APA (MAPA): an APA that involves the tax payer, two or more AEs of the tax payer in different foreign countries, tax authority of the country where the tax payer is located, and the tax authorities of AEs.

### **Benefits of APA's**

- Certainty with respect to tax outcome of the tax payer’s international transactions, by agreeing in advance the arm’s length pricing or pricing methodology (ies) to be applied to the tax payer’s international transactions covered by the APA.
- Removal of an audit threat (minimize rigours of audit), and deliverance of a particular tax outcome based on the terms of the agreement.
- Substantial reduction of compliance costs over the term of the APA.
- For tax authorities, an APA reduces cost of administration and also frees scarce resources.

### **Procedure for an APA**

- An application for a unilateral agreement should be made to the Director General of Income Tax (International Taxation) (DG-IT).
- For BAPA/MAPA, application should be made to the Competent Authority (CA) in India. The CA will send the application to DG-IT who in turn will send it to respective APA teams.
- In the case of BAPA/MAPA, negotiations between the CAs of India and other country (ies) shall be carried out in accordance with the provisions of the tax treaties.

- Further, the process in India will be initiated, only after filing the application with the CAs in the AEs' jurisdiction and evidence to that effect is provided to the Indian CA.

### **Question 10**

*Briefly explain the concept of rollback provisions under the Advance Pricing Agreement (APA).*

### **Answer**

The Finance (No.2) Act, 2014 introduced the rollback provisions under the Advance Pricing Agreement (APA) program. The roll back provisions were made applicable to the APAs signed or applied post 1<sup>st</sup> October 2014.

An Advance Pricing Agreement (APA) is an ahead of time agreement between a taxpayer and a taxing authority on an appropriate transfer pricing methodology for some set of transactions at issue over a fixed period of time. The Roll Back provisions allow an APA entered into from April 1, 2013 to be applied to four previous years for the international transactions covered in the APA. Rules/regulations, including the manner in which the Rollback will apply to bilateral APAs have been notified on vide Notification No. S.O. 758 of 2015 (E) dated 14<sup>th</sup> March 2015.

### **Question 11**

*State the consequences that would follow, if the Assessing Officer makes adjustment to arm's length price in international transactions of the assessee resulting in increase in taxable income. What are the remedies available to the assessee to dispute such adjustment?*

### **Answer**

In case the Assessing Officer makes adjustment to arm's length price in an international transaction it will results in increase in taxable income of the assessee. Further, the following consequences shall follow:-

- (a) No deduction under section 10AA or Chapter VI-A of Income tax Act shall be allowed from the income so increased.
- (b) No corresponding adjustment would be made to the total income of the other associated enterprise (in respect of payment made by the assessee from which tax has been deducted or is deductible at source) on account of increase in the total income of the assessee on the basis of the arm's length price so recomputed.

The remedies available to the assessee to dispute such an adjustment are:-

- 1) In case the assessee is an eligible assessee under section 144C of Income tax Act he can file his objections to the variation made in the income within 30 days [of the receipt of draft order by him] to the Dispute Resolution Panel and Assessing Officer. Appeal against the order of the Assessing Officer in pursuance of the directions of the Dispute Resolution Panel can be made to the Income-tax Appellate Tribunal.

- 2) In any other case, he can file an appeal under section 246A of the Act to the Commissioner (Appeals) against the order of the Assessing Officer within 30 days of the date of service of notice of demand.
- 3) The assessee can opt to file an application for revision of order of the Assessing Officer under section 264 within one year from the date on which the order sought to be revised is communicated, provided the time limit for appeal to the Commissioner (Appeals) or the Income-tax Appellate Tribunal has expired or the assessee has waived the right of such an appeal. The eligibility conditions stipulated in section 264 should be fulfilled.

### **Question 12**

*Discuss whether adjustment is required in the context of transfer pricing provisions where the transfer price adopted for an international transaction on sale of goods by an Indian company during the financial year 2021-22, is Rs. 25 lakhs whilst the Arm's Length Price determined using appropriate method are Rs. 25 lakhs and Rs. 27 lakhs. Assume that the rate of permissible variation prescribed by the Central Government is 3% of the transfer price for this class of international transaction.*

### **Answer**

The proviso to section 92C (2) of Income tax Act, provides that where more than one price is determined by the most appropriate method, the arm's length price (ALP) shall be taken to be the arithmetical mean of such prices. However, if the arithmetical mean, so determined, is within such percentage of the transfer price notified by the central government, then the transfer price shall be deemed to be the arm's length price and no adjustment is required to be made.

Here, the arithmetical mean of the prices =

$$(\text{Rs. } 25 + \text{Rs. } 27) / 2 = \text{Rs. } 26 \text{ lakhs}$$

Permissible variation =

$$3\% \text{ of } 25 \text{ lakhs} = 0.75 \text{ lakhs}$$

Thus, since the variation between the arm's length price of Rs. 26 lakhs and the transfer price of Rs. 25 lakhs is outside 3% of Transfer Price (i.e., Rs. 0.75 lakhs), adjustment in price is required.

### **Question 13**

*List out the method for determination of arm's length price?*

### **Answer:**

#### **Computation of arm's length price [Section 92C]**

The arm's length price in relation to an international transaction or specified domestic transaction shall be determined by any of the following methods, being the most appropriate method, having regard to the nature of transaction or class of transaction or class of associated persons or functions performed by such persons or such other relevant factors as the Board may prescribe namely:

- (a) comparable uncontrolled price method;
- (b) resale price method;
- (c) cost plus method;
- (d) profit split method;
- (e) transactional net margin method;
- (f) such other method as may be prescribed by the Board.

The most appropriate method referred to in sub-section (1) shall be applied, for determination of arm's length price, in the manner as may be prescribed.

Provided that where more than one price is determined by the most appropriate method, the arm's length price shall be taken to be the arithmetical mean of such prices:

Provided further that if the variation between the arm's length price so determined and price at which the international transaction or specified domestic transaction has actually been undertaken does not exceed such percentage not exceeding three per cent of the latter, as may be notified by the Central Government in the Official Gazette in this behalf, the price at which the international transaction or specified domestic transaction has actually been undertaken shall be deemed to be the arm's length price :

Provided also that where more than one price is determined by the most appropriate method, the arm's length price in relation to an international transaction or specified domestic transaction undertaken on or after the 1st day of April, 2014, shall be computed in such manner as may be prescribed and accordingly the first and second proviso shall not apply.

#### **Question 14**

*Explain the term 'Specified Domestic Transaction'?*

#### **Answer:**

Meaning of specified domestic transaction [Section 92BA]

For the purposes of this section and sections 92, 92C, 92D and 92E, "specified domestic transaction" in case of an assessee means any of the following transactions, not being an international transaction, namely:

- (i) any transaction referred to in section 80A;
- (ii) any transfer of goods or services referred to in sub-section (8) of section 80-IA;

- (iii) any business transacted between the assessee and other person as referred to in sub-section (10) of section 80-IA;
- (iv) any transaction, referred to in any other section under Chapter VI-A or section 10AA, to which provisions of sub-section (8) or sub-section (10) of section 80-IA are applicable; or
- (v) any other transaction as may be prescribed,

and where the aggregate of such transactions entered into by the assessee in the previous year exceeds a sum of twenty crore rupees.

### **Question 15**

Discuss the factors to be considered by the Assessing Officer while selecting the appropriate transfer pricing method?

#### **Answer:**

Factors to be considered by the Assessing Officer while selecting an appropriate transfer pricing method are as under:

1. The nature and class of the International or Specified Domestic Transaction.
2. The class or classes of Associated Enterprises entering into the transactions and the functions performed by them taking into account assets employed or to be employed and risk assumed by each enterprises.
3. The availability, coverage and reliability of data necessary for application of the method.
4. The degree of comparability existing between the International transaction or Specified Domestic Transaction and the uncontrolled transaction, and between the enterprises entering into such transaction
5. The extent to which reliable and accurate adjustments can be made to account for differences, if any, between the International or Specified Domestic Transaction and the comparable uncontrolled transactions or between the enterprises entering into such transactions.
6. The nature, extent and reliability of assumptions required to be made in the application of the method.

### **Question 16**

Discuss in brief a few benefits derived from the Safe Harbour Rules, relating to the transfer pricing regulations?

#### **Answer:**

**Benefits derived from Safe Harbour Rules are as under:**

1. Compliance Simplicity: Safe Harbour Rules tends to substitute requirements in place of existing regulations, thereby reducing compliance burden and associated costs for eligible taxpayers, who would otherwise be obligated to dedicate resources and time to collect, analyze and maintain extensive data to support their inter-company transactions.

2. Certainty and Reduce litigation: Electing Safe Harbours may grant a greater sense of assurance to taxpayers regarding acceptability of their transfer price by the authorities without onerous audits. This conserves administrative and monetary resources for both the taxpayer and tax administration.

3. Administrative Simplicity: Since Tax administration would be required to carry out only a minimal examination in respect of taxpayers opting for safe harbours, they can channelize their efforts to examine more complex and high - risk transactions and high- risk transactions and taxpayers.

### Question 17

ABC Ltd. is a foreign subsidiary company of XYZ Ltd. XYZ Ltd. sells refrigerators to ABC Ltd. at a price of Rs. 10,000 each for sale to its dealers in Singapore. In other States, XYZ Ltd. is directly selling to their dealers at Rs. 12,000 with a warranty of one year (Rs. 500 for each fridge). ABC Ltd. does not offer such warranty. Quantity sold to ABC Ltd. is 8000 units and to dealers of XYZ Ltd. is 3000 units.

Discuss the method to be applied to arrive at the arm's length price and compute the ALP.

How is the assessment of XYZ Ltd. going to be affected?

#### Answer:

ABC Ltd. and XYZ Ltd. are associated enterprise as ABC Ltd is subsidiary of XYZ Ltd. Comparable product (fridge) is sold to dealers (Uncontrolled transactions). Hence in given circumstances Comparable Uncontrolled Price (CUP) Method for determining arm's length price can be applied.

Particulars	Amount
Sale price charged to Dealers of XYZ Ltd.	12,000
Less cost of warranty included in price	(5,00)
Arm length price	11,500
Actual price paid by ABC Ltd. to XYZ Ltd.	10,000
Difference per unit	1,500
Addition required to be made in the computations of the total Income of XYZ Ltd. (1500 x 8000 units)	12,00,0000

No deduction under chapter VI-A would be available in respect of the enhanced Income.

### Question 18

*Zonik Inc of Canada holds 35% shares of Gama India Ltd. Gama India Ltd. imports 2000 unit of product X from Zonik Inc Canada at a price of Rs. 1,500 per unit and these are sold to Sunil Regency Ltd. at a price of Rs. 1,700 per unit. Gama India Ltd. has bought similar products from Ronak India Ltd. and sold to Vijay Ltd. at a gross profit of 14% on sales. Zonik Inc Canada offers a quantity discount of Rs. 15 per unit whereas Ronak India Ltd. does not offer such quantity discount. Gama India Ltd. incurred freight of Rs. 10 per unit and customs duty of Rs. 30 per unit in case of purchases made from Zonik Inc Canada.*

*On the basis of these facts explain the method which would be applicable for determination of Arm's Length Price (ALP) under Income Tax Act, 1961.*

*Determine the Arm's Length Price on the basis of the method as found to be applicable and also determine the effect on the net Profit/Income of Gama India Ltd. (assuming that there is no advance pricing agreement) in the scenario discussed above.*

**Answer:**

Arm's Length Price is determined on the basis of Resale Price Method

Particular	Amounts (Rs.)
Resale price of goods purchased from Zonik Inc Canada (per unit)	1700
Less: Normal Gross Profit Margin @ 14% on Rs. 1700 (per unit)	(238)
Less: Expenses connected with purchases (fright and customs duty i.e. Rs. 10 + Rs. 30)	(40)
Less: Quantity discount allowed by Zonik Inc Canada	(15)
Arm's Length Price (per unit)	1407
Price paid to Zonik Inc Canada (per unit)	1500
Excess price paid per unit (Rs. 1500 – Rs. 1407)	93
Increase in Income of Gama Limited (Rs. 93 * 2000 units)	186000

**Question 19**

*State with reasons, whether Jackson LLC., (incorporated in Japan) and Vijayshree Ltd. a domestic company, are/can be deemed to be associated enterprises for the transfer pricing regulations in the following independent situations :*

(a) Jackson LLC. has advanced a loan of Rs. 55 crores to Vijayshree Ltd. on 12th January, 2022. The total book value of assets of Vijayshree Ltd. is Rs. 100 crores. The market value of the assets, however, is Rs. 140 crores. Vijayshree Ltd. repaid Rs. 10 crores before 31st March, 2022.

(b) Total value of raw materials and consumables of Vijayshree Ltd. is Rs. 800 crores. Of this, Jackson LLC supplies to the tune of Rs. 740 crores, at prices mutually agreed upon once in six months and depending upon the market conditions.

**Answer:**

(a) Jackson LLC (a foreign company, has advanced loan of Rs. 55 crores to Vijayshree Ltd., a domestic company, which amounts to 55% of book value of assets of Vijayshree Ltd. Since the loan advanced by Jackson LLC is not less than 51% of the book value of assets of Vijayshree Ltd., Jackson LLC and Vijayshree Ltd. are deemed to be associated enterprises for the purpose of transfer pricing regulations. The deeming provision would be attracted even if there is a repayment of loan during the same previous year which brings down its percentage below 51%.

(b) The Jackson LLC supplies 92.50% (Rs. 740 crore / Rs. 800 crores \*100) of the raw material and consumables required by Vijayshree Ltd. which is more than the specified threshold limit of 90%, however, Jackson LLC and Vijayshree Limited are not deemed to be associated enterprises since the price of supply is not influenced by Jackson LLC but is mutually agreed upon once in six months depending upon prevailing market conditions.

### **Question 20**

*What are the practical difficulties in applying Arm's length price?*

#### **Answer:**

The practical difficulties involved in application of Arm's length price are as follows:

- True comparison difficult in certain cases.
- Availability of data and reliability of available data.
- Absence of market price.
- Absence of comparable market price for "intangible" transactions.
- Administrative burden.
- Time lag.

### **Question 21**

*A person fails to furnish audit report under section 92E of the Income Tax Act, 1961. The Income Tax Officer imposes penalty on the assessee. Assessee challenges the penalty stating that there was reasonable cause for not furnishing the report. Can the assessee escape the penalty if the cause was genuine.*

#### **Answer:**

As per section 271BA of the Income-tax Act, 1961 "the Act", if any person fails to furnish audit report as required under section 92E of the Act, then the assessing officer may direct that such person shall pay, by way of penalty, a sum of Rs. 1 lakh.

However, as per section 273B of the Act, penalty shall not be levied if the assessee proves that there was reasonable cause for such failure.

In this case, as the assessee is able to prove genuine reasonable cause of failure to furnish report u/s 92E, the assessing officer is not justified in imposing the penalty.

### **Question 22**

*Mr. Joy has entered into International transactions aggregating to Rs. 75 lakhs and specified domestic transactions aggregating to Rs. 5 crores. He did not mention any document/information relating to transfer pricing nor has filed any report/certificate/document/information with the tax authorities. Discuss penal consequences, if any.*

**Answer:**

Mr. Joy is not required to maintain information and documents since neither the aggregated value of international transactions exceed Rs. 1 crore, nor the aggregated value of specified domestic transactions exceed Rs. 20 Crore. Therefore, no penalty shall be levied for non-maintenance of information and documents.

However, Mr. Joy is required to obtain and furnish the audit report u/s 92E even if the aggregated value of international transactions does not exceed Rs. 1 crore or specified domestic transaction does not exceed Rs. 20 crore. Hence, Mr. Joy was required to obtain and furnish audit report u/s 92E in respect of international transactions aggregating to Rs. 75 lakh and specified domestic transaction aggregating to Rs. 5 crore. He shall be liable to penalty u/s 271BA of Rs. 1,00,000 for such default.

**Question 23**

*Comment on the following independent situations, whether X Ltd. and Y Ltd. constitute associated enterprises under the provisions of Section 92A :*

(a) Book value of total assets of X Ltd. is Rupees 100 crores, Y Ltd. has advanced a loan of Rupees 80 crores to its wholly subsidiary A Ltd., A Ltd., in term advanced a loan of Rupees 80 crore to X Ltd.

(b) Y Ltd. is engaged in trading of furniture. During the previous year 2021-22 it purchases furniture of Rupees 50 lakh from X Ltd. Total purchases of Y Ltd. during the year is Rupees 55 lakh.

(c) X Ltd. has two units, Unit A and Unit B, Unit A manufactures industrial equipment using the manufacturing process exclusively owned by Y Ltd. Unit B is engaged in buying and selling of toys.

(d) X Ltd. holds whole of equity share capital of C Ltd. C Ltd. holds 30% equity shares of Y Ltd. X Ltd. also holds 60% of preference share capital of Y Ltd.

(e) Y Ltd. has the right to appoint one of the executive director of X Ltd. However Y Ltd. does not exercise its right and therefore it did not appoint any executive director of X Ltd.

**Answer:**

(a) X Ltd. and Y Ltd. are not Associated Enterprise. As per section 92A of the Income-tax Act, 1961, two enterprises are deemed to be associated enterprise if loan advanced by one enterprise to another enterprise constitutes not less than 51% of book value of the total asset of the other enterprise. Under this clause, direct loans are covered and loan advanced indirectly is not covered. In this case, Y Ltd. has not directly given loan to X Ltd. and hence they do not qualify as Associated Enterprises.

(b) X Ltd. and Y Ltd. are not Associated Enterprise. As per section 92A of the Income-tax Act, 1961, two enterprises are deemed to be associated enterprises if 90% or more of the raw material required for the manufacture or processing of goods carried out by one enterprise, are supplied by the other enterprise. This clause is applicable only if the purchasing enterprise is engaged in manufacturing or processing of goods. In this case, Y Ltd. is not engaged in manufacturing or processing of goods and hence, X Ltd. and Y Ltd. do not qualify as Associated Enterprises.

(c) X Ltd. and Y Ltd. are not associated enterprises. As per section 92A of the Income-tax Act, 1961, two enterprises are deemed to be associated enterprises if the business carried on by one enterprise is 'wholly' dependent upon the intangible owned by the other enterprise. In this case, X Ltd. is engaged in two businesses, out of which only one business is dependent on Y Ltd. Thus, X Ltd.'s business is not wholly dependent upon Y Ltd. and therefore they do not qualify as associated Enterprises.

(d) X Ltd. and Y Ltd. are Associated Enterprises. As per section 92A of the Income-tax Act, 1961, two enterprises are deemed to be associated enterprises if one enterprise holds, directly or indirectly, shares carrying not less than 26% of voting power in other enterprise. In this case, X Ltd. indirectly (through C Ltd.) holds more than 26% equity shares (i.e. 30%) in Y Ltd. and thus they qualify as associated enterprises.

(e) X Ltd. and Y Ltd. are not associated enterprises. As per section 92A of the Income-tax Act, 1961, two or more enterprises are deemed as associated enterprises if one or more executive director of one enterprise is appointed by other enterprise. In this case, Y Ltd. has actually not appointed any executive director of X Ltd. Merely having a right to appoint is not sufficient. Hence, X Ltd. and Y Ltd. do not qualify as associated enterprises.

### **Clarifications on Rollback Provisions of Advance Pricing Agreement Scheme**

**Under rule 10 MA(2)(ii) there is a condition that the return of income for the relevant roll back year has been or is furnished by the applicant before the due date specified in Explanation 2 to sub-section (1) of section 139 of the Income-tax Act (hereinafter referred to as the 'Act'). It is not clear as to whether applicants who have filed returns under section 139(4) or 139(5) of the Act would be eligible for roll back.**

#### **Answer:**

The return of income under section 139(5) of the Act can be filed only when a return under section 139(1) has already been filed. Therefore, the return of income filed under section 139(5) of the Act, replaces the original return of income filed under section 139(1) of the Act. Hence, if there is a return which is filed under section 139(5) of the Act to revise the original return filed before the due date specified in Explanation 2 to sub-section (1) of section 139, the applicant would be entitled for rollback on this revised return of income.

However, rollback provisions will not be available in case of a return of income filed under section 139(4) because it is a return which is not filed before the due date.

**Rule 10MA (2)(i) mandates that the rollback provision shall apply in respect of an international transaction that is same as the international transaction to which the agreement (other than the rollback provision) applies. It is not clear what is the meaning of the word "same". Further, it is not clear whether this restriction also applies to the Functions, Assets, Risks (FAR) analysis.**

**Answer:**

The international transaction for which a rollback provision is to be allowed should be the same as the one proposed to be undertaken in the future years and in respect of which the agreement has been reached. There cannot be a situation where rollback is finalised for a transaction which is not covered in the agreement for future years. The term same international transaction implies that the transaction in the rollback year has to be of same nature and undertaken with the same associated enterprise(s), as proposed to be undertaken in the future years and in respect of which agreement has been reached. In the context of FAR analysis, the restriction would operate to ensure that rollback provisions would apply only if the FAR analysis of the rollback year does not differ materially from the FAR validated for the purpose of reaching an agreement in respect of international transactions to be undertaken in the future years for which the agreement applies.

The word "materially" is generally being defined in the Advance Pricing Agreements being entered into by CBDT. According to this definition, the word "materially" will be interpreted consistently with its ordinary definition and in a manner that a material change of facts and circumstances would be understood as a change which could reasonably have resulted in an agreement with significantly different terms and conditions.

**Rule 10MA (2)(iv) requires that the application for rollback provision, in respect of an international transaction, has to be made by the applicant for all the rollback years in which the said international transaction has been undertaken by the applicant. Clarification is required as to whether rollback has to be requested for all four years or applicant can choose the years out of the block of four years.**

**Answer:**

The applicant does not have the option to choose the years for which it wants to apply for rollback. The applicant has to either apply for all the four years or not apply at all. However, if the covered international transaction(s) did not exist in a rollback year or there is some disqualification in a rollback year, then the applicant can apply for rollback for less than four years. Accordingly, if the covered international transaction(s) were not in existence during any of the rollback years, the applicant can apply for rollback for the remaining years. Similarly, if in any of the rollback years for the covered international transaction(s), the applicant fails the test of the rollback conditions contained in various provisions, then it would be denied the benefit of rollback for that rollback year. However, for other rollback years, it can still apply for rollback.

Rule 10 MA(3) states that the rollback provision shall not be provided in respect of an international transaction for a rollback year if the determination of arm's length price of the said international transaction for the said year has been the subject matter of an appeal before the Appellate Tribunal and the Appellate Tribunal has passed an order disposing of such appeal at any time before signing of the agreement. Further, Rule 10 RA(4) provides that if any appeal filed by the applicant is pending before the Commissioner (Appeals), Appellate Tribunal or the High Court for a rollback year, on the issue which is subject matter of the rollback provision for that year, the said appeal to the extent of the subject

covered under the agreement shall be withdrawn by the applicant.

**There is a need to clarify the phrase “Tribunal has passed an order disposing of such appeal” and on the mismatch, if any, between Rule 10MA(3) and Rule 10RA(4).**

**Answer:**

The reason for not allowing rollback for the international transaction for which Appellate Tribunal has passed an order disposing of an appeal is that the ITAT is the final fact finding authority and hence, on factual issues, the matter has already reached finality in that year. However, if the ITAT has not decided the matter and has only set aside the order for fresh consideration of the matter by the lower authorities with full discretion at their disposal, the matter shall not be treated as one having reached finality and hence, benefit of rollback can still be given.

There is no mismatch between Rule 10MA(3) and Rule 10RA(4).

**Rule 10MA(3)(ii) provides that rollback provision shall not be provided in respect of an international transaction for a rollback year if the application of rollback provision has the effect of reducing the total income or increasing the loss, as the case may be, of the applicant as declared in the return of income of the said year. It may be clarified whether the rollback provisions in such situations can be applied in a manner so as to ensure that the returned income or loss is accepted as the final income or loss after applying the rollback provisions.**

**Answer:**

It is clarified that in case the terms of rollback provisions contain specific agreement between the Board and the applicant that the agreed determination of ALP or the agreed manner of determination of ALP is subject to the condition that the ALP would get modified to the extent that it does not result in reducing the total income or increasing the total loss, as the case may be, of the applicant as declared in the return of income of the said year, the rollback provisions could be applied. For example, if the declared income is Rs. 100, the income as adjusted by the TPO is Rs. 120, and the application of the rollback provisions results in reducing the income to Rs. 90, then the rollback for that year would be determined in a manner that the declared income Rs. 100 would be treated as the final income for that year.

**Rule 10RA(7) states that in case effect cannot be given to the rollback provision of an agreement in accordance with this rule, for any rollback year to which it applies, on account of failure on the part of applicant, the agreement shall be cancelled. It is to be clarified as to whether the entire agreement is to be cancelled or only that year for which roll back fails.**

**Answer:**

The procedure for giving effect to a rollback provision is laid down in Rule 10RA. Sub-rules

(2), (3), (4) and (6) of the Rule specify the actions to be taken by the applicant in order that effect may be given to the rollback provision. If the applicant does not carry out such actions for any of the rollback years, the entire agreement shall be cancelled. This is because the rollback provision has been introduced for the benefit of the applicant and is applicable at its option. Accordingly, if the rollback provision cannot be given effect to for any of the rollback years on account of the applicant not taking the actions specified in sub-rules (2), (3), (4) or (6), the entire agreement gets vitiated and will have to be cancelled.

**If there is a Mutual Agreement Procedure (MAP) application already pending for a rollback year, what would be the stand of the APA authorities? Further, what would be the view of the APA Authorities if MAP has already been concluded for a rollback year?**

**Answer:**

If MAP has been already concluded for any of the international transactions in any of the rollback year under APA, rollback provisions would not be allowed for those international transactions for that year but could be allowed for other years or for other international transactions for that year, subject to fulfilment of specified conditions in Rules 10MA and 10RA. However, if MAP request is pending for any of the rollback year under APA, upon the option exercised by the applicant, either MAP or application for roll back shall be proceeded with for such year.

**Rule 10MA(1) provides that the agreement may provide for determining ALP or manner of determination of ALP. However, Rule 10MA(4) only specifies that the manner of determination of ALP should be the same as in the APA term. Does that mean the ALP could be different?**

**Answer:**

Yes, the ALP could be different for different years. However, the manner of determination of ALP (including choice of Method, comparability analysis and Tested Party) would be same.

**Will there be compliance audit for roll back? Would critical assumptions have to be validated during compliance audit?**

**Answer:**

Since rollback provisions are for past years, ALP for the rollback years would be agreed after full examination of all the facts, including validation of critical assumptions. Hence, compliance audit for the rollback years would primarily be to check if the agreed price or methodology has been applied in the modified return.

**Whether applicant has an option to withdraw its rollback application? Can the applicant accept the rollback results without accepting the APA for the future years?**

**Answer:**

The applicant has an option to withdraw its roll back application even while maintaining the APA application for the future years. However, it is not possible to accept the rollback results without accepting the APA for the future years. It may also be noted that the fee specified in Rule 10MA(5) shall not be refunded even where a rollback application is withdrawn.

**For already concluded APAs, will new APAs be signed for rollback or earlier APAs could be revised?**

**Answer:**

The second proviso to Rule 10MA(5) provides for revision of APAs already concluded to include rollback provisions.

**For already concluded APAs, where the modified return has already been filed for the first year of the APA term, how will the time-limit for filing modified return for rollback years be determined?**

**Answer:**

The time to file modified return for rollback years will start from the date of signing the revised APA incorporating the rollback provisions.

**In case of merger of companies, where one or more of those companies are APA applicants, how would the rollback provisions be allowed and to which company or companies would it be allowed?**

**Answer:**

The agreement is between the Board and a person. The principle to be followed in case of merger is that the person (company) who makes the APA application would only be entitled to enter into the agreement and be entitled for the rollback provisions in respect of international transactions undertaken by it in rollback years. Other persons (companies) who have merged with this person (company) would not be eligible for the rollback provisions.

To illustrate, if A, B and C merge to form C and C is the APA applicant, then the agreement can only be entered into with C and only C would be eligible for the rollback provisions. A and B would not be eligible for the rollback provisions. To illustrate further, if A and B merge to form a new company C and C is the APA applicant, then nobody would be eligible for rollback provisions.

**In case of a demerger of an APA applicant or signatory into two or more companies (persons), who would be eligible for the rollback provisions?**

**Answer:**

The same principle as mentioned in the previous answer, i.e., the person (company) who makes an APA application or enters into an APA would only be entitled for the rollback provisions, would continue to apply. To illustrate, if A has applied for or entered into an APA and, subsequently, demerges into A and B, then only A will be eligible for rollback for international transactions covered under the APA. As B was not in existence in rollback years, availing or grant of rollback to B does not arise.

## II

# Place of Effective Management

### **Question 1**

*How the residential status of a company would be determined under Income Tax Act, 1961.*

### **Answer:**

As per Section 6(3) of the Income-tax Act, 1961 (the Act), 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 .

"Place of effective management" is defined in the Act to mean a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole are, in substance, made.

### **Question 2**

*ABC Inc., a Swedish company headquartered at Stockholm, not having a permanent establishment in India, has set up a liaison office in Mumbai in April, 2021 in compliance with RBI guidelines to look after its day to day business operations in India, spread awareness about the company's products and explore further opportunities. The liaison office takes decisions relating to day to day routine operations and performs support functions that are preparatory and auxiliary in nature. The significant management and commercial decisions are, however, in substance made by the Board of Director at Sweden. Determine the residential status of ABC Inc. for A.Y.2022-23.*

### **Answer:**

Section 6(3) provide that a company would 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 . ,

In this case, ABC Inc. is a foreign company. Therefore, it would be resident in India for P.Y. 2021-22 only if its place of effective management, in that year, is in India.

Explanation to Section 6(3) defines "Place of effective management" to mean a place where key management and commercial decisions that are necessary for the conduct of the business of an entity as a whole are, in substance, made. In the case of ABC Inc., its place of effective management for the PY 2021-22 is not in India, since the significant management and commercial decisions are in substance made by the Board of Directors outside India in Sweden.

ABC Inc. has only liaison office in India through which it looks after routine day to day business operations in India. The place where decisions relating to day to day routine operations are taken and support functions that are preparatory or auxiliary in nature are performed are not relevant in determining the place of effective management.

Hence, ABC Inc. being a foreign company is a non-resident for AY 2022-23 since its place of effective management is outside India in the PY 2021-22.

### **Example 1**

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

- i) 30% of income is from transaction where purchases are made from parties which are non associated enterprises and sold to associated enterprises;
- ii) 30% of income is from transaction where purchases are made from associated enterprises and sold to associated enterprises;
- (iii) 30% of income is from transaction where purchases are made from associated enterprises and sold to non-associated enterprises; and
- (iv) 10% of the income is by way of interest.

**Interpretation:** In this case passive income is 40% of the total income of the company. The passive income consists of, -

- (i) 30% income from the transaction where both purchase and sale is from/to associated enterprises; and
- (ii) 10% income from interest.

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

**Example 2:** The other facts remain same as that in Example 1 with the variation that A Co. has a total of 50 employees. 47 employees, managing the warehouse, storekeeping and accounts of the company, are located in country X. The Managing Director (MD), Chief Executive Officer (CEO) and sales head are resident in India. The total annual payroll expenditure on these 50 employees is of Rs. 5 crore. The annual payroll expenditure in respect of MD, CEO and sales head is of Rs. 3 crore.

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

**Example 3:** The basic facts are same as in Example 1. Further facts are that all the directors of the A Co. are Indian residents. During the relevant previous year 5 meetings of the Board of Directors is held of which two were held in India and 3 outside India with two in country X and one in country Y.

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

**Example 4:** The facts are same as in Example 3 but it is established by the Assessing Officer that Although A Co.'s senior management team signs all, the contracts, for all the contracts above Rs. 10 lakh the A Co. must submit its recommendation to B Co. and B Co. makes the decision whether or not the contract may be accepted. It is also seen that during the previous year more than 99% of the contracts are above Rs. 10 lakh and over past years also the same trend in respect of value contribution of contracts above Rs. 10 lakh is seen.

**Interpretation:** These facts suggest that the effective management of the A Co. may have been usurped by the parent company B Co. Therefore, POEM of A Co. may in such cases be not presumed to be outside India even though A Co. is engaged in active business outside India and majority of board meeting are held outside India.

**Example 5:** An Indian multinational group has a local holding company A Co. in country X. The A Co. also has 100% downstream subsidiaries B Co. and C Co. in country X and D Co. in country Y. The A Co. has income only by way of dividend and interest from investments made in' its subsidiaries. The Place of Effective Management of A Co. is in India and is exercised by ultimate parent company of the group. The subsidiaries B, C and D are engaged in active business outside India. The meetings of Board of Director of B Co., C Co. and D Co. are held in country X and Y respectively.

**Interpretation:** Merely because the POEM of an intermediate holding company is in India, the POEM of its subsidiaries shall not be taken to be in India. Each subsidiary has to be examined separately. As indicated in the facts since companies B Co., C Co., and D Co. are independently engaged in active business outside India and majority of Board meetings of these companies are also held outside India. The POEM of B Co., C Co., and D Co. shall be presumed to be outside India.

### Question 3

XYZ Ltd., a foreign company, has its head office at USA. The Board of Directors (BOD) meetings are held in USA. However, the Board of Directors has delegated major powers to a committee in Kolkata and the members of this committee are based in Kolkata. The Board of Directors ratified the decisions of the said committee. In the light of above,

- (1) Discuss the place of effective management (POEM) of XYZ Ltd.
- (2) Discuss the guiding factors of POEM for Board of Directors delegating authorities to Committee

**Answer:**

The location where company's Board of Directors (BOD) regularly meets and makes decisions may be the company's Place of Effective Management (POEM) provided the Board:

1. Retain and exercises its authority to govern the company: and
2. Does, in substance, make the key management and commercial decisions necessary for the conduct of the company's business as a whole.

In given case the board meetings are held in USA, but the same formalise the decisions taken by the committee at Kolkata. Hence Place of Board meeting held at USA cannot be POEM, as power is delegated to committee which is based at Kolkata.

Guiding factors when Board Delegating Authorities to Committee are as under:

If Board of Director had delegated some or all of its major authorities to one or more committees consisting senior management, then POEM shall be at the place where:

1. Members of executive committee are based and
2. Where committee develops and formulate key decisions for formal approval by Board.

Hence in given case, POEM of XYZ Ltd. will be Kolkata, as discussed above.

\*\*\*

## Tax Treaties

### Question 1

*Discuss the relief provided to the foreign income of an assessee in following cases:*

- (a) *In case there is bilateral DTAA*
- (b) *In case there is no DTAA.*

### Answer

Double Taxation Relief is applicable in the case of those assesses whose income is taxed in two or more countries due to residential status or due to source principle. To mitigate the impact of double taxation of income, the provisions for double taxation relief were made.

- (a) India has entered into agreement with many countries regarding avoidance of double taxation. In case there is a bilateral Double Taxation Avoidance Agreement ('DTAA' or 'the Treaty') concluded between India and the other country, the assessee can claim relief under section 90 of the Income tax Act, 1961. Foreign tax credit is provided to the assessee who has paid taxes in India as well as in a foreign country. This tax relief is governed by the provisions of respective DTAA. Further, the provision of Income-tax Act, 1961 are applicable to the assessee to the extent they are more beneficial to him.
- (b) Where there is no bilateral agreement with a country, under Section 90 of the Income tax Act, section 91 of the Act grants unilateral relief in respect of income which has suffered tax both in India and in a country with which no DTAA exists (i.e. doubly taxed income). This relief is provided in the form of a deduction from the income tax payable in India and is calculated on the doubly taxed income at Indian Tax rate or the tax rate of the foreign country whichever is lower or at Indian rate of tax, if both rates are equal. An assessee shall be allowed deduction under section 91 provided all the following conditions are fulfilled:-
  - (a) The assessee is a resident in India during the relevant previous year.
  - (b) The income accrues or arises to him outside India during that previous year.
  - (c) Such income is not deemed to accrue or arise in India during the previous year.
  - (d) The income in question has been subjected to income-tax in the foreign country in the hands of the assessee and the assessee has paid tax on such income in the foreign country.
  - (e) There is no agreement under section 90 for the relief or avoidance of double taxation between India and the other country where the income has accrued or arisen.

## **Question 2**

*The Income-tax Act, 1961 provides for taxation of a certain income earned by Shyam. The Double Taxation Avoidance Agreement, which applies to Shyam, excludes the income earned by him from the purview of tax. Will he be liable to pay tax on the income earned by him? Discuss in the light of provisions of Income Tax Act, 1961 and decided case law, if any.*

### **Answer**

Section 90(2) makes it clear that where the Central Government has entered into a Double Taxation Avoidance Agreement, then in respect of an assessee to whom such agreement applies, the provisions of the Act shall apply to the extent they are more beneficial to the assessee. This means that where tax liability is imposed by the Act, the Double Taxation Avoidance Agreement may be resorted to for reducing the tax liability.

Further, in *CIT v. P.V.A.L. Kulandagan Chettiar* (2004) 267 ITR 654, the Supreme Court has held that in case of any conflict between the provisions of the Double Taxation Avoidance Agreement and the Income-tax Act, 1961, the provisions of the Double Taxation Avoidance Agreement would prevail over those of the Income-tax Act, 1961.

Shyam will, therefore, not be liable to pay tax on such income earned by him.

## **Question 3**

*Yogita Kumari, a resident individual, is a freelance dancer deriving income of Rs. 75,000 from shows performed outside India. Tax of Rs. 10,000 was deducted at source in the country where the shows were performed. India does not have any double tax avoidance agreement with that country. Her income in India amounted to Rs. 5,00,000. Compute tax liability of Yogita for the assessment year 2022-23 assuming she has deposited Rs. 10,000 in Public Provident Fund and paid Rs. 20,000 as medical insurance premium in respect of her father (aged 65 years). Assuming assessee has not opted for Section 115BAC of the Income tax Act, 1961.*

### **Answer**

#### **Computation of Tax Liability of Ms. Yogita Kumari**

<i>Particulars</i>	<i>Amount in Rs.</i>
Indian Income	5,00,000
Foreign Income	75,000
A Gross Total Income	5,75,000
B Less : Deductions under Chapter VIA	
PPF Contribution	Rs. 10,000
Medical Insurance Premium for senior citizen	Rs. 20,000
	(30,000)

C	Total Income (A-B)	5,45,000
	Tax on first Rs. 2,50,000	Nil
	Tax on next Rs. 250000 @ 5%	12,500
	Tax on next Rs. 45,000 @ 20%	9000
	Rebate under section 87A	(Nil)
	Health and Education Cess @ 4%	860
D	Total Tax	22,360
	Average rate of Tax in India	
	Rs. $(22360 / 5,45,000 * 100)$ : 4.1027%	
	Average rate of tax in foreign country	
	Rs. $(10,000 / 75,000 * 100)$ : 13.33%	
	Doubly Taxed Income : Rs. 75,000	
E	Relief under section 91 (on Rs. 75,000 @ 4.1027%)	(3077)
F	Tax payable in India (D-E)	19,283

*Note:*

An assessee shall be allowed Relief under section 91 provided all the following conditions are fulfilled:-

- (a) The assessee is a resident in India during the relevant previous year.
- (b) The income accrues or arises to him outside India during that previous year.
- (c) Such income is not deemed to accrue or arise in India during the previous year.
- (d) The income in question has been subjected to income-tax in the foreign country in the hands of the assessee and the assessee has paid tax on such income in the foreign country.
- (e) There is no agreement under section 90 for the relief or avoidance of double taxation between India and the other country where the income has accrued or arisen.

In this case, Yogita Kumari is eligible for deduction under section 91 since all the above conditions are fulfilled.

#### Question 4

The following are the particulars of income earned by Ms. Sunita, a resident Indian aged 25, for the assessment year 2022-23:

Particulars	Amount in Rs.
Income from playing basketball match in Netherland	12,00,000
Tax paid in Netherland	1,80,000
Income from playing basketball match in India	19,20,000
Life insurance premium paid	1,20,000
Medical Insurance Premium paid through net banking for her father aged 62 years	25,000

Compute her total income and tax liability for the assessment year 2022-23. Assume there is no Double Taxation Avoidance Agreement between India and Netherland. Assuming assessee has not opted for Section 115BAC of the Income tax Act, 1961.

#### Answer

##### Computation of total income and tax liability of Ms. Sunita for the A.Y 2022-23

	Particulars	Amount (Rs.)	Amount (Rs.)
A	Indian Income (Income from playing basketball tournaments in India)	19,20,000	
	Foreign Income (Income from playing basketball matches in Netherland)	12,00,000	
	Gross Total Income		31,20,000
B	Less : Deduction under chapter VIA Deduction u/s 80C for Life Insurance Premium	1,20,000	
	Deduction u/s 80D for Medical Insurance Premium paid for her father	25,000	(1,45,000)
C	Total Income		29,75,000
D	Tax on total income Tax upto Rs. 10,00,000 -	Rs. 1,12,500	
	Tax on income above Rs. 10,00,000	Rs. 592500	7,05,000
	Add: Health and Education Cess @ 4%		28200
E	Average rate of tax in India Rs. (7,33,200 / 29,75,000 x 100)	24.65%	7,33,200

Average rate of tax in foreign country		
Rs.( 1,80,000/12,00,000 X 100)	15%	
Rebate u/s 91		(180000)
On Rs. 12 lakh @15% (lower of average Indian tax rate or average foreign tax rate)		
Tax payable in India		5,53,200

---

*Note :*

Ms. Sunita shall be allowed Relief under section 91 of Income Tax Act, 1961, since conditions mentioned therein are fulfilled.

#### **Question 5**

*Sudesh (age 62 years) is a resident and ordinarily resident in India. Details of his Income/ Investment are as under:*

*Rs. 16,80,000 is income from a business in India*

*Rs.5,45,000 is income from a business in country A*

*Rs. 32,000 has been paid as tax on income earned in country A*

*Rs. 28,000 paid as tuition fee for his daughter studying in India*

*Rs. 90,000 paid as tuition fee for his son studying outside India*

*Rs. 48,000 received as interest on Government securities.*

*Assume there is no Double Taxation Avoidance Agreement:*

*(i) Find out the tax liability of Sudesh for the Assessment Year 2022-23.*

*(ii) Does it make any difference, if Sudesh is a non-resident?*

*Note: Assuming assessee has not opted for Section 115BAC of the Income tax Act, 1961.*

#### **Answer**

##### **(i) Computation of Tax Liability of Sudesh**

**For A.Y 2022-23**

	<i>Particulars</i>	<i>Rs.</i>
	Business Income in India	16,80,000
	Interest on Government Securities	48,000
A	Gross Total Income	17,28,000
B	Deduction u/s 80C	28,000
	For tuition fee (Note 1)	

C	Total Income	17,00,000
	Foreign Income to be included in Indian Income for computation of tax rate	5,45,000
	Total Income for calculating tax rate	22,45,000
D	Tax on 22,45,000	
	Upto Rs. 3,00,000 (in case of senior citizen)	Nil
	From Rs. 3,00,001 to 5,00,000 @ 5%      Rs. 10,000	
	From Rs. 5,00,001 to 10,00,000 @ 20%      Rs. 1,00,000	
	On balance Rs. 12,45,000      @ 30%      Rs. 3,73,500	4,83,500
E	Health and Education Cess (4% of tax)	<u>19,340</u>
F	Tax Payable	5,02,840
G	Average Tax Rate in India 22.40% (Rs.5,02,840/22,45,000 * 100) Tax rate in Foreign Country (32000/545000*100)=5.87% Relief u/s 91 (545000*5.87%)	(32000)
H	Indian Tax Liability	470840
	Rounded off Tax liability	470840

*Note:*

1. Deduction under Section 80C is not available for tuition fee paid outside India.
- (ii) If Sudesh is non-resident, his income taxable in India would be Rs. 17,00,000. Rs. 5,45,000 would not be included in his income as the same is earned outside India and would be taxable in country A.

Further, the tax liability of Sudesh in India would be calculated in following manner:

Particular	Rs.	Rs.
Total Income		17,00,000
Tax on 17,00,000		
Upto Rs. 2,50,000 (for non-resident)		Nil
From 2,50,000 to 5,00,000 @ 5%		12,500

From 5,00,000 to 10,00,000 @ 20%	1,00,000	
On balance 7,00,000 @ 30%	2,10,000	3,22,500
Health & Education Cess @ 4%		12,900
Tax liability in India		3,35,400

## Question 6

*What is Tax Information Exchange Agreement 'TIEA'?*

### Answer

A Tax Information Exchange Agreement (TIEA) is an agreement between two jurisdictions and creates for both parties, rights and obligations, which are to be respected. It is not a double taxation avoidance treaty between two states but an agreement between two jurisdictions only for the purpose of exchange of information.

## Question 7

*Types of Double Taxation Agreement.*

### Answer:

Comprehensive DTAA: Comprehensive DTAAAs are those which cover almost all types of incomes covered by any model convention. Many a time a treaty covers wealth tax, gift tax, surtax etc. too.

Limited DTAA: Limited DTAAAs are those which are limited to certain types of incomes only, e.g. DTAA between India and Pakistan is limited to shipping and aircraft profits only.

Foreign nationals of several countries such as USA, Canada and UK are required to declare and pay taxes on their worldwide income. Double taxation avoidance treaties, actually help in either minimizing the tax payable to your home country or in some cases even eliminating further tax liabilities, depending on the tax rates applicable.

## Question 8

*Need of Double Taxation Agreement*

### Answer

1. The need for Double Taxation Avoidance Agreement (DTAA) arises because of rules in two different countries regarding chargeability of income based on receipt and accrual, residential status etc.
2. Double taxation is frequently avoided through DTAAAs entered into by two countries for the avoidance of double taxation on the same income.
3. The DTAA eliminates or mitigates the incidence of double taxation by sharing revenues arising out of international transactions by the two contracting states of the agreement.
4. As there is no clear definition of income and taxability thereof, which is accepted internationally, an income may become liable to tax in two countries.

5. In such a case, the possibilities are as under:

- The income is taxed only in one country.
- The income is exempt in both countries.
- The income is taxed in both countries, but credit for tax paid in one country is given against tax payable in other country.

If the two countries do not have DTAA then in such a case, the domestic law of the country will apply. In the case of India, the provisions of Section 91 of the Income Tax Act will apply. The CBDT has clarified vide circular no. 333 dated 2nd April, 1982 that in case of a conflict in the provisions of the agreement of Tax Avoidance of double taxation and the Income Tax Act, the provisions contained in the Agreement for Double Tax Avoidance will prevail.

### **Question 9**

Define Tax Treaty. Discuss the principal objectives of Indian Tax Treaties.

#### **Answer:**

**Tax Treaty:** A Tax treaty is a bilateral agreement made by two countries to resolve issues involving double taxation of passive as well as active income Tax treaties generally determine the amount of tax that a country can levy on a taxpayer's income/capital. It is also called a Double Taxation Avoidance Agreement.

Principal objective of India Tax Treaties are as under:

(1) For granting relief in respect of

- a. Income on which tax have been paid both under the Income Tax Act, 1961 and Income Tax Act prevailing in the other country ; or
- b. Income -tax chargeable under the Income Tax Act, 1961 and under law in force in that country to promote mutual economic relations, trade and investment; or

(2) For the avoidance of double taxation of on income under the Income Tax Act, 1961 and under the corresponding law in force in that country; or

(3) For exchange of information for the prevention of evasion or avoidance of Income Tax chargeable under the Incomes Tax Act, 1961 or under corresponding law in force in that country, or investigation of cases of such evasion or avoidance, or

(4) For recovery of income tax under Income Tax Act, 1961 and under the corresponding law in force in that country.

\*\*\*

# Income Tax Implication on specified transactions

## Question 1

*Distinguish between Slump sale and demerger.*

## Answer

*Slump Sale:* As per Section 2(42C) of Income tax Act slump sale means the transfer of one or more undertakings by any means for a lump sum consideration without values being assigned to the individual assets and liabilities in such sales. Any profits or gains arising from the slump sale, affected in the previous year, shall be chargeable to income tax as capital gains and shall be deemed to be the income of the previous year in which the transfer took place. Slump sale can be between any person and consideration is always in cash.

*Demerger:* As per section 2(19AA) of Income tax Act demerger, in relation to companies, means the transfer, pursuant to a scheme of arrangement under sections 391 to 394 of the Companies Act, 1956. The transfer is ongoing concern basis and all the property and liabilities of the undertaking, being transferred by the demerged company, immediately before the demerger, becomes the property and liabilities of the resulting company by virtue of the demerger. Demerger is between companies only and consideration is in form of shares only.

## Question 2

*ABC Finance Corp., a finance company had received certain amount from its subsidiary, under a scheme of arrangement sanctioned by the High Court under sections 391 to 394 of the Companies Act, 1956. Can this scheme of arrangement be treated as slump sale to attract capital gains provisions? Discuss in the light of decided case law.*

## Answer

The facts of the case are similar to that of *SREI Infrastructure Finance Ltd. v. Income-tax Settlement Commission (2012) 207 Taxman 74 of Income tax Act (Delhi)*, where the Delhi High Court held that it would be wrong to infer that section 50B is applicable only in case of actual "sale" of assets. Moreover, section 50B of Income tax Act shall be applicable in all types of "transfer" mentioned in section 2(47). When a scheme under sections 391 to 394 of the Companies Act, 1956 is sanctioned by the Court, it is treated as a binding statutory scheme because the scheme has to be implemented and enforced. However, this cannot be a ground for the assessee to escape tax on 'transfer' of a capital asset under the provisions of the Income-tax Act, 1961. The taxability of the said transaction is to be decided as per the provisions of the Income-tax Act, 1961.

Therefore, although the scheme is approved by the court under sections 391 to 394 of the Companies Act, 1956 it shall be treated as slump sale and capital gains provisions would be attracted.

### **Question 3**

*XYZ Pvt. Ltd. has converted itself into a Limited Liability Partnership (LLP) on 1.4.2019 and at the time of conversion, all the conditions specified in section 47(xiib) have been fulfilled. The unabsorbed business loss and depreciation of the company as on the date of conversion were Rs. 40 lakhs and Rs. 27 lakhs respectively. The business profits of the LLP for the previous year 2019-20 were Rs. 75 lakhs. However on 5.9.2020 two partners (who were erstwhile shareholders of XYZ Pvt. Ltd) having in aggregate 51% of the profit sharing in LLP, resigned. Discuss the tax consequences of the conversion of company into LLP and subsequent resignation of partners.*

### **Answer**

As per section 72A(6A), the LLP would be able to carry forward and set-off the unabsorbed depreciation and business loss of Rs. 40 lakhs and Rs. 27 lakhs, respectively, of XYZ Pvt. Ltd. since at the time of conversion, all the conditions specified in section 47(xiib) have been fulfilled. Further, the LLP can set off the unabsorbed depreciation and business loss aggregating to Rs. 67 lakhs against its business profits of Rs. 75 lakhs for A.Y.2020-21.

However, if in any subsequent year, the LLP fails to fulfill any of the conditions mentioned in section 47(xiib), the business loss or unabsorbed depreciation of the company already set off by the LLP would be deemed to be the income chargeable to tax of the LLP for the year in which it fails to fulfill such conditions.

One of the conditions mentioned in section 47(xiib) is that the erstwhile shareholders of the company continue to be entitled to receive at least 50% of the profits of the LLP for a period of 5 years from the date of conversion. Since two partners (who were erstwhile shareholders of ABC Pvt. Ltd.) holding in aggregate 51% of the profit-sharing in the LLP have resigned on 5.9.2020, thus the LLP has failed to fulfill this condition.

Therefore, the amount of Rs. 67 lakhs representing unabsorbed depreciation and business losses set-off against profits of the LLP for the A.Y. 2020-21, would deemed to be income of the LLP for the A.Y.2021-22, being the year in which it failed to fulfill the conditions.

### **Question 4**

*ABC Ltd. was amalgamated with XYZ Ltd. on 31.03.2021. All the conditions of section 2(1B) were satisfied. ABC Ltd. has the following carried forward losses as assessed till the Assessment Year 2021-22:*

<i>Particulars</i>	<i>Rs. (in lakhs)</i>
(i) Speculative Loss	4
(ii) Unabsorbed Depreciation	18
(iii) Unabsorbed expenditure of capital nature on scientific research	2
(iv) Business Loss	120

*XYZ Limited has computed a profit of Rs. 140 lakhs for the financial year 2021-22 before setting off the eligible losses of ABC Ltd. but after providing depreciation at 15% per*

*annum on 150 lakhs, being the consideration at which plant and machinery were transferred to XYZ Ltd. The written down value as per income-tax record of ABC Ltd. as on 31st March, 2021 was Rs. 100 lakhs. The above profit of XYZ Ltd. includes speculative profit of Rs. 10 lakhs. Compute the total income of XYZ Ltd. for Assessment Year 2022-23.*

### Answer

#### **Computation of total income of XYZ Ltd. for the A.Y. 2022-23**

Particulars	Rs. (in lakhs)
<b>Business income</b>	
Business income before setting-off brought forward losses of ABC Ltd.	140
Add: Excess depreciation claimed in the scheme of amalgamation of ABC Limited with XYZ Ltd.	
Value at which assets are transferred by ABC Ltd.	150
WDV in the books of ABC Ltd.	<u>100</u>
Excess accounted	50
Excess depreciation claimed in computing taxable income of XYZ Ltd. [Rs. 50 lakhs × 15 %] [Explanation 2 to section 43(6)]	<u>7.50</u>
	147.50
Set-off of brought forward business loss of ABC Ltd.	
(Notes 2 & 4)	(120.00)
Set-off of unabsorbed depreciation under section 32(2) read with section 72A (Notes 2 & 4)	(18.00)
Set-off of unabsorbed capital expenditure under section 35(1)(iv) read with section 35(4) (Note 5)	<u>(2.00)</u>
Income	<u>7.50</u>

#### *Notes:*

1. It is presumed that the amalgamation is within the meaning of section 72A of the Income tax Act, 1961.
2. In the case of amalgamation of companies, the unabsorbed losses and unabsorbed depreciation of the amalgamating company shall be deemed to be the loss or unabsorbed depreciation of the amalgamated company for the previous year in which the amalgamation was effected and such business loss and unabsorbed depreciation shall be carried forward and set-off by the amalgamated company for a period of 8 years and indefinitely, respectively.
3. As per section 72A(7), the accumulated loss to be carried forward specifically excludes loss sustained in a speculative business. Therefore, speculative loss of Rs. 4

lakhs of ABC Ltd. cannot be carried forward by XYZ Ltd.

4. Section 72(2) provides that where any allowance or part thereof unabsorbed under section 32(2) (i.e., unabsorbed depreciation) or section 35(4) (i.e., unabsorbed scientific research capital expenditure) is to be carried forward, effect has to be first given to brought forward business losses under section 72.
5. Section 35(4) provides that the provisions of section 32(2) relating to unabsorbed depreciation shall apply in relation to deduction allowable under section 35(1)(iv) in respect of capital expenditure on scientific research related to the business carried on by the assessee. Therefore, unabsorbed capital expenditure on scientific research can be set-off and carried forward in the same manner as unabsorbed depreciation.
6. The restriction contained in section 73 is only regarding set-off of loss computed in respect of speculative business. Such a loss can be set-off only against profits of another speculation business and not non-speculation business. However, there is no restriction under the Income-tax Act, 1961 regarding set-off of normal business losses against speculative income. Therefore, normal business losses can be set-off against profits of a speculative business.

### **Question 5**

*A resident by name Mr. Ram received gifts during the financial year 2021-22 as follows –*

- a *Rs. 1,00,000 from his friend residing in USA,*
- b *Rs. 20,000 from his elder brother residing in Lucknow,*
- c *Rs. 50,000 from his friend residing in Mumbai (received on the occasion of birthday of Mr. Ram),*
- d *Shares received from his father, the fair market value(i.e. value as per stock exchange) of the shares on the date of gift was Rs. 2,00,000*
- e *Rs. 50,000 from his friend residing in Mumbai (received on the occasion of marriage of Mr. Ram).*
- f *Jewellery received from his friend, the fair market value of the jewellery is Rs. 84,000.*

*We need to advice Mr. Ram with regard to tax treatment of above items in the hands of Mr. Ram.*

### **Answer –**

The tax treatment of gifts in the hands of Mr. Ram will be as follows –

- a. Rs. 1,00,000 received from his friend will be fully included in income because friend is not covered in the definition of 'relative'.
- b. Rs. 20,000 received from elder brother will not be charged to tax because elder brother is covered in the definition of 'relative'.
- c. Birthday is not covered in the list of prescribed occasion on which gift is not charged to tax, hence Rs. 50,000 received on the occasion of birthday will be included in income.
- d. Nothing will be included in income in respect of shares received from his father,

- since father comes under the definition of the term 'relative'
- e. Marriage is covered in the list of prescribed occasion on which gift is not charged to tax, hence Rs.50,000 received on the occasion of marriage will not be taxed.
  - f. Friend is not covered in the definition of relative and hence, in respect of jewellery received from his friend, the fair market value, i.e., Rs. 84,000 will be included in income.

### **Question 6**

*A held 2000 shares in a company ABC Ltd. ABC Ltd amalgamated with another company during the previous year ended 31.03.2022. Under the scheme of amalgamation, A was allotted 1000 shares in the new company. The market value of shares allotted is higher by Rs. 50000 than the value of holding in ABC Ltd.*

*The assessing officer proposes to treat the transaction as an exchange and to tax Rs. 50000 as capital gains. Is he justified?*

### **Answer:**

Assuming that the amalgamated company is an Indian company, the transaction is covered by the exemption u/s 47 and the proposal of the assessing officer to treat the transaction as an exchange is not justified.

### **Question 7**

*ABC Limited is an company incorporated under the Companies Act which is having two undertakings engaged in manufacture of cement and steel, decided to hive off cement division to XYZ Limited a company incorporated under the Companies Act, by way of demerger. The net worth of ABC Limited immediately before demerger was Rs. 40,00,00,000/-. The net book value of assets transferred to XYZ Limited was Rs. 10,00,00,000/-. The demerger was made in January 2022. In the scheme of demerger, it was fixed that for each equity share of Rs. 10 each (fully paid up) of ABC Limited, two equity shares of Rs. 10 each (fully paid up) were to be issued.*

*Mr. Ram. held 25,000 equity shares in ABC Limited which were acquired in the financial year 2003-2004 for Rs. 6,00,000. Mr. Ram received 50,000 equity shares from XYZ Limited consequent to demerger in January 2022. He sold all the shares of XYZ Limited for Rs. 8,00,000 in March, 2022.*

*Now following are the questions to be answered –*

- i. *Does the transaction of demerger attract any income tax liability in the hands of above two companies?*
- ii. *Would capital gain arise in the hands of Mr. Ram on receipt of shares of XYZ Limited and on sale of shares.*
- iii. *Whether the sale of shares by Mr. Ram affect the tax benefits availed by ABC Limited and/or XYZ Limited?*

*Also compute the capital gain in hands of Mr. Ram on sale of share of XYZ Ltd.*

### **Answer**

- (i) No, the transaction of demerger would not attract any income-tax liability in the hands of any of the above companies.
- (ii) There would be no capital gains liability in the hands of Mr. Ram on receipt of shares of XYZ Limited, In case he sells these shares than Capital gains would arise.
- (iii) No, sale of shares by Mr. Ram would not affect the tax benefits availed by ABC Limited or by XYZ Limited.
- (iv) Capital gain in the hands of Mr. Ram on sale of shares of XYZ ltd for AY 2022-23

<i>Period of Holding</i>	<i>2003-04 to March, 2022 LTCA</i>
FVC	Rs. 8,00,000
<i>Less ICOA</i> Rs. 6,00,000 x 10,00,000/40,00,000	Rs. 1,50,000
LTCG	Rs. 6,50,000

(We have ignored Section 112A implications while solving capital gains)

### **Question 8**

ABC Ltd. proposes to sell one unit XYZ which was set up in 2010 (out of 10 units) and is not related to company's main line of business. Total consideration for sale of XYZ unit as a going concern by way of slump sale is Rs. 3,50,000. The summarized financial position of XYZ unit as on 31<sup>st</sup> January, 2022 (Date of Sale) is as under:

Capital and Liabilities	Amount Rs.	Assets	Amount Rs.
Paid up capital	50,000	Fixed assets	70,000
General Reserve	40,000	Debtors	40,000
Revaluation Reserve	30,000	Inventories	40,000
Current liabilities	30,000		
	150000		150000

Additional information as under :

1. Fixed assets includes Land purchased at Rs. 5,000 in May, 2013 revalued at Rs. 50,000.

2. For the remaining fixed assets, their written down value as per the Income-tax Act, 1961 is Rs. 10,000.

Compute the capital gain arising on sale of XYZ unit of ABC Ltd.

**Answer:**

Computation of long term capital gain on slump sale of XYZ Unit of ABC Ltd.

Particulars	Amount	Amount
Fixed assets at W.D.V.	10,000	
Land at cost price	5,000	
Debtors	40,000	
Inventories	40,000	95,000
Less Current liabilities		(30,000)
Net worth of XYZ Unit Full		65,000
Value of Consideration		3,50,000
Long Term Capital Gain		2,85,000

Note:

1. In slump sale, benefit of indexation is not available.
2. Revaluation Reserve is not to be considered.

\*\*\*



UNIT	CONTENT	PAGE Nr
I	BASIC CONCEPTS, MEANING AND DEFINITION	02
II	INCOME EXEMPTED FROM TAX	04
III	INCOME FROM SALARY	09
IV	INCOME FROM HOUSE PROPERTY	20
V	INCOME FROM BUSINESS OR PROFESSION	26



**UNIT - I**  
**BASIC CONCEPTS, MEANING AND DEFINITION**

**Meaning of tax**

The tax is a compulsory payment that has to be made by individual or other persons to central government, state government or local government. Tax is based on certain will establishment rules or criteria such as income earned, property owned or expenditure made.

**Direct and indirect tax**

Direct tax is a payment directly made to the stable by the person who bears it.  
Indirect tax is a tax which is paid by one person and burned by another person.

**Income tax act**

The income tax act of 1961 has been in effect from the first day of April 1962 (sec 1). It contains 298 sec, sub sections, schedules etc. the income tax rules of 1962 was framed by **central board of Direct Taxes (CBDT)**

**Assessment year (sec 2(9))**

Assessment year may be defined as a year in which the income tax of the previous year is to be assessed. It is a period of twelve months starting from April 1 of every year and ending on March 31 of the next year.

**Previous year (sec 3)**

For the purposes of this Act, the term "previous year" means that the financial year immediately preceding the assessment year. ... Under Income Tax, the returns are filed by assesses after end of the year/ period during which earnings are made and that period is called as previous year/ financial year.

**Definition of 'Assessee'**

Section 2(7) of Income Tax Act. As per S. 2(7) of the Income Tax Act, 1961, unless the context otherwise requires, the term "**Assessee**" means a person who is responsible for payment of any tax or any other sum of money under this Act, and includes

**Person 2(31)**

It includes an individual and Hindu Undivided Family (HUF), Company, Firm, Association of Person (AOP), Body of Individual (BOI) Local Authority & Artificial Juridical Persons.

**AGRICULTURAL INCOME (SEC 2(1A))**

In India, agricultural income refers to income earned or revenue derived from sources that include farming land, buildings on or identified with an agricultural land and commercial produce from a horticultural land. Agricultural income is defined under section 2(1A) of the Income Tax Act, 1961.

**Different types of Agricultural Income**

- Rent or Revenue Derived from land.
- Income from Agriculture Operations.
- Income from Farm House/Building Attached to Agricultural Land.



**Non-agricultural income from land**

- Income from markets
- Income from stone quarries
- Income from mining royalties
- Income from land used for storing agricultural produce
- Income from supply of water for irrigation purpose
- Income from self-grown, grass and trees
- Income from fisheries
- Remuneration received as manager of an agricultural farm
- Income from interest on arrears of rent of agricultural land

Kamraj College



**UNIT - II**  
**INCOME EXEMPTED FROM TAX**

**Meaning and importance of residential status**

The taxability of an individual in India depends upon his residential status in India for any particular financial year. The term residential status has been coined under the income tax laws of India and must not be confused with an individual's citizenship of India. An individual may be a citizen of India but may end up being a non-resident for a particular year. Similarly, a foreign citizen may end up being a resident of India for income tax purposes for a particular year.

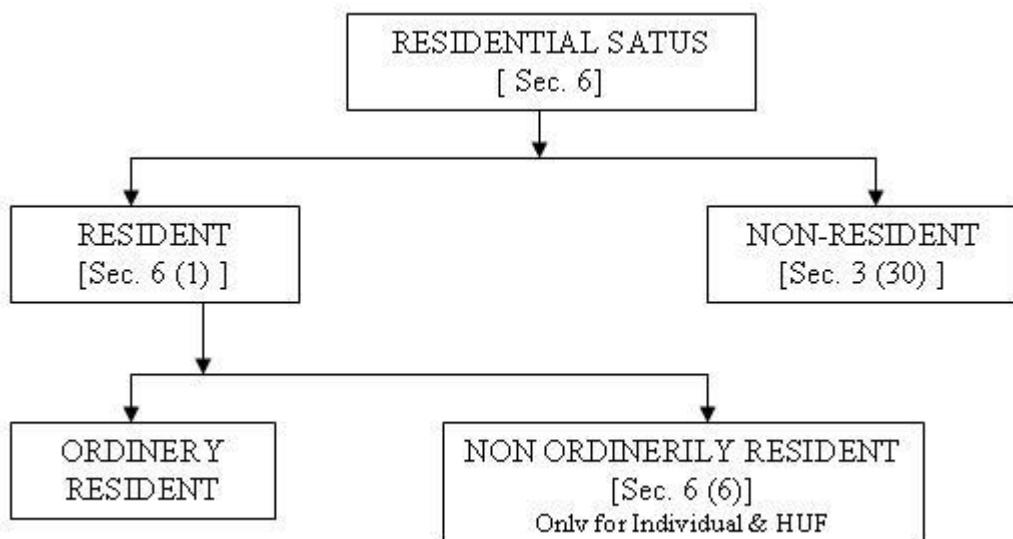
Also to note that the residential status of different types of persons via an individual, a firm, a company etc is determined differently in this article, we have discussed about how the residential status of an individual taxpayer can be determined for any particular financial year

**How to determine residential status?**

For the purpose of income tax in India, the income tax laws in India classify taxable persons as:

- A resident
- A resident not ordinarily resident (RNOR)
- A non-resident (NR)

The taxability differs for each of the above categories of taxpayers. Before we get into taxability, let us first understand how a taxpayer becomes a resident, an RNOR or and NR.



**Resident**

A taxpayer would be qualified as a resident of India if he satisfies any one of the following 2 conditions:

- Stay in India for a year is 182 days or more
- Stay in India for the immediately 4 preceding years is 365 days or more and 60 days or more in the relevant financial year

In the event an individual leaves India for employment during an FY, he will be qualified as a resident of India only if he stays in India for 182 days or more. else the condition (b) above 60 days will not apply to him



### **Resident Not Ordinarily Resident**

If an individual qualifies as a resident, the next step is to determine if he/she is a Resident ordinarily resident (ROR) or an RNOR. He will be a ROR if he meets both the following conditions:

- Has been a resident of India For at least 2 out of 10 years immediately, For the previous years
- Has stayed in India for at least 730 days in 7 immediately after the preceding years

Therefore, if any individual fails to satisfy even one of the above conditions, he would be an RNOR.

### **Non-resident**

An individual satisfying neither of the conditions stated in (a) or (b) above would be an NR for the year.

### **Taxability**

#### **Resident:**

A resident will be charged to tax in India on his global income i.e. income earned in India as well as the income earned outside India.

#### **NR and RNOR:**

Their tax liability in India is restricted to the income they earn in India. They are not in need to pay any tax in India on their foreign income.

Also note that in case of double taxation of income where the same income is getting taxed in India as well as in abroad, one may resort to the Double Taxation Avoidance Agreement (DTAA) that India would have entered into with the other country in order to eliminate the possibility of paying taxes twice.

### **Scope of total income**

Section -5 of Income Tax Act, 1961 provides Scope of total Income in case a person who is a resident, not an ordinarily resident in India and person who is a non-resident which includes. Income can be Income from any source which (a) is received or is deemed to be received in India in such year by or on behalf of such person; or (b) accrues or arises or is deemed to accrue or arise to him in India during such year; or (c) accrues or arises to him outside India during such year.

**Table explaining Scope of total Income under section 5 of Income Tax Act, 1961**

Sr. No	Particulars	Resident Ordinary Resident (ROR)	Resident Ordinary Resident – 5(1)	Not Resident (RNOR) – 5(2)	Non Resident (NR)– 5(2)
1	Income received in India	Taxed	Taxed	Taxed	
2	Income Deemed to be receive in India	Taxed	Taxed	Taxed	



**STUDY MATERIAL FOR B.COM**  
**INCOME TAX LAW & PRACTICE - I**  
**SEMESTER - V, ACADEMIC YEAR 2020 - 21**



3	Income accrues or arises in India	Taxed	Taxed	Taxed
4	Income deemed to accrues or arises in India	Taxed	Taxed	Taxed
5	Income accrues or arises outside India	Taxed	NO	NO
6	Income accrues or arises outside India from business/profession controlled/set up in India	Taxed	Taxed	NO
7	Income Other than Above (No Relation In India)	Taxed	NO	NO

Note-

1. Residential status is as per section 6 of Income Tax Act, 1961.
2. Deemed income is not actually accrued but is supposed to be accrued notionally.
3. The income accrued is when the assessee obtains the rights to receive it.
4. Previous year means the financial year immediately preceding the assessment year.

Explanation 1 & 2:-

Income accruing or arising outside India shall not be deemed to be received in India within the meaning of this section by reason only of the fact that it is taken into account in a balance sheet prepared in India.

Income which has been included in the total income of a person on the basis that it has accrued or arisen or is deemed to have accrued or arisen to him shall not again be so included on the basis that it is received or deemed to be received by him in India.

**Certain Examples of incomes which treated as incomes deemed to have accrued or arisen in India:**



- If Mr. X Transfer his Residential Property situated in Delhi then Capital gain arising on transfer of such Capital Asset is deemed to accrue in India. It means Capital gain arising on transfer of property situated in India.
- Income from business connection in India.
- Dividend paid by an Indian company.
- Income from any property, asset or other source of income located in India.

### **EXERCISES**

Mr. Rajan left India for the first time on 15<sup>th</sup> December 2018 and returned back to India on 2<sup>nd</sup> February 2019. Identify his residential status for the assessment year 2019-20.

### **Solution:**

Mr.Rajan Singh will get the status “Ordinary Resident”, since he satisfies the first basic condition and both the additional conditions.



**STUDY MATERIAL FOR B.COM**  
**INCOME TAX LAW & PRACTICE - I**  
**SEMESTER - V, ACADEMIC YEAR 2020 - 21**



MR. Williams is an Indian citizen who lives, in India since 1984. During the previous year 2018-2019 he went to Arabia for 325 days. Identify the residential status.

**Solution:**

Mr. Williams will get the status “Non-Resident”, since he did not satisfy the basic conditions itself as he had stayed only for 40 days in the previous year 2018-2019.

From the following details calculate the total income of Mr. Raja, if he is OR, NOR and NR

- dividend from Indian company rs 1,00,000
- dividend from foreign company rs 1,50,000, received in India
- income from business in Kenya but controlled from India rs, 2,00,000
- income accrued in Switzerland rs, 2,50,000, 2/5<sup>th</sup> received in India
- income from business in Indonesia but controlled from Bangladesh rs, 5,00,000

**Solution:**

**Calculation of taxable income of Mr. Raja**

S.No	Income	O.R	N.O.R	N.R.
1	Dividend from Indian company	-	-	-
2	Dividend from foreign company, received in India	1,50,000	1,50,000	1,50,000
3	Income from business in Kenya but controlled from India	2,00,000	2,00,000	2,00,000
4	income accrued in Switzerland a. 2/5 received in India {2,50,000 * 2/5} b. Balance 1,50,000	1,00,000  1,50,000	1,00,000  -	1,00,000  -
5	Income from business in Indonesia but controlled from Bangladesh	5,00,000	-	-
<b>Total income</b>		<b>11,00,000</b>	<b>4,50,000</b>	<b>2,50,000</b>

Mr. Sunil earns the following income during the previous year 2018-19

- Interest from an Indian company received in Germany rs, 1,00,000
- Pension from former employer in India received in U.K. Rs, 2,00,000
- Income from companies in USA and received in India 1,00,000
- Income from agriculture in USA and received in India 10,000
- Income from employment in Japan received there rs, 20,000
- Past untaxed profits brought to India rs, 50,000

Compute GTI of Sunil for the assessment year 2019-20 if he is,

- Resident
- Not ordinarily resident
- Non resident



**STUDY MATERIAL FOR B.COM**  
**INCOME TAX LAW & PRACTICE - I**  
**SEMESTER - V, ACADEMIC YEAR 2020 - 21**



**Solution:**

**Calculation of taxable income of Mr.Sunil**

<b>Sr</b>	<b>Income</b>	<b>O.R</b>	<b>N.O.R</b>	<b>N.R.</b>
1	Interest from an Indian company received in Germany	1,00,000	1,00,000	1,00,000
2	Pension from former employer in India received in U.K	2,00,000	2,00,000	2,00,000
3	Income from companies in USA and received in India	1,00,000	1,00,000	1,00,000
4	Income from agriculture in USA and received in India	10,000	10,000	10,000
5	Income from employment in Japan received there	20,000	-	-
6	Past untaxed profits brought to India Rs, 50,000	-	-	-
	Total income	4,30,000	4,10,000	4,10,000



**UNIT - III**  
**INCOME FROM SALARY**

**Salary**

Salary comes into existence as a result of employer-employee relationship. In a employer-employee relationship, employee performs his duties and the employer provides him salary.

**Allowances**

Allowances are part of salary given to employees to meet some particular requirements such as house rent, conveyance, etc. Allowances may be fully taxable, partially taxable or fully exempt.

**House Rent Allowance [S. 10(13A) & Rule 2A]**

The least of the following is exempt from tax:

- 50% of salary, (residential house situated at Mumbai, Kolkata, Delhi or Chennai) and 40% of salary where residential house is situated at any other place;
- Actual house rent allowance received by the employee;
- Excess of rent paid over 10% of salary

**Leave Encashment [S. 10(10AA)]**

Encashment of earned leave while in service will be treated as income. S. 17(1)(v)(a).

Encashment of earned leave on retirement would however, be exempt to the extent of least of:

- 10 months' salary calculated on the basis of last 10 months average salary or
- Rs. 3,00,000
- Amount equivalent to earned leave
- Actual amount paid by the employer

Entitlement of earned leave should not exceed 30 days for every year of actual service. Limits provided for aggregate maximum from any number of employers. Encashment of earned leave on retirement would be wholly exempt for employees of Central/State Government.

**Special Allowances [S. 10(14)]**

Following prescribed special allowances are exempt:

- Allowance, not in the nature of perquisite, granted to meet expenses wholly, necessarily and exclusively incurred in the performance of duties, to the extent to which actually incurred.
- Allowance granted to meet personal expense at the place where duties of his office are ordinarily performed or at the place where he ordinarily resides or to compensate for increased cost of living as may be prescribed in Rule 2BB.

**Nature of allowance prescribed under Rule 2BB**

- For cost of travel on tour or on transfer,
- For ordinary daily charges on account of absence from normal place of duty on tour or for journey in connection with transfer,
- For conveyance in performance of duties, where free conveyance is not provided,
- For expenditure on helper engaged for performance of office duties,



- For encouraging academic, research and training pursuits in educational and research institutions,
- For purchase or maintenance of uniform,
- Special Compensatory Allowance in specified areas to extent specified,
- Tribal Area Allowances in specified states up to Rs. 200 p.m.
- For meeting personal expenditure of employee of transport system running transport vehicle, up to 70% of allowance, maximum of Rs. 6,000 p.m., provided no daily allowance for the said duty is received.
- Children educational allowance @ Rs. 100 p.m. per child, maximum of two children,
- Children hostel allowance @ Rs. 300 p.m. per child, maximum of two children,
- Compensatory Field Area Allowance in specified areas, @ Rs. 2,600 p.m.
- Compensatory modified field area allowance @ Rs. 1,000 p.m.
- Counter insurgency allowance @ Rs. 3,900 p.m. to members of armed forces.
- Transport allowance (TA) granted to meet expenses for commuting between place of residence and place of duty is exempt up to Rs. 800 per month and TA received by blind or orthopedically handicapped is exempt up to Rs. 1,600 per month.
- Underground allowance granted to employee of underground coal mines: Rs. 800 per month.
- Special allowance in the nature of high altitude to members of armed forces: Rs. 1,060 per month for altitude of 9,000 to 15,000 ft. or Rs. 1,600 per month for altitude above 15,000 ft.
- Special compensatory highly active field area allowance to members of armed forces Rs. 4,200 per month.
- Island (duty) allowance to members of armed forces – Rs. 3,250/- per month.
- Perquisites
- Perquisites are benefits such as rent free accommodation, company's car, etc
- Perquisites may be provided in cash or in kind.
- Reimbursement of expenses incurred during office work is not a part of perquisites.
- Unauthorized benefits obtained do not form part of Perquisites
- Perquisites may be fully taxable, partially taxable or fully exempt.
- Fully and Partially Taxable Perquisites

#### **Perquisites not taxable in all cases**

The following perquisites are not taxable under CBDT instructions or by virtue of the Act/Rules:

- The provision of medical facilities as per Para 4(i).
- Free meals provided to all employees in office up to Rs. 50 per employee provided by the employer through paid vouchers usable at eating joints.
- Telephone including mobile phone provided to the employee.
- Perquisites allowed outside India by the Government to a citizen of India for rendering services outside India.
- Sum payable by an employer to pension or deferred annuity scheme.
- Employer's contribution to staff group insurance scheme.
- Actual travelling expenses paid/reimbursed for journeys undertaken for business purposes.
- Payment of annual premium on personal accident policy, if such policy is taken to safeguard the employer's interest. See *CIT vs. Lala Shri Dhar (1922) 84 ITR 192 (Delhi)*.
- Rent-free official residence to a High Court or Supreme Court Judge.



- Rent-free furnished residence to official of Parliament.
- Conveyance facility to High Court/Supreme Court Judges.

**Perquisites taxable in hands of all employees:**

- Value of rent-free accommodation.
- Value of concession in rent.
- Amount paid by employer in respect of any obligation which otherwise would have been payable by employee.
- Value of any security or sweat equity shares allotted or transferred by employer/former employer as free or concessional cost.
- An amount of contribution to an approved superannuation fund by the employer, to an extent it excess Rs. 1, 00,000/-.
- Any sum payable either directly or through a fund by employer (other than recognized PF, approved superannuation fund etc.) to effect an assurance on the life of the employee or to affect a contract for an annuity.

**Determination of the value of prescribed fringe benefit or amenityInterest free or concessional loan**

Value of perquisite w.e.f. 1-4-2000, of the loan given to the employee or any member of his household shall be at the rates charged by State Bank of India in respect of the loans for the same purpose advanced by the employer, on the maximum outstanding monthly balance as reduced by interest actually paid by employee – However, perquisite value for loans (net of amount reimbursed under medical insurance scheme) given for medical treatment of specified disease or petty loans up to Rs. 20,000 is not taxable.

**Use of movable assets**

Value of benefit shall be 10% p.a. of the actual cost of asset or the rent charges paid by the employer as reduced by amount paid by the employee.

**Transfer of movable assets**

Value of benefit on transfer of movable asset shall be the actual cost of the asset to the employer as reduced by the amount calculated at 10% of such cost for each completed year of use by the employer and further reduced by the payments made by the employee. The normal wear and tear would be computed at 50% in case of computers and electronic items, and 20% in case of motor cars on the reducing balance method.

**Perquisites taxable only in hands of specified employees**

Other perquisites are taxable only in the hands of the following specified employees; i.e.,

- Director-employee
- Employee having substantial interest in employer-company
- Employee drawing salary in excess of Rs. 50,000

**Rent free accommodation:**

The rent free accommodation provided to employees by their employer is taxable. Since the employees are provided rent free accommodation, the amount of income accruing to them cannot be determined by them. Accordingly, there is prescribed manner for calculating income



**STUDY MATERIAL FOR B.COM**  
**INCOME TAX LAW & PRACTICE - I**  
**SEMESTER - V, ACADEMIC YEAR 2020 - 21**



chargeable to tax as perquisite. The manner of calculating income chargeable to tax as perquisite for rent free accommodation is as follows:

<b>Category of Employees</b>	<b>Income</b>	
	<b>Unfurnished Accommodation</b>	<b>Furnished Accommodation</b>
1) Provided to a Judge of High Court, Supreme Court 2) Provided to an Officer of Parliament	In case of Rent free Official Residence: Nil	In case of Rent Free Official Residence: Nil
Provided to Central/ State Government employees	(a) License fees determined by the Central/ State Government	(a) Same as Unfurnished Accommodation (b) 10% p.a. Of the cost of furniture If such furniture is hired, then hire charges payable.
Provided to any other employee		
1) Where the accommodation is owned by the employer	(i) 15% of salary in cities having population exceeding 25,00,000(ii) 10% of salary in cities having population between 10,00,000 and 25,00,000(iii) 7.5% of salary in other areas	(a) Same as Unfurnished Accommodation (b) 10% p.a. Of the cost of furniture If such furniture is hired, then hire charges payable.
2) Where the accommodation is taken on rent by the employer	Lower of the following:(i) Rent Payable Or(ii) 15% of salary	(a) Same as Unfurnished Accommodation (b) 10% p.a. Of the cost of furniture If such furniture is hired, then hire charges payable.
Accommodation provided in a hotel	Not Applicable since Hotel is presumed to be furnished.	Lower of the following:(i) 24% of salary (ii) Rent (Room Fare/ Charges) Payable



### **Concession in rent:**

Some employers provide the employees with accommodation at rates lower than normal market rates. This reduction in rates is known as concession in rent.

### **Payment by the employer in respect of an obligation of employee:**

In this case, the amount is liable to be paid by the employee and the employer pays the same.

**Example:** Self Assessment Tax of the employee is paid by the Employer.

**Note:** If the employer pays taxes on behalf of employees on non-monetary perquisites provided to them, then such taxes are exempt in the hands of the employee.

### **Valuation of benefit of provision of domestic servants**

If the employee or any member of his household is provided with domestic servants such as sweeper, gardener, watchman or personal assistant then the benefits so received by the employee are taxable as perquisites in the hands of the employee.

### **Utility such as gas, electricity or water supplied by employer**

If the employer pays to the utility provider on behalf of the employee or if the employer himself provides such utilities then the benefits so received by the employee are taxable as perquisites in the hands of the employee.

### **Free or concessional educational facilities**

If the employer provides free or concessional educational facilities from the educational institutions maintained and owned by the employer or if free educational facilities are allowed in any other educational institution then the benefits so received by the employee are taxable as perquisites in the hands of the employee.

However, if the educational institution is maintained and owned by the employer and the employer provides free or concessional education facilities to the employee himself or his children and the benefits so received by the employee does not exceed Rs. 1,000/- per month then such amount shall not be taxable in the hands of the employee as perquisite.

### **Interest-free or concessional loan**

The value of the benefit to the employee as a result of interest-free loan or concessional loan for any purpose provided to the employee or any member of his household is a taxable perquisite.

However, this perquisite will be not being chargeable to tax in any of the following cases:

- If such loan is provided for the purpose of treatment of diseases such as cancer, tuberculosis, etc. However, out of the amount of loan provided, if the employee receives reimbursement from any medical insurance scheme, then such amount shall not be exempt.
- Amount of loans made to an employee does not exceed Rs. 20,000/-.



### **Free or concessional food and non-alcoholic beverages**

If the employer provides free or concessional food and/ or beverages such as tea, coffee etc., then the benefits so received by the employee are taxable as perquisites in the hands of the employee. However, if the following are provided by the employer then they are not taxable in the hands of employees as perquisites:

- Free food and beverages such as tea, coffee etc. provided by the employer to an employee during working hours at office or business premises less than Rs. 50/- per meal.
- Vouchers provided having value less than Rs. 50/- per meal
- Tea or Snacks provided during working hours
- Free food and beverages such as tea, coffee etc. provided during working hours provided in a remote area or an offshore installation.

### **Gifts or Vouchers**

Gift or vouchers received by employees or by member of his household on ceremonies or occasions are taxable perquisites in the hands of the employees. However, if the value of such gifts in totality does not exceed Rs. 5,000/- then such gifts are not taxable as perquisite in the hands of the employees.

### **Reimbursement of credit card expenses**

If the employer reimburses expenses incurred by the employee or any member of his household using a Credit card then the benefits so received by the employee are taxable as perquisites in the hands of the employee.

However, if such expenses are made by the employee exclusively for official purposes and the employer has documented the expenses incurred using the credit card then such reimbursements are not taxable as perquisite in the hands of the employees.

### **Club expenditure**

If the employer pays or reimburses for the periodic subscription of a club for the employee or any member of his household then the benefits so received by the employee are taxable as perquisites in the hands of the employee.

However, if the following are provided by the employer then they are not taxable in the hands of employees as perquisites:

- If the use of health club, sports and such facilities are provided uniformly to all employees by the employer.
- Such expenditure is incurred wholly and exclusively for business purposes and if the expenditure is properly documented by the employer.

### **Gratuity**

Gratuity is a payment received by an employee by his employer as a gratitude for the employee's services to the organization. It is over & above normal salary & other retirement benefits received by an employee.

### **Taxability of Gratuity**

#### **Pension**

Pension means the employer provides to the employee a fixed monthly amount after his retirement in consideration of past services. Pension can also be called as annuity.



**There are 2 types of pension:**

**Uncommuted Pension:**

The employer provides the employee with monthly pension till the lifetime of the employee starting post retirement.

**Example:** Manish worked for a company for past 20 years. After retirement the company pays him Rs. 5,000/- per month in appreciation of his past services to the company.

**Commututed Pension:**

The employee may request his employer to pay him a lump sum amount of money on retirement rather than providing a monthly amount. The employee can even request that out of the monthly pension, a certain part lets say 50% be given to him on retirement as a lump sum amount and receive the balance part monthly post retirement. This is known as commuted pension.

**Example:** Manish worked for a company for past 20 years. After retirement the company pays him Rs. 5,000/- per month in appreciation of his past services to the company. Now, Manish request the Company that instead of Rs. 5,000/- per month, he requires the entire amount post his retirement itself. This is a case of commuted pension.

**Provident Fund**

It is a savings scheme wherein a person saves a certain amount of money every year and receives the cumulative amount of money on retirement. There are various types of Provident Funds. They are as follows:

**Public Provident Fund (PPF):**

It is an account which may be opened from a nationalized bank. Only individual can open such PPF Accounts with annual contributions as low as Rs. 500/-.

**Statutory Provident Fund:**

This is applicable only to individuals employed with the Government, railways or all recognized educational institutions. The Government and the employee contribute a certain portion of the employee's salary to this fund monthly.

**Recognized Provident Fund:**

If the Provident Fund is approved by the Commissioner of Income-tax, it is known as Recognized Provident Fund. In recognized provident fund the employer and the employee contribute a certain portion of the salary of the employee to the fund.

**Unrecognized Provident Fund:**

A fund, which is not recognized by Income Tax Authorities, in which the employer and the employee contribute a certain portion of the salary of the employee, is an Unrecognized Provident Fund.

**Taxability of Provident Fund**

**Public Provident Fund:**



The amount of Contribution made to PPF in a Financial Year is allowed as Deduction U/s 80C subject to specified conditions. The amount of interest accrued is exempt from tax. If the amounts are withdrawn from PPF in specified manner then such withdrawals are also exempt from tax.

**Statutory Provident Fund:**

The amount of Contribution made by the Government is exempt from tax. Employee's contribution to Statutory Provident Fund is allowed as Deduction U/s 80C subject to specified conditions. The amount of interest accrued is exempt from tax. The amount received on retirement out of such fund is exempt from tax.

**Recognized Provident Fund:**

It is a fund, which is recognized by the commissioner of income tax. This type of fund is maintained by business houses, industrial undertakings and banks. Under this fund both employee and employer will contribute. Employee's contribution qualifies for deduction u/s 80C. Employer's contribution over 12% of mentioned salary is taxable. Interest is exempted up to 9.5%

**Unrecognized Provident Fund:**

The amount of contribution made by the employer is not taxable in the hands of the employee during the years when such amounts are being contributed. Employee's contribution to Unrecognized Provident Fund is not allowed as deduction. The amount of interest accrued is not taxable in the year of accrual. The amount received on retirement out of such fund is required to be bifurcated in 4 categories in order to understand its taxability.

**SIMPLE FORMAT TO COMPUTE SALARY INCOME**

<b>Basic items</b>		***
1. Basic salary/wages/remuneration/pay		***
2. Special pay		***
3. Bonus		***
4. Fees		***
5. Commission		***
6. Advance salary		***
7. Arrear salary		***
<b>Allowances</b>		
1. Fully taxable allowance		***
2. Partly taxable/partly exempted allowances		***
3. Fully exempted allowances		Nil
<b>Perquisites</b>		
1. Taxable for all (specified and unspecified)		***
2. Taxable for specified employees only		***
3. Exempted for all (specified and unspecified)		Nil
<b>Special items</b>		
1. Gratuity		***
2. Pension		***
3. Leave encashment		***



**STUDY MATERIAL FOR B.COM**  
**INCOME TAX LAW & PRACTICE - I**  
**SEMESTER - V, ACADEMIC YEAR 2020 - 21**



4. Provident fund		
<b>Gross salary</b>		***
<b>Deduction u/s 16</b>		
(i) Standard deduction-(limit 40,000)	***	
(ii) Entertainment allowance	***	
(iii) Professional/employment tax	***	***
<b>Income from salary</b>		***

### **EXERCISES**

#### **House rent allowance**

##### **Problem: 1**

Mr. Ram resides in Chennai and gets Rs.10, 000 per month as basic salary Rs. 8,000 per month as DA (entering service benefits), Rs.12, 000 per month as HRA. He pays Rs. 10,000 per month as rent. Calculate taxable HRA.

##### **Solution:**

##### **Calculation taxable HRA**

Actual HRA	1,44,000
Less: Exempted	98,000
<b>Taxable HRA</b>	<b>45,600</b>

##### **Workings**

##### **Calculation of exempted HRA**

$$\begin{array}{lcl} \text{Actual HRA} & = & 1,44,000 \\ \text{Rent paid}-10\% \text{ of salary} & = & 98,400 \\ \text{50\% of salary} & = & 1,08,000 \end{array}$$

$$\text{Whichever less is exempted} = 98,400$$

##### **Problem: 2**

The Following are the particulars of Mr.Priyan who is employed in Chennai.

- i. Basic Salary Rs.4000 p.m
- ii. DA (60% of Basic Salary)
- iii. CCA Rs.250 p.m
- iv. House Rent Allowance Rs.450 p.m (Rent paid Rs.500 p.m)
- v. During the year he paid professional tax Rs.550
- vi. Education allowances Rs.150 p.m (Per Child)

Calculate Salary Income.



**STUDY MATERIAL FOR B.COM**  
**INCOME TAX LAW & PRACTICE - I**  
**SEMESTER - V, ACADEMIC YEAR 2020 - 21**



**Solution:**

**Computation of income from salary for the A.Y-2019-20**

Particulars	Amount	Amount
(i) Basic salary ( $4000 * 12$ )		48,000
(ii) DA ( $48,000 * 60 / 100$ )		28,800
(iii) CCA ( $250 * 12$ )		3,000
(iv) Actual HRA	5400	
<b>Less: Exempted</b>	Nil	5,400
(v) Educational allowance ( $150 * 1 * 12$ )	1800	
<b>Less: Exempted (<math>100 * 1 * 12</math>)</b>	1200	600
<b>Gross salary</b>		85,800
<b>Deduction U/S 16</b>		
(i) Standard deduction	40,000	
(ii) Professional tax	550	40,550
<b>Taxable salary</b>		<b>45,250</b>

**Problem: 3**

The Following are the particulars of income of Mr.Ramesh (an employee of an Individual) for the previous year ended on 31<sup>st</sup> March2017.

- i. Salary Rs.4500p.m
- ii. Bonus equal to two month spay
- iii. Dog allowance – Rs.75p.m
- iv. Special Allowance – Rs.60 p.m
- v. Employee's contribution to a recognized provident fund @ 15% of salary
- vi. Employer's contribution to the fund @ 15% of the salary
- vii. Interest credited to the provident fund @ 9.5% p.a. is Rs.2,800
- viii. He is provided with free lunch in office. The cost per meals Rs.30
- ix. The employer has given him the use of small car which he uses for personal and official purpose. He meets the expenses for personal purpose from out of his pocket.

Compute the income of Mr.Ramesh from salaries for the A.Y. 2019-2020.

**Solution:**

**Computation of income from salary for the A.Y-2019-20**

Particulars	Amount	Amount
(i) Basic salary ( $4,500 * 12$ )		54,000
(ii) Bonus ( $4,500 * 2$ )		9,000
(iii) Dog allowance ( $75 * 12$ )		900
(iv) Special allowance ( $60 * 12$ )		720
(v) Employer contribution to provident fund ( $54,000 * 15 / 100$ )	8,100	
<b>Less: Exempted up to 12%</b>	6,480	1,620
(vi) Interest on EPF 9.5 %	2,800	
<b>Less: Exempted up to 9.5%</b>	2,800	Nil



**STUDY MATERIAL FOR B.COM  
INCOME TAX LAW & PRACTICE - I  
SEMESTER - V, ACADEMIC YEAR 2020 - 21**



(vii) Lunch allowance		Nil
(viii) Small car up to 1600 cc (1,800*12)		21,600
<b>Gross salary</b>		<b>87,840</b>

Kamrajicollege



**UNIT - IV**  
**INCOME FROM HOUSE PROPERTY**

**Basic of charge**

Annual value of any property is assessable under this head it,

- Assessee is the owner of the property.
- Property is building and attached land.
- Property should not be used by the owner for his business or profession.

**Incomes - Exempted from 'House Property Income'**

Under section 10 of the Income-tax Act 1961 following incomes from house property are exempted from tax. These incomes are not to be included in the total income of assessee. Hence no tax is payable on such incomes. These incomes are:

**Agricultural House Property [Section 2(1)(c)].**

Income from such house property which is situated on or in the immediate vicinity of agricultural land which is used for agricultural purposes by cultivator is exempted from tax.

**Income from Property held under Trust Wholly for Charitable or Religious Purposes [Section 11(1)(a)]:**

Income derived from property held under trust, wholly for charitable and religious purposes, shall be exempt. To the extent such income is applied in India for such purposes; andwhere any such income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of 15% of the income from such property.

**Income from Property held under trust which is applied in part only for Charitable or Religious purposes [Section 11(1)(b)]:**

Income derived from property held under trust in part only for such purpose, shall be exempt:To the extent such income is applied in India for such purposes, provided, the trust in question is created before the commencement of Income-tax Act, 1961 i.e. before 1.4.1962; andWhere any such income is finally set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of 15% of the income from such property.

**Income from Property held under trust which is applied for Charitable Purposes outside India [Section 11(1)(c)]:**

Income derived from property held under trust, created on or after 1.4.1952 for charitable purpose which tends to promote international welfare in which India is interested, shall be exempt to the extent to which such income is applied to such purpose outside India. Religious trusts are not covered here.

Income derived from property held under a trust for charitable or religious purposes, created before 1.4.1952, shall be exempt to the extent to which such income is applied to such purposes outside India.



In the above two cases, it is necessary that the Board, by general or special order, has directed in either case that it shall not be included in the total income of the person in receipt of such income.

#### **Self-Occupied but Vacant House [Section 23(3)]**

In case an assessee keeps one of his own houses reserved for self-occupation but is living in a rented house elsewhere due to his employment or profession the income from such house is taken to be NIL.

#### **The annual value of self-occupied house shall not be NIL:**

If such house or part of the house is actually let during the whole or any part of the previous year; or

Any other benefit there from is derived by the owner from such house.

In the above cases, the annual value shall be determined as per provisions applicable for let out properties i.e. under clause (a), (b) or (c) of section 23(1).

#### **House used for Own Business or Profession.**

There is no income chargeable to tax under this head from such house property.

#### **Property held by Registered Trade Union [Section 10(24)].**

Income from a house property owned by a registered trade union is not to be included in its G.T.I.

#### **Income from House Property held by following shall be exempted:**

- House property held by a local authority.
- House property held by a scientific research institution.
- House property held at a political party.
- House property held by a university and any other educational institution working for spreading education and not to earn profit.
- House property held by a hospital or medical institution working for the spreading of medical services to people and is not meant for earning profit.
- It is income from a farmhouse.

#### **One House Property (a palace) owned by a former ruler of Indian states.**

Ex-rulers of Indian states may own many palaces but only one palace of their choice shall be treated as a self-occupied house and shall be exempted.

#### **One Self-OccUPIED House**

In case assessed owns one residential house, the net annual value of the same shall be taken as nil but in case he owns more than one house, then only one of his choice but normally of higher value shall be treated as a self-occupied one and other/others are treated as deemed to be let out.



**STUDY MATERIAL FOR B.COM**  
**INCOME TAX LAW & PRACTICE - I**  
**SEMESTER - V, ACADEMIC YEAR 2020 - 21**



**Income from house property specimen / important provisions**

**For self-occupied:**

Gross Annual Value(GAV)/ Annual Rental Value(ARV)		Nil
<b>Less:</b> Municipal tax paid during the year by the owner		Nil
<b>Net Annual Value(NAV)</b>		Nil
<b>Less: Deduction u/s 24</b>		
(i) Standard deduction-not applicable		***
(ii) Interest on loan of pre-construction		***
<b>Loss from house property</b>		***

**Overall chart for computation of house property income**

**For letout property:**

(i) Municipal value (or) Fair Rent (whichever is higher)		
(ii) Expected Rent (or) Standard Rent (whichever is lower)		
(iii) Expected Rent (or) Actual Rent (whichever is higher)	***	
<b>Gross Annual Value</b>		***
<b>Less:</b>		
(iv) Local taxes (or) Municipal taxes paid by the Owner during the previous year	***	
(v) Unrealized rent conditions of rule 4 are satisfied	***	***
<b>Annual value</b>		***
<b>Less: Deduction u/s 24</b>		
(i) 30% of Annual value	***	
(ii) Interest on borrowed capital-paid or due	***	***
<b>Income from House Property</b>		***

**Problem: 1**

From the following calculate Gross Annual Value, assuming that there is no vacant period.

particulars	House 1	House 2
MRV	1,05,000	1,05,000
FRV	1,07,000	1,07,000
SR under rent control act	1,35,000	1,35,000
Actual Rent (AR)	1,12,000	98,000
Period in the previous year	12 months	12 months



**STUDY MATERIAL FOR B.COM**  
**INCOME TAX LAW & PRACTICE - I**  
**SEMESTER - V, ACADEMIC YEAR 2020 - 21**



**Solution:**

**Computation of Gross Annual Value**

particulars	Amount	Amount
MRV	1,05,000	1,05,000
FRV	1,07,000	1,07,000
Whichever is higher	1,07,000	1,07,000
SR	1,35,000	1,35,000
ER (Whichever is higher)	1,07,000	1,07,000
AR	1,12,000	98,000
<b>GROSS ANNUAL VALUE</b>	<b>1,12,000</b>	<b>1,07,000</b>

**Problem: 2**

Mr.Ganesh owns two house properties at Madurai the first house is self- occupied and the second house is let out for residential purpose. The other details of the properties given below.

Particulars	First House (Rs)	Second House (Rs)
Municipal value	5,000	6,000
Municipal Tax	600	800
Rental Income	-	7,200
Land revenue	100	125
Fire insurance premium	150	200
Interest on mortgage	-	300
Collection charges	-	100

The second house remained vacant for a period 2 months during the year. Compute the income from house property.

**Solution:**

**A. Computation of self-occupied house property (HOUSE-1)**

Particulars	Amount	Amount
Gross annual value of the house		Nil
<b>Less: Municipal tax paid by owner</b>		Nil
<b>Annual value</b>		Nil
<b>Less: standard deduction of annual value</b>	Nil	
Interest on loan for self-occupied house	Nil	Nil
<b>Loss from self-occupied house</b>		Nil



**STUDY MATERIAL FOR B.COM**  
**INCOME TAX LAW & PRACTICE - I**  
**SEMESTER - V, ACADEMIC YEAR 2020 - 21**



**B. Computation of Income From House Property for the A.y-2019-20 (HOUSE-2)**

Particulars	Amount	Amount
Municipal value	6,000	
Actual Rent(7,200-2 months vacant(600*2) whichever is higher	6,000	6,000
<b>Gross Annual Value</b>		6,000
<b>Less:</b>		
Municipal tax paid by Owner	600	
Unrealized Rent	Nil	600
<b>Annual value</b>		5,200
<b>Less: Deduction U/S 24</b>		
(i) 30% of annual value (5,200*30/100)	1,560	
(ii) Interest on loan	300	1,860
<b>Income From House Property</b>		3,340

**Problem: 3**

Mr.Senthil is the owner following house Property particulars in respect of which for the year ended 31/03/2019.

Particulars	House A	House B	House C
Actual Rent	12,000	2,000	Twilling of the House
Standard rent	8,000	2,400	Nil
Municipal Tax	900	200	3,800
Municipal Value	900	2,000	40,000
Municipal Tax paid by Senthil	900	100	Nil
Municipal Tax paid by Tenant	Nil	100	Nil
Repairs	600	2,000	3,000
Vacancy Period	1 Month	Nil	Nil
Interest on Loan for repairs loans	600	900	16,000

**House A**

Unrealized rent allowed in assessment year 2015-16 received during the year for the House in Rs.5,000

**Solution:**

**C.Computation of self-occupied house property (HOUSE-1)**

Particulars	Amount	Amount
Gross annual value of the house		Nil
<b>Less: Municipal tax paid by owner</b>		Nil
<b>Annual value</b>		Nil
<b>Less: standard deduction of annual value</b>	Nil	
Interest on loan for self-occupied house	16,000	-16,000
<b>Loss from self occupied house</b>		-16,000



**STUDY MATERIAL FOR B.COM**  
**INCOME TAX LAW & PRACTICE - I**  
**SEMESTER - V, ACADEMIC YEAR 2020 - 21**



**A. Computation of Income From House Property for the A.y-2019-20 (HOUSE-2)**

Particulars	Amount	Amount
Municipal value	90,000	
Standard rent (Whichever is higher)	8,000	
Expected rent	8,000	
Actual rent(12,000-one month vacant ) (Whichever if higher)	11,000	
<b>Gross Annual Value</b>		<b>11,000</b>
<b>Less:</b>		
Municipal tax paid by Owner	900	
Unrealized Rent	Nil	900
<b>Annual value</b>		<b>10,100</b>
<b>Less: Deduction U/S 24</b>		
(i) 30% of annual value ( $10,100 * 30 / 100$ )	3,030	
(ii) Interest on loan	600	3,630
		<b>6,470</b>
<b>Add: unrealized rent</b>		<b>5,000</b>
<b>Income From House Property</b>		<b>11,470</b>

**B. Computation of Income From House Property for the A.y-2019-20 (HOUSE-2)**

Particulars	Amount	Amount
Municipal value	2,000	
Standard rent (Whichever is lower)	2,400	
Expected rent	2,000	
Actual rent (Whichever is higher)	2,000	
<b>Gross Annual Value</b>		<b>2,000</b>
<b>Less:</b>		
Municipal tax paid by Owner	100	
Unrealized Rent	Nil	100
<b>Annual value</b>		<b>1,900</b>
<b>Less: Deduction U/S 24</b>		
(i) 30% of annual value ( $1,900 * 30 / 100$ )	570	
(ii) Interest on loan	900	
		<b>1,470</b>
<b>Income From House Property</b>		<b>11,470</b>



**UNIT - V**  
**INCOME FROM BUSINESS OR PROFESSION**

**Introduction**

Provision regarding calculation of profits and gains of business or profession is dealt under section 28 to 44 of income tax act 1961. This head of the act is a major source of revenue to the government.

**Business [section 2(13)]**

Definition of “Business” includes any trade, commerce or manufacture or any venture or concern in the nature of trade, commerce or manufacture.

**Profession [section 2(36)]**

Profession involves an exercise of intellect and skill based on learning and experience. Vocation refers to any work performed on the strength of one's natural ability for the work. Regularity and profit motive are not necessary for an activity to be called a vocation.

**OVER ALL CHAT FOR CALCULATION OF INCOME FROM BUSINESS**

Particulars	Amount	Amount
Net profit as per P & L A/c		****
<b>Add:</b>		
1. Disallowed Expenses		****
2. Business Income not credited in P & L A/c		****
3. Under valuation of closing stock		****
4. Over valuation of opening stock		****
<b>Less:</b>		
1. Non business income credited in P & L A/c	****	
2. Allowed expenses not debited in P & L A/c	****	
3. Over valuation of closing stock	****	
4. Under valuation of opening stock	****	****
<b>Income From Business</b>		****

**Problem: 1**

From the following P&L A/c calculate Income from Business

Particulars	Amount	Particulars	Amount
To Rent	40,000	By gross profit	2,50,000
To Salary to employees	25,000	By house property income	
To Depreciation	10,000	By income from other sources	1,50,000
To Donation	8,000		
To Net profit	5,17,000		2,00,000
	<b>6,00,000</b>		<b>6,00,000</b>

**Adjustments:**

- Depreciation to be allowed as per income tax provision Rs. 8,000.
- Business income of Rs. 12,000 is not shown in the P&L A/c.
- Rs. 8,000 of the rent is of personal nature.



**Solution:**

**Calculation of Income from Business**

Date	Particulars	Amount	Amount
	N\P as per P&L A/c		5,17,000
	<b>Add:</b> Donations Depreciation Business income not shown P&L A/c Rent	8,000 10,000 12,000 8,000	38,000
	<b>Less:</b> H/P Income IFOS Depreciation	1,50,000 2,00,000 8,000	5,55,000 3,58,000
	<b>Income from Business</b>		<b>1,97,000</b>

**Problem: 1**

**From the following P&L A/c calculate Income from Business**

Particulars	Amount	Particulars	Amount
To General expenses	20,000	By Gross profit	5,00,000
To Bad debts	25,000	By Sundry receipt	
To Advance income tax	24,000	By Bad debts recovered (earlier allowed as deduction)	50,000
To Salary to staff	40,000	By Interest on debentures	40,000
To Drawings	40,000	By Interest on deposit with a company	12,500
To Interest on capital	24,000		
To Advertisement	9,000		
To Excise duty	12,000		
To Expenditure on acquisition of patent right (in 2016)	10,000		25,000
To Net profit	4,23,000		
	<b>6,27,500</b>		<b>6,27,500</b>

**Adjustments**

- General expenses include Rs. 2,300 spent as marriage expenses by the proprietor.
- Advertise an expense was spent on 31<sup>st</sup> august 2018.
- Income of Rs. 12,000 accrued during the PY 2018-19 is nit recorded in the P&L A/c.
- An expenditure of Rs, 1,000 relating to business is not show in P&L A/c.
- The proprietor owns two houses from which he gets the income of Rs, 1,80,000



**Solution:**

**Calculation of Income from Business**

Date	Particulars	Amount	Amount
	N\P as per P&L A/c		4,23,000
	<b>Add:</b> Advance income tax Drawings Interest on own capital General expenses Income accrued during 2018-19 Patents	24,000 40,000 24,000 2,300 12,000 10,000	1,12,300
	<b>Less:</b> Depreciation for patents ( $10,000 * 25\%$ ) Expenditure relating to business Interest on debentures Interest on deposit with a company	2,500 1,000 40,000 25,000	5,35,800
	<b>Income from Business</b>		68,500
			<b>4,67,300</b>



**STUDY MATERIAL FOR B.COM**  
**INCOME TAX LAW & PRACTICE - I**  
**SEMESTER - V, ACADEMIC YEAR 2020 - 21**



**OVER ALL FORMAT FOR PROFESSIONALS LIKE DOCTORS, LAWYERS, ACCOUNTANTS, TAX CONSULTANTS.**

Particulars	Amount	Amount
<b>PROFESSIONAL INCOMES:</b>		
1.Fees [for all professional]		****
2.Operation fees, Visiting fees [for doctors]		****
3.Institute fees [for accountants]		****
4.Legal fee, practicing fees [for lawyers]		****
5.Gift from clients [for all professionals]		****
6.Gift from patients [for doctors]		****
7.Examiner fees [for all professional]		****
8.All other professional receipts		****
<b>Less:</b>		
<b>PROFESSIONAL EXPENSES:</b>		
1.Office and administrative expenses [for all professionals]	****	
2.Clinic expenses and dispensary expenses [for doctors]	****	
3. Cost of books for professional purposes. [for all professionals]	****	
4. Subscription for journals. [for all professionals]	****	
5.Depreciation		
a) For office equipments (for all professional)		
b) For surgical equipments ( for doctors)		
6.Any membership fee (for all professionals)	****	
7.Cost of medicine [for doctors] [opening stock +purchases-closing stock]	****	
8.All other professional payments	****	****
<b>Income From Profession</b>		****



**STUDY MATERIAL FOR B.COM**  
**INCOME TAX LAW & PRACTICE - I**  
**SEMESTER - V, ACADEMIC YEAR 2020 - 21**



**Problem: 3**

From the following receipts and payments A/c of Mr.Vasanth, a tax consultant, calculate income from profession.

Receipts	Amount	Payments	Amount
To balance	3,50,000	By office and admin expenses	60,000
To fees from clients 2019-20            1,00,000 2018-19            50,000	1,50,000	By salary to staff: 2019-20            40,000 2018-19            30,000 By repairs	70,000
To presents from clients	40,000	By interest on loan for business	8,000
To winning from lotteries	28,000	By income tax	
To rent from let out property	75,000	By purchase of car(purchased during January 2019)	12,000
To share of income from firm	12,500	By balance	6,000
			1,50,000
			3,49,500
	<b>6,55,500</b>		<b>6,55,500</b>

**Solution:**

**Calculation of Income from Profession of Mr. Vasanth**

Date	Particulars	Amount	Amount
	<b>Professional receipts:</b>		
i)	Fess 2019-20            1,00,000		
	2018-19            50,000		1,50,000
ii)	Presents from client		40,000
	<b>Less: Professional payments</b>		
iii)	Office and admin expenses	60,000	
iv)	Staff salary: 2019-20            40,000		
	2018-19            30,000	70,000	
v)	Repairs	8,000	
vi)	Interest on loan for business	12,000	
vii)	Depreciation on car purchased during January 2019 (1,50,000*15% = 22,500 * 50%)	11,250	1,61,250
	<b>Income from Profession</b>		<b>28,750</b>



**STUDY MATERIAL FOR B.COM**  
**INCOME TAX LAW & PRACTICE - I**  
**SEMESTER - V, ACADEMIC YEAR 2020 - 21**



**Problem: 4**

From the following income and expenditure A/c of Ramana & Co, charted accountants, calculate income from profession from the details below.

Expenditure	Amount	Incomes	Amount
To charity and donation	1,00,000	By audit fee	3,00,000
To subscription to journals	2,000	By examiner fee	25,000
To institute fee	4,000	By fee for other accounts work	40,000
To office rent	5,000	By dividend from UTI	
To drawings	50,000		35,000
To electricity bill	9,000		
To salary to trainee	20,000		
To net income	2,10,000		
	<b>4,00,000</b>		<b>4,00,000</b>

**Solution:**

**Calculation of Income from Profession of Ramana & Co**

Date	Particulars	Amount	Amount
	<b>Professional Receipts:</b>		
	i) Audit fees	3,00,000	
	ii) Examiner fees	25,000	
	iii) Fees for other accounting work	40,000	
	<b>Less: Professional Payments</b>		3,65,000
	i) Subscription to journal	2,000	
	ii) Institute fee	4,000	
	iii) Office rent	5,000	
	iv) Bill of electricity	9,000	
	v) Salary to trainee	20,000	
	vi) Depreciation as per provisions	5,000	45,000
	<b>Income from Profession</b>		<b>3,20,000</b>

### Books:

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
  2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

**University of Delhi - B.Com.(H) Sem III  
Income Tax Law & Practice  
AY 2020-21**

**Session started from 10 August 2020 and Ended on 28 November 2020  
COVID-19 Situation**

## **Books Recommended:**

1. Concept Building Approach to Income Tax Law & Practice (Assessment Year 2020-21) – **By Dr. Naveen Mittal – Published by Cengage Learning India Pvt. Ltd. [B.Com.(H)]**
  2. Principles of Income Tax Law & Practice (Assessment Year 2020-21) – **By Dr. Naveen Mittal – Published by Cengage Learning India Pvt. Ltd. [B.Com.]**

### **Relevant original source:**

[www.incometaxindia.gov.in](http://www.incometaxindia.gov.in)

---

[www.incometaxindiaefiling.gov.in](http://www.incometaxindiaefiling.gov.in)

## Lecture 1

### *Income-tax Act, 1961*

### *Income-tax Rules, 1962*

## *Notifications issued by the CBDT (Central Board of Direct Taxes)*

Circulars

Court Cases

Finance Acts

Taxation Amendment Acts

Lecture 2

## **Computation of total income of an assessee for the AY 2020-21:**

Salary		10,00,000
HP		3,00,000
PGBP		4,00,000
<i>Capital Gains:</i>		
Long-term capital gains [Normal LTCG]	20,000	
Long-term capital gains [Sec. 112A]		1,10,000
Short-term capital gains [Normal STCG]	1,80,000	
Short-term capital gains [Sec. 111A]	<u>80,000</u>	3,90,000
<i>Income from other sources:</i>		
Winnings from lottery	2,00,000	
Interest income from a saving bank account	<u>3,00,000</u>	<u>5,00,000</u>
Gross total income		25,90,000
Less: Deductions under section 80		
80C	1,40,000	
80G	50,000	
80TTA	<u>10,000</u>	<u>2,00,000</u>
Total income		23,90,000

## **Computation of tax payable by (refundable to) an assessee for the AY 2020-21:**

**Tax on Total income** XXX

Less: Rebate under section 87A

Add: Surcharge

Add: Health and Education cess

### Less: Relief under section 89

Add: Interest/ Penalty

Less: Prepaid taxes

#### Tax payable

**Books:**

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

**Tax rates:**

**Special tax rates:**

*In such case, it does not matter who you are. You may be an individual (Human being), HUF, firm, company (Adani Group, Tatas, etc.), AOP/BOI, a local authority (MCD, DDA, CMC) or an artificial juridical person (DU, Supreme Court Bar Council).*

1. Long-term capital gain [Sec. 112A]: 10% over and above Rs. 1,00,000  
*Example: 10% of [(Rs. 1,10,000 – Rs. 1,00,000)] = 10% of Rs. 10,000 = Rs. 1,000*
2. Normal Long-term capital gain: 20% (This rate is written under section 112)  
*Example: 20% of Rs. 20,000 = Rs. 4,000*
3. Short-term capital gain [Sec. 111A]: 15%  
*Example: 15% of Rs. 80,000 = Rs. 12,000*
4. Winnings from lottery, card games, gambling, betting, etc. [Sec. 115BB]: 30%  
*Example: 30% of Rs. 2,00,000 = Rs. 60,000*
5. Dividend income received from a domestic company:  
Till Rs. 10,00,000 per year (if received), no tax is payable by the shareholder.  
Over and above Rs. 10,00,000 is taxable in the hands of shareholders @ 10% under section 115BBDA.  
*Example: If Mr. X received Rs. 11,00,000 dividend from a domestic company, the tax payable by him is 10% of [(Rs. 11,00,000 – Rs. 10,00,000)] = 10% of Rs. 1,00,000 = Rs. 10,000.*
6. Unexplained incomes/ cash credits, etc.:  
60%

**Normal tax rates:**

These normal tax rates depend upon the category of persons –

**Individuals:** There are three categories of individuals:

*Category 1: All individuals (resident) whose age is 60 years or more during the PY 2019-20 but less than 80 years on the last day of the PY 2019-20:*

Up to Rs. 3,00,000	:	Nil
Rs. 3,00,001 to Rs. 5,00,000	:	5% of TI exceeding Rs. 3,00,000
Rs. 5,00,001 to Rs. 10,00,000	:	Rs. 10,000 + 20% of TI exceeding Rs. 5,00,000
Above Rs. 10,00,000	:	Rs. 1,10,000 + 30% of TI exceeding Rs. 10,00,000

Example:	Age 65 years (Resident):	
	TI is Rs. 2,90,000	Tax is Nil
	TI is Rs. 4,50,000	Tax is 7,500 [5% of (Rs. 4,50,000 – Rs. 3,00,000)]
	TI is Rs. 8,00,000	Tax is Rs. 70,000
	3,00,000	2,00,000
	Nil	5%
	+ 10,000	+ 60,000 =
	TI is Rs. 17,00,000	70,000
		Tax is Rs. 3,20,000

*Category 2: All individuals (resident) whose age is 80 years or more during the PY 2019-20:*

Up to Rs. 5,00,000	:	Nil
Rs. 5,00,001 to Rs. 10,00,000	:	20% of TI exceeding Rs. 5,00,000
Above Rs. 10,00,000	:	Rs. 1,00,000 + 30% of TI exceeding Rs. 10,00,000

Example:	Age 85 years (Resident):	
	TI is Rs. 2,90,000	Tax is Nil
	TI is Rs. 4,50,000	Tax is Nil
	TI is Rs. 8,00,000	Tax is Rs. 60,000
	TI is Rs. 17,00,000	Tax is Rs. 3,10,000

*Category 3: All individuals (resident) who are less than 60 years of age during the PY 2019-20/ all non-resident individuals (irrespective of age)/ HUF –*

Up to Rs. 2,50,000	:	Nil
Rs. 2,50,001 to Rs. 5,00,000	:	5% of TI exceeding Rs. 2,50,000
Rs. 5,00,001 to Rs. 10,00,000	:	Rs. 12,500 + 20% of TI exceeding Rs. 5,00,000

**Books:**

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

Above Rs. 10,00,000 : Rs. 1,12,500 + 30% of TI exceeding Rs. 10,00,000

Example:	Age 45 years (Resident):	
	TI is Rs. 2,90,000	Tax is Nil
	TI is Rs. 4,50,000	Tax is 10,000 [5% of (Rs. 4,50,000 – Rs. 2,50,000)]
	TI is Rs. 8,00,000	Tax is Rs. 72,500
	TI is Rs. 17,00,000	Tax is Rs. 3,22,500

Example:	Age 98 years (Non-Resident):	
	TI is Rs. 17,00,000	Tax is Rs. 3,22,500

Example:	X (HUF):	
	TI is Rs. 17,00,000	Tax is Rs. 3,22,500

**Firm:**

Taxable at a flat rate of 30%.

Example:	M/s. Raj Kumar & Sons (a partnership firm):	
	TI is Rs. 17,00,000	Tax is Rs. 5,10,000
	TI is Rs. 100	Tax is Rs. 30 [30% of Rs. 100]

**Rebate under section 87A:**

It is available to a **resident individual** whose TI does not exceed Rs. 5,00,000.

*Amount of rebate:*

Rs. 12,500 or 100% of tax, whichever is lower.

Example:	Age 65 years ( <b>Resident</b> ):	
	TI is Rs. 4,50,000	Tax is 7,500 – Rs. 7,500 [Rs. 12,500 or 100% of Rs. 7,500, whichever is lower is Rebate U/S 87A) = Nil
	TI is Rs. 8,00,000	Tax is Rs. 70,000 – Rs. Nil (Rebate U/S 87A) = Rs. 70,000
	TI is Rs. 5,00,000	Tax is Rs. 10,000 – Rs. 10,000 (Rebate U/S 87A) = Nil
	TI is Rs. 5,00,100	Tax is Rs. 10,020 – Rs. Nil (Rebate U/S 87A) = Rs. 10,020

Example:	Age 65 years (Non-Resident):	
	TI is Rs. 4,50,000	Tax is 10,000 – Rs. Nil (Rebate U/S 87A) = 10,000

Example:	X (HUF) (Resident):	
	TI is Rs. 4,50,000	Tax is 10,000 – Rs. Nil (Rebate U/S 87A) = 10,000

Example:	M/s. Raj & Brothers, a firm (Resident):	
	TI is Rs. 4,50,000	Tax is 1,35,000 – Rs. Nil (Rebate U/S 87A) = 1,35,000

**Surcharge:**

## Example:

Mr. X (67 years and a resident) has a total income of Rs. 80,00,000 (including long-term capital gain under section 112A of Rs. 3,00,000).

## Solution:

Tax  
[10% of (Rs. 3,00,000 – Rs. 1,00,000) +  
Tax on remaining income of Rs. 77,00,000  
(Rs. 80,00,000 – Rs. 3,00,000)  
i.e., Rs. 1,10,000 + 30% of (Rs. 77,00,000 – Rs. 10,00,000)] 21,40,000

Less: Rebate under section 87A Nil

Books:

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

Add: Surcharge [10% of Rs. 21,40,000]	<u>2,14,000</u>	<b>Total</b>
Add: Cess @ 4% [4% of Rs. 23,54,000]	<u>94,160</u>	
Tax liability		<b><u>24,48,160</u></b>

### Lecture 3

Practice cases

### Lecture 4

#### **Residential Status of an individual [Sec. 6]**

Basic conditions:

1. PY 2019-20: Presence of 182 days or more  
**Or**
2. PY 2019-20: Presence of 60 days or more + PY 2018-19 to 2015-16: 365 days or more

If any individual satisfies any one of the two basic conditions, the said individual will be treated as 'RESIDENT' for the PY 2019-20.

**Note:**

**Date of coming into India and date of leaving India is treated as the day for which the assessee was present in India (provided timings of coming and leaving India is not given).**

*Example:*

Mr. X came to India for the first time on 23 July 2019 and left India on 20 March 2020. What is his residential status for the AY 2020-21 (or PY 2019-20)?

*Solution:*

Presence in India during PY 2019-20: 242 days [9+31+30+31+30+31+31+29+20]

Mr. X is resident in India for the AY 2020-21 (or PY 2019-20) because he was present in India for 182 days or more during the PY 2019-20.

### Lecture 5 and 6

*Continuing the discussion on determining the residential status of an individual:*

**Basic condition 1:** PY 2019-20: 182 days or more

**Basic condition 2:** PY 2019-20: 60 days or more + Last 4 years: 365 days or more

Exception of basic condition 2:

Exception 1: An Indian Citizen who **leaves** India during the PY for the purpose of employment outside India.

Exception 2: An Indian Citizen (*or a person of Indian Origin*) who **comes** on a visit to India during the PY.

Meaning of PIO:

A person who parents (or grandparents) were born in *undivided* India

**Additional condition 1:** Resident in at least 2 Years out of 10 immediately preceding previous year

**Additional condition 2:** Present in India for 730 days or more during 7 years immediately preceding the previous year

#### **Rules of residence of an individual:**

R: Must satisfy at least 1 basic condition

ROR: Must satisfy at least 1 basic + both the additional conditions

RNoR: Must satisfy at least 1 basic + Either none (or one) of the additional

NR: Must not satisfy any of the basic

#### **Page 4 of chapter 2 [Book: Concept Building Approach]**

*Example:*

**Books:**

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

Mr. P, a Canadian citizen, comes to India for the first time during the previous year 2015-16. Since then he is coming every year on a visit to India for some days. During the financial years 2015-16, 2016-17, 2017-18, 2018-19 and 2019-20, he was in India for 60 days, 60 days, 90 days, 190 days and 70 days, respectively. Determine his residential status for the assessment year 2020-21. Assume that he is a person of Indian origin.

*Solution:*

Basic condition 2 cannot be applied in this case because the assessee is a person of Indian origin who has come on a visit to India during the relevant previous year 2019-20. The residential status of Mr. P has to be determined on the basis of basic condition 1 which requires presence of 182 days or more during the relevant previous year 2019-20.

Additional conditions are applicable for every individual who has become resident in the relevant previous year. Mr. P is a non-resident for the assessment year 2020-21 as he does not satisfy basic condition 1 which requires the presence of 182 days or more during the relevant previous year. He is present in India during the previous year 2019-20 for 70 days, and not for 182 days, as required.

#### **Page 5 of chapter 2 [Book: Concept Building Approach]**

*Example:*

Mr. P, a Canadian citizen, comes to India for the first time during the previous year 2015-16. Since then he is coming every year on a visit to India for some days. During the financial years 2015-16, 2016-17, 2017-18, 2018-19 and 2019-20, he was in India for 55 days, 60 days, 90 days, 150 days and 70 days, respectively. Determine his residential status for the assessment year 2020-21. Assume that he is **not** a person of Indian origin.

*Solution:*

Mr. P is a non-resident for the assessment year 2020-21 as he does not satisfy any of the following basic conditions:

1. He is present in India during the previous year 2019-20 for 70 days, and not for 182 days, as required.
2. He is present in India for a period of 60 days or more [70 days] during the previous year 2019-20 but not for 365 days or more [150+90+60+55 = 355 days] during 4 years immediately preceding the relevant previous year 2019-20.

Since Mr. P is neither an Indian citizen nor a person of Indian origin, basic condition 2 is also applicable in this case. Exemption from basic condition 2 is applicable only for an Indian citizen (or a person of Indian origin) who has come on a visit to India during the relevant previous year.

#### **Determination of residential status of a HUF:**

**Resident:** Control and management of the affairs of a HUF is situated in India (or partly in India and partly outside India).

**ROR:** If manager of the HUF (i.e., Karta) satisfies both the additional conditions, the entire HUF will be known as ROR

**RNoR:** If manager of the HUF (i.e., Karta) satisfies either none (or one) of the additional conditions, the entire HUF will be known as RNoR.

**Non-Resident:** Control and management of the affairs of a HUF is situated outside India.

#### **Page 6 of chapter 2 [Book: Concept Building Approach]**

*Example:*

The business of an HUF is transacted from Germany but some of the important policy decisions are taken there and some are taken in India also. P, the karta of the HUF, who was born in Kolkata, visits India during the previous year 2019-20 after a gap of 12 years. He comes to India on 10 May 2019 and leaves for Germany on 25 November 2019. Determine the residential status of P and the HUF for the assessment year 2020-21.

*Solution: Discussed in the class*

## Lecture 7

#### **Determination of residential status [Sec. 6]**

#### **Scope of total income [Sec. 5]**

*Example on scope of total income:*

Mr. A, the assessee:

Particulars	ROR	RNoR	NR

Books:

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

1. <b>Rental</b> income from a house property in Chennai [Rs. 7,00,000] received in USA. Taxable value [Rs. 7,00,000 – 30% of Rs. 7,00,000] <i>Head: Income from House Property</i> [Income accrued in India]	4,90,000	4,90,000	4,90,000
2. <b>Salary</b> received in Mumbai from a company registered in Singapore and the assessee is also working in Singapore [Rs. 18,00,000] Taxable value [Rs. 18,00,000 – Rs. 50,000] <i>Head: Income from Salary</i> [Income received in India]	17,50,000	17,50,000	17,50,000
3. House property in France is <b>sold</b> and the amount is also received in France. The profit on such sale is Rs. 19,00,000. <i>Head: Income from Capital Gains</i> [Income accrued as well as received outside India. It is income from capital gains and thus, neither from a business/profession]	19,00,000	----	----
4. Income from a business <b>in Kolkata</b> . The business income is Rs. 9,00,000 and the business is controlled from Italy. <i>Head: PGBP</i> [Income accrued in India]	9,00,000	9,00,000	9,00,000
5. Income from a business in Canada. The business income is Rs. 18,00,000 and the business is controlled from Austria. 30% of income is received in Mumbai. <i>Head: PGBP</i> [30% of income is received in India] [70% of income is accrued outside India as well as outside India. The business is controlled from outside India]	5,40,000  12,60,000	5,40,000  ----	5,40,000  ----
6. Income from a business in Mexico. The business income is Rs. 25,00,000 and the business is controlled from India. 40% of income is received in India. <i>Head: PGBP</i> [40% of income is received in India] [60% of income is accrued outside India as well as outside India. The business is controlled from India]	10,00,000  15,00,000	10,00,000  15,00,000	10,00,000  ----
7. Rental income [Rs. 10,00,000] is earned in Russia. Taxable value [Rs. 10,00,000 – 30% of Rs. 10,00,000] <i>Head: House Property</i> It is assumed that the income is received in Russia also. [Income is accrued outside India as well as outside India]	7,00,000	----	----

Note:

1. Rental income – 30% standard deduction = Taxable Value of Rent under the head House Property
2. While computing taxable salary under the head Salaries, Rs. 50,000 per year is allowed as standard deduction.

### Lecture 8

Income deemed to be accrued in India [Sec. 9]

### Lecture 9 & 10

Questions were practiced from the book: Concept Building Approach

### Lecture 11

Books:

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

### Income under the head ‘Salaries’

Computation of income under the head Salaries of an assessee for the AY 2020-21:

Particulars	Rs.
Basis salary Bonus Commission Advance salary Arrear salary <i>Retirement benefits:</i> Leave encashment Gratuity Pension Provident fund Retrenchment compensation Voluntary retirement compensation <b>Received [Know]</b> <b>Less: Exempt [Compute]</b> <b>Taxable [Value required]</b>	
<i>Income by way of allowances:</i> House rent allowance Transport allowance Entertainment allowance Children education allowance Hostel expenditure allowance Tribal area allowance Outstation allowance Conveyance allowance Travelling allowance Uniform allowance <b>[Concentrate only on those allowances where Income-tax Act grants exemption under section 10]</b> <b>Received [Know]</b> <b>Less: Exempt [Compute]</b> <b>Taxable [Value required]</b>	
<i>Income by way of Perquisites [Rule 3]:</i> <b>Convert non-monetary benefits into Monetary value</b> Accommodation Use of motor car Interest-free loan Education facility Medical facility Use of movable assets Sale of movable assets LTC ESOP/ Sweat equity shares <b>Taxable value [By applying Rule 3 of Income-tax Rules, 1962]</b>	
Gross salary	XXX
Less: Deductions under section 16: Standard deduction Entertainment allowance Tax on employment/ Professional tax	50,000 XX XX
Income under the head Salaries	XXXX

### Lecture 12

#### Tax treatment of Leave Encashment:

1. In case of a Government employee, leave encashment received at the time of retirement (or leaving the job) is exempt from tax.

**Books:**

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

2. In case of a **non-Government employee**, leave encashment received at the time of retirement (or leaving the job) is exempt from tax but to the extent of least of the following:

- a) Leave **salary** based on **completed/ actual** year of service [Leave entitlement cannot exceed **30 days** for every year of completed/ actual year of service]
- b) **10 Months salary**
- c) Rs. 3,00,000 (Amount notified by the Government) – Amount exempted earlier
- d) Leave encashment actually received

*Note:*

i. Salary:

Basic salary	XX
+ Dearness allowance (if terms of employment so provide)	XX
+ Commission based on fixed percentage of turnover achieved by the employee	<u>XX</u>

Salary for the purpose of computing leave encashment exemption XX

ii. Salary is to be taken for 10 months preceding the retirement.

iii. Dearness allowance (if terms of employment so provide) means that dearness allowance which is included in computing the retirement benefits of the employee.

*Example:*

X retires on 30 November 2019 after doing the service in A Ltd. for 23 years and 11 months. His basic salary at the time of retirement is Rs. 70,000 per month, dearness allowance is 20% of basic salary (80% of dearness allowance forms part of salary for the purpose of computing the retirement benefits) and commission is 3% of sales (sales during 1 December 2018 to 30 November 2019 achieved by him is Rs. 24,00,000 on evenly basis). His leave entitlement is 20 days for completed year and he has already claimed 280 days of leaves. He also gets a bonus of Rs. 30,000 in the month of September 2019. Compute his taxable salary for the assessment year 2020-21 assuming he received the leave encashment of Rs. 4,87,200  $[(Rs. 81,200 \div 30) \times 180]$  at the time of retirement. Further, he was in K Ltd. before joining A Ltd. and from K Ltd. also, he got the leave encashment of Rs. 5,00,000 out of which Rs. 2,28,930 got exempted in 1994-95.

*Solution:*

Computation of income under the head Salaries of X for the AY 2020-21:

	Rs.
Basic salary [Rs. 70,000 $\times$ 8]	5,60,000
Dearness allowance [20% of Rs. 5,60,000]	1,12,000
Commission [3% of (Rs. 24,00,000/12 $\times$ 8)]	48,000
Bonus	30,000
Leave encashment – Note 1	<u>4,16,130</u>
Gross Salary	11,66,130
Less: Deductions under section 16	
Standard deduction	<u>50,000</u>
Income under the head Salaries	<u>11,16,130</u>

*Note 1: Computation of exemption of leave encashment (in case of non-Government employee):*

Out of Rs. 4,87,200 received as leave encashment, least of the following is exempt from tax:

- a) Rs. 5,23,200 [**Rs. 87,200  $\times$  6**]
- b) Rs. 8,72,000 [**10 Months salary**]
- c) Rs. 71,070 [**Rs. 3,00,000** (Amount notified by the Government) – **Rs. 2,28,930** (Amount exempted earlier)]
- d) **Rs. 4,87,200**, being leave encashment actually received

*Rs. 71,070, being the least, is exempt from tax.*

Therefore, the taxable leave encashment is:

Books:

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

	Rs.
Received	4,87,200
Less: Exempt	<u>71,070</u>
Taxable	<u><b>4,16,130</b></u>

*Note 2: Salary for the purpose of computing exemption from leave encashment [1 February 2019 to 30 November 2019]:*

	Rs.
Basic salary [Rs. 70,000 × 10]	7,00,000
Dearness allowance (forming part) [80% of (20% of Rs. 70,000)]	1,12,000
Commission [3% of (Rs. 24,00,000/12 × 10)]	<u>60,000</u>
Salary for 10 months	<u>8,72,000</u>
Average monthly salary [Rs. 8,72,000/10]	87,200

*Note 3: Completed/ actual year of service means any fraction of the year is ignored.*

Computation of leave at the credit:

Leave entitlement [20 × 23]	460 days
Less: Leave actually availed	<u>280</u> days
Leave at the credit	<u>180</u> days
Leave the credit (in months)	6 [180 days/ 30 days per month] months

#### **Dearness allowance (if terms of employment so provide/ forming part)**

Basic salary is Rs. 70,000.

Dearness allowance is Rs. 14,000 [20% of Rs. 70,000]

Suppose, the pension is 80% of Basic salary [Rs. 80% of Rs. 70,000 = Rs. 56,000]. After 20 years, inflation has risen, cost of living has risen but my pension remained at Rs. 56,000.

#### **Employee's request:**

When my pension was being fixed, please do not give me 80% of basic salary. Please give me 80% of (basic salary + Dearness allowance) as pension.

*How much is DA (forming part) in the above example?*

DA is Rs. 14,000 [20% of Rs. 70,000]

DA (forming part) is Rs. 11,200 [80% of Rs. 14,000]

## Lecture 13

#### **Example:**

X retires on 30 November 2019 after doing the service in A Ltd. for 23 years and 11 months. His basic salary at the time of retirement is Rs. 70,000, dearness allowance is 20% of basic salary (80% of dearness allowance forms part of salary for the purpose of computing the retirement benefits) and commission is 3% of sales (sales during 1 December 2018 to 30 November 2019 achieved by him is Rs. 24,00,000 on evenly basis). His leave entitlement is 40 days for completed year and on this basis, he has 440 days of credit available. He also gets a bonus of Rs. 30,000 in the month of September 2019. Compute his taxable salary for the assessment year 2020-21 assuming he received the leave encashment of Rs. 11,90,933 / (Rs. 81,200 ÷ 30) × 440 at the time of retirement. Further, he was in K Ltd. before joining A Ltd. and from K Ltd. also, he got the leave encashment of Rs. 5,00,000 out of which Rs. 2,28,930 got exempted in 1994-95.

#### **Solution:**

Computation of income under the head Salaries of X for the AY 2020-21:

	Rs.
Basic salary [Rs. 70,000 × 8]	5,60,000
Dearness allowance [20% of Rs. 5,60,000]	1,12,000
Commission [3% of (Rs. 24,00,000/12 × 8)]	48,000
Bonus	30,000
Leave encashment – Note 1	11,19,863
Gross Salary	18,69,863
Less: Deductions under section 16	
Standard deduction	<u>50,000</u>
Income under the head Salaries	<u>18,19,863</u>

Books:

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

*Note 1: Computation of exemption of leave encashment (in case of non-Government employee):*

Out of Rs. 11,90,933 received as leave encashment, least of the following is exempt from tax:

- a) Rs. 6,10,400 [Rs. 87,200  $\times$  7]
- b) Rs. 8,72,000 [10 Months salary]
- c) Rs. 71,070 [Rs. 3,00,000 (Amount notified by the Government) – Rs. 2,28,930 (Amount exempted earlier)]
- d) Rs. 11,90,933, being leave encashment actually received

Rs. 71,070, being the least, is exempt from tax.

Therefore, the taxable leave encashment is:

	Rs.
Received	11,90,933
Less: Exempt	<u>71,070</u>
Taxable	<u>11,19,863</u>

*Note 2: Salary for the purpose of computing exemption from leave encashment [1 February 2019 to 30 November 2019]:*

	Rs.
Basic salary [Rs. 70,000 $\times$ 10]	7,00,000
Dearness allowance (forming part) [80% of (20% of Rs. 7,00,000)]	1,12,000
Commission [3% of (Rs. 24,00,000/12 $\times$ 10)]	<u>60,000</u>
Salary for 10 months	<u>8,72,000</u>
Average monthly salary [Rs. 8,72,000/10]	87,200

*Note 3: Completed/ actual year of service means any fraction of the year is ignored.*

Computation of leave at the credit (as per the policy of the company):

Leave entitlement [40 $\times$ 23]	920 days
Less: Leave actually availed (Bal. Fig.)*	<u>480*</u> days
Leave at the credit	<u>440</u> days

Computation of leave at the credit (as per the Income-tax Department):

Leave entitlement [30 $\times$ 23]	690 days
Less: Leave actually availed	<u>480</u> days
Leave at the credit	<u>210</u> days
Leave the credit (in months)	7 [210 days/ 30 days per month] months

**Page 15 of chapter 4 [Book: Concept Building Approach by Dr. Naveen Mittal, 2e]**

## Lecture 14

We have covered the tax treatment of leave encashment received at the time of retirement/ leaving the job (Both the cases whether the employee is a Government employee or a non-Government have been covered)

### Leave encashment during continuity of employment

It is fully taxable (whether the employee is a Government/ non-Government).

### Leave encashment at the time of death

Leave encashment at the time of death is not taxable (whether the employee is a Government/ non-Government).

### GRATUITY

**Tax treatment of gratuity received at the time of retirement (or leaving the job):**

Government employee                          or                          Non-Government employee  
- 100% tax-free

**In case of a non-Government**

**Books:**

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

(a) The employee is covered under the Payment of Gratuity Act 1972

Gratuity received is exempt from tax but to the extent of least of the following:

- i) 15 days salary based on salary **last drawn** by the employee for completed year of service in excess of 6 months
- ii) Rs. 20,00,000 (Amount notified by the Government) – Amount exempted earlier
- iii) Gratuity actually received

*Note:*

i. Salary (Monthly salary):

Basic salary	XX
+ Dearness allowance (whether forming part or not)	<u>XX</u>
Salary for the purpose of computing gratuity here	<u>XX</u>

ii. If service rendered is 23 years and 4 months, relevant value is 23. If service rendered is 23 years and 8 months, relevant value is 24. If service rendered is 23 years and 6 months, the relevant value is 23.

$$\text{iii. } 15 \text{ days salary} = \frac{\text{Salary}}{26} \times 15$$

*Example:*

X retires on 31 January 2020 after doing the service in A Ltd. for 23 years and 11 months. His basic salary at the time of retirement is Rs. 70,000 per month, dearness allowance is 20% of basic salary (80% of dearness allowance forms part of salary for the purpose of computing the retirement benefits) and commission is 3% of sales (sales during 1 February 2019 to 31 January 2020 achieved by him is Rs. 24,00,000 on evenly basis). He also gets a bonus of Rs. 30,000 in the month of September 2019. Compute his taxable gratuity for the assessment year 2020-21 assuming he received the gratuity of Rs. 22,38,000 at the time of retirement. He is covered under the Payment of Gratuity Act 1972.

*Solution:*

Case of gratuity received by a non-Government employee at the time of retirement and the employee is covered under the Payment of Gratuity Act 1972:

Gratuity of Rs. 22,38,000 received is exempt from tax but to the extent of least of the following:

- i) Rs. 11,63,077 [i.e., 15 days salary based on salary **last drawn** by the employee for completed year of service in excess of 6 months (Rs.  $48,461.54 \times 24$ )]
- ii) Rs. 20,00,000 (Amount notified by the Government)
- iii) Rs. 22,38,000 (Gratuity actually received)

Rs. 11,63,077, being the least, is exempt from tax.

*Taxable amount of gratuity is:*

Received	22,38,000
Less: Exempt	<u>11,63,077</u>
Taxable	<u>10,74,923</u>

*Note:*

i. Salary (Monthly salary):

Basic salary	70,000
+ Dearness allowance (whether forming part or not) [20% of Rs. 70,000]	<u>14,000</u>
Salary for the purpose of computing gratuity here	<u>84,000</u>

$$\text{iii. } 15 \text{ days salary} = \frac{\text{Salary}}{26} \times 15 = 48,461.54$$

(b) The employee is not covered under the Payment of Gratuity Act 1972

Gratuity received is exempt from tax but to the extent of least of the following:

- i) Half months average salary for completed year of service
- ii) Rs. 20,00,000 (Amount notified by the Government) – Amount exempted earlier
- iii) Gratuity actually received

*Note:*

**Books:**

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

i. Salary:

Basic salary

XX

+ Dearness allowance (if terms of employment so provide)

XX

+ Commission based on fixed percentage of turnover achieved by the employee XX Salary for the purpose of computing gratuity here XX

ii. Salary is to be taken for 10 months immediately **preceding the month of** retirement. For example, if employee retires on 31<sup>st</sup> December 2019, the period of 10 months is 1 Feb. 2019 to 30 November 2019.

$$\text{iii. Half months' salary} = \frac{\text{Average Monthly salary}}{2}$$

*Example:*

X retires on 31 January 2020 after doing the service in A Ltd. for 23 years and 11 months. His basic salary at the time of retirement is Rs. 70,000 per month, dearness allowance is 20% of basic salary (80% of dearness allowance forms part of salary for the purpose of computing the retirement benefits) and commission is 3% of sales (sales during 1 February 2019 to 31 January 2020 achieved by him is Rs. 24,00,000 on evenly basis). He also gets a bonus of Rs. 30,000 in the month of September 2019. Compute his taxable gratuity for the assessment year 2020-21 assuming he received the gratuity of Rs. 22,38,000 at the time of retirement. He is **not** covered under the Payment of Gratuity Act 1972.

*Solution:*

Case of gratuity received by a non-Government employee at the time of retirement and the employee is **not** covered under the Payment of Gratuity Act 1972:

Gratuity of Rs. 22,38,000 received is exempt from tax but to the extent of least of the following:

- i) Rs. 10,02,800 [i.e., Half month's average salary for completed year of service (Rs. 43,600 × 23)]
- ii) Rs. 20,00,000 (Amount notified by the Government)
- iii) Rs. 22,38,000 (Gratuity actually received)

Rs. 10,02,800, being the least, is exempt from tax.

*Taxable amount of gratuity is:*

Received	22,38,000
Less: Exempt	<u>10,02,800</u>
Taxable	<u>12,35,200</u>

*Note:*

i. Salary for 10 months [1 March 2019 to 31 December 2020]:

Basic salary [Rs. 70,000*10]	7,00,000
+ Dearness allowance (forming part) [80% (20% of Rs. 7,00,000)]	1,12,000
+ Commission based on fixed percentage of turnover [Rs. 24,00,000/12* 10 = Rs. 20,00,000*3%]	<u>60,000</u>
Salary for the purpose of computing gratuity here	<u>8,72,000</u>

Average monthly salary = Rs. 87,200 [Rs. 8,72,000/10]

$$\text{Half months' salary} = \frac{\text{Rs. } 87,200}{2} = 43,600$$

**Gratuity received during continuity of employment**

Gratuity received during continuity is fully taxable (whether a Government employee or a non-Government employee)

**Gratuity received at the time of death**

On the basis of circulars issued for leave encashment in similar situation, I say that gratuity received at the time of death is exempt from tax.

**Lecture 15**

**Tax treatment of Pension**

**Books:**

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

Two types of pension schemes in India:

1. Old Pension Scheme

[In PY 2019-20, most of the people who are retiring from the Government job are covered under Old Pension Scheme]

2. New Pension Scheme [applicable to Government employees who have joined the job on or after 1 January 2004] **Will be discussed in detail in the chapter 11- Deductions under section 80**

For example, if X (49 years) joined the Government job in 2004 and the retirement age in that job is 60 years. In such a case, X is, by default, covered under NPS.

**Tax treatment of old pension scheme:**

Uncommuted pension (Monthly pension): Fully Taxable (Govt/ non-Govt.)

Commuted pension (Lump sum): Fully exempt in case of Government employees

Or

in case of non-Government employees,

Situation 1: The employee receives gratuity

Exemption is  $\frac{1}{3}$ rd of commuted value

Situation 2: The employee does not receive gratuity

Exemption is  $\frac{1}{2}$  of commuted value

**Example:**

Ms. Harshita retires from Government job on 31<sup>st</sup> July 2019. After retirement, her pension was fixed at Rs. 40,000 per month. On 1<sup>st</sup> February 2020, her 80% pension was commuted for Rs. 48,00,000. Compute the taxable pension in the hands of Ms. Harshita for the AY 2020-21.

**Solution:**

Taxable pension for the AY 2020-21:

Uncommuted pension [Rs. 40,000*6 + (Rs. 40,000*20%)*2]	2,56,000	----
Commutted pension (exempt)		
Taxable pension	<u>2,56,000</u>	

**Example:**

Ms. Vedika retires from a non-Government job on 31<sup>st</sup> July 2019. After retirement, her pension was fixed at Rs. 60,000 per month. On 1 January 2020, her 70% pension was commuted for Rs. 56,00,000. Compute the taxable pension in the hands of Ms. Vedika for the AY 2020-21 assuming:

- (a) She does not receive any gratuity
- (b) She receives a gratuity of Rs. 30,000.

**Solution:**

(a) When Ms. Vedika does not receives any gratuity:

Taxable pension for the AY 2020-21:

Uncommuted pension [Rs. 60,000*5 + (Rs. 60,000*30%)*3]	3,54,000	----
Commutted pension		
Received	56,00,000	

Less: Exempt – Note	<u>40,00,000</u>	<u>16,00,000</u>	----
Taxable pension		<u>19,54,000</u>	

**Note:**

Commutted pension received	56,00,000
70% conversion	56,00,000
1% conversion	56,00,000/70
100% conversion	56,00,000/70*100
Commutted value	<b>80,00,000</b>
Exemption [1/2 of Rs. 80,00,000]	40,00,000

(b) When Ms. Vedika receives any gratuity:

**Books:**

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

Taxable pension for the AY 2020-21:

Uncommuted pension [Rs. 60,000*5 + (Rs. 60,000*30%)*3]	3,54,000
Commutted pension	
Received	56,00,000
Less: Exempt – Note	<u>26,66,667</u>
Taxable pension	<u>29,33,333</u> <u>32,87,333</u>

*Note:*

Commutted pension received	56,00,000
70% conversion	56,00,000
1% conversion	56,00,000/70
100% conversion	56,00,000/70*100
Commutted value	<b>80,00,000</b>
Exemption [1/3 of Rs. 80,00,000]	26,66,667

**Example [Page 13 of the book: Concept Building Approach]**

Y retired from a private job on 30 June 2019 and after retirement, he started receiving pension of Rs. 40,000 per month. On 1 February 2020, he gets 80% of the pension commuted for Rs. 16,00,000. Compute his taxable pension for the assessment year 2020-21 assuming:

- a) he has received gratuity of Rs. 3,00,000; or
- b) he has not received any gratuity.

Ans. (a) Rs. 12,29,333

(b) Rs. 8,96,000

**Tax treatment of Provident Fund (PF)**

1. Every yearly employee contributes as well as employer [Tax treatment required]
2. Interest credited on the accumulated balance of PF [Tax treatment required]
3. Lump sum amount of PF received at the time of retirement [Tax treatment required]
 

(a) [Employee's contribution]	(c) Employer's contribution
+ -----	+ -----
(b) Interest on Employee's contribution]	(d) Interest on Employer's contribution

**Lecture 16**

**SPF (Statutory PF)**

RPF (Recognised PF)

UPF (Unrecognised PF)

PPF (Public PF)

Particulars	SPF	RPF	UPF	PPF
Employer's contribution [Rs. 3,00,000]	Exempt ----	Exempt upto 12% of Salary. Over and above 12% of salary is taxable.	Exempt ----	Employer cannot contribute
Employee's contribution [Rs. 1,50,000]	Deduction under section 80C [Rs. 1,50,000]	Deduction under section 80C [Rs. 1,50,000]	Deduction not allowed [-----]	Deduction allowed under section 80C [Rs. 1,50,000]
Interest credited [Rs. 34,000 @ 11%] [Balance in my PF Account*11% = Interest (Rs. 34,000)]	Exempt	Exempt if rate of interest does not exceed 9.5%. if exceeds 9.5%, excess is taxable. [Rs. 34,000/11*1.5 = <b>Rs. 4,636</b> ]	Exempt	Exempt

**Books:**

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

Lump	Exempt	Exempt but some conditions need to be followed [Sec. 10(12)]	Employer's contribution + Interest on it = Taxable under the head Salaries. Employee Contribution is not at income and thus, not taxable but Interest on employee's contribution = Taxable under the head Income from Other Sources	Exempt
Concept followed?	EEE		<b>EET</b>	

*Salary for the purpose of computing RPF exemption is:*

BS + DA (forming part) + Commission based on fixed percentage of turnover achieved by the employee.

**Example on Page 18 of the Book [Concept Building Approach by Dr. Naveen Mittal]**

During the previous year 2019-20, X has earned the following from the employer:

1. Basic pay: Rs. 10,000 per month
2. Dearness allowance: Rs. 3,000 per month (60% forms part of salary)
3. Commission (fixed): Rs. 31,000

He contributes Rs. 20,000 towards provident fund. The employer also makes a matching contribution. Interest credited in the provident fund on 7 February 2020 is Rs. 57,645 @ 14% p.a. At the time of retirement on 31 March 2020, the employee received Rs. 23,59,500 (employer's contribution Rs. 7,00,000 & interest thereon Rs. 3,01,000 as well as employee's contribution Rs. 9,50,000 & interest thereon Rs. 4,08,500). He has retired after continuous service of 11 years. Compute the total income of X for the assessment year 2020-21 assuming:

- a) the provident fund is statutory; or
- b) the provident fund is recognized; or
- c) the provident fund is unrecognized.

**Solution:**

	Particulars	SPF	RPF	UPF
	Income from Salary:			
	Basic pay [10,000*12]	1,20,000	1,20,000	
	DA [3,000*12]	36,000	36,000	
	Commission	31,000	31,000	
	Employer's contribution			
	[20,000 – 12% of (1,20,000 + 60% of 36,000)]*	Exempt	3,008*	
	Interest credited			
	[57,645/14*4.5]**	<u>Exempt</u>	<u>18,529**</u>	
	Gross salary	1,87,000	2,08,537	
Less:	Standard deduction	<u>50,000</u>	<u>50,000</u>	
	Income under the head Salaries	1,37,000	1,58,537	
Add:	Income under other heads	<u>Nil</u>	<u>Nil</u>	
	Gross total income	1,37,000	1,58,537	
Less:	Deductions under section 80C			
	[Employee's contribution]	<u>20,000</u>	<u>20,000</u>	
	Total income (Rounded off)	1,17,000	1,38,540	15,46,500

**Rounded off**

Total income as well as tax payable (or tax refundable) has to be rounded off to the nearest multiple of Rs. 10.

For example, if Total income is Rs. 1,98,976, TI should be written as 1,98,780.

If Total income is Rs. 1,98,975, TI should be written as 1,98,780.

If Total income is Rs. 1,98,974, TI should be written as 1,98,770.

Books:

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

If Total income is Rs. 1,98,974.99, TI should be written as 1,98,770.

*Similar concept will apply in case of tax payable (or tax refundable).*

#### **Tax treatment of Retrenchment Compensation**

Out of retrenchment compensation received, least of the following is exempt –

1. ....
- 2. Rs. 5,00,000 (Amount specified)**
3. Retrenchment compensation actually received

#### **Tax treatment of Compensation at the time of Voluntary Retirement**

Out of voluntary compensation received, least of the following is exempt –

1. ....
2. ....
- 2. Rs. 5,00,000 (Amount specified)**
3. Voluntary compensation actually received

## Lecture 17

### ALLOWANCES

#### **Taxability of allowances is explained as below –**

- 1. Where exemption depends upon the actual expenditure [6] [Sec. 10(14)]*

Received – Exemption (Actual expenditure) = Taxable

- a) Transfer/ Touring/ Travelling allowance
- b) Conveyance allowance
- c) Daily allowance
- d) Helper allowance
- e) Academic/ Research allowance
- f) Uniform allowance

For example,

i) Z received helper allowance of Rs. 30,000 per year and he spent only Rs. 28,000 to engage a helper. Taxable helper allowance is Rs. 2,000 [Rs. 30,000 – Rs. 28,000].

ii) K received helper allowance of Rs. 30,000 per year and he spent Rs. 4,00,000 to engage a helper. Taxable helper allowance is Nil [Rs. 30,000 – Rs. 30,000\*].

- 2. Where exemption does not depend upon the actual expenditure (but exemption depends upon the provisions of the Act) [8] [Sec. 10(14)]*

Received – Exemption (does not depend upon the actual expenditure) = Taxable

For example, children education allowance is exemption @ Rs. 100 per month per child (exemption is allowed for a maximum of 2 children)

Received = Rs. 40,000 – Rs. 1,200 (Rs. 100\*12\*1) = Rs. 38,800

- a) Children education allowance  
Exemption is Rs. 100 per month per child (maximum exemption is for 2 children)
- b) Hostel expenditure allowance  
Exemption is Rs. 300 per month per child (maximum exemption is for 2 children)
- c) Transport allowance (blind, deaf and dumb, orthopaedically handicapped)  
Exemption is Rs. 3,200 per month

For example,

i) Z received education allowance for 3 children @ Rs. 800 per month per child but he actually spent Rs. 10,000 per month per child on their education.

Books:

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

Taxable education allowance is Rs. 26,400 [(Rs. 800\*12\*3) – (Rs. 100\*12\*2)].

ii) Z received Rs. 2,880 as education allowance for 3 children but he actually spent Rs. 10,000 per month per child on their education.

Taxable education allowance is Rs. 960 [(Rs. 80\*12\*3) – (Rs. 80\*12\*2)].

$2880/3 = 960/12 = 80$  per month per child

## Lecture 18

3. Allowance where exemption depends upon the actual expenditure as well as the provisions of the Act

### House rent allowance

Least of the following amount is exempt from tax:

1. 50% of salary if the house is situated in Bombay/Delhi/ Calcutta/ Madras (or 40% of salary if the house is situated in other places)
2. HRA actually received
3. Rent paid by the employee *minus* 10% of salary

Received	XX
Less: Exempt	<u>XX</u>
Taxable HRA	<u>XX</u>

Note:

1. Salary for the purpose of HRA exemption is:

BS	XX
+ DA (forming part)	XX
+ Commission based on fixed percentage of turnover achieved by the employee	<u>XX</u>
Salary for the purpose of computing HRA exemption	<u>XX</u>

2. *Salary for the purpose of HRA exemption is always taken on 'due' basis:*

Salary if become due, has to be included for the purpose of HRA exemption even if not received. Similarly, salary if not due, will not be included for the purpose of HRA exemption even if it is received.

For example, my previous year is 2019-20 [1 April 2019 to 31 March 2020]. During these 12 months, I received HRA from my employer. Basic salary till 31 December 2019 is Rs. 1,00,000 per month (Rs. 1,10,000 from 1 January 2020), dearness allowance is 20% of basic salary (not forming part). Basic salary of April 2020 is received in advance in March 2020. *Basic salary of December 2019 was given in May 2020.*

Salary for the purpose of HRA exemption:

Basic salary [Rs. 1,00,000*9 + Rs. 1,10,000*3]	12,30,000
+ DA	Nil
+ Commission based on fixed percentage	<u>Nil</u>
Salary for the purpose of HRA exemption	<u>12,30,000</u>

### Example on Page 25 of the book [Concept Building Approach by Dr. Naveen Mittal] – HRA

Y is a Government employee. During the previous year 2019-20, he earns the basic salary of Rs. 8,40,000 and dearness allowance (60% forms part of salary) of Rs. 2,52,000. He has also received the house rent allowance of Rs. 90,000 during the previous year 2019-20. In March 2020, he has received Rs. 70,000 as the advance salary of April 2020. Compute the amount of taxable house rent allowance for the assessment year 2020-21 assuming that he is living in Pune in a rented accommodation and paying a rent of Rs. 1,10,000. Also compute the income of Y under the head Salaries.

4. Allowances which are fully exempt [4]

#### Theory purpose

Sec. 10 – Gives the fully exempt allowances also.

5. Allowances which are fully taxable -----

All the allowances which are not covered in the above 4 categories are by default, fully taxable.

For example, dearness allowance, City Compensatory allowance, medical allowance, etc.

Books:

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

## PERQUISITES

It is also a benefit given to the employee by the employer. It can be cash or non-cash.

Section 17(2): Meaning of 'Perquisites'

**In case of retirement benefits and allowances, how taxable value was computed?**

Received
Less: Exempt
Taxable

**In case of perquisites, how taxable value was computed?**

Received (DO NOT KNOW)
Less: Exempt (Difficult to compute how much is exempt)
<b>Taxable</b>

In case of perquisites, I will directly compute the taxable value of perquisite.

## Lecture 19

### Valuation of different perquisites [Rule 3]

#### 1. Residential Accommodation:

(a) Unfurnished:

*Government employee:*

Value of unfurnished accommodation = Licence Fee – Amount payable by the employee

*Example*

*Mr. X, a Secretary in the Ministry of Finance, got an accommodation from the Government of India on 1 June 2019. The market rent of similar property is Rs. 6,00,000 per month but the licence fee is Rs. 800 per month.*

*Taxable value of unfurnished accommodation = Rs. 800\*10 = **Rs. 8,000***

*Non-Government employee:*

*Where the accommodation is owned by the employer*

- i. If population of the City exceeds 25 Lakhs as per 2001 Census, value = 15% of Salary – Amount payable by the employee
- ii. If population of the City exceeds 10 Lakhs but does not exceed 25 Lakhs as per 2001 Census, value = 10% of Salary – Amount payable by the employee
- iii. If population of the City does not exceed 10 Lakhs as per 2001 Census, value = 7.5% of Salary – Amount payable by the employee

*Where the accommodation is taken on rent by the employer*

Value = 15% of salary or rent payable by the employer, whichever is less.

From this value so arrived, deduct Amount payable by the employee

**Meaning of Salary for the purpose of computing the value of accommodation:**

- Basis salary
  - + DA (forming part)
  - + Commission
  - + Bonus
  - + All monetary taxable benefits
  - + All taxable value of allowances
- But this salary does not include the following:
- a) Perquisites (monetary or non-monetary)

Books:

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

- b) All retirement benefits given at the **time of retirement**

Note: While computing salary for this purpose, salary is to be taken on due basis only.

**Example given on page 30 of the book [Concept Building Approach by Dr. Naveen Mittal]**

X is an employee of a private sector company in Delhi. He got the residential accommodation from the company in Noida for the period during 16 July 2019 to 31 January 2020. The accommodation is owned by the company. The population of Noida as per 2001 Census is 6,50,000. Salary for the purpose of perquisite of accommodation is Rs. 8,90,000 for the previous year 2019-20. X is also supposed to pay Rs. 1,000 per month as rent to the employer.

Value	36,156
Less: Rent payable by the employee [Rs. 1,000*6.5]	<u>6,500</u>
Taxable value	<u>29,656</u>

**Example given on page 30 of the book [Concept Building Approach by Dr. Naveen Mittal]**

Suppose, in the above case, the accommodation is not owned by the employer but the employer has also taken the accommodation on rent of Rs. 12,000 per month from a third party (market rent of this accommodation, however, is Rs. 22,000 per month). In this case, the population of the city does not matter as the accommodation is not owned by the employer.

Value is 65,813

## Lecture 20

(b) Furnished accommodation

First of all, assume this accommodation as Unfurnished and compute the accordingly.

Then, simply add the value of Furniture in the value so arrived.

*Value of furniture:*

Situation I: If furniture is owned by the employer

Value of furniture = Actual cost\*10% p.a.

Situation II: If furniture is taken on rent by the employer:

Value of furniture = Rent payable by the employer

Thus, Value of furnished accommodation = Value of Unfurnished accommodation + Value of Furniture – Amount payable by the employee

(c) Hotel Accommodation

Value = 24% of salary or Hotel Tariff payable by the employer, whichever is less.

From this value so arrived, deduct amount payable by the employee.

**Illustration given on page 4.33 of the book [Concept Building Approach by Dr. Naveen Mittal]**

During the previous year 2019-20, X gets the following emoluments from his employer:

	Rs.
Basic salary per month	80,000
Dearness allowance (60% forms part of salary) per month	20,000
Commission (fixed) per annum	50,000
Children education allowance received for 2 children per month	800
Value of perquisite of domestic servants per annum	1,20,000
Gratuity received at the time of retirement	13,00,000

X has received the salary of April 2020 [Rs. 80,000] in the month of March 2020 itself.

Compute the salary for the purpose of Accommodation for the AY 2020-21.

## 2. Interest-free loan/ Loan at concessional rate

Value = Interest rate charged by the SBI on 1 April 2019 on such loans – Interest rate recovered from the employee

**Books:**

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

Example, Suppose, my employer has given me Rs. 5,00,000 at 2% p.a. on 1 July 2019.

Note:

- a) The interest is to be computed on the maximum outstanding balance of each month and this maximum outstanding balance means the outstanding balance on the last day of each month.
- b) No perquisite value to be computed if loan amount does not exceed Rs. 20,000 in aggregate in a year.
- c) No perquisite value is to be computed if loan is given for a disease specified in rule 3A.

**Illustration given on page 4.45 of the book [Concept ....]**

3. X has taken a personal loan of Rs. 3,00,000 on 16 September 2019 from his employer at an interest rate of 12% p.a. Assume that the rate of SBI on 1 April 2019 for personal loan is 11% p.a.

In this case, the value of perquisite of concessional loan for the assessment year 2020-21 is Nil because the employee is not getting any benefit from the employer as he is already paying the interest which is more than what he would have paid had he borrowed the amount from SBI.

4. X has taken a car loan of Rs. 20,000 on 18 November 2019 from his employer at an interest rate of 5% p.a. Assume that the rate of SBI on 1 April 2019 for such car loan is 11% p.a.

In this case, the value of perquisite of concessional loan for the assessment year 2020-21 is Nil because the loan amount does not exceed Rs. 20,000.

5. X has taken an interest-free car loan of Rs. 16,000 on 1 November 2019 from his employer and an interest-free personal loan of Rs. 10,000 on 1 December 2019. Assume that the rate of SBI on car loan on 1 April 2019 is 10% and on personal loan is 12%.

## Lecture 21

### **3. Perquisite of use of motor car**

Three points need to be considered while determining the value of motor car:

1. Who provided the car [Employer/ Employee].
2. For what purpose the car is being used [official, personal, official cum personal]
3. Who incurs the running and maintenance expenses on car? [Employer/ Employee]

#### Situation I: Car is provided by the employer

Use	Who incurs the Expenses?	Value
1. Official	Does not matter	Nil
2. Personal	Employer/ Employee	10% p.a. of actual cost (owned) or Hire charges payable (hire) Add: Actual expenditure on running and maintenance (if incurred by the employer) Add: Driver's expenses (if driver is provided by the employer) Less: Amount recovered from the employee = Taxable value
3. Off/ Per.	Employer	Rs. 1,800 per month if engine capacity of the car does not exceed 1.6 litre (1,600 cc) or Rs. 2,400 per month if engine capacity of the car exceeds 1.6 litre
		+ Rs. 900 per month (if driver is also provided by the employer)
		<i>Note: Amount recovered from the employee is not deductible.</i>
	Employee	Rs. 600 per month (cc does not exceed 1.6 litre) or Rs. 900 per month (cc exceeds 1.6 litre) + Rs. 900 per month (if driver is also provided by the employer)

Books:

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

*Note: Amount recovered from the employee is not deductible.*

*Note:*

*While computing the value of perquisite of motor car, the month means calendar month. Calendar month means complete month.*

**Illustration 2 from page 35 of the book [Concept Building Approach .....**

*A Maruti WagonR [1,200 cc] which is owned by the employer has been given to the employee only for personal purposes on 8 July 2019. The actual cost of the car when purchased in November 2010 was Rs. 3,50,000 (written down value of the car is Rs. 1,50,000 on 8 July 2019). The expenses incurred by the employee during 8 July 2019 to 31 March 2020 on petrol Rs. 60,000, insurance Rs. 10,000, service Rs. 25,000 and driver's salary Rs. 70,000 were reimbursed by the employer during the previous year. The employee has paid Rs. 30,000 to the employer for the use of this car facility.*

**Value is Rs. 1,61,250**

**Illustration 4 from page 35 of the book [Concept Building Approach .....**

*Suppose in Illustration 2 above, the car is taken on hire charges of Rs. 12,000 per month by the employer.*

**Value is Rs. 2,43,000**

**Illustration 5 from page 36 of the book [Concept Building Approach .....**

*A Toyota Fortuner [2,750 cc] which is hired by the employer on a monthly hire charge of Rs. 55,000 has been given to the employee for official as well as personal purposes on 31 October 2019. The expenses incurred by the employee during 31 October 2019 to 31 March 2020 on diesel Rs. 1,10,000, insurance Rs. 28,000, service Rs. 43,000 and driver's salary Rs. 1,40,000 were reimbursed by the employer during the previous year. The employee has paid Rs. 9,000 to the employer for the use of car facility.*

**Value is Rs. 19,800**

**Situation II: Car is owned by the employee and running & maintenance expenses are incurred by the employer:**

<i>Use</i>	<i>Value</i>	
1. Official	Nil	
2. Personal	Expenses incurred by the employer Less: Amount recovered from the employee Taxable value	
3. Off/ Per.	Expenses incurred by the employer <i>Less: Amount attributable for official purpose: Rs. 1,800 per month or Rs. 2,400 per month, depending upon the engine capacity</i>	XX
	+	
	<i>Rs. 900 per month (if driver is also provided by the employer)</i>	XX
		<i>OR</i>
	<i>Actual official expense Whichever is higher</i>	<u>XX</u> <u>XX</u>
	Amount recovered from the employee	<u>XX</u>
	Taxable value	<u>XX</u>

**Illustration 2 from page 36 of the book [Concept Building Approach .....**

*A Maruti WagonR [1,200 cc] is owned by the employee. The expenses are, however, incurred by the employer on running and maintenance expenses of the car and amounts to Rs. 1,50,000 during the previous year 2019-20. Driver's salary of Rs. 2,00,000 is also paid by the employer. The employee has paid Rs. 20,000 for the use of this car facility. The car is used only for personal purposes.*

**Value is Rs. 3,30,000.**

**Illustration 3 from page 37 of the book [Concept Building Approach .....**

*A Toyota Fortuner [2,750 cc] is owned by the employee but used for official as well as personal purposes from 8 November 2019. The expenses incurred by the employee during 8 November 2019 to*

Books:

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

*31 March 2020 on diesel Rs. 1,10,000, insurance Rs. 28,000, service Rs. 43,000 and driver's salary Rs. 1,40,000*

*were reimbursed by the employer during the previous year. The employee has paid only Rs. 9,000 to the employer for getting the benefit of running and maintenance expenses incurred by the employer. The employer has maintained the log-book of the car. The employer claims that the actual expenses incurred for official purpose is 80% of the actual expenditure.*

**Value is Rs. 55,200**

*Note: If car facility is given to commute the distance from office to residence and back, the car facility is 100% exempt from tax.*

#### **4. Domestic servants [Watchmen, Sweeper, Gardener, etc.]**

Value = Expenditure incurred by the employer – Amount recovered from the employee

*Note:*

If gardener is provided to the employee where the accommodation is owned by the employer, then the salary of gardener is not taxable separately – *Circular*.

#### **Illustration 2 from page 39 of the book [Concept Building Approach .....**

*X has been provided an unfurnished accommodation owned by the employer whose taxable value comes out to be Rs. 89,000. He has been provided a gardener also whose salary Rs. 1,20,000 during the previous year is paid by the employer. In this case, the salary of the gardener is not taxable in the hands of the employee because the salary of the gardener is not taxable as a perquisite when the gardener is provided along with the accommodation owned by the employer.*

#### **Illustration 1 from page 39 of the book [Concept Building Approach .....**

*X has been provided a watchman at his house by the employer from 16 August 2019. The salary of watchman Rs. 10,000 per month is paid by the employer to the watchman. However, the employee pays only Rs. 1,500 per month to the employer for this service.*

*In this case, the value of perquisite of the watchman taxable for the assessment year 2020-21 in the hands of X is Rs. 63,750 [(Rs. 10,000 – Rs. 1,500) \* 7.5 months].*

#### **Illustration 3 from page 39 of the book [Concept Building Approach .....**

*X has been provided an unfurnished accommodation which is also taken on lease by the employer at a monthly rent of ` 20,000. The taxable value of this perquisite comes out to be Rs. 89,000. He has been provided a gardener also whose salary Rs. 1,20,000 during the previous year is paid by the employer.*

*Is gardener salary taxable separately or not? (Yes/ No)*

*Ans. Yes*

#### **5. Household amenities [Electricity facility, Water facility, Gas facility etc.]**

Value = Expenditure incurred by the employer – Amount recovered from the employee

### **Lecture 22**

#### **6. Education facility**

### **Lecture 23**

#### **7. Medical facility**

Employee as well as the family

Family means –

- (a) Spouse and children
- (b) Parents/ brothers/ Sisters of the employee (if dependant on the employee)

*(a) Medical facility provided in India*

Books:

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

In the following cases, medical facility provided is exempt from tax:

1. Employer's hospital/ clinic/ dispensary
2. Government hospital
3. Prescribed diseases in rule 3A and availed in a hospital which is approved by the CIT.
4. Medical insurance premium for the employee.

*(b) Medical facility provided outside India*

1. Medical treatment [1] : Exempt to the extent permitted by RBI
2. Stay aboard [1 + 1] : Exempt to the extent permitted by RBI
3. Travelling [1 + 1] : Entire travelling expenditure reimbursed by the employer is exempt if Gross total income (excluding the said travelling expenditure reimbursed) does not exceed Rs. 2,00,000.

**Example from the book Concept Building Approach –**

X has incurred the following expenses on the medical treatment outside India during the previous year 2019-20:

	Exp. Incurred	Exp. Reimbursed	Permi. RBI	
Medical expenditure of X	10,00,000	9,00,000	8,60,000	
Stay abroad expenses of X and one attendant accompanying him		3,00,000		2,80,000
	2,50,000			
Travel expenses of X and one attendant accompanying him	4,00,000	3,80,000		—

Compute the value of perquisite of medical facility outside India in the hands of X for the assessment year 2020-21

assuming that his basic salary is Rs. 13,000 per month, income from other sources is Rs. 24,100 and he has invested

Rs. 10,000 in his PPF account during the previous year 2019-20.

Solution:

Medical	40,000
Stay abroad	30,000
Travelling	<u>3,80,000</u>
Medical facility outside India	<u>4,50,000</u>

Note:

Basic salary [Rs. 13,000*12]	1,56,000
Perquisite of medical	
[40,000 + 30,000]	<u>70,000</u>
Gross salary	2,26,000
Less: Standard deduction	<u>50,000</u>
Taxable salary	1,76,000
Add: IFOS	<u>24,100</u>
<b>Gross total income</b>	<b>2,00,100</b>

**Lecture 24**

**8. Valuation of Leave travel concession/ leave travel assistance**

Taxable value = Amount reimbursed by the employer – Actual Expenditure of the employee

Government employment:

$$\text{Rs. } 80,000 - \text{Rs. } 80,000 = \text{Nil}$$

Non-Government employment:

$$\text{Rs. } 90,000 - \text{Rs. } 80,000 = \text{Rs. } 10,000 - \text{Taxable}$$

**9. Value of food**

**Books:**

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

**Exempt:**

1. Tea or snacks during working hours is exempt.
2. Food/ lunch is exempt if cost per meal does not exceed Rs. 50. Excess of Rs. 50 is taxable.

**10. Gift received from the employer**

Gift received in cash is fully taxable.

However, gift in kind is exempt up to Rs. 5,000. Over and above Rs. 5,000 is taxable.

**11. Value of use of movable assets (except use of motor car)**

**Value:**

If movable assets are owned by the employer: Value is 10% p.a. of Actual Cost – Amount recovered from the employee

If movable assets are taken on rent by the employer, Value is Rent charges paid/ payable by the employer – Amount recovered from the employee

**Note:**

Use of laptop/ computers is a tax-free perquisite.

**12. Value of Sale of movable assets**

	Electronic Items	Motor Car	Other Assets
Actual cost of the asset			
Less: Normal wear and Tear			
On the basis of <i>completed year</i>			
Of service	[50% WDV]	[20% WDV]	[10% SLM]
WDV Value			

Sale value

**Note:**

Electronic items mean official purpose items like computers, printers, scanners, fax machines. It does not mean household items like TV, Fridge, AC, Washing machines, etc.

**Example**

Mr. X purchased the following assets on 12 December 2019 from the employer

	Laptop	Car	AC
Sale price	10,000	50,000	2,000
Other information:			
Actual cost	90,000	6,00,000	44,000
Purchase date	14 Dec. 2017	11 Dec. 2016	15 January 2013

**Solution:**

**Laptop:**

Actual cost on		
14.12.17	90,000	
Less: Normal W&T		
[50% -		
14.12.17 to 13.12.18	45,000	
WDV on 14.12.18	45,000	
Less: Sale value	10,000	
Value	35,000	

**Car:**

Actual cost on 11 Dec. 2016		6,00,000
Less: Normal W&T [20% - 11 Dec. 2016 to 10 Dec. 2017]	]	1,20,000
WDV on 11 Dec. 2017		4,80,000
Less: Normal W&T [20% - 11 Dec. 2017 to 10 Dec. 2018] 96,000		
WDV on 11 Dec. 2018		3,84,000

**Books:**

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

Less:	Normal W&T [20% - 11 Dec. 2018 to 10 Dec. 2019]	<u>76,800</u>	
	WDV on 11 Dec. 2019	3,07,200	
Less:	Sale value	<u>50,000</u>	
	Value	<u>2,57,200</u>	
AC:			
	Value	15,600	

**Lecture 25**

**13. Valuation of Sweat Equity shares or Employees Stock Option Plan [ESOP]**

*Example:*

X was employed with A Ltd. since 1994. On 5 October 2006, the company offered X that if you stay in our company till 4 October 2016, you will be given an option to purchase 1,000 shares at Rs. 20 per share. You can exercise this option for 4 years [5 October 2016 to 4 October 2020].

X exercised the option to purchase 800 shares on 12 December 2019.

The FMV is Rs. 100 per share on 5 October 2006; Rs. 700 per share on 5 October 2016; Rs. 1,300 per share on 12 December 2019 and Rs. 2,300 per share on 31 March 2020.

*Solution:*

Exercise Period: 5 October 2016 to 4 October 2020

The option will lapse automatically on 5 October 2020.

Value = (Rs. 1,300 – Rs. 20)\*800 = Rs. 10,24,000 is the taxable value of the perquisite.

= The FMV of the share on the date of exercise of the option – The Price at which the option has been exercised

**14. Treatment of employer's contribution towards Approved Superannuation Fund**

Employer' contribution towards Approved SAF is exempt up to Rs. 1,50,000 per year. Over and above Rs. 1,50,000 is taxable as salary income of the employee.

**15. Perquisite of telephone facility (including mobile phones) is a tax-free perquisite.**

**Deductions under section 16**

Salary (including retirement benefits)		
Allowances [Entertainment Allowance]		<b>12,000</b>
Perquisites		
Gross salary		
Less: Deductions under section 16:		
Standard deduction		50,000
<b>Entertainment allowance related deduction</b>		<b>XXX</b>
Tax on employment/ Professional tax related deduction		

**Entertainment allowance:**

Let us suppose, entertainment allowance received by the employee is Rs. 12,000 per year.

*What is the amount of deduction under section 16 in respect of entertainment allowance?*

1. There is no deduction available to a non-Government employee.

2. Available only to Government employee:

Least of the following is allowed as deduction:

- i. Rs. 5,000
- ii. Entertainment allowance received
- iii. 20% of **Basic salary**.

**Example given on Page 55 of the Book [Concept Building Approach]**

*G, a Government employee, has earned the basic salary of Rs. 8,00,000 and Rs. 36,000 as the entertainment allowance in the previous year 2019-20. His taxable salary for the assessment year 2020-21 is:*

**Books:**

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

Ans. Rs. 7,81,000

**Tax on employment/ Professional tax:**

Amount actually paid is allowed as deduction.

**Problem 9 from the book [Concept Building Approach]**

Computation of total income of B for the Assessment year 2020-21:

Particulars	Rs.	Amount (Rs.)
Basic salary [Rs. 65,000*12]		7,80,000
Tiffin allowance [Rs. 2,000*12]		24,000
Perquisite of medical facility – Note 1		60,000
Transport allowance [Rs. 200*12] – Assumed not a differently abled person	2,400	
Perquisite of unfurnished flat – Note 2		48,960
Perquisite of sale of movable assets [Rs. 56,000 + Nil + Rs. 6,000] – Note 3		62,000
Perquisite of use of movable assets [Rs. 15,000*10%*6/12]		750
Employer's contribution towards RPF [18% of Rs. 7,80,000]	1,40,400	
Less: Exempt [12% of Rs. 7,80,000]	93,600	46,800
Interest [50,000/12.5*3(12.5-9.5)]		12,000
Gross salary		10,36,910
Less: Standard deduction		50,000
Taxable salary		9,86,910
Add: Income of other heads		Nil
Gross total income		9,86,910
Less: Deduction under section 80C [18% of Rs. 7,80,000]		1,40,400
Less: Deduction under section 80G [Rs. 18,000*100%]		18,000
Total income		8,28,510

Computation of tax payable by B for the assessment year 2020-21:

	Rs.
Tax [Rs. 12,500 + 20% (Rs. 8,28,510 – Rs. 5,00,000)]	78,202
Less: Rebate under section 87A	Nil
	78,202
Add: Surcharge	Nil
	78,202
Add: Cess @ 4%	3,128
Tax payable	81,330

*Note:*

1. Since it is not mentioned where the expenditure has been incurred, it is assumed that the medical expenditure is incurred in a private clinic.
2. Since the accommodation is taken on rent by the employer, the value is 15% of salary or rent paid/ payable by the employer, whichever is lower.

Salary:

BS	7,80,000
Tiffin allowance	24,000
Transport allowance	2,400
Salary	8,06,400

Value is 1,20,960 (15% of Rs. 8,06,400) or Rs. 2,16,000 (Rs. 18,000\*12)

Thus, lower is Rs. 1,20,960. From this value, deduct amount recovered from the employee.

Therefore, the taxable value is Rs. 48,960 [Rs. 1,20,960 – Rs. 72,000 (Rs. 6,000\*12)].

3. Perquisite in respect of sale of movable assets:

**Books:**

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

		Car	Computer	Fridge
	Actual cost	4,00,000	60,000	
Less:	Normal W&T			20,000
	[10 June 17 to 9 June 18]	<u>80,000</u>		
	[12 July 16 to 11 July 17]		<u>30,000</u>	
	[5 April 17 to 4 April 18]			<u>2,000</u>
	WDV on			
	10 June 18/ 12 July/ 5 April	3,20,000	30,000	18,000
Less:	Normal W&T			
	[10 June 18 to 9 June 19]	<u>64,000</u>		
	[12 July 17 to 11 July 18]		<u>15,000</u>	
	[5 April 18 to 4 April 19]			<u>2,000</u>
	WDV on			
	10 June 19/12 July/ 5 April	2,56,000	15,000	16,000
Less:	Normal W&T			
	[12 July 18 to 11 July 19]	<u>7,500</u>		
	WDV on 12 July 19		7,500	
	Sale value	<u>2,00,000</u>	8,000	<u>10,000</u>
	Taxable value	<u>56,000</u>	<u>Nil</u>	<u>6,000</u>

**Lecture 26****Deductions under section 80:****Section 80C:**

Available to an individual and a HUF on savings/ investments/ deposits done during the previous year.

Following are eligible savings/ investments/ deposits:

1. Own contribution towards RPF/ PPF/ SPF/ Approved superannuation fund
2. Tuition fees of child (full-time education)
3. Principal payment of housing loan
4. Fixed deposits of 5 year period
5. Life insurance premium [Actual premium paid or 10% of sum assured, whichever is less]. However, if the policy is taken before 1 April 2012, then the eligible amount is Actual premium paid or 20% of sum assured, whichever is less. Further, if the policy is taken on or after 1 April 2013 for a differently abled person, then the eligible amount is Actual premium paid or 15% of sum assured, whichever is less.

**Section 80G [Deduction available to any assessee for eligible donations]:**

For some donations, 100% of the donated amount is eligible for deduction and for some donations, 50% of the donated amount is eligible for deduction.

**Section 80TTA [Interest income from savings accounts with a bank/ co-operative society/ post office]:**

1. Available to individuals and a HUF
2. The assessee should not be covered under section 80TTB (80TTB is for senior citizens.).
3. Maximum deduction is Rs. 10,000.

**Section 80TTB [Interest income of Senior Citizens]:**

1. Available to individuals whose age is 60 years or more.
2. Maximum deduction is Rs. 50,000.
3. It covers fixed deposits also.

**Section 80U [Disability cases]**

1. Available to a resident individual.
2. Amount of deduction is Rs. 75,000 (or Rs. 1,25,000 in case of severe disability).
3. Severe disability is when the disability is 80% or more.

**Problem 18 from the book [Concept Building Approach]**

Computation of total income of Arun for the assessment year 2020-21:

**Books:**

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

Particulars	Amount (Rs.)
Basic salary [Rs. 60,000*12]	7,20,000
Dearness allowance [Rs. 20,000*12]	2,40,000
Commission [Rs. 8,00,000*8%]	64,000
Bonus	10,000
Transport allowance [(Rs. 4,500 – Rs. 3,200)*12]	15,600
Conveyance allowance [(Rs. 3,500 – Rs. 3,000)*12]	6,000
House rent allowance [Rs. 3,84,000 – Rs. 1,47,200]	2,36,800
Perquisite of interest-free loan - Note	Exempt
Employer's contribution towards RPF	1,08,000
Less: Exempt	
[12% of (7,20,000 + 60% of 2,40,000 + Rs. 64,000)]	<u>1,08,000*</u>
	Nil
Interest credited to RPF [39,000/13*3.5 (13-9.5)]	10,500
Lunch allowance [Rs. 2,000*12]	<u>24,000</u>
Gross salary	13,26,900
Less: Standard deduction	50,000
Taxable salary	12,76,900
Add: Income from other sources:	
Dividend income from a domestic company – Note	Exempt
from a bank saving account	<u>8,800</u>
Gross total income	12,85,700
Less: Deduction under section 80C:	
Own contribution in RPF	1,08,000
Less: Deduction under section 80TTA	8,800
Less: Deduction under section 80U	<u>75,000</u>
Total income	<u>10,93,900</u>

*Computation of tax payable by Mr. Arun for the AY 2020-21:*

Tax [Rs. 1,12,500 + 30% (10,93,900 – 10,00,000)]	1,40,670
Less: Rebate under section 87A	<u>Nil</u>
	1,40,670
Add: Surcharge	<u>Nil</u>
	1,40,670
Add: Cess @ 4%	<u>5,627</u>
Tax payable (Rounded off)	<u>1,46,300</u>

*Note:*

### Lecture 27

#### **Problem 24 of the Book [Concept Building Approach]**

**24.** Mr. Alok (a resident individual) retires from Reliance Retail Ltd. (Bengaluru) on 31 October 2019 after completing 19 years and 11 months of service. Compute his income under the head Salaries for the assessment year 2020-21 on the basis of following amounts received by him from his employer in the financial year 2019-20:

- a) Basic salary: Rs. 1,80,000 p.m.
- b) Dearness allowance: 35% of basic salary (40% forming part of salary for all retirement benefits).
- c) Interest free personal loan: Rs. 6,00,000 on 1 July 2019. This loan was fully repaid by Mr. Alok on 27 October 2019. The SBI lending rate on such loan on 1 April 2019 is 12% p.a.
- d) House rent allowance: Rs. 68,000 p.m. (rent paid by Mr. Alok is Rs. 65,000 p.m.). From 1 November 2019, he resides in his own house.
- e) Innova car (2494 cc): The car is owned by the employer company and provided to Mr. Alok for official as well as personal purposes. Diesel expenses and Chauffeur's salary incurred by Mr. Alok is Rs. 14,000 p.m. Diesel expenses were reimbursed by the employer.
- f) Pension: Rs. 1,00,000 p.m. (he gets 40% of the pension commuted for Rs. 20,00,000 on 1 November 2019).
- g) Gratuity: Rs. 25,00,000 (he is covered under the Payment of Gratuity Act, 1972).

Books:

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

h) Accumulated balance from Recognised Provident Fund: Rs. 30,00,000.

i) Gift from employer company of Microwave oven at the time of retirement: Rs. 18,000.

[Delhi University B.Com.(H) 2019 (Modified)]

### Lecture 28

#### Problem 13 of the Book [Concept Building Approach]

13. X (64 Years and resident) is a director of A Ltd. since 1984. He gets Rs. 1,10,000 per month as basic salary (up to 30 September 2019, it was Rs. 1,00,000 per month) and Rs. 3,000 per month as bonus. He received fixed commission of Rs. 2,00,000 from the employer during 2019-20. He owns a car which is used by him for official and personal purposes. The entire expenditure of car and driver of Rs. 1,95,000 is borne by the company. As per logbook of the car, 70% of the expenditure is attributable towards official use of the car. The company reimburses Rs. 20,200 on account of personal telephone bills and Rs. 48,000 on account of personal water bills during the financial year 2019-20. The company contributed 15% of salary towards recognized provident fund (X also made equal contribution) and credited Rs. 60,000 as interest @ 15% on 1 December 2019.

X retired from the company on 31 March 2020 and gets a gratuity of Rs. 12,00,000 (the employee is not covered under the Payment of Gratuity Act, 1972). After retirement he gets a fixed pension of Rs. 10,000 per month. Assuming that income of X from other sources is Rs. 2,38,000 (including bank deposit interest Rs. 55,000 from saving bank of Punjab National Bank), find out his taxable income and tax payable for the assessment year 2020-21.

[Delhi University B.Com.(H) 2016 (Modified)]

Ans.:

	Gross salary	16,62,300
Less:	Std. Ded.	<u>50,000</u>
	Taxable Salary	16,12,300
Add:	Income from other sources	
	Interest from Saving Account	55,000
	Other incomes	
	[2,38,000 – 55,000]	<u>1,83,000</u>
	Gross total income	18,50,300
Less:	Deduction under section 80C	
	[15% of Rs. 12,60,000]*	1,50,000
Less:	Deduction under section 80TTB	<u>50,000</u>
	Total income	<u>16,50,300</u>

Tax on

### Lecture 29

#### Discussion on some points of ‘Salaries’

1. Y is a regular employee of R Ltd. in Noida, U.P. He was appointed on 1 January 2019 in the pay scale of Rs. 20,000 – Rs. 1,000 – Rs. 30,000. How much is basic salary for the AY 2020-21?

Ans. Basic salary for PY 2019-20 is Rs. 2,43,000 [Rs. 20,000\*9 + Rs. 21,000\*3]

1 January 2019 to 31 December 2019: Rs. 20,000

1 January 2020 to 31 December 2020: Rs. 21,000

1 January 2021 to 31 December 2021: Rs. 22,000

2. Y is a regular employee of R Ltd. in Noida, U.P. He was appointed on 1 January 2019 in the pay scale of Rs. 20,000 – Rs. 1,000 – Rs. 30,000. He joined at Rs. 22,000. How much is basic salary for the AY 2020-21?

Ans. Basic salary for PY 2019-20 is Rs. 2,67,000 [Rs. 22,000\*9 + Rs. 23,000\*3]

1 January 2019 to 31 December 2019: Rs. 22,000

1 January 2020 to 31 December 2020: Rs. 23,000

1 January 2021 to 31 December 2021: Rs. 24,000

#### Problem 22 of the book [Concept Building Approach]

22. Dr. Kumar is a director of A Ltd. He furnishes the following particulars of his income for the assessment year 2020-21:

Books:

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

- a) Basic salary: ` 5,000 p.m.
- b) Bonus: ` 7,500 p.m.
- c) House rent allowance received: ` 900 p.m. He resides in the house belonging to his H.U.F. and pays rent @ ` 950 p.m. in Delhi.
- d) The company has provided him with a car (without driver) having engine capacity less than 1.6 litres but recovers ` 100 p.m. from him for possible personal use. This car was purchased by Dr. Kumar from the company on 1 September 2019 at a book value of ` 20,000; he sold this car after 3 months for ` 32,000.
- e) Medical reimbursement for treatment of Dr. Kumar himself in a government hospital: ` 16,000.
- f) The company has taken a personal accident policy for him, the annual premium being 1,300.
- g) He contributes premium of ` 5,000 to the LIC.

You are required to compute Dr. Kumar's **income from salary** for the assessment year 2020-21.

**[IAS Mains 1994 (Modified)]**

Solution:

(d)(i) Use of motor from 1 April 2019 to 31 August 2019.

$$1,800 \times 5 = \text{Rs. } 9,000$$

(ii) Perquisite of sale of movable assets: Nil

(iii) Gain on sale of personal car is not taxable.

f) According to labour laws in India, taking accident policy is the employer's duty.

Sale of movable Assets (Car):

Actual cost	
Less: Normal Wear and Tear [20% WDV]	
Book value/ WDV	20,000
Sale value	20,000

The car which was purchased on 1 September 2019 for Rs. 20,000 by me was sold on 1 December 2019 for Rs. 32,000. The gain of Rs. 12,000 is not taxable because **personal assets (except Jewellery and Immovable Properties) are not Capital Assets**.

## Lecture 30

### HOUSE PROPERTY

#### 1. Basis of charge [Sec. 22]

3 conditions to be satisfied to tax the income under the head HP:

- a) There must be a property.
- b) Assessee must be the owner.
- c) The property is not used for business or profession.

#### Income from house property.

22. The annual value of property consisting of any buildings or lands appurtenant thereto of which the assessee is the owner, other than such portions of such property as he may occupy for the purposes of any business or profession carried on by him the profits of which are chargeable to income-tax, shall be chargeable to income-tax under the head "Income from house property".

#### 2. Determination of Annual Value [Sec. 23]:

**Books:**

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

	Let out property (Rs.)		
Step 1: Expected rent [Municipal value or Fair rent whichever is higher but subject to a maximum of Standard rent]			
Step 2: A/R			
Step 3: (i) If A/R > ER, then A/R is the Annual value (before deduction of local taxes). (ii) If A/R < ER because of vacancy, then also A/R is the Annual value (before deduction of local taxes). (iii) If A/R < ER not only because of vacancy but because of other reasons also, then ER is the annual value (before deduction of local taxes).			

*Fair rent: Rent of a similar property in a similar locality.*

*Standard rent: Rent which a person can legally recover from the tenant.*

**Examples:**

1. If MV is Rs. 4,00,000, FR is Rs. 3,00,000 and SR is Rs. 9,00,000, Expected rent is Rs. 4,00,000.

**Examples on page 5.5 of the book [Concept Building Approach]**

2. A property is let out throughout the previous year 2019-20 at a monthly rent of ` 20,000. However, the tenant has refused to pay the rent of July 2019. Further, for the months of November 2019 and December 2019, the property remained vacant. The assessee has not yet received the rent of March 2020 (it will be received in April 2020). In this case, the actual rent received/receivable is calculated as:

Rental income entitled [20,000*12]	2,40,000
Less: Unrealised Rent [Rs. 20,000*1]	<u>20,000</u>
	2,20,000
Less: Loss due to vacancy [Rs. 20,000*2]	<u>40,000</u>
Rent received/ receivable	<u>1,80,000</u>

Different assumptions in example 2 discussed above:

- (i) Suppose, my expected rent is Rs. 1,70,000, then annual value (before deduction of local taxes) is Rs. 1,80,000.
- (ii) Suppose, my expected rent is Rs. 1,90,000, then annual value (before deduction of local taxes) is Rs. 1,80,000.
- (iii) Suppose, my expected rent is Rs. 2,30,000, then annual value (before deduction of local taxes) is Rs. 2,30,000.
- (iv) Suppose, my expected rent is Rs. 2,50,000, then annual value (before deduction of local taxes) is Rs. 2,50,000.

23. (1) For the purposes of section 22, the annual value of any property shall be deemed to be—

- (a) **Expected Rent** [the sum for which the property might reasonably be expected to let from year to year]; or
- (b) **A/R [A/R > ER]** where the property or any part of the property is let and the actual rent received or receivable by the owner in respect thereof is in excess of the sum referred to in clause (a), the amount so received or receivable; or
- (c) **A/R [A/R < ER only because of vacancy]** where the property or any part of the property is let and was vacant during the whole or any part of the previous year and owing to such vacancy the actual rent received or receivable by the owner in respect thereof is less than the sum referred to in clause (a), the amount so received or receivable :

**Example**

3. A property is let out throughout the previous year 2019-20 at a monthly rent of ` 20,000. However, the tenant has refused to pay the rent of July 2019. Further, for the months of November 2019 and December 2019, the property remained vacant. The assessee has not yet received the rent of March 2020 (it will be received in April 2020). **For the month of May 2019, the property was self-occupied.** In this case, the actual rent received/receivable is calculated as:

Rental income entitled [20,000* <b>11</b> ]	2,20,000
Less: Unrealised Rent [Rs. 20,000*1]	<u>20,000</u>
	2,00,000

Books:

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

Less:	Loss due to vacancy [Rs. 20,000*2]	40,000
	Rent received/ receivable	<u>1,60,000</u>

Different assumptions in example 3 discussed above:

(I) Suppose, my expected rent is Rs. 1,70,000, then annual value (before deduction of local taxes) is Rs. 1,60,000.

Step 1: ER is Rs. 1,70,000

Step 2: A/R is Rs. 1,60,000

Step 3: (i) A/R > ER, NO

(ii) A/R < ER (only because of vacancy), A/R is Annual value (before deduction of local taxes).  
(iii) A/R < ER (not only because of vacancy but because of other factors), ER is the Annual value (before deduction of local taxes).

(II) Suppose, my expected rent [*calculated for 12 months*] is Rs. 1,70,000, then annual value (before deduction of local taxes) is 1,60,000.

**Note: The self-occupied period, the vacancy period and the period for which tenant did not pay the rent, cannot affect my expected rent period.**

#### Example given on page 5.7 of the book [Concept Building Approach] – Discussed

### Lecture 31

#### Deemed to be let out property:

The annual value of a deemed to be let out property is always equal to Expected Rent [Sec. 23(1)(a)] because clause (b) and (c) of sub-section 1 of section 23 cannot be applied here.

#### Annual value how determined.

<sup>12</sup> 23. (1) For the purposes of [section 22](#), the annual value of any property shall be deemed to be—

- (a) the <sup>10</sup>sum for which the property might reasonably be expected to let from year to year; or
- (b) where the property or any part of the property is let<sup>13</sup> and the actual rent<sup>13</sup> received or receivable<sup>13</sup> by the owner in respect thereof is in excess of the sum referred to in clause (a), the amount so received or receivable; or
- (c) where the property or any part of the property is let<sup>13</sup> and was vacant during the whole or any part of the previous year and owing to such vacancy the actual rent received or receivable by the owner in respect thereof is less than the sum referred to in clause (a), the amount so received or receivable :

**Provided** that the taxes levied<sup>13</sup> by any local authority in respect of the property shall be deducted (irrespective of the previous year in which the liability to pay such taxes was incurred by the owner according to the method of accounting regularly employed by him) in determining the annual value of the property of that previous year in which such taxes are actually paid by him.

*Explanation.*—For the purposes of clause (b) or clause (c) of this sub-section, the amount of actual rent received or receivable by the owner shall not include, subject to such rules<sup>14</sup> as may be made in this behalf, the amount of rent which the owner cannot realise.

(2) Where the property consists of a house **or part of a house** which—

- (a) is in the occupation of the owner for the purposes of his own residence; or
- (b) cannot actually be occupied by the owner by reason of the fact that owing to his employment, business or profession carried on at any other place, he has to reside at that other place in a building not belonging to him,

the annual value of such house **or part of the house** shall be taken to be **nil**.

(3) The provisions of sub-section (2) shall not apply if—

- (a) the house or part of the house is actually let during the whole or any part of the previous year; or
- (b) any other benefit therefrom is derived by the owner.

(4) Where the property referred to in sub-section (2) consists of more than <sup>15</sup>[two houses]—

- (a) the provisions of that sub-section shall apply only in respect of <sup>16</sup>[two] of such houses, which the assessee may, at his option, specify in this behalf;
- (b) the annual value of the house or houses, <sup>17</sup>[other than the house or houses] in respect of which the assessee has exercised an option under clause (a), shall be determined under sub-section (1) as if such house or houses had been let.]

Books:

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

<sup>18</sup>[5] Where the property consisting of any building or land appurtenant thereto is held as stock-in-trade and the property or any part of the property is not let during the whole or any part of the previous year, the annual value of such property or part of the property, for the period up to <sup>19</sup>[two years] from the end of the financial year in which the certificate of completion of construction of the property is obtained from the competent authority, shall be taken to be *nil*.]

- See More

### Lecture 32

#### Example given on page 5.14 of the book [Concept Building Approach]

Mr. X took a loan of ` 15,00,000 from SBI @ 15% p.a. on **1 June 2015** for the **construction** of his house. The construction of this house was completed on **1 January 2019**. Date of repayment of loan is 1 October 2019. Compute the interest on capital borrowed for construction of the house for the assessment year 2020-21 assuming the house is owned by him and is self-occupied during the financial year 2019-20.

Solution:

24(b): Interest for PY 2019-20:

$$1 \text{ April 2019 to 1 October 2019: Rs. } 15,00,000 * 15\% * 6/12 = \textbf{Rs. 1,12,500}$$

Main issue is:

DOB: 1 June 2015

DOC: 1 January 2019 [**PY 2018-19**].

*Problematic period is 1 June 2015 to 31 December 2018: Interest was being payable to SBI but Income Tax Department was not giving me any benefit in Computation of HP income [Refer Explanation of Sec. 24(b)].*

*Explanation.— Where the property has been acquired or constructed with borrowed capital, the interest, if any, payable on such capital borrowed for the period **prior to the previous year in which the property has been acquired or constructed**, shall be deducted under this clause in equal instalments for the **said previous year** and for each of the four immediately succeeding previous years:*

#### Interest from 1 June 2015 to 31 March 2018

$$\text{Rs. } 15,00,000 * 15\% * 34/12 = \text{Rs. } 6,37,500 / 5 = 1,27,500$$

Deduction in PY

2018-19:	1,27,500
<b>2019-20:</b>	<b>1,27,500</b>
2020-21:	1,27,500
2021-22:	1,27,500
2022-23:	1,27,500

Conclusion: Interest of PY 2019-20: Rs. 1,27,500 + Rs. 1,12,500 = **Rs. 2,40,000**

Deduction allowed under section 24(b): Rs. 2,00,000

### Lecture 33

#### Problem 1 of the book [Concept Building Approach]

1. X has a property whose municipal valuation is ` 1,30,000, fair rent is ` 1,10,000 and the standard rent is ` 1,20,000. The property was let out for a rent of ` 11,000 p.m. throughout the previous year 2019-20. Rent of one month was unrealized. He paid municipal taxes @ 10% of municipal valuation on 7 March 2020. Interest on borrowed capital for repairs of house property was ` 40,000 for the financial year 2019-20. Compute the income from house property of X for the assessment year 2020-21.

Ans.

#### Problem 2 of the book [Concept Building Approach]

2. Y has a property whose municipal valuation is ` 2,50,000, fair rent is ` 2,00,000 and the standard rent is ` 2,10,000. The property was let out for a rent of ` 20,000 p.m. during 2019-20. However, the tenant vacated

Books:

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

the property on 31 January 2020. One month's rent was unrealized. He paid municipal taxes @ 8% of municipal valuation on 23 February 2020. Interest on borrowed capital for reconstruction of the property was ` 65,000 for the year 2019-20. Compute the income from house property of Y for the assessment year 2020-21.  
Ans. Rs. 47,000

**Problem 3 of the book [Concept Building Approach]**

3. Z has one house property in Delhi. He stays with his family in the house. The rent of similar property in the neighbourhood is ` 25,000 p.m. The municipal valuation is ` 23,000 p.m. Municipal taxes paid is ` 8,000. The house **construction** began on **1 February 2013** with a loan of ` 20,00,000 taken from a nationalised bank @ 10% p.a. on the same date. The construction was completed on **30 November 2015**. During the previous year 2019-20, Z paid ` 50,000 as principal on 31 March 2020 apart from the interest. Compute his income from house property for the assessment year 2020-21.

Ans.

	Annual value	Nil
Less:	Deductions under section 24:	
	Standard deduction [Sec. 24(a)]	Nil
	Interest on borrowed capital [Sec. 24(b)]	<u>2,00,000</u>
	Income from house property	<u>(2,00,000)</u>

*Note:*

*For the previous year 2019-20:*

$$\text{Rs. } 20,00,000 * 10\% = \text{Rs. } 2,00,000$$

*Issue is Pre-Construction Period Interest:*

DOB: 1 February 2013 to 31 March 2015 [PY 2015-16]

Interest for this period =  $\text{Rs. } 20,00,000 * 10\% * 26/12$

$$= \text{Rs. } 4,33,333/5$$

$$= \text{Rs. } 86,667 \text{ [PY 2015-16, 2016-17, 2017-18, 2018-19 and 2019-20]}$$

Computation of interest of PY 2019-20:

$$2,00,000 + 86,667 = \text{Rs. } 2,86,667$$

**Problem 4 of the book [Concept Building Approach]**

4. P owns a house property in Mumbai. The municipal value of the property is ` 5,00,000, fair rent is ` 4,20,000 and standard rent is ` 4,80,000. The property was let out for ` 50,000 p.m. upto 31 December 2019. Thereafter, the tenant vacated the property and P used the house for self-occupation. Rent for the months of November and December 2019 could not be realized. He paid municipal taxes @ 12% during the year 2019-20. He had to pay interest of ` 35,000 during the year 2019-20 for amount borrowed for repairs for the house property but he has not yet paid the interest. Compute his income from house property for the assessment year 2020-21.

Ans.

	ER	4,80,000
Less:	Actual Rent Received/ Receivable	3,50,000
	Annual value (before deduction of local taxes)	4,80,000
Less:	Local taxes [12% of 5,00,000]	<u>60,000</u>
	Annual value	4,20,000
Less:	Deduction under section 24:	
	Std. Ded. [30% of Rs. 4,20,000]	1,26,000
	Interest on capital borrowed	<u>35,000</u>
	IFHP	<u>2,59,000</u>

**Problem 15 of the book [Concept Building Approach]**

15. Raj Sethi is a Sales-tax officer at Jaipur. He owns two residential houses. The first house is in Delhi and was constructed on 31 December 1995. This has been let out on a rent of ` 30,000 p.m. to a company for its office. The second house is in Jaipur, which was constructed on 1 March 2019 and has been occupied by him for his own residence since then. He took a loan of ` 9,00,000 on 1 August 2017 @ 8% p.a. interest for the purpose of construction of this house. The entire loan is outstanding.

Books:

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

Other relevant particulars in respect of these houses for the financial year 2019-20 are given below:

	House I – Delhi	House II - Jaipur
Municipal valuation	2,40,000	1,80,000
Municipal taxes	10% of Municipal value	8% of municipal value
Expenses on repairs	20,000	60,000
Interest on Loan	—	72,000
Payment status of municipal taxes	Paid	Unpaid

He was transferred to Mumbai on 1 December 2019 where he resides in a house at a monthly rent of ` 40,000, and his house at Jaipur was let out on the same day on a rent of ` 20,000 per month. Compute the income from house property of Raj Sethi for the assessment year 2020-21.

[Delhi University B.Com. (H) 2016 (Modified)]

Ans.

House I: Rs. 2,35,200

House II: Rs. 44,400 [Interest is Rs. 81,600]

Income from HP: Rs. 2,79,600

## Lecture 34

### Problem 10 of the book [Concept Building Approach]

10. X owns two residential houses. You are requested to compute his income under the head House Property for the assessment year 2020-21. Details of the two houses are as follows:

House I in Delhi (Let out):

- a) Municipal value: ` 2,40,000 per annum
- b) Fair market value: ` 2,80,000 per annum
- c) Rent receivable: ` 25,000 per month
- d) Vacancy: 2 months
- e) Municipal tax: 10% (paid on 31 March 2020)
- f) Interest on borrowed capital: Loan of ` 6,00,000 was raised on 1 April 2012 for the construction of this house. Construction was started on 1 April 2011 and was completed on 10 October 2017. Half of the loan was repaid on 31 March 2016. Rate of interest was 12% p.a.

House II in Noida (Self-occupied):

- a) Municipal value: ` 1,80,000 per annum
- b) Standard rent: ` 1,50,000 per annum
- c) Municipal tax: ` 18,000 per annum
- d) House II was constructed on 31 January 2017 with a loan of ` 8,00,000 raised on 1 April 2013. Interest payable was 10% p.a. Entire loan and interest of the current previous year was outstanding on 31 March 2020.

[Delhi University B.Com. (H) 2012 (Modified)]

*Solution:*

Calculation of Interest on capital borrowed:

#### **Steps to be followed for computing the total amount of interest on capital borrowed**

**Step 1:** Compute the pre-acquisition period or pre-construction period, if any. Pre-acquisition period or pre-construction period, as the case may be, starts from the date of borrowing of loan for such purpose and ends on 31 March of the year prior to the year in which the house is acquired or constructed.

**Step 2:** Compute the pre-acquisition period interest or pre-construction period interest, if any and make 5 equal annual instalments which are allowed to be deducted in 5 years starting from the year in which the house is acquired or completed, as the case may be and next 4 successive years.

**Step 3:** Compute the amount of interest on capital borrowed for the relevant financial year as follows:  
Amount of loan outstanding during the relevant financial year  $\times$  Rate of interest.

**Step 4:** Total amount of interest on capital borrowed eligible for deduction for the relevant financial year = Amount computed in Step 2 eligible for deduction in the relevant financial year + Amount computed in Step 4 for the relevant financial year.

For example, if the total amount of interest on capital borrowed eligible for deduction for the relevant financial year 2019-20 is required, it will be equal to the total of amount computed in Step 2 eligible for deduction in the relevant financial year 2019-20 plus amount computed in Step 4 for the relevant financial year 2019-20.

Books:

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

**Example given on page 5.14 of the Book [Concept Building Approach]**

Mr. X took a loan of ` 15,00,000 from SBI @ 15% p.a. on 1 June 2015 for the construction of his house. The construction of this house was completed on 1 January 2019. Date of repayment of loan is 1 October 2019. Compute the interest on capital borrowed for construction of the house for the assessment year 2020-21 assuming the house is owned by him and is self-occupied during the financial year 2019-20.

**Solution**

*Computation of total amount of interest on capital borrowed for construction of the house for the previous year 2019-20:*

*Step 1: Compute the pre-construction period.*

Pre-construction period ends on March 31 immediately preceding the year in which the construction is completed. Construction is completed on 1 January 2019 and thus, the pre-construction period ends on 31 March 2018.

*Step 2: Compute the pre-construction period interest and make 5 equal annual instalments which are allowed to be deducted in 5 years starting from the year in which the house is completed and next 4 successive years.*

Interest for the period during 1 June 2015 to 31 March 2018, i.e., for 34 months [2015-16: 10 months, 2016-17: 12 months and 2017-18: 12 months] is allowed to be deducted in 5 equal annual instalments and the first instalment starts from the year in which the house is constructed.

Total interest of pre-construction period is ` 6,37,500 [ $15,00,000 \times 15\% \times 34/12$ ] and each instalment is ` 1,27,500 [ $6,37,500/5$ ] which will be deducted during the previous years 2019-20 to 2023-24.

*Step 3: Compute the amount of interest on capital borrowed for the relevant financial year 2019-20 as follows: Amount outstanding during the previous year 2019-20 × Rate of interest.*

Since the loan is repaid on 1 October 2019, interest during the previous year 2019-20 is payable for 6 months [1 April 2019 to 30 September 2019]. Thus, interest during the previous year 2019-20 is ` 1,12,500 [ $15,00,000 \times 15\% \times 6/12$ ].

*Step 4: Total amount of interest on capital borrowed eligible for deduction for the relevant financial year 2019-20 = Amount computed in Step 2 eligible for deduction in the relevant financial year 2019-20 + Amount computed in Step 4 for the relevant financial year 2019-20.*

Thus, total interest allowable as deduction during the previous year 2019-20 is ` 2,40,000 [ $1,27,500 + 1,12,500$ ].

Since the property is a self-occupied property whose annual value is always Nil, interest on borrowed capital allowed

as deduction under section 24(b) is subject to limit (as explained below). Here, the capital is borrowed on or after 1 April 1999 for the purpose of construction and such construction is completed within 5 years from the end of the year in which capital is borrowed (i.e., the construction is completed till 31 March 2020), the maximum

interest allowable as deduction is ` 2,00,000.

**Problem 12 of the Book [Concept Building Approach]**

12. A owns a property at Ghaziabad (Municipal value: ` 1,90,000, Fair rent: ` 2,04,000, Standard rent: ` 1,85,000). The house is let out upto 29 February 2020 at a monthly rent of ` 18,500. From 1 March 2020, the property is self-occupied for own residence.

Expenses incurred by A during the previous year 2019-20 are as follows:

Municipal Taxes: ` 10,000 (half of it was paid by tenant), Repairs: ` 20,000 and Fire Insurance premium: ` 5,000, Interest on capital borrowed for acquiring the property: ` 1,80,000.

Assuming that income of A from other sources is ` 4,50,000, find out the net income of A for the assessment year 2020-21. Does it make any difference if the property is let out upto 29 February 2020 @

` 16,500 per month?

Ans. Rs. 4,08,950; Rs. 3,96,000

[Delhi University B.Com. (H) 2013 (Modified)]

**Problem 13 of the Book [Concept Building Approach]**

13. X owns a house at Gurgaon, particulars of which are given below:

Municipal valuation 3,20,000

Fair rent 3,40,000

Standard rent 3,00,000

Books:

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

Municipal taxes paid by X 30,000

Land revenue (payable) 10,000

Fire insurance premium (paid) 10,000

He borrowed ` 20,00,000 @ 9% p.a. from LIC Housing Premium Ltd. for the construction of this house on 1 June 2015. Construction on this house was completed on 10 September 2017. The entire loan amount is still outstanding.

Compute his income from the house property for the assessment year 2020-21 assuming:

a) House property is self-occupied throughout the previous year.

b) House is let out throughout the previous year at a monthly rent of ` 28,000.

[Delhi University B.Com. (H) 2015 (Modified)]

Ans: Rs. (2,00,000); Rs. (31,800)

## Lecture 35

### Problem 5 of the book [Concept Building Approach]

5. P has three houses, all of which are self-occupied. The particulars of the houses for the year 2019-20 are as under:

	house I	house II	house III
Municipal value	1,00,000	1,50,000	2,00,000
Fair rent	75,000	1,75,000	80,000
Standard rent	90,000	1,60,000	1,10,000
Municipal taxes paid during the year	12%	8%	4%
Interest on capital borrowed for repair of property during the year	---	55,000	27,000

Compute P's taxable income for the assessment year 2020-21 assuming his income from other sources is ` 2,00,000 and he has deposited ` 40,000 in PPF during the previous year 2019-20.

### Solution:

Computation of taxable income of P for the assessment year 2020-21:

	Option A	Option B	Option C
Income from House I	Nil (SO)	54,600 (DLO)	Nil (SO)
Income from House II	(30,000) (SO)	(30,000) (SO)	48,600 (DLO)
Income House III	<u>44,400 (DLO)</u>	<u>(27,000) (SO)</u>	<u>(27,000) (SO)</u>
Income from HP	14,400	(2,400)	21,600
Add: Income from other heads (IFOS)	<u>2,00,000</u>	<u>2,00,000</u>	<u>2,00,000</u>
Gross total income	2,14,400	1,97,600	2,21,600
Less: Deductions under sections 80C	<u>40,000</u>	<u>40,000</u>	<u>40,000</u>
<b>Taxable Income</b>	<b>1,74,400</b>	<b>1,57,600</b>	<b>1,81,600</b>

Conclusion:

Option B is the best option and thus, P will assume the houses II and III and self-occupied and house I as deemed to be let-out.

### Notes:

1. Computation of income from HP assuming the houses are deemed to be let out:

	House I	House II	House III
Step 1: Expected Rent	90,000	1,60,000	1,10,000
Annual Rent (before deduction of local taxes)	90,000	1,60,000	1,10,000
Less: Local taxes	<u>12,000</u>	<u>12,000</u>	<u>8,000</u>
Annual value	78,000	1,48,000	1,02,000
Less: Deductions under section 24:			
Standard deduction [30%]	23,400	44,400	30,600
Interest on capital borrowed	<u>Nil</u>	<u>55,000</u>	<u>27,000</u>
<b>Income from house property</b>	<b>54,600</b>	<b>48,600</b>	<b>44,400</b>

2. Computation of income from HP assuming the house are self-occupied:

	House I	House II	House III

**Books:**

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

Annual value	Nil	Nil	Nil
Less: Deduction under section 24:			
Standard deduction	Nil	Nil	Nil
Interest on capital borrowed	Nil	30,000*	27,000
Income from house property	Nil	(30,000)	(27,000)

**Problem 6 of the Book [Concept Building Approach]**

6. B owns a house in Delhi. During the previous year 2019-20, 2/3<sup>rd</sup> portion of the house was let out for residential purposes at a rent of ` 8,000 p.m. and 1/3<sup>rd</sup> portion was self-occupied. Municipal value of the property is ` 3,00,000 p.a., fair rent is ` 2,70,000 p.a. and standard rent is ` 3,30,000 p.a. He paid municipal taxes @ 10% of municipal value during the year 2019-20. Interest on loan (loan was taken for acquisition of the house property in 2016 and the house was acquired in 2016 itself) paid during the previous year 2019-20 was ` 1,20,000. Compute his income from house property for the assessment year 2020-21.

**Solution:**

The part of the house which is self-occupied is treated as a self-occupied house and the part of the house which is let out is treated as let out house.

Computation of income from HP:

	LO	SO
Step 1: ER	2,00,000	
Step 2: Actual Rent:		
Rental income entitled	96,000	
Less: U/R	Nil	
	96,000	
Less: Vacancy loss	Nil	
Actual Rent Received/ Receivable	<u>96,000</u>	
Step 3: Annual value (before deduction of local taxes)	2,00,000	
Less: Municipal taxes	<u>20,000</u>	
Annual value	1,80,000	Nil
Less: Deductions under section 24:		
Standard deduction	54,000	Nil
Interest on capital borrowed	<u>80,000</u>	<u>40,000</u>
Income from HP	<u>46,000</u>	<u>(40,000)</u>

Income from HP is Rs. 6,000 [Rs. 46,000 + Rs. (40,000)].

**Books:**

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

**Note:**

Bifurcation of amounts:

	LO [2/3]	SO [1/3]
MV	2,00,000	1,00,000
FR	1,80,000	90,000
SR	2,20,000	1,10,000
Rent income per month	8,000	
MT	20,000	10,000
Interest on loan taken for acquisition	80,000	40,000

**Lecture 36**

**11.** R owns a big house. The house has three independent residential units. Unit 1 (50 per cent of the floor area) is let out for residential purposes on a monthly rent of ` 16,000 (this unit is, however, used by him from 15 January 2020 to 15 March 2020 for his residential purposes). A sum of ` 1,000 could not be collected from the tenant.

Unit 2 (25 per cent of the floor area) is used by him for the purpose of his residence, while Unit 3 (the remaining 25 per cent) is used by him for the purpose of his business.

Other particulars of the house are: municipal valuation: ` 3,84,000; municipal taxes (paid): ` 32,000; repairs: ` 40,000; ground rent: ` 16,000; land revenue (paid): ` 9,800, insurance premium: ` 16,000 and interest on capital borrowed for payment of municipal tax: ` 14,000.

Income of R from business is ` 4,61,200 (without debiting house rent and other incidental expenditure including admissible depreciation of ` 1,600 on the one-fourth portion of house used for business). Determine the taxable income of R for the assessment year 2020-21.

[Delhi University B.Com. (H) 2012 (Modified)]

**Solution:**

	Unit I [50%]	Unit II [25%]	Unit III [25%]
LO – 10M	LO – 10M	SO – 12M	Business – 12 M
SO – 2M			
Types of Property and Heads	LO	SO	<b>PGBP</b>
MV	1,92,000	96,000	96,000
MT (Paid)	16,000	8,000	8,000
Repairs	20,000	10,000	10,000
GR	8,000	4,000	4,000
LR	4,900	2,450	2,450
Insurance Premium	8,000	4,000	4,000
Interest on capital borrowed	7,000	3,500	3,500
Depreciation			1,600
Rent per month	16,000		
Unrealised rent	1,000		
Business Income			4,61,200

**Computation of Income from HP:**

	I	II
Step I: ER	1,92,000	
Step 2:		
Rental income entitled [16,000*10]	1,60,000	
Less: U/R	<u>1,000</u>	
	1,59,000	
Less: Vacancy Loss	<u>Nil</u>	
Rent received/ receivable	<u>1,59,000</u>	

Step 3: Here, Rent received/ receivable is

Books:

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

	less than the ER not only because of vacancy annual value (before ...) 1,92,000	
Less:	MT <u>16,000</u>	
	Annual value 1,76,000	Nil
Less:	Deductions under section 24: Std. Ded. [30%] 52,800	Nil
	IOCB <u>Nil</u>	<u>Nil</u>
	IHFP <u>1,23,200</u>	<u>Nil</u>

Computation of income under the head Profits and Gains of Business or Profession [Unit III]:

	Income from business (before deducting the following expenses) 4,61,200	
Less:	Expenses allowed to be deducted: [8,000 + 10,000 + 4,000 + 2,450 + 4,000 + 3,500 + 1,600]	<u>33,550</u>
	Income from business	<u>4,27,650</u>

Computation of taxable income:

	HP [1,23,200 + Nil] 1,23,200	
	PGBP <u>4,27,650</u>	
	Gross total income 5,50,850	
Less:	Deductions under section 80 <u>Nil</u>	
	Taxable income <u>5,50,850</u>	

### Lecture 37

#### **Special provision for arrears of rent and unrealised rent received subsequently.**

**25A.** (1) The amount of arrears of rent received from a tenant or the unrealised rent realised subsequently from a tenant, as the case may be, by an assessee shall be deemed to be the income from house property in respect of the financial year in which such rent is **received or realised**, and shall be included in the total income of the assessee under the **head "Income from house property"**, whether the **assessee is the owner of the property or not in that financial year**.  
(2) A sum equal to thirty per cent of the arrears of rent or the unrealised rent referred to in sub-section (1) shall be allowed as deduction.

#### **Example:**

Mr. A, the owner of the house had an unrealised rent in the PY 2011-12 of Rs. 3,00,000. On 12<sup>th</sup> December 2019, he recovered Rs. 2,60,000 as the unrealised rent. However, he has already sold this house in the PY 2016-17. Determine the taxability of this transaction for the AY 2020-21.

#### **Solution:**

	AY 2020-21	
	Unrealised rent recovered 2,60,000	
Less:	Standard deduction [30%] <u>78,000</u>	
	Income under the head HP <u>1,82,000</u>	

#### **Property owned by co-owners.**

**26.** Where property consisting of buildings or buildings and lands appurtenant thereto is owned by **two or more persons** and their respective shares are **definite and ascertainable**, such persons shall not in respect of such property be assessed as an association of persons, **but the share of each such person in the income from the property as computed in accordance with sections 22 to 25** shall be included in his total income.

*Explanation.*—For the purposes of this section, in applying the provisions of sub-section (2) of section 23 for computing the share of each such person as is referred to in this section, such

Books:

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

share shall be computed, as if each such person is individually entitled to the relief provided in that sub-section.

**Hon'ble Supreme Court says what?**

If each co-owner has occupied the property for his own-residence, then each co-owner can take his share of property as self-occupied and each co-owner can show the annual value of the property as Nil – *CIT vs Bijoy Kumar Almal [1995] 80 Taxman 76 (SC)*.

**Do you remember section 23(2)?**

Self-occupied or vacant because of.....

**Example given on page 5.16 of the Book [Concept Building Approach]**

*A property was co-owned equally by three owners A, B and C. Interest on capital borrowed on loan taken to acquire the property comes out to be ` 8,00,000 during the previous year 2019-20. The capital was borrowed equally by the three co-owners. The capital was borrowed on 9 April 2013 to acquire the property and the property was acquired on 29 March 2017. The property was self-occupied by the co-owners for the entire year 2019-20.*

Solution:

Maximum interest allowed as deduction for the PY 2019-20:

Rs. 2,00,000

AY 2020-21

	A	B	C
Annul value	Nil	Nil	Nil
Less: Deduction under section 24:			
Standard deduction	Nil	Nil	Nil
Interest on borrowed capital	2,00,000	2,00,000	2,00,000

**DEEMED OWNERSHIP**

"Owner of house property", "annual charge", etc., defined.

**27. For the purposes of sections 22 to 26—**

- (i) an individual who transfers otherwise than for adequate consideration any house property to his or her spouse, not being a transfer in connection with an agreement to live apart, or to a minor child not being a married daughter, shall be deemed to be the owner of the house property so transferred;

**EXAMPLE:**

Mr. X                          Mrs. X                          [Should be either inadequate consideration or  
Not because of agreement of living separately]

OR

Mr. X                          **Minor child**                          [Other than a minor married daughter]  
But for the purpose of computing HP income, Mr. X remains the owner.

- (ii) the holder of an immoveable estate shall be deemed to be the individual owner of all the properties comprised in the estate;
- (iii) a member of a co-operative society, company or other association of persons to whom a building or part thereof is allotted or leased under a house building scheme of the society, company or association, as the case may be, shall be deemed to be the owner of that building or part thereof;
- (iiia) a person who is allowed to take or retain possession of any building or part thereof in part performance of a contract of the nature referred to in section 53A of the Transfer of Property Act, 1882 (4 of 1882), shall be deemed to be the owner of that building or part thereof;
- (iib) a person who acquires any rights (excluding any rights by way of a lease from month to month or for a period not exceeding one year) in or with respect to any building or part

Books:

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

thereof, by virtue of any such transaction as is referred to in clause (f) of section 269UA, shall be deemed to be the owner of that building or part thereof;

(vi) taxes levied by a local authority in respect of any property shall be deemed to include service taxes levied by the local authority in respect of the property.

## Lecture 38

### PROFITS AND GAINS OF BUSINESS OR PROFESSION

Sales [Should be as per the provisions of the Income-tax Act]	XX
Less: Expenses [Should be as per the provisions of the Income-tax Act]	<u>XX</u>
Income under the head Profits and Gains of Business or Profession	<u>XX</u>

#### Section 28: Basis of charge

#### Section 29: Computation of income under the head PGBP

**Expenses which are allowed to be deducted while computing income under the head PGBP**  
Section 30: Rent, Repairs, Insurance etc. of Buildings used for Business/ Profession

Section 31: Repairs, Insurance, Rent etc. of Plant and Machinery, Furniture used for Business/ Profession

#### Section 32: Depreciation

Conditions:

1. Owner of the Assets
2. Assets can be tangible (Building, Furniture, Machinery & Plant) or intangible (Know-how, copyright, trademark, etc.)
3. Assets must be used for Business/ Profession

*Point to be noted:*

1. Depreciation is calculated on the basis of WDV of the block of assets:

Building	Furniture	Machinery & Plant	Intangible Assets
5%	10%	15%	25%
10%		30%	
40%		45%	

2. Depreciation for the PY 2019-20 = WDV on 31 March 2020\* Rate of Depreciation (ROD)
3. If any asset is acquired and put to use for less than 180 days during the year in which it is acquired, then on this asset, half the rate of normal rate of depreciation is allowed. While computing depreciation, first preference is always given to such assets.
4. If there is no machine in the block on 31 March 2020, depreciation is Nil.

#### Examples from the book [Concept Building Approach]:

Type I:

The written down value of the block of Machinery and Plant (Rate of depreciation: 15%) consisting of three plants A, B and C, on 1 April 2019 was ` 10,00,000. Machine D was acquired as well as put to use on 7 July 2019 for ` 3,00,000 and Machine E was acquired as well as put to use on 9 August 2019 for ` 4,00,000. Machine B and C were sold for ` 5,00,000 (expenses on sale: ` 50,000). Ignore the additional depreciation, if any.

Solution:

Machinery & Plant [ROD: 15%]

**Books:**

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

	WDV of the block on 1 April 2019 [3]	10,00,000
Add:	Actual cost of the assets (same block) acquired as well as put to use during 2019-20 [1 April 2019 to 31 March 2020] [3,00,000 + 4,00,000] [2]	<u>7,00,000</u> 17,00,000
Less:	Net Sale proceeds of the assets (same block) happened during 2019-20 [5,00,000 – 50,000] [2]	<u>4,50,000</u>
	WDV of the block on 31 March 2020	12,50,000
	Depreciation [Closing WDV * ROD] [12,50,000*15%]	<u>1,87,500</u>
	WDV of the block on 1 April 2020	10,62,500

**Type II:**

The written down value of the block of Machinery and Plant (Rate of depreciation: 15%) consisting of three plants A, B and C, on 1 April 2019 was ` 10,00,000. Machine D was acquired as well as put to use on 7 July 2019 for ` 3,00,000 and Machine E was acquired as well as put to use on 9 **December** 2019 for ` 4,00,000. Machine B and C were sold for ` 5,00,000 (expenses on sale: ` 50,000). Ignore the additional depreciation, if any.

Solution:

	Machinery & Plant [ROD: 15%]	
Add:	WDV of the block on 1 April 2019 [3]	10,00,000
	Actual cost of the assets (same block) acquired as well as put to use during 2019-20 [1 April 2019 to 31 March 2020] [3,00,000 + 4,00,000] [2]	<u>7,00,000</u> 17,00,000
Less:	Net Sale proceeds of the assets (same block) happened during 2019-20 [5,00,000 – 50,000] [2]	<u>4,50,000</u>
	WDV of the block on 31 March 2020	12,50,000
	Depreciation [Closing WDV * ROD] [4,00,000*7.5% + 8,50,000 (12,50,000 – 4,00,000)*15%]	<u>1,57,500</u>
	WDV of the block on 1 April 2020	10,92,500

**Type III:**

The written down value of the block of Machinery and Plant (Rate of depreciation: 15%) consisting of three plants A, B and C, on 1 April 2019 was ` 10,00,000. Machine D was acquired as well as put to use on 7 July 2019 for ` 3,00,000 and Machine E was acquired as well as put to use on 9 **December** 2019 for ` 4,00,000. Machine B and C were sold for ` **15,00,000** (expenses on sale: ` 50,000). Ignore the additional depreciation, if any.

Solution:

	Machinery & Plant [ROD: 15%]	
Add:	WDV of the block on 1 April 2019 [3]	10,00,000
	Actual cost of the assets (same block) acquired as well as put to use during 2019-20 [1 April 2019 to 31 March 2020] [3,00,000 + 4,00,000] [2]	<u>7,00,000</u> 17,00,000
Less:	Net Sale proceeds of the assets (same block) happened during 2019-20 [ <b>15,00,000</b> – 50,000] [2]	<u>14,50,000</u>
	WDV of the block on 31 March 2020	2,50,000
	Depreciation [Closing WDV * ROD] [2,50,000*7.5%]	<u>18,500</u>
	WDV of the block on 1 April 2020	2,31,250

**Type IV:**

The written down value of the block of Machinery and Plant (Rate of depreciation: 15%) consisting of three plants A, B and C, on 1 April 2019 was ` 10,00,000. Machine D was acquired as well as put to use on 7 July 2019 for ` 3,00,000 and Machine E was acquired on 9 **December** 2019 for ` 4,00,000 **but put to use on 6 July 2020**. Machine B and C were sold for ` **5,00,000** (expenses on sale: ` 50,000). Ignore the additional depreciation, if any.

Solution:

	Machinery & Plant [ROD: 15%]	
	WDV of the block on 1 April 2019 [3]	10,00,000

**Books:**

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

Add:	Actual cost of the assets (same block) acquired as well as put to use during 2019-20 [1 April 2019 to 31 March 2020] [3,00,000] [2]	<u>3,00,000</u> 13,00,000
Less:	Net Sale proceeds of the assets (same block) happened during 2019-20 <b>[5,00,000 – 50,000] [2]</b>	<b>4,50,000</b>
	WDV of the block on 31 March 2020	<b>8,50,000</b>
	Depreciation [Closing WDV * ROD] <b>[8,50,000*15%]</b>	<b>1,27,500</b>
	WDV of the block on 1 April 2020 [7,22,500 + <b>4,00,000</b> ]	11,22,500

**Type VI:**

The written down value of the block of Machinery and Plant (Rate of depreciation: 15%) consisting of three plants A, B and C, on 1 April 2019 was ` 10,00,000. Machine D was acquired as well as put to use on 7 July 2019 for ` 3,00,000 and Machine E was acquired as well as put to use on 9 December 2019 for ` 4,00,000. Machine B and C were sold for ` **25,00,000** (expenses on sale: ` 50,000). Ignore the additional depreciation, if any.

Solution:

	Machinery & Plant [ROD: 15%]	
Add:	WDV of the block on 1 April 2019 [3]	10,00,000
	Actual cost of the assets (same block) acquired as well as put to use during 2019-20 [1 April 2019 to 31 March 2020] [3,00,000 + 4,00,000] [2]	<u>7,00,000</u> <b>17,00,000</b>
Less:	Net Sale proceeds of the assets (same block) happened during 2019-20 <b>[25,00,000 – 50,000]* [2]</b>	<b>17,00,000*</b>
	WDV of the block on 31 March 2020	<u>Nil</u>
	Depreciation [Closing WDV * ROD]	<u>Nil</u>
	WDV of the block on 1 April 2020	Nil

**Type VII:**

The written down value of the block of Machinery and Plant (Rate of depreciation: 15%) consisting of three plants A, B and C, on 1 April 2019 was ` 10,00,000. Machine D was acquired as well as put to use on 7 July 2019 for ` 3,00,000 and Machine E was acquired as well as put to use on 9 December 2019 for ` 4,00,000. **All the machines are sold** for ` **5,00,000** (expenses on sale: ` 50,000). Ignore the additional depreciation, if any.

Solution:

	Machinery & Plant [ROD: 15%]	
Add:	WDV of the block on 1 April 2019 [3]	10,00,000
	Actual cost of the assets (same block) acquired as well as put to use during 2019-20 [1 April 2019 to 31 March 2020] [3,00,000 + 4,00,000] [2]	<u>7,00,000</u> 17,00,000
Less:	Net Sale proceeds of the assets (same block) happened during 2019-20 <b>[5,00,000 – 50,000]* [2]</b>	<b>4,50,000*</b> <b>12,50,000</b>
	WDV of the block on 31 March 2020	<u>Nil</u>
	Depreciation [Closing WDV * ROD]	Nil
	WDV of the block on 1 April 2020	Nil

### Lecture 39

#### Concept of additional depreciation

Additional depreciation is applicable in case of **New Machinery and Plant** if installed on or after 1 April 2005.

The rate of additional depreciation is **20% of actual cost**.

The machines must be used for manufacturing to claim additional depreciation.

Example on Additional Depreciation:

The written down value of the block of Machinery and Plant (Rate of depreciation: 15%) consisting of three plants A, B and C, on 1 April 2019 was ` 30,00,000. Machine D was acquired as well as put to use on 7 July 2019 for ` 3,00,000 and Machine E was acquired as well as put to use on 9 December 2019 for ` 4,00,000. Machine B and

**Books:**

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

C were sold for ` **15,00,000** (expenses on sale: ` 50,000). Both the Machines D and E are new and the assessee is into the business of manufacturing.

Solution:

		Machinery & Plant [ROD: 15%]	
	WDV of the block on 1 April 2019 [3]		30,00,000
Add:	Actual cost of the assets (same block) acquired as well as put to use during 2019-20 [1 April 2019 to 31 March 2020] [3,00,000 + 4,00,000] [2]		<u>7,00,000</u>
			37,00,000
Less:	Net Sale proceeds of the assets (same block) happened during 2019-20 [ <b>15,00,000</b> – 50,000] [2]		<u>14,50,000</u>
	WDV of the block on 31 March 2020		<b>22,50,000</b>
	Depreciation [Closing WDV * ROD]		
	Normal Depreciation [4,00,000*7.5% + 18,50,000*15%]	3,07,500	
	Additional Depreciation [3,00,000*20% + 4,00,000*10%]	<u>1,00,000</u>	<b>4,07,500</b>
	WDV of the block on 1 April 2020		18,42,500
Add:	Actual cost of the assets ..... During 2020-21		
Less:	Sale value ....		
	WDV of the block on 31 March 2021		
	Depreciation:		
	Normal		
	Additional [4,00,000*10%]		40,000

### **Section 35: Scientific Research**

1. Revenue expenditure incurred by the assessee (if it relates to the business): 100%
2. Capital expenditure (except the cost of land) incurred by the assessee (if it relates to the business): 100%
3. Donation to an approved research association/ University/ College (if donation is used for natural science): 150%
4. Donation to an approved research association/ University/ College (if donation is used for social science) : 100%
5. Donation to a National Laboratory or a University or IIT: 150%
6. Donation to a company registered in India for use in scientific research: 100%

### Lecture 40

**Sections which are complete till now are:**

**28, 29, 30, 31, 32 and 35**

**Section 35AD:** 100% capital expenditure is allowed as deduction under section 35AD if the assessee is in the specified business.

**Section 35D:** Amortization of Preliminary Expenses

Preliminary expenses are allowed as deduction in five equal annual instalments, while computing income under the head PGBP.

**Section 35DDA:** Expenditure in respect of VRS

VRS expenses are allowed as deduction in five equal annual instalments, while computing income under the head PGBP.

<b>Section</b>	<b>Purpose</b>
28	Basis of charge
29	Computation of income under the head PGBP
Section 30 to 35DDA [30, 31, 32, 35, 35AD, 35D, 35DDA]	<b>Heavy Expenses</b> Expenses: NAME Conditions: MENTIONED

Books:

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

	Calculation: REQUIRED
Section 36	Expenses: NAME Conditions: MENTIONED Calculation: NOT REQUIRED
Section 37	Expenses: NO NAME, NO CALCULATION But some COMMON CONDITIONS
Section 40(a)	Expenses/ Amounts which are not allowed to be deducted

## Lecture 41

### Section 36:

The following are allowed to be deducted while computing the income under the head PGBP:

1. Insurance premium to cover the business stock
2. Insurance premium to cover the health of employees
3. Bonus or commission to employees
4. Interest on capital borrowed for the purpose of business or profession
5. *Employer's contribution towards recognised provident fund of the employees*
6. Employer's contribution towards approved superannuation fund of the employees
7. Employer's contribution towards new pension scheme (NPS) of the employees is also allowed as a valid expenditure but only to the extent of 10% of salary.
8. Employer's contribution towards an approved gratuity fund of the employees
9. Any sum *received* by the employer from his employees as contributions to any provident fund/superannuation fund/any fund set up under the employees' state insurance act, 1948/any other fund for the welfare of employees [Sec. 36(1)(va)]

*Example of point no. 9:*

Mr. X is employed with P Ltd.

Salary Slip	
Basic salary	13,00,000
Dearness allowance	<u>9,00,000</u>
Gross income	24,00,000
Less: TDS	3,00,000
Association Fund	10,000
PF Account	2,90,000
Income received	<u>18,00,000</u>

## Lecture 42

### 10. Bad debts written off as irrecoverable

Bad debts are allowed as deduction but provision for bad debts are not allowed as deduction while computing income under the head PGBP.

*Illustration –*

*During the previous year 2016-17, X has sold some goods for ` 2,50,000 to Y and shows ` 2,50,000 as sales while computing the business income of the previous year 2016-17.*

*Y paid ` 50,000 through cash and remaining ` 2,00,000, he agreed to pay in 20 months. Thus, X has a debt of ` 2,00,000 (because Y is a debtor for X). Y paid ` 80,000 on 16 December 2018. For the previous year 2018-19, X had written off ` 30,000 as bad debt against the outstanding from Y and thus, deduction of ` 30,000 is allowed to X while computing the business income in the previous year 2018-19. During the previous year 2019-20, X recovered full and final payment from Y as:*

*(a) ` 70,000; (b) ` 90,000; or (c) ` 1,05,000.*

*In this case, the amount of debt is ` 1,20,000 [i.e., ` 2,00,000 (Debtor – ` 80,000 (amount received)) and the amount deducted earlier as bad debt against this debtor while computing the business income is ` 30,000.*

*Thus, ` 90,000 [ $1,20,000 - 30,000$ ] is the maximum expected bad debts of X assuming the debtor does not pay any amount. The tax treatment of the amount recovered as full and final payment is as follows:*

*Solution:*

*Rs. 30,000 as bad debts shown in th*

Books:

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

The P&L Account (debit side) is correctly shown under section 36 in the PY 2018-19.

However, in the PY 2019-20,

	<i>Bad debts</i>	<i>Tax Treatment</i>
(a) Rs. 70,000	90,000	Rs. 20,000 is allowed as deduction under section 36
(b) Rs. 90,000	90,000	No treatment
(c) Rs. 1,05,000	90,000	Rs. 15,000 to be taxable as PGBP income.

Question:

**Profit and loss account [P Ltd.]**  
**[as per the provisions of Companies Act]**

Opening stock	10,00,000	Sales	80,00,000
Purchases	25,00,000		
Interest on loan taken for business purposes	2,00,000		
Employer's contribution towards RPF of the employee	7,00,000		
Employer's contribution towards approved SAF of the employee	3,80,000		
Employer's contribution towards NPS of the employee [Employee's salary for the purpose of NPS is Rs. 15,00,000]	2,40,000		
Employer's contribution in an approved gratuity fund of the employees	86,000		
Employee's contribution towards PF given to the employer (Mr. X is the employee) and transferred to the concerned authority within the prescribe time [Sec. 36(1)(va)]	2,90,000		
Net Profit	3,00,000		

Solution:

Net profit as per the profit and loss account	3,00,000
<b>Add: Income under section 2(24)(x)</b>	<b>2,90,000</b>
	5,90,000
Add: Expenses disallowed: Employer's contribution towards NPS exceeding 10% of salary [2,40,000 – 10% of 15,00,000]	90,000

#### 6.10 General deductions [Sec. 37(1)]

Any expenditure which satisfies all the following conditions is allowed as deduction while computing the income under the head Profits and Gains of Business or Profession –

1. The expenditure is not covered under sections 30 to 36.
2. The expenditure is not a capital expenditure.
3. The expenditure is not a personal expenditure of the assessee.

**Books:**

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

**4.** The expenditure is laid out (or expended) wholly and exclusively for the purposes of the business or profession.

**5.** The expenditure incurred by an assessee is not for the purpose which is an offence or which is prohibited by law.

### Lecture 43

#### Amounts which are not allowed to be deducted [Sec. 40(a)]

*Example 1:*

Mr. X paid Interest on borrowed capital [Rs. 10,00,000] to Mr. Y (a non-resident) outside India. This payment is subject to TDS provisions but Mr. X did not deduct the tax. Is Section 40(a)(i) applicable?

*Ans: Yes. Rs. 10,00,000 cannot be deducted in the PY 2019-20.*

If I assume that TDS on Rs. 10,00,000 is deposited in 2027-28, then Rs. 10,00,000 can be deducted in the PY 2027-28.

*Example 2:*

Mr. X paid Interest on borrowed capital [Rs. 10,00,000] to Mr. Y (a resident individual) outside India. This payment is subject to TDS provisions but Mr. X did not deduct the tax. Is Section 40(a)(i) applicable?

*Ans: Yes. Rs. 10,00,000 cannot be deducted in the PY 2019-20.*

*Example 3:*

Mr. X paid Interest on borrowed capital [Rs. 10,00,000] to Mr. Y (a non-resident individual) in India. This payment is subject to TDS provisions but Mr. X did not deduct the tax. Is Section 40(a)(i) applicable?

*Ans: Yes. Rs. 10,00,000 cannot be deducted in the PY 2019-20.*

*Example 4:*

Mr. X paid Interest on borrowed capital [Rs. 10,00,000] to Y Ltd. (a resident foreign company) in India. This payment is subject to TDS provisions but Mr. X did not deduct the tax. Is Section 40(a)(i) applicable?

*Ans: Yes. Rs. 10,00,000 cannot be deducted in the PY 2019-20.*

*Example 5:*

Mr. X paid Interest on borrowed capital [Rs. 10,00,000] to P Ltd. (an Indian company) in India. This payment is subject to TDS provisions but Mr. X did not deduct the tax. Is Section 40(a)(i) applicable?

*Ans: No. Rs. 10,00,000 can be deducted in the PY 2019-20.*

**Conditions of Sec. 40(a)(i) [PY 2019-20]**

1. Any payment made [PY 2019-29]
2. Outside India or in India (to a foreign company) or .....
3. TDS is required before making the payment. [PY 2019-20, then during 1/04/2019 to 31/03/2020, TDS was required]
4. TDS not deducted during the PY 2019-20 (Till March 31, 2020)

**OR**

Deducted during the PY (till March 31, 2020) but not deposited till due date of furnishing return of income under section 139(1) [PY is 2019-20 then the due date of filing return of income is 31 July 2020]

### Lecture 44

#### Expenses of which sections can be shown on the debit side of P&L Account:

1. Sections 30 to 35DDA
2. Section 36
3. Section 37(1)

**Practice of Section 40(a)(i) with the help of a numerical:**

*Example 1:*

PY 2019-20 [1 April 2019 to 31 March 2020]:

To Fees for technical services	Mr. X P&L 30,00,000	----
--------------------------------	---------------------------	------

**Books:**

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

[payable outside India] – 37(1)

Net profit	----
------------	------

*Additional information:*

1. This Fees is subject to TDS provisions. But Mr. X has not deducted the tax at source till 31 March 2020. Mr. X deposited the tax at source on 12 December 2024.

Solution:

PY 2019-20

Net profits as per P&L Account	13,00,000
--------------------------------	-----------

PY 2024-25

Net profit as per P&L Account	---
-------------------------------	-----

Less: Fees for technical services [PY 2019-20]	30,00,000
--	-----------

*Example 2:*

**PY 2019-20 [1 April 2019 to 31 March 2020]:**

Mr. X

P&L

To Fees for technical services [payable outside India] – 37(1)	30,00,000
---	-----------

Net profit	----
------------	------

*Additional information:*

1. This Fees is subject to TDS provisions. But Mr. X has deducted the tax at source on 28 March 2020 but deposited it on 7 August 2020.

Solution:

PY 2019-20

Net profits as per P&L Account	13,00,000
--------------------------------	-----------

PY 2020-21

Net profit as per P&L Account	---
-------------------------------	-----

Less: Fees for technical services [PY 2019-20]	30,00,000
--	-----------

**Simplifying Section 40(a)(i):**

Assuming the expense on which TDS provisions are applicable is related to the PY 2019-20, the default will be if the payer has not deducted tax at source till March 31, 2020

or

if the payer has deducted tax at source till March 31, 2020 but not deposited it till 31 July 2020 (i.e., the due date of furnishing return of income of an individual assessee for the PY 2019-20)

**Lecture 45**

**Section 40(a)(ia)**

**Practice of Section 40(a)(ia) with the help of a numerical:**

Books:

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

Example 1:

PY 2019-20 [1 April 2019 to 31 March 2020]:

Mr. X P&L		
To Fees for technical services [payable outside India to a Resident] – 37(1)	40,00,000	----
Net profit	16,00,000	

*Additional information:*

1. This Fees is subject to TDS provisions. But Mr. X has not deducted the tax at source till 31 March 2020. Mr. X deposited the tax at source on 12 December 2024. Assume that Section 40(a)(ia) is applicable.

Solution:

PY 2019-20		
Net profits as per P&L Account	16,00,000	
Add: Expenses disallowed: Fees for technical services [Sec. 40(a)(ia)] [30% of 40,00,000]		12,00,000
PY 2024-25		
Net profit as per P&L Account	---	
Less: Fees for technical services [PY 2019-20]	12,00,000	

**Completed Section 40(a)(i), 40(a)(ia), 40(a)(iii) – These three are related to TDS**

**Completed Section 40(a)(ii) – This is related to TDS**

#### Lecture 46

**Section 40(b): Amount not allowable as deduction [But applicable only in case of a firm assessee]**

Will be discussing with you in the chapter “Assessment of Firms”

**Section 40A: Amount not allowable as deduction while computing the income under the head PGBP:**

1. Payment to Relatives which is unreasonable/ excessive [Sec. 40A(2)]

**Mr. X [30%]**  
**To Stationary [Mrs. X] 1,00,000**

Add:	Net profit	-----
	Expenses disallowed	
	Payment excessive [40A(2)]	20,000

Mrs. X [Stationary Business] [5%]  
Sales 1,00,000

2. Payment exceeding Rs. 10,000 per day made in cash [Sec. 40A(3)]

3. Provision for Gratuity Fund [Sec. 40A(7)]

Generally, gratuity is paid at the time of retirement.

Books:

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

**P&L Account  
[PY 2019-20]**

Provision for Approved Gratuity Fund [for employees who will retire later on]	2,00,000
Provision for <b>Unapproved Gratuity Fund</b> [for employees who will retire later on]	Disallowed
Gratuity actually paid	Allowed [30,00,000]
Gratuity actually paid (out of provisions debited and allowed as deduction earlier)	Disallowed
Provision for Approved/ <b>Unapproved Gratuity Fund</b> [for gratuity which has become payable]	Allowed [28,00,000]

*Example:*

*In PY 2019-20, 50 employees retired to whom I was supposed to pay Rs. 90 lakhs. I paid them Rs. 30 lakhs in this year's P&L account, paid Rs. 10 lakhs from the provision made earlier (these provisions were debited in the PY 2013-14 and PY 2016-17 and allowed too) and Rs. 50 lakhs will be paid after 3 years and for the purpose of this Rs. 50,00,000, I contributed Rs. 28 lakhs in the provision for unapproved gratuity fund in the PY 2019-20 and Rs. 22 lakhs, I will contribute in next years.*

*Solution:*

30,00,000: Allowed as deduction in the PY 2019-20

10,00,000: Not allowed as deduction in the PY 2019-20 because it has already been allowed as deduction earlier. [Explanation of Sec. 40A(7)]

**4. Employer's contribution towards non-statutory funds [Sec. 40A(9)]**

Employer's contribution towards any fund for the benefit of the employee is not allowed as deduction except the following funds:

1. Employer's contribution Approved Superannuation Fund and RPF (subject to the conditions of section 36)
2. Employer's contribution towards NPS (subject to the conditions of section 36)
3. Employer's contribution towards Approved Gratuity Fund (subject to the conditions of section 36)
4. Employer's contribution toward any Fund which is prescribed under law.

*Example:*

*There are 300 employees in X Ltd. and these employees have their association in the company. X Ltd. contributed Rs. 10,000 towards the association of its employees. Can X Ltd. show Rs. 10,000 on the debit side of its P&L Account?*

*Ans: Disallowed expenditure under section 40A(7)*

**Till today, the completion structure of PGBP:**

Sec.

**28: Basis of charge**

**29: Computation**

**30 to 35DDA: Expenditure allowed**

**36: Expenditure allowed**

**37(1): Expenditure allowed**

**37(2B): Expenditure allowed**

**40(a): The above expenditures which are allowed might be disallowed**

**40(b): The above expenditures which are allowed might be disallowed**

**40A: The above expenditures which are allowed might be disallowed**

**43B:**

Books:

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

## Lecture 47

### Section 43B:

**It says if a businessman wants to claim the deduction of those expenses which are written in section 43B, then he/ she/ it has to –**

- 1. make the actual payment during the PY to which such expenses relates; or**
- 2. make the actual payment till 31 July of the PY to which such expenses relates and also submit the proof of such payment.**

*Note:*

**If the payment of such expenses is not made till due date of furnishing return of income under section 139(1), then the deduction will not be allowed in the PY to which such expenses relates but it will be allowed in the PY in which the payment is actually made.**

Example 1:

PY 2019-20: Indirect Tax of Rs. 40,00,000 and Income Tax of Rs. 30,00,000

Additional information:

1. Indirect Tax of PY 2019-20 is paid on 29<sup>th</sup> February 2020 and Income Tax is paid on 30<sup>th</sup> March 2020.

Indirect Tax	P&L [PY 2019-20] 40,00,000
--------------	-------------------------------

*Note: Income Tax is disallowed under section 40(a). Indirect Tax is allowed under section 43B because the amount is paid till 31 July 2020.*

Example 2:

PY 2019-20: Indirect Tax of Rs. 40,00,000.

Additional information:

1. Indirect Tax of PY 2019-20 is paid on 30 July 2020.

Indirect Tax	P&L [PY 2019-20] 40,00,000
--------------	-------------------------------

*Note: Indirect Tax is allowed under section 43B because the amount is paid till 31 July 2020.*

Example 3:

PY 2019-20: Indirect Tax of Rs. 40,00,000.

Additional information:

Situation 1: Indirect Tax of PY 2019-20 is paid on 28 January 2025.

*Ans: Sec. 43B : PY 2024-25, I will debit my P&L Account with Rs. 40,00,000.*

Situation 2: Indirect Tax of PY 2014-15 was Rs. 20,00,000. Rs. 8,00,000 was paid on 30 June 2015 and Rs. 9,00,000 was paid on 28 March 2020 and remaining Rs. 3,00,000 not yet paid.

*Ans: Rs. 8,00,000 allowed as deduction in the PY 2014-15*

*Rs. 9,00,000 allowed as deduction in the PY 2019-20*

*Rs. 3,00,000 not yet allowed.*

Situation 3: Indirect Tax of **PY 2014-15** was Rs. 20,00,000. Rs. 8,00,000 was paid on 30 June 2015 and Rs. 9,00,000 was paid on 28 July 2020 and remaining Rs. 3,00,000 not yet paid.

*Ans: Rs. 8,00,000 allowed as deduction in the PY 2014-15*

*Rs. 9,00,000 allowed as deduction in the PY 2020-21 [Due date is relevant only for the first year to which the expense is related. If that year has crossed, then due date does not make any sense and then the year [April to March will prevail]*

*Rs. 3,00,000 not yet allowed.*

## Lecture 48

### Understanding the way of attempting the questions of PGBCP:

**Books:**

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

*Example:*

P&L Account for the year ended 31 March 2020

Purchases	10,00,000	Sales	50,00,000
Depreciation	7,00,000	LTCG	4,00,000
Provision for bad debts	6,00,000		
Payment in cash for 1 purchase	30,000		
Household expenses of the owner	9,00,000		
Net profits	<u>21,70,000*</u>		
	<u>54,00,000</u>		<u>54,00,000</u>

*Additional information:*

1. The depreciation as per section 32 is Rs. 6,80,000.

*Compute the total income of X for the AY 2020-21.*

*Solution:*

Computation of total income of X for the AY 2020-21:

Net profit	21,70,000
Add: Expenses disallowed:	
Excess depreciation written off	
[7,00,000 – 6,80,000]	20,000
Provision for bad debts	6,00,000
Payment in cash [Sec. 40A(3)]	30,000
Household expenses	<u>9,00,000</u>
	<u>15,50,000</u>
	37,20,000
Less: Incomes not related to business:	
LTCG	<u>4,00,000</u>
<b>Income under the head PGBP</b>	33,20,000
Add: LTCG	<u>4,00,000</u>
Gross total income	37,20,000
Less: Deductions under section 80C to 80U	<u>Nil</u>
Total income	<u>37,20,000</u>

**Presumptive taxation scheme**

**Section 44AD, Section 44ADA and Sec. 44AE**

**Section 44AD:**

**Applicable:**

1. Resident Ind/ Resi HUF/ Resi Firm
2. If turnover during the PY does not exceed Rs 2 crore
3. If they are not in the business of plying, leasing or hiring goods.
4. If they are not in professions mentioned in section 44AA.

**Amount:**

8% of total turnover (6% in case of that amount of sales which is through backing channel) is treated as taxable income under the head PGBP.

**Consequences:**

For example, in the PY 2019-20, I opted for Sec. 44AD.

From PY 2020-21 to 2024-25, I should not opt for normal provisions. If I opt for normal provisions in any of the PY during 2020-21 to 2024-25, then for next 5 PYs, you cannot opt for 44AD.

For instance, if I do not opt for 44AD in the PY 2023-24, then during PY 2024-25 to PY 2028-29, you cannot opt for 44AD.

**Example given on page 6.38 of the Book ‘Concept Building Approach to Income Tax Law & Practice’**

A partnership firm, a resident assessee, is engaged in the business of trading of utensils (turnover of previous year 2019-20 is ` 90,00,000 out of which ` 80,00,000 is received through account payee cheques). The firm has computed the income under the head Profits and Gains of Business or Profession as follows:

**Books:**

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

Sales	90,00,000
Less: Expenses:	
Cost of material used	10,00,000
Salary to employees	56,00,000
Depreciation under section 32	15,00,000
Salary and interest to partners as per section 40(b)	<u>5,00,000</u> <u>86,00,000</u>
Income from business	<u>4,00,000</u>

As a tax consultant, what would be your advice to the partnership firm? The firm has a short-term capital gain of ` 3,00,000 in the previous year 2019-20.

Solution:

The firm is advised to compute the business income as per the normal provisions:

PGBP	4,00,000
STCG	<u>3,00,000</u>
GTI	7,00,000
Less: Deductions under section 80	<u>Nil</u>
Total income	<u>7,00,000</u>

Note 1: Computation of business income as per the normal provisions:

Rs. 4,00,000

Note 2: Computation of business income as per the provisions of section 44AD:

8% of 10,00,000 + 6% of 80,00,000 = 5,60,000

## Lecture 49

### Section 44ADA:

Dr. Keshav has the following information to show for the PY 2019-20:

Receipts	40,00,000
Less: Expenses	
Clinic rent	6,00,000
Receptionist salary	2,40,000
Sweeper charges	1,00,000
Consumables	<u>20,000</u> <u>9,60,000</u>
Professional income	<u>30,40,000</u>

In this case, if he wants to apply section 44ADA,

The professional income would be Rs. 20,00,000.

Better:

To apply section 44ADA.

### Section 44AE:

*Example on page 6.42 of the book ‘Concept Building Approach’ by Dr. Naveen Mittal*

Solution:

PGBP income as per the normal provisions is Rs. 10,00,000

PGBP income as per section 44AE is:

A	[10*5*14*1,000]	7,00,000
B	[9*2*7,500]	1,35,000
C (Sold vehicle)	[4*1*7,500]	30,000
C (Unsold vehicles)	[5*2*7,500]	<u>75,000</u> <u>9,40,000</u>

## Lecture 50

### Mercantile basis Numerical of PGBP

**Solution of Case 6 given on page 6.52 of the book ‘Concept Building Approach to Income Tax Law & Practice’ by Dr. Naveen Mittal**

Books:

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

Computation of taxable income of Ms. X for the assessment year 2020-21:

PGBP – Note 2	1,25,760	<b>5,69,000 [Assumption]</b>
STCG	31,000	
Income from other sources:		
Interest on debentures	25,000	
Gift from father (Exempt)	---	
GTI	1,81,760	
Less: Deduction under section 80C	2,000	
Less: Deduction under section 80G [2,500*100%]	<u>2,500</u>	
Total income	<u>1,77,260</u>	

Note 1: Computation of PGBP income as per the normal provisions:

Net profit as per P&L Account	5,53,000
Add: Expenses disallowed:	
Salary to self	50,000
Bonus to employees [Sec. 43B]	30,000
Payment to relatives [Sec. 40A(2)]	5,000
Payment in cash [Sec. 40A(3)]	40,000
Household expenses	2,500
Income-tax [Sec. 40(a)]	19,000
Donation to NDF	2,500
LIP – Personal	2,000
Provision for bad debts	<u>2,000</u>
	<u>1,53,000</u>
	7,06,000
Less: Depreciation [40,000 – 32,000]	8,000
Less: Contribution to National Laboratory [1,00,000*150% - 1,00,000]	<u>50,000</u>
	6,48,000
Less: <i>Incomes not related to PGBP:</i>	
Interest on debentures	25,000
STCG	31,000
Gift from father	<u>22,000</u>
	5,70,000
Less: Refund of income-tax	<u>1,000</u>
PGBP	<u>5,69,000</u>

Note 2: Computation of PGBP income on presumptive taxation basis [Sec. 44AD]:

PGBP income [15,72,000*8%]	1,25,760
----------------------------	----------

Thus, it is better to apply section 44AD but in this case, she cannot opt to compute the PGBP income for the next 5 years as per the normal provisions and if she computes the PGBP income in any of the 5 years as per the normal provisions, then she cannot opt for section 44AD for next 5 years from the year in which she opted for normal provisions.

## Lecture 51

### CASH BASIS Numerical of PGBP

**Solution of Case 3 given on page 6.47 of the book ‘Concept Building Approach to Income Tax Law & Practice’ by Dr. Naveen Mittal**

Computation of total income of Y for the assessment year 2020-21:

Income from profession:	
Fees [10,60,000 + 45,000]	11,05,000
Presents from clients	<u>20,000</u>
Gross receipts	11,25,000
Less: Expenses allowed as deduction	

**Books:**

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

Depreciation on Furniture [10% of Rs. 28,000]	2,800	
Car expenses [1,22,500*80%]	98,000	
<i>Depreciation on car [1,35,000*80%]</i>	1,08,000	
<i>Depreciation on computers [50,000*40%]</i>	20,000	
Office expenses	10,000	
Salary to staff	4,41,000	
Office rent	<u>20,000</u>	<u>6,99,800</u>
		4,25,200
Income from other sources		<u>3,70,000</u>
Gross total income		7,95,200
Less: Deductions under section 80C:		
PPF	20,000	
Subscription .....	<u>6,000</u>	<u>26,000</u>
Total income		<u>7,69,200</u>

### Lecture 52

#### Chapter 16 Assessment of Partnership Firm as Such [PFAS]

**Covered section 184 and 40(b)**

**Question 9 of the chapter Assessment of Firms [Page 16.24 of the Book Concept Building Approach – Dr. Naveen Mittal]**

Computation of net income of firm for the AY 2020-21:

Net profit	(9,750)	
Add: <i>Expenses disallowed:</i>		
Depreciation [1,35,250 – 1,20,000]	15,250	
Excess Payment to Relatives [Sec. 40A(2)] [1,50,000 – 1,25,000]	25,000	
Donation to an approved charitable trust	30,000	
Provision for bad debts	55,000	
Interest on capital [1,17,000/20*8]	<u>46,800</u>	<u>1,72,050</u>
		1,62,300
Add: Undervaluation of closing stock [90,000/90*10]		<u>10,000</u>
		1,72,300
Less: Undervaluation of opening stock [81,000/90*10]	9,000	
Less: O/S sales tax liability paid in our PY [Sec. 43B]	<u>20,000</u>	
		1,43,300
Less: Income not related to PGBP [LTCG]		<u>55,000</u>
		<u>88,300</u>
Add: Remuneration to partners		<u>2,34,000</u>
Book-Profit		3,22,300
Less: Remuneration to partners as per the provisions of section 40(b)		
Remuneration as per book profit rule		
On 1 <sup>st</sup> Rs. 3,00,000 of the B/P, 1,50,000 or		
90% of B/P, More	2,70,000	
On remaining balance of Rs. 22,300 of the B/P,		
60% of B/P	<u>13,380</u>	
		<u>2,83,380</u>
Or		
Remuneration as per deed	<u>2,34,000</u>	<u>2,34,000</u>
<b>Income under the head PGBP</b>		<b>88,300</b>

**Books:**

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

Add:	LTCG	<u>55,000</u>
	GTI	1,43,300
Less:	Deduction under section 80G [8,830*50%]	<u>4,415</u>
	Total income (Rounded off)	<u>1,38,890</u>

Computation of tax to be payable by the firm for the AY 2020-21:

Tax on LTCG [55,000*20%]	11,000
Tax on remaining income [(1,38,890 – 55,000)*30%]	<u>25,167</u>
	36,167
Add: HEC @ 4%	<u>1,447</u>
Tax to be payable (Rounded off)	<u>37,610</u>

Profit after tax of Rs. **1,01,280** [1,38,890 – 37,610] will be distributed amongst the partners in the profit sharing ratio.

Computation of total income and tax liability of partners for the AY 2020-21:

	R	S	T
<b>PGBP:</b>			
Remuneration from the firm			
[ <b>2,34,000</b> is divided in the ratio of remuneration as per deed]	1,02,000	60,000	72,000
Interest from the firm			
[43,000/20*12; 70,000/20*12; 4,000/20*12]	25,800	42,000	2,400
Share of profit from the firm			
[Exempt under section 10(2A)]	----	----	----
PGBP	1,27,800	1,02,000	74,400
<b>IFOS:</b>			
Interest on Bank (Term Deposit)	12,00,000	9,10,000	14,20,000
Dividend from Indian Companies			
[Till Rs. 10,00,000, exempt]	----	----	----
GTI	13,27,800	10,12,000	14,94,400
Less: Deduction under section 80C	60,000	40,000	65,000
Total income	<u>12,67,800</u>	<u>9,72,000</u>	<u>14,29,400</u>
Add: Tax	1,92,840	1,06,900	2,41,320
Cess @ 4%	<u>7,714</u>	<u>4,276</u>	<u>9,653</u>
Tax payable (Rounded)	<u>2,00,550</u>	<u>1,11,180</u>	<u>2,50,970</u>

Note: It is assumed that the individuals are resident and the age of these does not exceed 60 years of age during PY 2019-20

**Sec. 40(b)**

*Explanation 3.*—For the purposes of this clause, "book-profit" means the net profit, as shown in the profit and loss account for the relevant previous year, computed in the manner laid down in Chapter IV-D as increased by the aggregate amount of the remuneration paid or payable to all the partners of the firm if such amount has been deducted while computing the net profit.

**One change in the above question only for the purpose of showing you the treatment of remuneration to partners:**

Assume that the remuneration as per the book profit comes out to be Rs 2,27,000 in place of 2,82,380. In this case, following two changes will take place in the above solution:

Change I: While computing total income of the firm, the remuneration deductible would be Rs. 2,27,000 instead of Rs. 2,34,000.

Books:

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

Change II: While computing the PGBP income of partners, the remuneration taxable would be Rs. 2,27,000 and should be apportioned in the ratio of 102:60:72 which will come out as:

	R	S	T
2,27,000/234*102 .....	98,949	58,205	69,846

## Lecture 53

### Capital Gains

#### Basis of charge [Sec. 45(1)]

The income is taxable under the head CG if all the following conditions are satisfied:

1. Capital Asset
2. Transfer
3. During the PY

#### Capital Asset [2(14)]

Everything in this world is a capital asset except the following:

1. Stock-in-trade
2. Personal movable belongings except Personal Jewellery
3. Agricultural land in India provided .....
4. Some Gold Bonds and Special Bearer Bonds

#### Transfer [2(47)]

Transfer includes –

1. Sale
2. Exchange
3. Compulsory acquisition, etc.

*There are some transactions which are not treated as ‘transfer’ [Sec. 47]:*

1. Distribution of capital assets at the time of partition of HUF
2. Transfer by way of gift or will
3. Transfer by holding company to subsidiary company ....
4. Transfer by subsidiary company to holding company ....
5. Transfer at the time of conversion of firm into a company ....
6. Transfer at the time of amalgamation ....
7. Transfer at the time of demerger ....
8. Transfer at the time of conversion of sole proprietorship into a company

#### Types of Capital Assets [Sec. 2]

1. Short-term capital Assets:
  - a. List shares: 12 M
  - b. Unlisted shares and/ or Immovable Property: 24 M
  - c. Other Capital Assets: 36 M
2. Long-term capital Assets: Which is not a short-term capital asset

## Lecture 54

#### Types of Capital Gains [Sec. 2]

1. Short-term capital gain/ loss: Gain/ loss arising on transfer of STCA
2. Long-term capital gain/ loss: Gain/ loss arising on transfer of LTCA

#### How to compute the Capital Gains [Sec. 48]

**Example:**

Property

Purchase	10,00,000
Commission at the time of purchase	50,000
Paint expenses	40,000
<b>Sale within 1 year</b>	<b>22,00,000</b>

## Books:

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
  2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

Commission at the time of sale 1,00,000

**Solution:**

	Full value of consideration	22,00,000
Less:	Expenses on sale	<u>1,00,000</u>
	Net full value	21,00,000
Less:	Cost of acquisition (10,00,000 + 50,000)	10,50,000
Less:	Cost of improvement	<u>40,000</u>
	STCG	10,10,000

### ***Computation of STCG/ STCL:***

	Full value of consideration
Less:	Expenses on sale
Less:	Cost of acquisition
Less:	Cost of improvement
	If + ve, STCG and if - ve, STCL

### ***Computation of LTCG/ LTCL:***

	Full value of consideration
Less:	Expenses on sale
Less:	Indexed cost of acquisition
Less:	Indexed cost of improvement
	If + ve, LTCG and if - ve, LTCL

*Note:*

1. Indexation is not allowed when LTCA mentioned in section 112A are transferred.
  2. Indexation is not allowed when LTCA being bonds/ debentures are transferred.
  3. Computation of Indexed cost of acquisition (ICA):

ICA = COA x CII of the year in which the asset is transferred

CII of the year in which the asset was held by the assessee\*  
[previous owner in case of section 49(1)]

Or

CII of the PY 2001-02,

Whichever is later

My example given below, 10,50,000 \* PY 2019-20  
**PY 2007-08 or PY 2001-02 [Later]**

Illustration 2: Acquired in PY 2002-03, my denominator CII will be of PY 2002-03

Illustration 3: Acquired in PY 1998-99, my denominator CII will be of PY 2001-02

- #### 4. Computation of Indexed cost of improvement (ICI):

ICI = COI \* CII of the year in which the asset is transferred

CII of the year in which improvement is actually done

## Example:

Property

Purchase [PY 2007-08]	<b>10,00,000</b>
Commission at the time of purchase	50,000
Paint expenses [PY 2013-14]	40,000
<b>Sale within 13 year [2019-20]</b>	<b>90,00,000</b>
Commission at the time of sale	1,00,000

**Solution:**

Property – Transferred after holding it for more than 24 Months. LTCA

Full value of consideration **90,00,000** PY 2019-20

Books:

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

Less:	Expenses on sale	<u>1,00,000</u>	PY 2019-20
	Net full value	89,00,000	
Less:	Indexed Cost of acquisition 10,50,000/129*289	23,52,326	PY 2019-20
Less:	Indexed Cost of improvement 40,000/220*289	<u>52,545</u>	PY 2019-20
	LTCG	<u>64,95,129</u>	

**Cost Inflation Index:**

Base year 2001-02:	100
PY 2019-20:	289

**Lecture 55**

**Heading 1. Basis of charge**

**Heading 2. Meaning of Capital Assets**

**Heading 3. Meaning of Transfer**

**Heading 4. Transactions which are not treated as ‘Transfers’**

**Heading 5. Types of Capital Assets**

**Heading 6. Types of Capital Gains**

**Heading 7. Computation of Capital Gains**

*All 7 headings are covered earlier*

**Example 1:**

Mr. X purchased a house on 17 December 2017 for Rs. 10,00,000 and sold it on 15 December 2019 for Rs. 30,00,000. Compute the capital gains.

**Solution:**

Since the house is transferred within 2 years from the date of its purchase, the asset is thus, a short-term capital asset [Holding Period].

	AY 2020-21
	Sale
Less:	COA
	<u>STCG</u>

**Example 2:**

Mr. K purchased a house on 2 July 2006 for Rs. 20,000 and transferred it to Mr. X on 17 December 2017 for Rs. 10,00,000. Mr. X further transfers it to Mr. Y on 15 December 2019 for Rs. 30,00,000. Compute the capital gains for the AY 2020-21.

**Solution:**

Assessee is Mr. X for the AY 2020-21

Holding period: Within 2 years from the date of its purchase.

	AY 2020-21
	Sale
Less:	COA
	<u>STCG</u>

**Example 3:**

Mr. K purchased a house on 2 July 2006 for Rs. 20,000 and gifted it to his friend Mr. X on 17 December 2017. Mr. X transfers it to Mr. Y on 15 December 2019 for Rs. 30,00,000. Compute the capital gains for the AY 2020-21. CII of 2006-07 is 122, for 2017-18 is 272 and for 2019-20 is 289.

**Solution:**

Assessee for the AY 2020-21 is Mr. X.

Holding period: 2 July 2006 till 2018-19: More than 2 Years and therefore, asset is **Long-term Capital Asset**.

**New concepts applied are Sec. 49(1) [Cases of acquisition by way of gift/ will/ succession/ inheritance] and ‘Previous Owner’ [The person who became the owner of the capital by any other mode other than by way of gift/ will/succession/ inheritance]**

Books:

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

#### **Heading 8: Determination of holding period: COVERED**

#### **Heading 9: Special Cases of acquisition of capital asset [Sec. 49]: COVERED**

In the cases of acquisition which are covered under section 49(1) [gift/ will/ succession/ inheritance], the period of holding of previous owner is also included in determining the period of holding of the capital asset.

AY 2020-21		
Sale	30,00,000	
Less: Indexed cost of Acquisition [20,000/122*289]	<u>47,377</u>	
LTCG	<u>29,52,623</u>	

#### **Points to be remembered:**

For cases of acquisition covered under section 49(1), go back to the previous owner for the following things:

1. Determining the holding period
2. Determining the cost of acquisition
3. Determining the CII year

## Lecture 56

#### **Heading 10: Meaning of cost of acquisition [Sec. 55(2)]**

There are 5 different types of capital assets for the purpose of determining the meaning of cost of acquisition as well as the value of cost of acquisition:

#### **Category 1. Goodwill ..... [TO BE DISCUSSED LATER ON]**

*Category 2. Where capital asset became the property of the assessee before 1 April 2001,*

COA is FMV on 1 April 2001 or Actual cost [Higher] – **Optional**

*Category 3. Where the capital asset became the property of the assessee by any of the modes mentioned in section 49(1) and the capital asset became the property of the previous owner before 1 April 2001*

COA is FMV on 1 April 2001 or Actual cost of the PY [Higher] – **Optional**

*Category 4. Bonus shares/ Right shares/ Right entitlement*

*Category 5. Section 112A capital assets*

#### **Example on Heading 10 (on Category 2):**

Mr. K purchased a house on 2 July 1986 for Rs. 20,000 and transferred it to Mr. X on 17 December 1997 for Rs. 10,00,000. Mr. X further transfers it to Mr. Y on 15 December 2019 for Rs. 30,00,000. Compute the capital gains for the AY 2020-21. FMV of the asset on 1 April 2001 is Rs. 13,00,000

#### **Solution:**

Holding period starts from 17 December 1997 and thus, more than 24 Months, the asset is a LTCA.

COA: Rs. 13,00,000

AY 2020-21		
Sale	30,00,000	
Less: ICA [13,00,000/100* 289]	<u>37,57,000</u>	
LTCG	<u>(7,57,000)</u>	

#### **Example on Heading 10 (on Category 3):**

Mr. K purchased a house on 2 July 1984 for Rs. 20,000 and gifted it to his friend Mr. X on 17 December 2017. Mr. X transfers it to Mr. Y on 15 December 2019 for Rs. 30,00,000. Compute the capital gains for the AY 2020-21. CII of 2001-02 is 122, for 2017-18 is 272 and for 2019-20 is 289. FMV on 1 April 2001 is Rs. 12,00,000.

#### **Solution:**

Holding period start from 2 July 1984 because the case is covered under section 49(1) which is more than 24 months and thus, the capital gain will be long-term.

COA of the assessee: COA to the previous owner [20,000] or FMV on 1 April 2001 [12,00,000] – Higher

AY 2020-21		
Sale	30,00,000	
Less: ICA		
[12,00,000/100* 289]	<u>34,68,000</u>	
LTCG	<u>(4,68,000)</u>	

Books:

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

**Question:**

If capital asset became the property of the assessee by any of the modes referred to in section 49(1) and the capital asset became the property of the previous owner on or after 1 April 2001?

Ans: Which category of COA?

This is not at all covered under any category of COA?

It is already covered in Example 3 given under the heading **Lecture 55**.

**Heading 11: Meaning of cost of improvement [Sec. 55(1)(b)]**

*Category I: Where the capital asset became the property of the assessee or the previous owner before 1 April 2001*

All improvement incurred before 1 April 2001 are ignored.

Explanation:

Purchased in 1996 for Rs. 10,00,000

Improvement in 1998 for Rs. 2,00,000

FMV on 1 April 2001 for ..... [Will be having the reflection of all such improvement incurred before April 2001]

*Category II: Where the capital asset became the property of the assessee or the previous owner on or after 1 April 2001*

COI: Actual cost of improvement

*Category III: Goodwill [To be discussed later on]*

**Lecture 57**

Topics to be followed in sequence:

1. Introduction [45(1)]
2. Capital Asset [2(14)]
3. Transfer [2(47)]
4. Transaction which is not treated as ‘Transfer’ [47]
5. Type of Capital Asset – Long-term or Short-term by way of determining the Holding Period of the Capital Asset
6. Type of Capital Gain – Long-term or Short-term
7. Mode of computation of Capital Gains [48]
8. Determination of Cost of Acquisition in some special cases [49] – This heading does not tell you the value of Cost of Acquisition. This heading only tells you the point of time which you will use the value of Cost of Acquisition.
9. Determination of value of Cost of Acquisition – There are 5 Categories out of which we have covered only 2 categories till this discussion.
10. Determination of Cost of Improvement and the value of Cost of Improvement – There are 3 categories out of which we have covered only 2 categories till this discussion.
11. Determination of Indexed Cost of Acquisition and Indexed Cost of Improvement
12. Exemptions under the head Capital Gains

**Exemption under section 54:**

1. Individual/ HUF
2. Sold a residential house
3. The house sold must be a Long-term Capital Asset.
4. The assessee has purchased within 1 year before or within 2 years after the date of sale of the house  
Or

Constructed within 3 years from the date of sale of house,  
Another 1 residential house in India.

**Amount of exemption:**

Amount investment in purchasing/ constructing another residential house in India.

Books:

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

**In case LTCG does not exceed Rs. 2 Crores, then investment in 2 residential houses in India are eligible for exemption under section 54 but this is the life-time option available.**

**Example on Page 7.25 of the book Concept Building Approach**

**Illustration (a)** X, a non-resident individual, has earned a **long-term capital gain** of ` 17,00,000 in the previous year 2019-20 by selling a residential house on 10 December 2019. This house was purchased by him 10 years ago. The long-term capital gain of ` 17,00,000 can be exempt under section 54 with the amount invested by him in –

1. Purchasing a residential house in India during 11 December 2018 or 9 December 2021; or
2. Constructing a residential house in India during 10 December 2019 to 9 December 2021.

**Illustration (b)** Continuing the above illustration (a), suppose he purchases a residential house in India on **30 June 2020** for ` 15,00,000. In this case, he will get the exemption of ` 15,00,000 under section 54 and the taxable long-term capital gain during the previous year 2019-20 becomes ` 2,00,000 [ ` 17,00,000 (longterm capital gain before exemption) – ` 15,00,000 (exemption under section 54)]. He should not sell this house because of which he got an exemption of ` 15,00,000 till 29 June 2023.

Suppose, he sold this house on **28 June 2022** for ` 24,00,000, then short-term capital gain during the previous year 2022-23 will be computed as follows –

Sale	24,00,000
Less: Expenses on sale	Nil
Cost of Acquisition	
[15,00,000 (Cost) – 15,00,000 (Exemption taken)]	<u>Nil</u>
STCG	<u>24,00,000</u>

Suppose, he purchases a residential house for Rs. 18,00,000, then exemption is available for Rs. 17,00,000 and the LTCG during 2019-20 is Nil [` 17,00,000 (LTCG) – ` 17,00,000 (Maximum eligible exemption from investment in new house)]

Suppose, he sold this house on **28 June 2022** for ` 24,00,000, then short-term capital gain during the previous year 2022-23 will be computed as follows –

Sale	24,00,000
Less: Expenses on sale	Nil
Cost of Acquisition	
[18,00,000 (Cost) – 17,00,000 (Exemption taken)]	<u>1,00,000</u>
STCG	<u>23,00,000</u>

Continuing the above illustration (a), suppose he has not taken the decision of purchasing or constructing the residential house till 31 July 2020 (i.e., the due date of filing return of income of the previous year 2019-20, the year in which the long-term capital gain has arisen), he can still claim the exemption under section 54 if he deposits the amount, which he wants to claim as an exemption under section 54, in Capital Gains Deposit Account Scheme till 31 July 2020 i.e., the due date of filing return of income of the previous year 2019-20, the year in which the long-term capital gain has arisen.

Now, let us suppose, he has deposited ` 14,00,000 on 31 July 2020 in Capital Gains Deposit Account Scheme for the purpose of claiming exemption under section 54. In this situation, he can claim the exemption under section 54 of ` 14,00,000 in the previous year 2019-20 and the taxable long-term capital gain in the previous year 2019-20 will be ` 3,00,000 [ ` 17,00,000 (long-term capital gain) – ` 14,00,000 (amount deposited in the Capital Gains Deposit Account Scheme till 31 July 2020)].

However, he has to withdraw the amount of ` 14,00,000 either for purchasing the residential house till 9 December 2021 or for constructing the residential house till 9 December 2022.

**Illustration (d)** Continuing the above illustration (c) where he has deposited ` 14,00,000 till 31 July 2020, suppose he has purchased a residential house of ` 2,00,000 on 2 June 2020 and deposited ` 14,00,000 also till 31 July 2020 for the purpose of claiming exemption under section 54, the total amount eligible for exemption under section 54 for the previous year 2019-20 will be treated as ` 16,00,000 [ ` 2,00,000 (actually invested till due date of filing return of income) + ` 14,00,000 (amount deposited till due date of filing return of income)] and the taxable long-term capital gain in the previous year 2019-20 becomes ` 1,00,000 [ ` 17,00,000 – ` 16,00,000].

Books:

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

*Illustration (e) Continuing the illustration (c) above, where he has deposited ` 14,00,000 till due date of filing return of income, suppose he has utilised ` 13,00,000 for purchasing the residential house till 9 December 2021, the unutilised amount of ` 1,00,000 [` 14,00,000 (amount deposited) – ` 13,00,000 (amount actually utilised within the eligible time-limit)] will be taxable as long-term capital gain of the previous year in which the limit of 3 years expires. Thus, ` 1,00,000 will be taxable as **long-term capital gain** in the previous year 2022-23 (i.e., on 10 December 2022, the date on which the time-limit of 3 years expires). For the purpose of taxation of unutilised amount, the time-limit will be taken as 3 years even if the amount was utilised for purchasing the residential house where 2 years are allowed. The unutilised amount of ` 1,00,000 can be withdrawn by the assessee from the Capital Gains Deposit Account Scheme as per the rules of the scheme.*

### **Profit on sale of property used for residence.**

**54.** (1) Subject to the provisions of sub-section (2), where, in the case of an assessee being an individual or a Hindu undivided family, the capital gain arises from the transfer of a long-term capital asset, being buildings or lands appurtenant thereto, and being a residential house, the income of which is chargeable under the head "Income from house property" (hereafter in this section referred to as the original asset), and the assessee has within a period of one year before or two years after the date on which the transfer took place purchased, or has within a period of three years after that date constructed, one residential house in India, then, instead of the capital gain being charged to income-tax as income of the previous year in which the transfer took place, it shall be dealt with in accordance with the following provisions of this section, that is to say,—

- (i) if the amount of the capital gain is greater than the cost of the residential house so purchased or constructed (hereafter in this section referred to as the new asset), the difference between the amount of the capital gain and the cost of the new asset shall be charged under section 45 as the income of the previous year; *and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be nil; [My example of Rs. 17,00,000 is covered under (i)]* or
- (ii) if the amount of the capital gain is equal to or less than the cost of the new asset, the capital gain shall not be charged under section 45; *and for the purpose of computing in respect of the new asset any capital gain arising from its transfer within a period of three years of its purchase or construction, as the case may be, the cost shall be reduced by the amount of the capital gain:*

<sup>2</sup>[**Provided that where the amount of the capital gain does not exceed two crore rupees, the assessee may, at his option, purchase or construct two residential houses in India, and where such option has been exercised,—**

- (a) *the provisions of this sub-section shall have effect as if for the words "one residential house in India", the words "two residential houses in India" had been substituted;*
- (b) *any reference in this sub-section and sub-section (2) to "new asset" shall be construed as a reference to the two residential houses in India:*

**Provided further that where during any assessment year, the assessee has exercised the option referred to in the first proviso, he shall not be subsequently entitled to exercise the option for the same or any other assessment year.]**

**(2) The amount of the capital gain which is not appropriated by the assessee towards the purchase of the new asset made within one year before the date on which the transfer of the original asset took place, or which is not utilised by him for the purchase or construction of**

Books:

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

*the new asset before the date of furnishing the return of income under section 139, shall be deposited by him before furnishing such return [such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of section 139] in an account in any such bank or institution as may be specified in, and utilised in accordance with, any scheme which the Central Government may, by notification in the Official Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit; and, for the purposes of sub-section (1), the amount, if any, already utilised by the assessee for the purchase or construction of the new asset together with the amount so deposited shall be deemed to be the cost of the new asset :*

**Provided** that if the amount deposited under this sub-section is not utilised wholly or partly for the purchase or construction of the new asset within the period specified in sub-section (1), then,—

- (i) the amount not so utilised shall be charged under section 45 as the income of the previous year in which the period of three years from the date of the transfer of the original asset expires; and
- (ii) the assessee shall be entitled to withdraw such amount in accordance with the scheme aforesaid.

*Explanation.— [Omitted by the Finance Act, 1992, w.e.f. 1-4-1993.]*

#### **Exemption 54B**

#### **Exemption 54D**

### Lecture 58

#### **Exemption under section 54EC**

*Page 7.31 of the book [Concept Building Approach]*

1. X has transferred a commercial property on 6 May 2019 and earned a long-term capital gain of ` 22,00,000. He invested ` 13,00,000 from the sale proceeds of commercial property in NHAI bonds on 31 October 2019.

Taxable LTCG = Rs. 22,00,000 – Rs. 13,00,000 (Exemption under 54EC) = Rs. 9,00,000.

3. X has transferred gold on 6 May 2019 and earned a long-term capital gain of ` 22,00,000. He invested ` 13,00,000 from the sale proceeds of gold in NHAI bonds on 31 October 2019.

Taxable LTCG = Rs. 22,00,000 – Nil (Exemption under section 54EC) = Rs. 22,00,000.

#### **Exemption under section 54EE**

#### **Exemption under section 54F**

*Page 7.33 of the book [Concept Building Approach]*

*Illustration:*

X, a resident individual, has sold gold on **10 December 2019** which was purchased by him 10 years ago. The sale value of gold was ` 22,30,000, expenses on sale were ` 30,000 and indexed cost of acquisition of gold was ` 5,00,000. Thus, he earned a long-term capital gain of ` 17,00,000 [ ` 22,30,000 – ` 30,000 – ` 5,00,000] in the previous year 2019-20 by selling gold. Suppose he purchases a residential house in India on **30 June 2020** for ` 15,00,000.

$$\begin{aligned} \text{Exemption under section 54F} &= \frac{\text{LTCG}}{\text{Net Sale consideration}} * \text{Investment} \\ &= \frac{17,00,000}{22,00,000} * 15,00,000 \\ &= 11,59,091 \end{aligned}$$

Taxable LTCG = 17,00,000 – 11,59,091 = 5,40,909

#### **Exemption under section 54F is not available –**

- (a) the assessee,—

Books:

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

- (i) **owns** more than one residential house, **other than the new asset**, on the date of transfer of the original asset; or

Example:

Sale date of gold in above example was 10 December 2019. Suppose, I have already one residential house. Another residential house on which I got the exemption has been purchased by me on 30 June 2020.

Suppose, rather than 30 June 2020, had I purchased the house on 8 September 2019, would I get the exemption under section 54F? Answer is YES

Suppose, rather than 30 June 2020, had I purchased the house on 8 September 2019 (and I am already having two house for the past 20 years), would I get the exemption under section 54F? Answer is NO

- (ii) **purchases** any residential house, **other than the new asset**, within a period of **one year** after the date of transfer of the original asset; or
- (iii) **constructs** any residential house, other than the new asset, within a period of **three years** after the date of transfer of the original asset; and

*Explanation.*—For the purposes of this section,—

"net consideration", in relation to the transfer of a capital asset, means the full value of the consideration received or accruing as a result of the transfer of the capital asset as reduced by any expenditure incurred wholly and exclusively in connection with such transfer.

***Consequences if another house is purchased or constructed within 1 year or within 3 years from the date of sale***

(2) Where the assessee purchases, within the period of **two[CLARIFICATION NEEDED]** years after the date of the transfer of the original asset, or constructs, within the period of three years after such date, any residential house, the income from which is chargeable under the head "Income from house property", **other than the new asset**, the amount of capital gain arising from the transfer of the original asset not charged under section 45 on the basis of the cost of such new asset as provided in clause (a), or, as the case may be, clause (b), of sub-section (1), shall be deemed to be income chargeable under the head "Capital gains" relating to long-term capital assets of the previous year in which such residential house is purchased or constructed.

***Consequences if the house on which I got the exemption is transferred within 3 years***

(3) Where the new asset is transferred within a period of three years from the date of its purchase or, as the case may be, its construction, the amount of capital gain arising from the transfer of the original asset not charged under section 45 on the basis of the cost of such new asset as provided in clause (a) or, as the case may be, clause (b), of sub-section (1) shall be deemed to be income chargeable under the head "Capital gains" relating to long-term capital assets of the previous year in which such new asset is transferred.

(4) The amount of the net consideration which is not appropriated by the assessee towards the purchase of the new asset made within one year before the date on which the transfer of the original asset took place, or which is not utilised by him for the purchase or construction of the new asset before the date of furnishing the return of income under section 139, shall be deposited by him before furnishing such return [such deposit being made in any case not later than the due date applicable in the case of the assessee for furnishing the return of income under sub-section (1) of section 139] in an account in any such bank or institution as may be specified in, and utilised in accordance with, any scheme which the Central Government may, by

Books:

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

notification in the Official Gazette, frame in this behalf and such return shall be accompanied by proof of such deposit ; and, for the purposes of sub-section (1), the amount, if any, already utilised by the assessee for the purchase or construction of the new asset together with the amount so deposited shall be deemed to be the cost of the new asset :

**Provided** that if the amount deposited under this sub-section is not utilised wholly or partly for the purchase or construction of the new asset within the period specified in sub-section (1), then,—

(i) the amount by which—

- (a) the amount of capital gain arising from the transfer of the original asset not charged under section 45 on the basis of the cost of the new asset as provided in clause (a) or, as the case may be, clause (b) of sub-section (1), exceeds
- (b) the amount that would not have been so charged had the amount actually utilised by the assessee for the purchase or construction of the new asset within the period specified in sub-section (1) been the cost of the new asset,

shall be charged under section 45 as income of the previous year in which the period of three years from the date of the transfer of the original asset expires; and

(ii) the assessee shall be entitled to withdraw the unutilised amount in accordance with the scheme aforesaid.

*Explanation.—[Omitted by the Finance Act, 1992, w.e.f. 1-4-1993.]*

LTCG [3,00,000] \* Deposited Amount [14,00,000]

Net Sale [15,00,000]

= 2,80,000 [54F]

LTCG [3,00,000] \* Unutilised Amount [2,00,000]

Net Sale [15,00,000]

= 40,000 [Taxable as LTCG after the expiry of 3 year period]

### Lecture 59

**Page 7.36 of the book [Concept Building Approach by Naveen Mittal]**

*Illustration*

*X, a resident individual, has earned a long-term capital gain of ` 17,00,000 in the previous year 2019-20 because of transfer of machinery used in the business of an industrial undertaking situated in an urban area. The transfer has been done because of shifting of the undertaking from an urban area to a non-urban area on 10 December 2019. He purchases a building on 30 June 2020 for ` 15,00,000.*

AY 2020-21

	LTCG (before exemption)	17,00,000
Less:	Exemption under section 54G	<u>15,00,000</u>
	LTCG	<u>2,00,000</u>

*Suppose he sold this building on 28 June 2022 for ` 24,00,000.*

AY 2023-24

	Sale	24,00,000
Less:	COA	<u>Nil</u>
	[15,00,000 – 15,00,000 (Exemption u/s 54G)]	<u>24,00,000</u>

### Special Cases of Capital Gains:

1. Compute capital gain in case of depreciable assets [Sec. 50]

Books:

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

#### **Application of Section 50(1):**

Type VI [The same Question which we have discussed in the chapter PGBP]:

The written down value of the block of Machinery and Plant (Rate of depreciation: 15%) consisting of 3 plants A, B and C, on 1 April 2019 was ` 10,00,000. Machine D was acquired as well as put to use on 7 July 2019 for ` 3,00,000 and Machine E was acquired as well as put to use on 9 December 2019 for ` 4,00,000. Machine B and C were sold for ` **25,00,000** (expenses on sale: ` 50,000). Ignore the additional depreciation, if any.

Solution:

*Computation of depreciation:*

	Machinery & Plant [ROD: 15%]	
	WDV of the block on 1 April 2019 [3]	10,00,000
Add:	Actual cost of the assets (same block) acquired as well as put to use during 2019-20 [1 April 2019 to 31 March 2020] [3,00,000 + 4,00,000] [2]	<u>7,00,000</u> <u>17,00,000</u>
Less:	Net Sale proceeds of the assets (same block) happened during 2019-20 [ <b>25,00,000</b> – 50,000]* [2]	<u><b>17,00,000*</b></u>
	WDV of the block on 31 March 2020	Nil
	Depreciation [Closing WDV * ROD]	Nil
	WDV of the block on 1 April 2020	Nil

\* Net sale cannot exceed the total of opening WDV + Actual cost of Asset acquire

*Computation of capital gains:*

Sale value	25,00,000
Less: Expenses on sale	50,000
Less: WDV of the BOA on 1 April 2019	10,00,000
Less: Actual cost of asset acquired	<u>7,00,000</u>
STCG [Sec. 50(1)]	<u>7,50,000</u>

#### **Application of Section 50(2):**

Type VII [The same Question which we have discussed in the chapter PGBP]:

The written down value of the block of Machinery and Plant (Rate of depreciation: 15%) consisting of three plants A, B and C, on 1 April 2019 was ` 10,00,000. Machine D was acquired as well as put to use on 7 July 2019 for ` 3,00,000 and Machine E was acquired as well as put to use on 9 December 2019 for ` 4,00,000. All the machines are sold for ` **5,00,000** (expenses on sale: ` 50,000). Ignore the additional depreciation, if any.

Solution:

*Computation of Depreciation:*

	Machinery & Plant [ROD: 15%]	
	WDV of the block on 1 April 2019 [3]	10,00,000
Add:	Actual cost of the assets (same block) acquired as well as put to use during 2019-20 [1 April 2019 to 31 March 2020] [3,00,000 + 4,00,000] [2]	<u>7,00,000</u> <u>17,00,000</u>
Less:	Net Sale proceeds of the assets (same block) happened during 2019-20 [ <b>5,00,000</b> – 50,000]* [2]	<u><b>4,50,000*</b></u>
	WDV of the block on 31 March 2020	12,50,000
	Depreciation [Closing WDV * ROD]	Nil
	WDV of the block on 1 April 2020	Nil

*Computation of capital gain:*

Sale	5,00,000
Less: Expenses on sale	50,000
Less: WDV of the BOA in beginning	10,00,000
Less: Actual cost of asset acquired	<u>7,00,000</u>
STCL [Sec. 50(2)]	<u>12,50,000</u>

*Note:*

Sec. 50(1) always gives STCG but Sec. 50(2) can give either STCG or STCL.

Books:

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

**Non-application of Sec. 50 even though depreciable assets are sold:**

Type I [The same Question which we have discussed in the chapter PGBP]:

The written down value of the block of Machinery and Plant (Rate of depreciation: 15%) consisting of three plants A, B and C, on 1 April 2019 was ` 10,00,000. Machine D was acquired as well as put to use on 7 July 2019 for ` 3,00,000 and Machine E was acquired as well as put to use on 9 August 2019 for ` 4,00,000. Machine B and C were sold for ` 5,00,000 (expenses on sale: ` 50,000). Ignore the additional depreciation, if any.

Solution:

*Computation of depreciation:*

	Machinery & Plant [ROD: 15%]
	WDV of the block on 1 April 2019 [3]
Add:	Actual cost of the assets (same block) acquired as well as put to use during 2019-20 [1 April 2019 to 31 March 2020] [3,00,000 + 4,00,000] [2]
	<u>7,00,000</u>
	17,00,000
Less:	Net Sale proceeds of the assets (same block) happened during 2019-20 [5,00,000 – 50,000] [2]
	<u>4,50,000</u>
	WDV of the block on 31 March 2020
	Depreciation [Closing WDV * ROD] [12,50,000*15%]
	<u>1,87,500</u>
	WDV of the block on 1 April 2020
	10,62,500

*Computation of capital gains:*

*Capital gain cannot be computed in this case because neither Sec. 50(1) is applicable nor Sec. 50(2).*

Had you computed the amount of capital gains without knowing the provisions of Sec. 50?

Sale	5,00,000
Less: Expenses on sale	50,000
Less: Opening WDV	10,00,000
Less: Actual cost	<u>7,00,000</u>
	<u>12,50,000</u>

**2. Special provision in case of transfer of land or building [Sec. 50C]**

- (a) 105% of Actual Sale < Stamp Duty value,
- (b) 105% of Actual Sale > Stamp Duty value,
- (c) 105% of Actual Sale = Stamp Duty value,

SDV is taken as Sale value for the purpose of CG  
Actual sale value is taken as Sale value for the purpose of CG  
Actual sale value is taken as Sale value for the purpose of CG

*Example:*

- 1. Sale = 50,00,000 and SDV = 53,00,000,  
105% of 50,00,000 = 52,50,000
- 2. Sale = 50,00,000 and SDV is 52,40,000,
- 3. Sale = 50,00,000 and SDV is 52,50,000,

Sale value should be taken as 53,00,000  
Sale value should be taken as 50,00,000  
Sale value should be taken as 50,00,00

**3. Treatment of Advance Money Forfeited [Sec. 51]**

Advance money forfeited by the assessee is taxable as IFOS.

It has no effect under the Capital Gains but amount forfeited till 31 March 2014 was not taxable under the head IFOS. In fact, that forfeited amount was deducted from the Cost of Acquisition while computing income under the head CG.

**Lecture 60**

**Sec. 112: Tax on LTCG**

**Tax on long-term capital gains.**

**112.** (1) Where the total income of an assessee includes any income, arising from the transfer of a long-term capital asset, which is chargeable under the head "Capital gains", the tax payable by the assessee on the total income shall be the aggregate of,—

- (a) in the case of an individual or a Hindu undivided family, being a **resident**,—

Books:

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

- (i) the amount of income-tax payable on the **total income [9,00,000]** as reduced by the amount of such **long-term capital gains [4,00,000]**, had the total income as so reduced been his total income ; and
- (ii) the amount of income-tax calculated on such long-term capital gains at the rate of 20%:

**Provided** that where the total income **[4,30,000 {2,00,000 LTCG + 2,30,000 IFOS}]** as reduced by such long-term capital gains **[2,00,000]** is below the maximum amount which is not chargeable to income-tax,

If **2,30,000** (TI - LTCG) < 2,50,000 (Exemption Limit)

+ 20,000

**2,50,000**

then, such long-term capital gains shall be **reduced** by the amount by which the total income as so reduced falls short of the maximum amount which is not chargeable to income-tax and the tax on the balance of such long-term capital gains shall be computed at the rate of twenty per cent ;

$$\begin{aligned}\text{Relief} &= 2,50,000 \text{ (Exemption Limit)} - \text{TI as reduced} \\ &= 2,50,000 - 2,30,000 \\ &= 20,000\end{aligned}$$

$$\text{Taxable LTCG} = 2,00,000 - 20,000 = 1,80,000 @ 20\%$$

*Explanation.—[\*\*\*]*

**Provided** that where the tax payable in respect of any income arising from the transfer of a long-term capital asset, being listed securities (other than a unit) or zero coupon bond, **exceeds** 10% of the amount of capital gains before giving effect to the provisions of the second proviso to section 48, then, such excess shall be ignored for the purpose of computing the tax payable by the assessee :

*Explanation.—For the purposes of this sub-section,—*

(aa) "listed securities" means the securities which are listed on any recognised stock exchange in India;

(2) Where the gross total income of an assessee includes any income arising from the transfer of a long-term capital asset, the gross total income shall be reduced by the amount of such income and the deduction under Chapter VI-A shall be allowed as if the gross total income as so reduced were the gross total income of the assessee. **In other words, deduction under section 80 are not allowed from such LTCG. For example**, if LTCG (covered under section 112) is Rs. 4,00,000, IFOS is 70,000 and deduction under section 80C is Rs. 90,000; his total income is

LTCG	4,00,000
IFOS	<u>70,000</u>
GTI	4,70,000
Less: Deduction under section 80C	<u>70,000*</u>
Total income	<u>4,00,000</u>

LTCG of ..... will be taxed at 20%.

Relief:

**Books:**

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

TI – LTCG < Exemption Limit

4,00,000 – 4,00,000 < 2,50,000

0 < 2,50,000

Relief of Rs. 2,50,000 is allowed and LTCG taxable will be 1,50,000 [4,00,000 – 2,50,000].

**Example on Sec. 112 given on page 7.40 from the book [Concept Building Approach]**

X (49 years), a resident individual, has taxable long-term capital gain of ` 3,50,000 from sale of a house property during the previous year 2019-20 (it is to be noted that the long-term capital gain from sale of a house property is not covered under section 112A). His income from other sources is ` 60,000 during the previous year 2019-20.

Compute his tax liability for the assessment year 2020-21 on the assumption that he has deposited ` 10,000 in PPF during the previous year 2019-20.

**Solution:**

	AY 2020-21
LTCG	3,50,000
IFOS	<u>60,000</u>
GTI	4,10,000
Less: Deduction u/s 80C	<u>10,000</u>
TI	<u><b>4,00,000</b></u>

Tax on LTCG @ 20% U/S 112 [(3,50,000 – 2,00,000)*20%]	30,000
Tax on remaining income [4,00,000 – 3,50,000]	<u>Nil</u>
	30,000
Less: Rebate under section 87A	<u>12,500</u>
	17,500
Add: Cess @ 4%	<u>700</u>
Tax payable	<u><b>18,200</b></u>

**Note:**

Relief is available from LTCG computed as follows –

1. Resident Individual
  2. TI – LTCG < Exemption limit [4,00,000 – 3,50,000] < 2,50,000
- Relief = Exemption limit – TI excluding LTCG  
= 2,50,000 – 50,000  
= 2,00,000

**Example given on page 7.42 of the book [Concept Building Approach] – Option to pay tax on LTCG @ 10%**

X (39 years), a resident individual sold 1,000 equity shares on 10 December 2019 for ` 3,90,000 and also paid STT at the time of sale. However, when these were acquired on 6 May 2013 for ` 2,20,000, STT was not paid. Compute his total income and tax liability for the assessment year 2020-21 assuming his income from other sources during 2019-20 is ` 3,59,000. CII for 2013-14 and for 2019-20 is 220 and 289 respectively.

**Solution:**

Sec. 112A is not applicable in the present case because STT was not paid at the time of acquisition of equity shares.

In case of listed securities, the holding period is 12 Months.

	AY 2020-21
Sale	3,90,000
Less: ICA [2,20,000/220* 289]	<u>2,89,000</u>
LTCG	1,01,000
IFOS	<u>3,59,000</u>
GTI	4,60,000
Less: Deduction u/s 80	<u>Nil</u>
TI	<u><b>4,60,000</b></u>

Books:

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

Will relief be available?

$$\begin{aligned} \text{TI - LTCG} &< \text{Exemption Limit} \\ 4,50,000 - 1,01,000 &< 2,50,000 \end{aligned}$$

3,49,000 is not less than the exemption limit of the assessee and thus, no relief is available from LTCG.

Tax on LTCG – Note	17,000
Tax on remaining income [ $4,60,000 - 1,01,000 = 3,59,000$ as per the slab of the assessee] i.e., $3,59,000 - 2,50,000 = 99,000 * 5\%$	<u>5,450</u> 22,450
Less: Rebate under section 87A	<u>12,500</u> 9,950
Add: Cess @ 4%	<u>398</u>
Tax payable (Rounded off)	<u>10,350</u>

Note:

	Option I [With indexation]	option II [Without indexation]
Sale	3,90,000	3,90,000
Less: ICA	<u>2,89,000</u>	<u>2,20,000</u> [Cost]
LTCG	<u>1,01,000</u>	<u>1,70,000</u>
Tax @ 20%	20,200	tax @ 10% 17,000

## Lecture 61

### Sec. 112A: Tax on LTCG

#### **Tax on long-term capital gains in certain cases.**

**112A. (1)** Notwithstanding anything contained in section 112, the tax payable by an assessee on his total income shall be determined in accordance with the provisions of sub-section (2), if—

- (i) the total income includes any income chargeable under the head "Capital gains";
- (ii) the capital gains arise from the **transfer of a long-term capital asset being an equity share** in a company or a unit of an equity oriented fund or a unit of a business trust;
- (iii) **securities transaction tax** under Chapter VII of the Finance (No. 2) Act, 2004 (23 of 2004) has,—
  - (a) in a case where the long-term capital asset is in the nature of an equity share in a company, **been paid on acquisition and transfer of such capital asset**; or
  - (b) in a case where the long-term capital asset is in the nature of a unit of an equity oriented fund or a unit of a business trust, been paid on transfer of such capital asset.

**(2) The tax payable** by the assessee on the total income referred to in sub-section (1) shall be the aggregate of—

- (i) the amount of income-tax calculated on **such long-term capital gains exceeding one lakh rupees at the rate of ten per cent**; and
- (ii) the amount of income-tax payable on the total income as reduced by the amount of long-term capital gains referred to in sub-section (1) as if the total income so reduced were the total income of the assessee:

*Provided that in the case of an individual or a Hindu undivided family, being a resident, where the total income as reduced by such long-term capital gains is below the maximum amount*

Books:

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

*which is not chargeable to income-tax, then, the long-term capital gains, for the purposes of clause (i), shall be reduced by the amount by which the total income as so reduced falls short of the maximum amount which is not chargeable to income-tax.*

(4) The Central Government may, by **notification** in the Official Gazette, specify the nature of acquisition in respect of which the provisions of sub-clause (a) of clause (iii) of sub-section (1) shall not apply.

(5) Where the gross total income of an assessee includes any long-term capital gains referred to in sub-section (1), the deduction under Chapter VI-A shall be allowed from the gross total income as reduced by such capital gains.

(6) Where the total income of an assessee includes any long-term capital gains referred to in sub-section (1), the **rebate under section 87A** shall be allowed from the income-tax on the total income as reduced by tax payable on such capital gains.

*Explanation.—For the purposes of this section,—*

### Lecture 62

#### Sec. 111A

### Lecture 63

*A brief discussion to clear any confusion:*

	Sec. 112	Sec. 112A	Sec. 111A
Covers	Normal LTCG	Special LTCG	Special STCG
Tax Rate	20% (or 10% in some cases)	10% exceeding Rs. 1 lakh	15%

Note: For normal STCG, there is no separate section of tax rate.

#### How to compute LTCG covered under section 112A?

1. LTCA
2. Equity shares
3. STT is paid at the time of sale as well as at the time of **Purchase (exceptions to pay STT at the time of purchase are there).**
4. The transaction of sale is taking place on or after 1 April 2018.

As we know that capital gains (whether long-term or short-term) are computed as per section 48.

Sale	xx
Less: EOS	xx
Less: ICA	xx
LTCG	xx

*There is a technicality in computing Cost of Acquisition of the assets covered under section 112A*

### Lecture 64

#### Practice of one numerical question:

13. Compute the capital gains in the hands of Gurmeet for the assessment year 2020-21 and 2021-22 on the basis of following information:
- a) Gurmeet sold a **residential house** on 28 June 2019 for ` 30,00,000 (Stamp duty value: ` 34,00,000) which was purchased by him on 1 October 2006 for ` 5,20,000. He had spent ` 2,70,000 on improvement of the house during the year 2007-08.
- b) He purchased a **new house** on 21 October 2019 for ` 8,50,000 and on 16 July 2020, he sold it for ` 10,00,000.

**Books:**

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

c) He again purchased another house on 21 November 2020 for ` 8,00,000.

CII for the financial year 2006-07 is 122, 2007-08 is 129 and for 2019-20 is 289. Gurmeet has filed his return of income of assessment year 2020-21 on 5 July 2020. [Delhi University B.Com.(H) 2019 (Modified)]

**Solution:**

AY 2020-21

Sale – Note 1	34,00,000
Less: Expenses on sale	Nil
Less: Indexed cost of acquisition [5,20,000/122* 289]	12,31,803
Less: Indexed cost of improvement [2,70,000/129*289]	<u>6,04,884</u>
LTCG (before exemption)	15,63,313
Less: Exemption under section 54	<u>8,50,000</u>
LTCG	<u>7,13,313</u>

AY 2021-22

Sale	10,00,000
Less: Cost of Acquisition [8,50,000 – 8,50,000 (Exemption already claimed)]	Nil
STCG	<u>10,00,000</u>

*Note:*

1. Applicability of Sec. 50C:

105% of sale value is Rs. 31,50,000 [105% of 30,00,000] and SDV > 105% of Sale Value. Therefore, SDV is taken as sale value for the purpose of capital gains.

2.

**COMPUTATION in case of some capital assets where there is a possibility of being self-generated**

*Computation of cost of acquisition [Referring Sec. 55(2)(a) and dealing with Goodwill of a business, right to manufacture/ produce/ process any article (or thing) and right to carry on any business/ profession, loom hours, stage carriage permits and tenancy rights. In these capital assets, the COA is determined as follows:*

1. If these are purchased, COA is your purchase price
2. If these are acquired by the assessee as per section 49(1), COA of the assessee is the COA of the previous owner.
3. In all other cases of acquisition, COA is NIL.

Further, neither indexation is allowed nor FMV on 1 April 2001 concept is applicable here.

*Example*

RIL wants to sell its goodwill today and asking for Rs. 1,00,000 crore. Suppose, RIL started the business in 1973.  
FMV of Goodwill must be existing on 1 April 2001 and it is Rs. 12,000 crore

Sale	1,00,000 Crore
Less: Indexed cost of acquisition [12,000 crore/100* 289]	
COA as 12,000 crore	
LTCG in this example will be Rs. 1,00,000 Crore.	

*Computation of cost of improvement [Referring Sec. 55(1)(b) and dealing with Goodwill of a business, right to manufacture/ produce/ process any article (or thing) and right to carry on any business/ profession. In these capital assets, the COI is Nil*

*Note that in case of loom hours, stage carriage permits and tenancy rights, COI is actual COI. However, COA in these three capital assets (if self-generated) is Nil.*

**A separate query related to section 54F**

	A	B	C
Net sale	3,00,000	5,00,000	2,00,000
LTCG (before exemption) [a]	50,000	90,000	<b>80,000</b>

Books:

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

Exemption U/S 54F [6,00,000 investment made]	III ----	II 4,00,000	I 2,00,000
Amount of 54F	[b]	Nil	72,000
			80,000

54F is available [LTCG/ Net sale* <b>Investment</b> ]	16.67%	18%	40%
% of LTCG/ Net sale			
Taxable LTCG [a - b]	50,000	18,000	Nil

*Computation of amount to be distributed:*

$$X \times 40\% = 80,000$$

$$X \times 18\% = 90,000$$

## Lecture 65

### Income from other sources

#### 1. Basis of charge [Sec. 56(1) and Sec. 56(2)]

*Discussion on some incomes taxable under the head IFOS which requires detailed discussion:*

#### 1. Dividend [Sec. 2(22), Sec. 115-O, Sec. 115BBDA and Sec. 10(34)]

*What is dividend? [Sec. 2(22)]*

*Computation of effective tax rate of dividend distribution tax [Sec. 115-O]*

Dividend declared [GROSS Dividend]	100	Value of X
Dividend tax [15%] [Govt. of India]	15	
Shareholder gets [Net Dividend]	85	500

For example, X Ltd. (a domestic company) wants to distribute Rs. 500 to the shareholders.

Less: 15% of X	X ???	↑	588.24	100
		+	88.24	15
	500		500	85

If  $85 = 500$

$$\text{Then } 1 = 500/85$$

$$\text{Therefore, } 100 = 500/85 \times 100 = 588.24$$

Cross check is to be done as follows:

$$15\% \text{ of } 588.24 = 88.24$$

Effectively, the Govt. has received =  $88.24/500 \times 100 = 17.648\%$

*If you determine it on the basis of 100 =  $15/85 \times 100 = 17.647\%$*

In the Finance Acts, it is written that on Dividend tax under section 115-O, by default, surcharge @ 12% is also added. Now the effective rate is further increased to

$$17.647 + 12\% \text{ of } 17.647\% = 19.76464\%$$

It is further increased by Cess @ 4% which will increase it further to  $19.76464 + 4\% \text{ of } 19.76464 = 20.555\%$ .

Note: Effective dividend tax rate for dividends covered under section 2(22)(e) in the hands of a domestic company will be  $30\% + 12\% \text{ of } 30\% + 4\% \text{ of } (30\% + 12\% \text{ of } 30\%)$  which makes it to  $34.944\%$

#### Tax on distributed profits of domestic companies.

Books:

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

**115-O.** (1) Notwithstanding anything contained in any other provision of this Act and subject to the provisions of this section, in addition to the income-tax chargeable in respect of the total income of a **domestic company** for any assessment year, any amount **declared, distributed or paid by such company by way of dividends** (whether interim or otherwise) on or after the 1st day of April, 2003 <sup>90</sup>[*but on or before the 31st day of March, 2020*], whether out of current or accumulated profits shall be charged to additional income-tax (hereafter referred to as tax on distributed profits) @ 15%:

**Provided** that in respect of dividend referred to in sub-clause (e) of clause (22) of section 2, this sub-section shall have effect as if for the words "fifteen per cent", the words "30%" had been substituted.

(1B) For the purposes of determining the tax on distributed profits payable in accordance with this section, any amount by way of dividends referred to in sub-section (1), **shall be increased to such amount as would**, after reduction of the tax **on such increased amount** at the rate specified in sub-section (1), be equal to the net distributed profits:

**Provided** that this sub-section shall not apply in respect of dividend referred to in sub-clause (e) of clause (22) of section 2.

*Tax on dividend received in the hands of shareholder [Sec. 115BBDA]*

Over and above Rs. 10,00,000 per year, the excess is taxable in the hands of shareholders @ 10%.

*Exemption under section 10(34)*

The amount received by a shareholder as dividend from a domestic company is exempt in his hands under section 10(34) till the amount received per year does not exceed Rs. 10,00,000.

(34) any income by way of dividends referred to in section 115-O :

**Provided** that nothing in this clause shall apply to any income by way of dividend chargeable to tax in accordance with the provisions of section 115BBDA;

### Lecture 66

#### 2. Casual incomes [Lottery/ Gambling/ Card Games/ Horse Races, etc.]

Tax rate on such incomes is 30%.

*TDS on Lottery incomes, other gambling incomes (except horse races) etc. [Sec. 194B]*

Rate of TDS is 30% if the amount of income exceeds Rs. 10,000.

*TDS on Horse Races [Sec. 194BB].*

Rate of TDS is 30% if the amount of income exceeds Rs. 10,000.

*Gross up of gambling income:*

Example:

Mr. X (40 years) earned a lottery income of Rs. 1,00,000. He will receive Rs. 70,000 because Rs. 30,000 [30% of 1,00,000] will be deducted by the payer of this income to Mr. X.

How much amount Mr. X will show in his head IFOS?

Solution:

	AY 2020-21
Taxable Salary (Assumed)	12,00,000
IFOS:	
Lottery income	<u>1,00,000</u>
Gross total income	13,00,000
Less: Deductions U/S 80	<u>Nil</u>
Total income	<u>13,00,000</u>

**Books:**

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

	Tax [1,12,500 + 30% (13,00,000 – 10,00,000)]	2,02,500
Less:	Rebate under section 87A	<u>Nil</u>
		2,02,500
Add:	Surcharge	<u>Nil</u>
		2,02,500
Add:	HEC @ 4%	<u>8,100</u>
	Tax liability	2,10,600
Less:	TDS	<u>30,000</u>
	Tax payable	<u>1,80,600</u>

**HOW TO DO GROSSING UP OF GAMBLING INCOME?**

If lottery income **received** is Rs. 1,40,000, the lottery income **earned** is Rs. 2,00,000 [ $1,40,000 / (1 - .30)$ ]

$$\text{Amount earned} = \frac{\text{Amount received}}{1-\text{TDS} (.90)}$$

**3. Interest income**

*Interest on securities is having special calculations.*

*'Record Date'*

*Example:*

*X Ltd.'s securities of Rs. 2,00,000 are owned by Mr. Salman on which the company policy says that interest @ 5% will be paid every year on 31 July.*

*Mr. Salman transferred these securities of Rs. 2,00,000 to Mr. Rahul on 31 March 2019.*

*Assuming the PY 2019-20, 31<sup>st</sup> July will come on 31 July 2019.*

*Mr. Rahul will get the interest on 31<sup>st</sup> July 2019 for entire 1 year [Rs. 10,000] but in reality, he held the securities only for 4 Months [April 2019 to July 2019].*

*Unfortunately, Mr. Salman held the securities for 8 Months [1 August 2018 to 31 March 2019].*

*In reality, Mr. Salman will get the 8 months from Rahul of Rs. 6,667 [10,000\*8/12] and though Rahul will get Rs. 10,000 from the company on 31 July 2019 but his actual real income is Rs. 3,333.*

*As per Income-tax Act, Mr. Rahul will include the entire interest income of Rs. 10,000 in the PY 2019-20 and there is no need for Salman to include Rs. 6,667 in his hands.*

*TDS in case of 'interest on securities' incomes [Sec. 193]:*

*1. TDS rate is 10% if the interest is payable to a Resident Assessee. Further, no TDS is required in case of securities of Central Government or State Government.*

*2. TDS in case of interest incomes other than 'interest on securities' incomes [Sec. 194A]:*

This section is applicable if all the following conditions are satisfied –

*1. Income is **earned** by way of interest other than 'Interest on securities'.*

*2. The recipient of such interest income is a **resident** person.*

*3. The payer of such interest is **any person except** that an **individual/HUF** whose total sales/gross receipts/turnover from the **business** (or profession) carried on by him **does not exceed ` 1 crore** in case of business (or ` **50 lakhs** in case of profession) during the financial year immediately preceding the financial year in which such interest is credited/paid.*

If all the above conditions are satisfied, the person responsible to pay such interest has to deduct **10% tax** at source at time of credit of such income to the account of the payee (or at the time of payment thereof in cash/by issue of a cheque/by way of issue of a draft/by any other mode), whichever is earlier.

*Note: No TDS is required under section 194A in the following cases –*

*1. If aggregate amount of such interest credited/paid (or likely to be credited/paid) during the **financial year** does not exceed –*

*a) ` 40,000 (or ` 50,000 in case of resident individual who is **60 years or more** of age, at any time during the relevant previous year), where the payer is a **banking company**; and*

*d) ` **5,000** in any other case.*

*2. If such interest is credited/paid by a **firm to its partners**.*

*4. If such interest is credited/paid on deposits [other than time deposits (including recurring deposits)] **with a bank**.*

Books:

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

*Grossing up of interest income*

$$\text{Income earned} = \frac{\text{Income Received}}{1 - \text{TDS} (.10)}$$

## Lecture 67

### 4. Gift received from any person (other than the employer)

#### (a) Cash Gift [AGGREGATE]

If Amount per year > Rs. 50,000, entire amount is taxable.

*Example*

Naveen receives Rs. 15,000 each from 4 of his **friends** during PY 2019-20. The total cash received per year is Rs. 60,000. In this case, Rs. 60,000 is taxable in Naveen's hands under his income head IFOS.

#### (b) Immovable Property Gift without any consideration [SINGLE TRANSACTION]

If SDV > Rs. 50,000, SDV is taxable.

*Example*

- i. Ashish receives an immovable property (free of cost) from a **friend** whose SDV is Rs. 40,000. In this case, Rs. 40,000 is not taxable.
- ii. Ashish receives an immovable property (free of cost) from a **friend** whose SDV is Rs. 60,000. In this case, Rs. 60,000 is taxable in his hands under the head IFOS.

#### (c) Immovable Property Gift with consideration and the consideration < SDV [SINGLE TRANSACTION]

*Example*

i. Mahesh receives an immovable property from a friend by making a payment of Rs. 80,00,000, the SDV of the property is Rs. 1 Crore.

In this case,

Is Rs. 20,00,000 > Rs. 4,00,000 which is Higher of (a) 50,000

(b) 4,00,000 [5% of 80,00,000]

Here, Rs. 20,00,000 is taxable in his hands under the head IFOS.

ii. P received an immovable property (a residential house) from his friend N on 8 December 2019 for ` 11,00,000 and the stamp duty value of this property is ` 11,40,000.

In this case, the amount taxable is

Is Rs. 40,000 exceeds Higher of (a) Rs. 50,000 or Rs. 55,000 (5% of 11,00,000).

No, Rs. 40,000 does not exceed Rs. 55,000.

Nothing is taxable in his hands for this transaction.

#### (d) Movable property Gift without any consideration [AGGREGATE TRANSACTIONS]

If Aggregate FMV > Rs. 50,000, the aggregate FMV is taxable.

*Example*

Ms. Sneha received 2 movable properties from her friends during PY 2019-20 free of cost. The FMV of property 1 is Rs. 30,000 and the FMV of property 2 is Rs. 22,000.

In this case, Rs. 52,000 > Rs. 50,000 and thus, Rs. 52,000 is taxable as IFOS.

#### (e) Movable property Gift consideration and the consideration < FMV [AGGREGATE TRANSACTIONS]

If difference b/w Aggregate FMV and the consideration > Rs. 50,000, then the difference is taxable in his hands under the head IFOS.

*Example*

Mr. Suraj receives a movable property for Rs. 40,000 whose FMV is Rs. 95,000.

Here, the difference of Rs. 55,000 > Rs. 50,000 and thus, Rs. 55,000 is taxable as IFOS.

## Sec. 56(2)

- (x) where any person receives, in any **previous year**, from any **person or persons** on or after the 1st day of April, 2017,—
- (a) any sum of money, without consideration, the **aggregate value** of which exceeds fifty thousand rupees, *the whole of the aggregate value of such sum;*
  - (b) any **immovable property**,

Books:

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

- (A) **without consideration**, the **stamp duty value** of which exceeds **fifty thousand rupees**, *the stamp duty value of such property*;
- (B) **for a consideration**, *the stamp duty value of such property as exceeds such consideration*, if the amount of such excess is more than the higher of the following amounts, namely:—
- (i) the amount of fifty thousand rupees; and
  - (ii) the amount equal to <sup>13</sup>[five] per cent of the consideration:
- (c) **any property**, other than immovable property,—
- (A) **without consideration**, the **aggregate fair market value** of which exceeds **fifty thousand rupees**, *the whole of the aggregate fair market value of such property*;
- (B) for a **consideration** which is **less than the aggregate fair market value** of the property by an amount exceeding fifty thousand rupees, *the aggregate fair market value of such property as exceeds such consideration*:
- Provided that this clause shall not apply to any sum of money or any property received [Gift is exempt if received from the following] —*
- (I) from any **relative**; or
  - (II) on the occasion of the **marriage** of the individual; or
  - (III) under a **will or by way of inheritance**; or
  - (IV) in contemplation of death of the payer or donor, as the case may be; or
  - (V) from any **local authority** as defined in the *Explanation* to clause (20) of section 10; or
  - (VI) from any fund or foundation or **university or other educational** institution or hospital or other medical institution or any trust or institution referred to in clause (23C) of section 10; or
  - (VII) from or by any charitable **trust or charitable institution**

**Meaning of 'Property'**

"property" means the following capital asset of the assessee, namely:—

- (i) **immovable property** being land or building or both;
- (ii) shares and securities;
- (iii) jewellery;
- (iv) archaeological collections;
- (v) drawings;
- (vi) paintings;
- (vii) sculptures;
- (viii) any work of art; or
- (ix) bullion;

"relative" means,—

- (i) in case of an individual (For example, Mr. X)—
  - (A) spouse of the individual (Mrs. X);

Books:

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

- (B) brother or sister of the individual (Mr. X's brother and sister);
- (C) brother or sister of the spouse of the individual (Mrs. X's brother and sister);
- (D) brother or sister of either of the parents of the individual (Mr. X's parents brothers and sisters);
- (E) any lineal ascendant or descendant of the individual (Mr. X's father, grandfather and so on, Mr. X's son, grandson and so on);
- (F) any lineal ascendant or descendant of the spouse of the individual (Mrs. X's father, grandfather and so on, Mrs. X's son, grandson and so on);
- (G) spouse of the person referred to in items (B) to (F) ; and

### Deductions allowed while computing IFOS [Sec. 57].

57. The income chargeable under the head "Income from other sources" shall be computed after making the following deductions, namely :—

- (i) in the case of <sup>17</sup>[dividends, other than dividends referred to in section 115-O], or interest on securities, any reasonable sum paid by way of commission or remuneration to a banker or any other person for the purpose of realising such dividend or interest on behalf of the assessee;
- (ii) in the case of income in the nature of **family pension**, a deduction of a sum equal to 1/3<sup>rd</sup> of such family pension or Rs. 15,000, whichever is less.

*Explanation.*—For the purposes of this clause, "family pension" means a regular monthly amount payable by the employer to a person belonging to the family of an employee in the event of his death ;

*Example:*

Mr. X died and after this death, his spouse received a family pension of Rs. 3,00,000 during PY 2019-20.

Mrs. X will show it as IFOS by Rs. 2,85,000 [3,00,000 – Rs. 15,000].

- (iii) any other **expenditure (not being in the nature of capital expenditure)** laid out or expended wholly and exclusively for the purpose of making or earning such income;

*Example:*

X has borrowed Rs. 1,00,000 @ 10% p.a. interest and given Rs. 1,00,000 to another person as loan @ 13% interest.

In this case, X will earn [1,00,00*13%]	13,000
Less: Expenses [1,00,000*10%]	<u>10,000</u>
Taxable IFOS	<u>3,000</u>

- (iv) While computing interest on compensation or interest on enhanced compensation, 50% of such interest is allowed as deduction.

### Amounts not deductible while computing the income under the head IFOS [Sec. 58]

1. Personal expenses of the assessee
2. Expenses incurred to earn the casual incomes

### Interest incomes which are exempt from tax [Sec. 10(15)]

**Books:**

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

1. Interest income from saving account in a Post office is exempt till Rs. 3,500 in case of single account and till Rs. 7,000 in case of joint account.

*Example:*

- i. Mr. X has earned Rs 12,000 from saving bank account of SBI. His taxable IFOS is Rs. 12,000.
- ii. Mr. X has earned Rs. 12,000 from saving account of Post Office. His taxable IFOS is Rs. 8,500 [12,000 – Rs. 3,500].

### **Lecture 68** **Clubbing of income**

*Example*

Mr. X transferred Rs. 20,00,000 to Mrs. X. Mrs. X earned Rs. 2,00,000 as interest income on this amount received from his husband. Mr. X has a business income of Rs. 14,00,000.

	Mr. X	Mrs. X
PGBP	14,00,000	----
IFOS	----	2,00,000
GTI	14,00,000	2,00,000
Less: Deduction under section 80	<u>Nil</u>	<u>Nil</u>
Total income	<u>14,00,000</u>	<u>2,00,000</u>
 Tax		Nil
2,00,000*30% decrease by	60,000	

After applying the provisions of clubbing of income, the computation of total income would be as follows:

	Mr. X	Mrs. X
PGBP	14,00,000	----
IFOS [Clubbing]	<u>2,00,000</u>	----
GTI	16,00,000	----
Less: Deduction under section 80	<u>Nil</u>	<u>Nil</u>
Total income	<u>16,00,000</u>	----
 Tax		Nil
2,00,000*30%	+ 60,000	

### **Lecture 69**

#### **Sec. 64(2)**

*Illustration*

Mr. X was the owner of the property which is giving the annual rental income of Rs. 10,00,000. During the PY 2019-20, the property was transferred by him to the HUF without adequate consideration (Mr. X, Mrs. X, Child A and Child B are the members of the HUF having equal share).

*Solution:*

1. Rental income before transferring the property to the HUF: Taxable in the hands of Mr. X.
2. Rental income after transferring the property to the HUF: Taxable in the hands of Mr. X [Sec. 64(2)(b)].

After 3 years, this property was to be partitioned by the HUF, each member will get equal share.

	X	Mrs. X	A	B
Rental income	2,50,000	----	2,50,000	2,50,000
Clubbing [64(2)(c)]	2,50,000			

### **Lecture 70** ***Set off OR carry forward and set off of losses***

Salaries : Can never give a loss

HP : HP 1 (1,00,000)  
HP 2 30,000

### Books:

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
  2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

HP 3 50,000  
(20,000) – I applied Step 1: Intra-head (or Inter source)

PGBP : Speculative business  
Non-speculative business:

1. Specified Business [Sec. 35AD]
  2. Other non-speculative Business

CG : Short-term capital gain (1,00,000)

Long-term capital gain 1,15,000

$15,000 - I$  applied Step 1: Intra-head  
 $(15,000) - I$  applied Step 2: Inter-head

House property (15,000) – I applied Step 2: Inter-head  
N1

Ni

Rs. 5,000 HP loss will be carried forward to the next year – *I applied Step 3: Carry forward and set off*

IFOS : Casual incomes/ losses (e.g. horse races)  
Activity of owning and maintaining race horses  
Others

## Simplification Table for the rules of Step 1 [Intra-head] and Step 2 [Inter-head]

Profits Losses	Salaries	HP	PGBP			CG		IFOS		
			Speculative business	Non-speculative		STC G	LTC G	Casual incomes	Owning and maintaining race horses	Other incomes
				Specified business [Sec. 35AD]	Other non-speculative business					
HP**	Y	Y	Y	Y	Y	Y	Y	No	Y	Y
<b>PGBP:</b>										
1. Speculative	No	No	Y	No	No	No	No	No	No	No
2. Non-speculative:										
(a) Specified Business [Sec. 35AD]	No	No	No	Y	No	No	No	No	No	No
(b) Other non-speculative	No	Y	Y	Y	Y	Y	Y	No	Y	Y
3. Capital Losses:										
(a) STCL	No	No	No	No	No	Y	Y	No	No	No
(b) LTCL	No	No	No	No	No	No	Y	No	No	No
<b>4. IFOS:</b>										
(a) Casual losses	No	No	No	No	No	No	No	No	No	No
(b) Owning and maintaining race horses	No	No	No	No	No	No	No	No	Y	No
(c) Other losses	Y	Y	Y	Y	Y	Y	Y	No	Y	Y

**\*\* HP loss is allowed to be adjusted inter-head but the maximum amount which can be adjusted is Rs. 2,00,000.** For example, HP loss in the PY 2019-20 is Rs. 9,00,000 and LTCG is Rs. 5,00,000. In this case,

**Books:**

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

LTCG is Rs. 3,00,000 [Rs. 5,00,000 – Rs. 2,00,000]. However, the assessee can forward remaining unadjusted HP loss of Rs. 7,00,000 and in case it is assumed that in the PY 2020-21, the assessee has a positive HP income of Rs. 13,00,000; then entire will Rs. 7,00,000 carried forward HP is allowed to be adjusted. The final taxable HP income during the PY 2020-21 will be Rs. 6,00,000 [Rs. 13,00,000 – Rs. 7,00,000].

*Note: The understanding of different colours is as follows:*

*1. For Intra-head:*

- (a) Allowed is shown by Black Font and Letter 'Y'
- (b) Not Allowed is shown by Red Font and Word 'No'

*2. For Inter-head:*

- (a) Allowed is shown by Sky Blue Font and Letter 'Y'
- (b) Not Allowed is shown by Red Font, Yellow Background and Word 'No'

**Simplification Table for the rules of Step 3 [Carry-forward and set off]**

	Income under the head	Maximum time-limit (in years)	Is it necessary to submit return of income on time to claim the benefit of set off?
HP loss	HP	8	No
Speculative business loss	Speculative business profits	4	Yes
Specified business loss under section 35AD	Specified business profits under section 35AD	No time limit	Yes
Other non-speculative business loss	Speculative business profits, specified business profits under section 35AD as well as against other non-speculative business profits	8	Yes
STCL	STCG/ LTCG	8	Yes
LTCL	LTCG	8	Yes
Owning and maintaining race horse losses	Owning and maintaining race horses incomes	4	Yes

**Note:**

1. Once loss of any head is carried forward, in next year, it will be adjusted only intra-head.
2. Under the head IFOS, except the loss of owning and maintaining race horses, no other loss is allowed to be carried forward.

*Examples on Carry forward:*

1. During the PY 2017-18, Mr. X has a HP loss of Rs. 8,60,000 and the non-speculative business income of Rs. 10,00,000.

In this case,	Non-speculative business loss	10,00,000
Less:	HP loss	(2,00,000)
	Taxable non-speculative business loss	8,00,000

*Note:* Rs. 6,60,000 HP loss will be carried forward till the PY 2025-26. After this year, if it remains unadjusted, it will lapse automatically.

**Example on Page 10.13 of the book [Concept Building Approach]**

2. A submits the following particulars of his income and loss for the assessment year 2020-21:

Income from house property (computed)	2,57,000
Income from interest from a partnership firm	1,500
Profit from cloth business (before depreciation)	40,000
Income from speculation business	3,200

**Books:**

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

Long-term capital gain	9,100
Dividend from UTI	2,000
Current year's depreciation	2,000

*The following items have been brought forward from the preceding year:*

Loss from cloth business	10,000
Unabsorbed depreciation	7,500
Loss from speculation	7,000
Short-term capital loss	4,200
Long-term capital loss	11,400

You are required to compute his gross total income and deal with carry forward of losses.

[Delhi University B.Com.(H) 2016 (Modified)]

**Solution:**

Computation of gross total income of A for the assessment year 2020-21:

Particulars	Rs.	Rs.
HP		2,57,000
PGBP:		
Non-speculative:		
Interest	1,500	
Profit from cloth business	40,000	
Less: Depreciation	<u>2,000</u>	
Taxable business income from cloth business	39,500	
Less: Brought forward loss in cloth business	10,000	
Less: Unabsorbed depreciation	<u>7,500</u>	22,000
Speculative business:		
Income	3,200	
Less: Brought forward speculation loss	<u>3,200*</u>	Nil
Capital Gains:		
LTCG	9,100	
Less: LTCL	<u>9,100*</u>	<u>Nil</u>
GTI		<u>2,79,000</u>

**Note:**

1. Dividend from UTI is exempt under section 10(35).
2. Speculation loss of Rs. 3,800 [7,000 – 3,200] will be carried forward to the next years and can only be adjusted till the PY 2022-23.
3. LTCL of Rs. 2,300 [11,400 – 9,100] will be carried forward to the next years and can be adjusted against LTCG only till the PY 2026-27.
4. STCL of Rs. 4,200 will be carried forward to the next years and can be adjusted against STCG as well as LTCG only till the PY 2026-27.

#### ***Discussion on some common points of Chapter Set off:***

1. Applying the provisions of Set off is compulsory.
2. Losses of exempt incomes are not allowed to be adjusted.

Example: Borrowed Rs. 1,00,000 @ 10% = Expense is Rs. 10,000 per year.

I invested this Rs. 1,00,000 in the shares of a domestic company. Suppose the dividend received during PY 2019-20 is Rs. 3,000.

Income [Nil – 10,000] = (Rs. 10,000). It is not allowed.

2. If nothing is mentioned whether the business is speculative or non-speculative, then, as a convention, it is a non-speculative business.

#### Lecture 71

#### **Deductions under sections 80C to 80U**

Some of the deductions are income based [80TTA, 80TTB, 80QQB, 80RRB, etc.] whereas some are payment based [80C, 80CCC, 80G, etc.].

#### **Sec. 80A:**

**Books:**

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

1. There are deductions available under sections 80C to 80U.
2. These deductions cannot exceed the GTI.

**80AC:**

To avail income-based deductions, it is necessary to furnish the return of income on time under section 139(1).

**80B:**

Defines GTI as the total income computed after applying all the provisions of the Act except deductions under section 80.

**80C:**

Applicability:

1. Individual/ HUF
2. Paid/ deposited during the PY
3. Maximum limit is Rs. 1,50,000.

Eligible payments:

1. PPF
2. SPF
3. RPF
4. Tuition fees of 2 children
5. Fixed deposits of 5 years or more tenure
6. Approved superannuation fund
7. Principal payment of housing loan
8. LIP [Actual premium paid or 10% of sum assured, LOWER. However, if the policy is issued till 31 March 2012, the eligible amount is Actual premium paid or 20% of sum assured, LOWER].

Note: Own life/ Spouse/ Children

9. NSC

10. Sukanya Samridhi Account

**80CCC: Annuity Pension Plans**

Individuals

Max. amount is Rs. 1,50,000.

**80CCD: NPS**

80CCD(1)	: <i>Own contribution</i>	:	Maximum 10% of Salary
80CCD(1B)	: <i>Own contribution</i>	:	Rs. 50,000 Maximum
80CCD(2)	: Employer's contribution	:	Maximum 10% of salary (14% of salary in case the employer is Central Government)

*Note:* Salary means BS + DA (forming part) + Commission based on fixed %age of turnover achieved by the employee.

**Example given on page 11.9 of the book [Concept Building Approach]**

During the previous year 2019-20, X gets ` 30,000 per month as basic salary and ` 10,000 per month as dearness allowance (60% is considered for retirement benefits). Employer contributes ` 45,000 towards NPS. X, however, annually contributes ` 55,000. Income from other sources of X is ` 9,40,000. X deposits every year ` 90,000 in PPF. X is also eligible for a deduction of ` 25,000 under section 80CCC. Compute the taxable income of X for the assessment year 2020-21.

Solution:

	Basic salary	3,60,000
	Dearness allowance	1,20,000
	Employer's contribution towards NPS	<u>45,000</u>
	Gross salary	5,25,000
Less:	Standard deduction	<u>50,000</u>
	Taxable salary	4,75,000
Add:	IFOS	<u>9,40,000</u>

**Books:**

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

GTI		14,15,000
Less: Deductions under section 80:		
80C	90,000	
80CCC	25,000	
80CCD(1)	<u>5,000</u>	1,20,000
80CCD(1B)		50,000
80CCD(2) [10% of 4,32,000]	<u>43,200</u>	
Total income		<u>12,01,800</u>

Note:

1. Salary for the purpose of NPS deductions is 4,32,000 [3,60,000 + 72,000 (1,20,000\*60%) + Nil].
2. It is assumed that the employee is not a Central Government employee.
3. Under section 80CCE, the cumulative amount of deduction under section 80C + 80CCC + 80CCD(1) cannot exceed Rs. 1,50,000.

***Another way of attempting the deduction related to NPS:***

Basic salary		3,60,000
Dearness allowance		1,20,000
Employer's contribution towards NPS		<u>45,000</u>
Gross salary		5,25,000
Less: Standard deduction		<u>50,000</u>
Taxable salary		4,75,000
Add: IFOS		<u>9,40,000</u>
GTI		14,15,000
Less: Deductions under section 80:		
80C	90,000	
80CCC	25,000	
80CCD(1) [Max. 10% of 4,32,000]	<u>43,200</u>	1,50,000*
80CCD(1B) [55,000 – 43,200]		11,800
80CCD(2) [10% of 4,32,000]		<u>43,200</u>
Total income		<u>12,10,800</u>

**Lecture 72**

**Sec. 80D, 80DD, 80DDB, 80E, 80EEA and 80EEB**

**Lecture 73**

**Sec. 80G:**

Donations

Any assessee can claim this deduction.

Table 1: Where there is **no limit** on the amount of donations

**100%:**

National Defence Fund	:
National Relief Fund	:
PM CARES Fund	:
Zila Saksharta Samiti	:
National Blood Transfusion Council (NTC)	:
National Children Fund	:
Etc.	: Donated amount is eligible Rs. 4,00,000 is donated amount and it is also the eligible. Deduction 80G is 4,00,000 [4,00,000 (eligible)*100%]

**50%:**

The Prime Minister's Drought Relief Fund	:
Jawahar Lal Nehru Memorial Fund	:
Indira Gandhi Memorial Trust	:
Rajiv Gandhi Foundation	: Donated amount is eligible Rs. 3,00,000 is donated amount and it also the eligible.

Books:

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

Deduction 80G is Rs. 1,50,000 [3,00,000 (eligible)\*50%]

Table 2: Where there is a **limit** on the amount of donations

**100%:**

Donation to Government, charitable institution etc. for the purpose of promoting family planning : Donated amount **needs to be checked** that how much is eligible

**50%:**

Donation to Government, charitable institution etc. for any purpose **other than family planning** :

Donated to any temple/ mosque/ Gurudwara/ Church :

Donated to promote the interest of minority community :

: Donated amount needs to be checked that how much is eligible

*How to check the eligible amount for Table 2 donations:*

Total of Table 2 donations (including 100% and 50% donations) must not exceed 10% of adjusted gross total income. In case, it exceeds, that excess is ineligible amount.

Here, adjusted GTI = GTI – LTCG (whether sec. 112 or sec. 112A) – STCG (Sec. 111A) – Deductions under section 80C to 80U (except 80G).

#### **Example given on page 11.18 of the Book [Concept Building Approach] – Deduction 80G**

X has made the following donations during the previous year 2019-20:

- |  |            |
|--|------------|
| 1. Donation to the Government for the purpose of promoting family planning     | : 1,00,000 |
| 2. Donation to the Government for promoting the interest of minority community | : 60,000   |
| 3. PM National Relief Fund   | : 50,000   |
| 4. Rajiv Gandhi Foundation   | : 20,000   |

His gross total income is ` 16,00,000. Compute his total income for the assessment year 2020-21 assuming he has contributed ` 40,000 towards his PPF account.

Solution:

GTI	16,00,000
Less: Deductions under section 80C	40,000
Less: Deductions under section 80G – Note	<u>1,88,000</u>
TI	<u>13,72,000</u>

*Note on calculation of Sec. 80G deductions:*

	Donated	Eligible	Deduction 80G
<i>Donations without any limit:</i>			
100%			
PM NRF	50,000	50,000	<b>50,000</b> [50,000*100%]
<i>Donations with limit:</i>			
100%			
Family planning	1,00,000	1,00,000	<b>1,00,000</b> [1,00,000*100%]
50%			
Minority community	<u>60,000</u>	<u>56,000*</u>	<b>28,000</b> [56,000*50%]
<u>1,60,000</u>	<u>1,56,000</u>		

Calculation of limit:

$$\begin{aligned}10\% \text{ of Adjusted GTI} &= 10\% \text{ of } [16,00,000 - 40,000] \\&= 10\% \text{ of } 15,60,000 \\&= \mathbf{1,56,000}\end{aligned}$$

Total deduction under section 80G = 1,88,000 [50,000 + 10,000 + 1,00,000 + 28,000]

*Discussion on the above example of 80G for the purpose of just removing some confusion:*

**Doubt 1: Can we allot eligible amount in Table 2 donations first towards 50% and then 100%; my answer is Yes but in that case, your deduction 80G will be less.**

*Note on calculation of Sec. 80G deductions:*

	Donated	Eligible	Deduction 80G
<i>Donations without any limit:</i>			

Books:

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

100%			
PM NRF	50,000	50,000	<b>50,000</b> [50,000*100%]
50%			
RGF	20,000	20,000	<b>10,000</b> [20,000*50%]
<i>Donations with limit:</i>			
100%			
Family planning	1,00,000	96,000*	<b>96,000</b> [96,000*100%]
50%			
Minority community	<u>60,000</u>	<u>60,000</u>	<b>30,000</b> [60,000*50%]
	<u>1,60,000</u>	<u>1,56,000</u>	
<b>Total deduction 80G is 1,86,000 [50,000 + 10,000 + 96,000 + 30,000]</b>			

**Doubt 2:** While computing the eligible amount for those donations which are covered in Limit Category (i.e., Table 2 donations), donated amount should not be compared with the 10% of Adjusted GTI. The donations amount should be multiplied by the respective percentages and then the amount which will come has to be compared with the Adjusted GTI.

Note on calculation of Sec. 80G deductions:

	Donated	Eligible	Deduction 80G
<i>Donations without any limit:</i>			
100%			
PM NRF	50,000	50,000	<b>50,000</b> [50,000*100%]
50%			
RGF	20,000	20,000	<b>10,000</b> [20,000*50%]
<i>Donations with limit:</i>			
100%			
Family planning	1,00,000	1,00,000	<b>1,00,000</b> [1,00,000*100%]
50%			
Minority community	<u>60,000</u>	<u>56,000*</u>	<b>28,000</b> [56,000*50%]
	<u>1,60,000</u>	<u>1,56,000</u>	

Why you are comparing Rs. 1,60,000 with the 10% of adjusted GTI?

Why you are not comparing Rs. 1,30,000 with the 10% of adjusted GTI?

*Donations with limit:*

100%			
Family planning	1,00,000*100% = 1,00,000	1,00,000	<b>1,00,000</b> [1,00,000*100%]
50%			
<i>Minority community</i>			
	60,000*50% = <u>30,000</u>	<u>30,000*</u>	<b>30,000</b> [60,000*50%]
		<b>1,30,000</b>	<b>1,56,000</b>

While computing the eligible amount for those donations which are covered in Limit Category (i.e., Table 2 donations), donated amount should not be compared with the 10% of Adjusted GTI. The donations amount should be multiplied by the respective percentages and then the amount which will come has to be compared with the Adjusted GTI.

## Lecture 74

### Deduction under section 80GG:

Available in case rent is being paid for the residential accommodation provided HRA is not being received  
Least of the following:

1. Rent paid – 10% of Total income
2. Rs. 5,000 per month
3. 25% of Total income

‘Total income’ for this purpose = GTI – LTCG (whether Sec. 112 or 112A) – STCG (Sec. 111A) – Deductions 80C to 80U (except 80GG)

Example:

**Books:**

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

Mr. X, a salaried employee, earns Rs. 1,00,000 per month as basic salary. He is not receiving any HRA. His LTCG is Rs. 2,00,000. He is living in a rented house by paying a rent of Rs. 30,000 per month. Compute his total income.

Solution:

	BS	12,00,000	
Less:	Std. Ded.	<u>50,000</u>	11,50,000
	LTCG		<u>2,00,000</u>
	GTI		13,50,000
Less:	Deduction 80GG		<u>60,000</u>
	TI		<u>12,90,000</u>

Note:

1. Rs. 60,000
2. 2,87,500 being 25% of (13,50,000 – 2,00,000)
3. 2,45,000 [3,60,000 – 10% of 11,50,000]

### **Deduction under section 80QQB:**

#### **Royalty income:**

*Example:*

	IFOS [Royalty – Lump Sum]	4,00,000	
	GTI	4,00,000	
Less:	80QQB	<u>3,00,000</u>	
	TI	<u>1,00,000</u>	

*Example:*

	IFOS [Royalty – 12% of .... ]	4,00,000	
	GTI	4,00,000	
Less:	80QQB [4,00,000 or 3,00,000, Lower]	<u>3,00,000</u>	
	TI	<u>1,00,000</u>	

*Example:*

	IFOS [Royalty – 18% of .... ]	4,00,000	
	GTI	4,00,000	
Less:	80QQB [4,00,000/18 * 15 = <b>3,33,333</b> or 3,00,000, Lower]	<u>3,00,000</u>	
	TI	<u>1,00,000</u>	

## **Lecture 75**

Deduction under section 80TTB, 80TTA, 80-IAC and 80-IBA

## **Lecture 76**

### **Agricultural income**

1. Agricultural income in India is 100% exempt from tax [10(1)]
2. Meaning [2(1A)]

3. Scheme of Partial Integration [Finance Act]

#### **Applicability:**

1. The assessee is an individual, HUF, association of persons or body of individuals or artificial juridical person.
2. The net agricultural income exceeds Rs. 5,000.
3. The non-agricultural total income exceeds the exemption limit of the assessee.

#### *Example*

For the assessment year 2020-21, Mrs. X (Date of birth: 1 Sept 1951), a resident, furnishes the following information:

Gross agricultural income	: Rs. 12,21,000
Expenditure on earning agricultural income	: Rs. 90,000
Non-agricultural income (Gross total income)	: Rs. 4,00,000

Determine the tax liability of Mrs. X for the assessment year 2020-21 on the assumption that she contributes

Books:

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

` 60,000 towards PPF and pays insurance premium of ` 35,000 on her life insurance policy (sum assured: ` 1,50,000, policy issued on 23 March 2010).

Solution:

*Computation of net agricultural income:*

$$\text{Net agricultural income} = 11,31,000 [12,21,000 - 90,000]$$

*Computation of total income:*

GTI	4,00,000
Less: Deductions 80C:	
PPF	60,000
LIP	<u>30,000</u>
Total income	<u>3,10,000</u>

In the present case, scheme of partial integration is applicable because all the following three conditions are satisfied:

- 1.
2. Agri > 5,000
3. Non-agri > Exemption limit

*Computation of tax:*

Step 1: Tax on **14,41,000** [ $3,10,000 + 11,31,000$ ] = 2,42,300 [ $1,10,000 + 30\% (14,41,000 - 10,00,000)$ ]

Step 2: Tax on 14,31,000 [ $3,00,000 + 11,31,000$ ] = 2,39,300 [ $1,10,000 + 30\% (14,31,000 - 10,00,000)$ ]

Step 3: Difference of Step 1 and Step 2

2,42,300 – 2,39,300	=	<b>3,000</b>
Less: Rebate under section 87A [12,500 of 100% of tax, lower]		<b>3,000</b>
		Nil
Add: Surcharge		<u>Nil</u>
Add: HEC @ 4%		<u>Nil</u>
Less: Prepaid taxes (if any) Tax liability		<u>Nil</u>

Note: To apply rebate and surcharge, non-agricultural total income is considered

**In this case, I should not have done like the way given below:**

*Agri is 11,31,000 – Exempt*

*Non-agri is 3,10,000*

Tax [5% of ( $3,10,000 - 3,00,000$ )]	<b>500</b>
Less: Rebate under section 87A [12,500 or 500]	<b>500</b>
Tax	<u>Nil</u>

### Lecture 77

#### Alternate Minimum Tax [AMT] (not applicable to companies)

##### MAT which is applicable to companies

1. AY 1988-89, MAT came to tax Zero-tax companies.

MAT [Sec. 115JB] – Applicable in PY 2019-20

It says

If Tax as per normal provisions < Tax as per book profits [Sec. 115JB], then you have to pay as per section 115JB.

Example:

1. Tax as per normal = Rs. 3,50,000

2. Tax as per book profit [15% of 40,00,000] = Rs. 6,00,000

You have to pay **Rs. 6,00,000**

##### AMT [Sec. 115JC]: Applicable to assessees (other than companies)

Books:

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

If tax payable as per normal provisions < 18.5% of Adjusted Total Income, then tax payable by the assessee is 18.5% of Adjusted Total Income (ATI).

*Example*

AY 2020-21:

Tax as per normal = Rs. 5,00,000

Tax as per 18.5% of ATI = Rs. 7,00,000

Tax to be paid is Rs. 7,00,000.

#### **Tax credit [Sec. 115JD]**

Maximum 15 years are allowed for tax credit

*Example:*

AY 2020-21: Excess than the normal is Rs. **2,00,000** [ $7,00,000 - 5,00,000$ ].

AY 2021-22:

Tax as per normal = Rs. 4,00,000

Tax as per 18.5% of ATI = Rs. 4,70,000

Tax to be paid is Rs. 4,70,000.

AY 2021-22 Excess than the normal is Rs. **70,000** [ $4,70,000 - 4,00,000$ ]

AY 2022-23:

Tax as per normal = Rs. 9,00,000

Tax as per 18.5% of ATI = Rs. 7,40,000

For the purpose of tax credit adjustment, I need to see the amount of normal tax which is more than AMT is 1,60,000 [ $9,00,000 - 7,40,000$ ]

Here, tax as per normal > Tax as per AMT by Rs. 1,60,000

Tax to be paid is 7,40,000 [ $9,00,000 - 1,60,000$  (out of Rs. 2,00,000)]

Remaining tax credit for AY 2020-21 is Rs. 40,000 and for AY 2021-22, it is Rs. 70,000.

#### **13.3 Application of AMT to certain persons [Sec. 115JEE]**

*This section discusses the provisions related to applicability as well as non-applicability of AMT to certain persons.*

##### **Applicability of AMT**

The provisions of AMT are applicable to a person (other than companies) who has claimed any deduction under section 80-IAC, 80-IBA, 80JJA, 80QQB, 80RRB, 80TTA, 80TTB, 10AA or 35AD.

##### **Non-applicability of AMT**

AMT is not applicable to an individual, an HUF, an association of persons or a body of individuals (whether incorporated or not), or an artificial juridical person, if the adjusted total income of such person does not exceed ` 20,00,000.

#### **Lecture 78**

**12.** B is employed by **A Ltd.** at **Delhi** throughout the financial year ended on 31 March 2020. He furnishes the following particulars for computation of his total income for the assessment year 2020-21:

- a) Basic salary: ` 50,000 per month.
- b) Personal pay: ` 30,000 per month.
- c) Conveyance allowance: ` 3,000 per month.
- d) Uniform allowance: ` 2,000 per month.
- e) Knowledge update allowance: ` 2,500 per month (amount spent: ` 1,800 per month).
- f) Medical allowance: ` 5,000 per month (amount spent: ` 4,000 per month).
- g) Entertainment allowance: ` 1,000 per month.
- h) He is provided with gift vouchers worth ` 25,000 per year.
- i) His employer contributes 15% of the basic salary to his recognized provident fund account. Similar amount is deducted from his salary as his contribution to the fund.
- j) He gets house rent allowance of ` 20,000 per month against a rent of ` 25,000 per month paid by him for his residential accommodation.
- k) His employer paid electricity and telephone bills of his residential house amounting to ` 70,000 and ` 20,000 respectively for the whole year.
- l) During the year he made the following payments:

Books:

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

i. Life insurance premium on own policy: ` 1,20,000 (sum assured is ` 10 lakhs)

ii. Life insurance premium on the life of his major son: ` 25,000

iii. Mediclaim policy premium paid in cash: ` 30,000

iv. Donation of ` 2,00,000 to an approved charitable trust

Compute his total income for the assessment year 2020-21 assuming life insurance policies have been taken in 2017 and his long term capital gains is ` 4,00,000.

[IAS Mains 2015 (Modified)]

*Solution:*

Computation of total income of B for the AY 2020-21:

BS	6,00,000	
PP	3,60,000	
Conveyance A	36,000	
Uniform A	24,000	
KU A [(2,500 – 1,800)*12]	8,400	
Medical A	60,000	
Enter A	12,000	
Gift [25,000 – 5,000]	20,000	
Employer contribution to RPF [15% of (6,00,000 + 3,60,000)]	1,44,000	
Less: Exempt [12% of (6,00,000 + 3,60,000 + Nil + Nil)]	<u>1,15,200</u>	28,800
HRA	2,40,000	
Less: Exempt	<u>2,04,000</u>	36,000
Perquisite of electricity	70,000	
Telephone facility	<u>Nil</u>	
Gross Salary	12,55,200	
Less: Std deduction	50,000	
Entertainment allowance	<u>Nil</u>	50,000
Taxable salary	12,05,200	
LTCG	<u>4,00,000</u>	
GTI	16,05,200	
Less: Deductions		
80C:		
Employee's contribution in RPF	1,44,000	
Own LIP [1,20,000 or 10% of 10,00,000, Less]	1,00,000	
Son's LIP	<u>25,000</u>	1,50,000*
80D	Nil	
80G [1,05,520*50%]	52,760	
Total income	<u>14,02,440</u>	

Note 1: HRA exemption:

1. 4,80,000 [50% of 9,60,000]
2. Rs. 2,40,000
3. **2,04,000** [3,00,000 – 10% of 9,60,000]

Note 2:

$$\begin{aligned} 10\% \text{ of AGTI} &= 10\% [16,05,200 - 4,00,000 - \text{Nil} - 1,50,000] \\ &= 1,05,520 \end{aligned}$$

**Following steps should be followed to compute the total income of an individual –**

*Step 1 Determination of residential status*

It is necessary to see whether the individual is resident and ordinarily resident, resident but not ordinarily resident or non-resident. The residential status of an individual helps in determining the following –

- a) Whether any income is taxable in his hands or not; and
- b) Whether any deduction is allowed to him or not.

*Step 2 Computation of income of the individual under different heads of income as per the provisions applicable for the respective head.*

*Step 3 Apply the provisions of clubbing of income.*

*Step 4 Apply the provisions of set-off (or carry forward and set-off) of losses.*

*Step 5 Compute the deductions under section 80.*

*Step 6 Compute the total income.*

Books:

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

**Following steps should be followed to compute the tax payable by (or refundable to) an individual –**

*Step 1 Compute the tax on total income by applying special tax rates on special incomes and normal slab rates on remaining income.*

*Step 2 Deduct rebate under section 87A, if applicable.*

*Step 3 Add surcharge, if applicable.*

*Step 4 Add health and education cess.*

*Step 5 Deduct pre-paid taxes paid by the individual and the figure arrived at is the tax payable by (or refundable to) an individual.*

## Lecture 79

### Page 15.2 of the book [Concept Building Approach]

X (HUF) is having four members, Mr. X (64 years), Mrs. X, major son and minor daughter. Mr. X, being the senior most member of the family is the karta of X (HUF). The X (HUF) and the members of the X (HUF) have earned the following incomes during the previous year 2019-20:

1. Rental income from a let out property earned by the X (HUF): ` 4,00,000
2. Long term capital gains earned by the X (HUF): ` 2,00,000
3. Gross salary of Mr. X from A Ltd.: ` 6,10,000
4. X (HUF) has an income of ` 1,00,000 from fixed deposits in a bank.
5. Mr. X has an income of ` 90,000 from fixed deposits in a bank.

Determine the total income as well as tax liability of the X (HUF) and Mr. X for the assessment year 2020-21. Further, X (HUF) as well as Mr. X are resident and ordinarily resident in India.

#### Solution:

*Computation of total income of X (HUF) for the AY 2020-21:*

Rental income/ Annual value	4,00,000	
Less: Std. Ded. [30% of Annual value]	<u>1,20,000</u>	2,80,000
LTCG		2,00,000
IFOS – Interest income from FD		<u>1,00,000</u>
GTI		5,80,000
Less: Deduction under section 80TTB (not allowed to a HUF)		<u>Nil</u>
TI		<u>5,80,000</u>

*Computation of tax liability of X (HUF) for the AY 2020-21:*

Tax on LTCG [2,00,000*20%] under section 112	40,000
Tax on remaining income of 3,80,000 [5,80,000 – 2,00,000]	
i.e., 5% (3,80,000 – 2,50,000)	<u>6,500</u>
	46,500
Add: HEC @ 4%	<u>1,860</u>
	<u>48,360</u>

*Computation of total income of Mr. X for the AY 2020-21:*

Gross salary	6,10,000	
Less: Std. Ded.	<u>50,000</u>	5,60,000
IFOS – Interest income from FD		<u>90,000</u>
GTI		6,50,000
Less: Deduction under section 80TTB		<u>50,000</u>
TI		<u>6,00,000</u>

*Computation of tax liability of Mr. X for the AY 2020-21:*

Tax on 6,00,000 [10,000 + 20% (6,00,000 – 5,00,000)]	30,000
Add: HEC @ 4%	<u>1,200</u>
	<u>31,200</u>

**The following steps should be followed to compute the total income of an HUF –**

*Step 1 Determination of residential status*

It is necessary to see whether the Hindu undivided family is resident and ordinarily resident, resident but not ordinarily resident or non-resident. The residential status of an HUF helps in determining the following –

- a) Whether any income is taxable in its hands or not; and
- b) Whether any deduction is allowed to it or not.

*Step 2 Computation of income of the HUF under different heads of income (except income from salaries) as per the provisions applicable for the respective head.*

*Step 3 Apply the provisions of clubbing of income under section 64(2).*

Books:

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

*Step 4 Apply the provisions of set-off (or carry forward and set-off) of losses.*

*Step 5 Compute the deductions under section 80.*

*Step 6 Compute the total income.*

**The following steps should be followed to compute the tax payable by an HUF –**

*Step 1 Compute the tax on total income by applying special tax rates on special incomes and normal slab rates on remaining income. The normal slab rate applicable to a non-resident individual is applicable to every HUF.*

*Step 2 Add surcharge, if applicable*

*Step 3 Add health and education cess*

*Step 4 Deduct pre-paid taxes paid by the HUF and the figure arrived at is the tax payable by (or refundable to) an HUF.*

## Lecture 80

### Return of Income

[with reference to the PY 2019-20 (AY 2020-21)]

#### 1. Who has to furnish the return of income? [Sec. 139]

*1.1 Who has to compulsorily furnish the return? [Sec. 139(1)]*

**1) Every company [1 Person]**

**2) Firm [1 Person]**

**3) Every assessee [5 Person]** (other than the company and firm) whose total income > the maximum amount which is not chargeable to tax. For example, If TI of Mr. X (40 years) is Rs. 6,00,000, he has to compulsorily furnish his return of income.

**Note:**

1. For every assessee [5 Person] (other than the company and firm) has to compulsorily furnish the return of income in the following cases even if the TI does not exceed the maximum amount which is not chargeable to tax –

- a) If his deposits during the PY in one or more current accounts > Rs. 1 crore; or
- b) If expense on foreign travel during the PY > Rs. 2,00,000; or
- c) If electricity consumption during the PY > Rs. 1,00,000.

For example, if TI of Mr. X (40 years) is Rs. 10,000 but his electricity consumption during the PY is Rs. 1,30,000, he has to compulsorily furnish his return of income.

2. An *individual/HUF/AOP or BOI/AJP [4 Person]* has to compulsorily furnish the return of income if the TI without giving effect to the provisions of sections 54 to 54G and without giving deductions under section 80 exceeds the maximum amount which is chargeable to tax.

For example, if Mr. X's taxable salary is Rs. 3,40,000 and his deduction under section 80C is Rs. 1,20,000, his total income is Rs. 2,20,000. In this case, since the total income without deducting section 80C is Rs. 3,40,000, he has to furnish the return of income.

3. Return has to be furnished till due date in the prescribed manner.

4. Return has to be verified also in the prescribed manner.

5. Due date of furnishing return of income:

S. No.	Assessee	Due date
(1)	An assessee who has entered into an <i>international transaction</i> or specified domestic transaction during the previous year	30 November of the assessment year

*(Assuming PY 2019-20 is going on, the due date in this case is 30 November 2020)*

- (2) The following assessees if not covered under point (1) above –
- (a) A company
  - (b) A person (other than a company) whose accounts are required to be audited
  - (c) A partner of a firm whose accounts are required to be audited

(3)	Assessee who are not covered under point (1) and (2) above	31 October of the assessment year 31 July of the assessment year
-----	--	---

*6. Fees of late filing of return of income [Sec. 234F] –*

A person who is required to furnish a return of income under section 139 but not furnishing it till the due date has to pay a fee of –

1. ` 5,000 (if the return is furnished till 31<sup>st</sup> December of the assessment year);

Books:

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

Example, if Mr. X's due date is 31 July 2020 and he has furnished the return on 30 November 2020, Rs. 5,000 is the fee.

2. ` 10,000 (if the return is furnished after 31<sup>st</sup> December of the assessment year)

However, if the total income of such person does not exceed ` **5,00,000**, the fee payable cannot exceed ` 1,000.

#### 1.2 Belated Return [139(4)]

Return furnished after due date is Belated Return.

#### 1.3 Revised Return [139(5)]

When I have already furnished either Original Return or Belated Return and later on found some defects in the such submitted return, the new return which will be furnished will be known as Revised Return.

#### 1.4 Defective [139(9)]

When ITD tells me that the return submitted by me is defective, it is known as defective return.

### 2. E-filing of Return

#### 2.1 Offline filling the form and then submit online

Step 1: [www.incometaxindiaefiling.gov.in](http://www.incometaxindiaefiling.gov.in)

Step 2: Download section and download the applicable ITR [ITR-1 to ITR-7]

Step 3: Fill the excel file and generate .xml

Step 4: Login on the above website [www.incometaxindiaefiling.gov.in](http://www.incometaxindiaefiling.gov.in) with your PAN and password. Select your AY, ITR and upload the .xml version.

Step 5: Return submitted and acknowledgement in ITR-V will be generated automatically

Step 6: Verify through online (through passwords like Aadhar, Bank ATM, Net banking, EVC) or offline (Send the print of ITR-V with your Signatures at CPC, Bengaluru)

#### 2.2 Prepare the form online and submit directly

Step 1: Login on the above website [www.incometaxindiaefiling.gov.in](http://www.incometaxindiaefiling.gov.in) with your PAN and password. Select your AY, ITR and **prepare and submit online [the option of online is available only for ITR-1 and ITR-4]**.

Step 2: Return submitted and acknowledgement in ITR-V will be generated automatically

Step 3: Verify through online (through passwords like Aadhar, Bank ATM, Net banking, EVC) or offline (Send the print of ITR-V with your Signatures at CPC, Bengaluru)

### 3. Forms applicable for the AY 2020-21

Covered

### 4. Manner of submitting the returns

Covered

### 5. E-verification of Return of income

### 6. Form 26AS

## Lecture 81 Deduction of tax at source and Advance payment

#### Deduction of tax at source:

*Example*

If Mr. X pays Rs. 3,00,000 to Mr. J as fees for professional services, Mr. X will deduct tax at source on behalf of Mr. J. Suppose, Rs. 30,000 has been deduction and Rs. 2,70,000 has been given to Mr. J.

Here, **Mr. J [AY 2020-21]**

Income	3,00,000
Other incomes	----
GTI	

**Books:**

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

Less:      Ded.  
              TI

Tax on TI 87A/ Surcharge/ HEC	XXX
Less:      TDS	<u>30,000</u>
Tax payable	<u>XXX</u>

***Mr. X has to furnish the TDS returns and to deposit the tax of Rs. 30,000 with the Government of India on time.***

**TDS provisions relevant:**

1. TDS on gambling incomes (except horse race) [194B]
2. TDS on horse races [194BB]

**TDS Returns:**

**1. Types of TDS Returns:**

Form No.	Periodicity	Purpose for which forms are submitted
<b>24Q</b>	Quarterly	Statement of deduction of tax under section <b>192 [Salary income]</b>
<b>27Q</b>	Quarterly	Statement of deduction of tax under sections 193 to 196D in respect of the following deductees – <ol style="list-style-type: none"> <li><b><u>1. A non-resident (not being a company);</u></b></li> <li><b><u>2. A foreign company; or</u></b></li> <li><b><u>3. A resident but not ordinarily resident.</u></b></li> </ol>
<b>26Q</b>	Quarterly	Statement of deduction of tax under sections 193 to 196D in respect of all deductees <b>other than the following</b> – <ol style="list-style-type: none"> <li><b><u>1. A non-resident (not being a company);</u></b></li> <li><b><u>2. A foreign company; or</u></b></li> <li><b><u>3. A resident but not ordinarily resident.</u></b></li> </ol>

**2. Due date of TDS returns**

The following are the due dates of different returns forms required to be submitted quarterly –

<b><u>Quarter ending of financial year</u></b>	<b><u>Due date</u></b>
30 June	31 <sup>st</sup> July of the financial year
30 September	31 <sup>st</sup> October of the financial year
31 December	31 <sup>st</sup> January of the financial year
31 March	31 <sup>st</sup> May of the financial year immediately following the financial year in which the deduction is made.

**Advance payment of tax:**

If expected tax liability is Rs. 10,000 or more during PY 2019-20.

**Due date of instalment**

	<b><u>Amount of advance tax</u></b>
On or before the 15 June	Not less than 15% of such advance tax
<b><u>Till 15 June 2019</u></b>	<b><u>30,000 [15% of 2,00,000]</u></b>
On or before the 15 September	Not less than 45% of such advance tax <i>minus</i> the amount (if any), paid in the earlier instalment
<b><u>Till 15 Sept 2019</u></b>	<b><u>60,000 [(45% of 2,00,000) – 30,000]</u></b>
On or before the 15 December	Not less than 75% of such advance tax <i>minus</i> the amount (if any), paid in the earlier instalments
<b><u>Till 15 December 2019</u></b>	<b><u>60,000 [(75% of 2,00,000) – 30,000 – 60,000]</u></b>
On or before the 15 March	The whole amount of such advance tax <i>minus</i> the amount (if any), paid in the earlier instalments
<b><u>Till 15 March 2020</u></b>	<b><u>50,000 [2,00,000 – 30,000 – 60,000 – 60,000]</u></b>

For example, I expected Rs. 2,00,000 as my tax liability during the PY 2019-20.

Books:

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

**Permanent Account Number [PAN] [Sec. 139A]**

Self-Study

**Lecture 82**  
**Supreme Court Cases**  
Covered

**MANY THANKS**

Dr. Naveen Mittal

[naveen.mittal@srcc.du.ac.in](mailto:naveen.mittal@srcc.du.ac.in)

The file is available at [www.srcc.edu/e-resources](http://www.srcc.edu/e-resources)

**Books:**

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

**Income Tax Law & Practice  
Session Plan**

<b>Lecture</b>	<b>Topics Covered</b>
1	Basics of Income Tax Law & Practice
2	Computation of total income and tax liability of an individual/ HUF/ Firm/ Company for the AY 2020-21; Special incomes and special tax rates; Tax slabs
3	Tax computation – Practice Cases
4	How to read the original Income-tax Act; Determination of Residential Status
5	Determination of Residential status – Individuals
6	Determination of Residential status – HUF, Company and all other assessees
7	Tax incidence
8	Tax incidence – Incomes deemed to accrue/ arise in India [Sec. 9]
9	Residential status – Practice cases
10	Residential status – Practice cases
11	Salaries – Introduction
12	Salaries – Leave Salary practice
13	Salaries – Leave Salary practice
14	Salaries – Gratuity
15	Salaries – Pension
16	Salaries – Provident Fund
17	Salaries – Taxability of allowances covered under section 10(14)
18	Salaries – House rent allowance, Fully exempt allowances, Fully taxable allowances and Perquisites – Introduction
19	Salaries – Accommodation
20	Salaries – Accommodation and Interest-free loan
21	Salaries – Motor car, domestic servants and household amenities
22	Salaries – Education
23	Salaries – Medical
24	Salaries – LTC, Food, Gift from the employer, Use of movable assets, Sale of movable assets
25	Salaries – ESOPs, Approved SAF, Telephone facility, Deductions under section 16
26	Salaries – Practice Questions
27	Salaries – Practice Questions
28	Salaries – Practice Questions
29	Salaries – Practice Questions
30	HP: Introduction and Determination of annual value of let out property
31	HP: Determination of annual value of a deemed to be let out property, Cases when annual value of a property is Nil
32	HP: Interest on borrowed capital
33	HP: Practice Questions
34	HP: Practice Questions
35	HP: Practice Questions
36	HP: Practice Questions
37	HP: Sec. 25A, Sec. 26 and Sec. 27
38	PGBP: Introduction
39	PGBP: Section 28, 29, 30
40	PGBP: Section 31, 32
41	PGBP: Additional Depreciation + Section 35
42	PGBP: Section 36 and 37(1)
43	PGBP: Section 40(a)(i)
44	PGBP: Section 40(a)(i) – Numerical
45	PGBP: Section 40(a)(ia)/ (ii)/ (iii)
46	PGBP: Section 40(b), Section 40A

**Books:**

1. Concept Building Approach to Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal
2. Principles of Income Tax Law & Practice (AY 2020-21): By Dr. Naveen Mittal

47	PGBP: Section 43B
48	PGBP: Section 44AD
49	PGBP: Section 44ADA and Section 44AE
50	PGBP: Mercantile Basis case for practice
51	PGBP: Cash Basis case for practice
52	Firms: Assessment of Firms
53	CG: Section 45(1A), 2(14), Meaning of 'Transfer', Section 47, Types of Capital Assets
54	CG: Types of Capital Gains, Mode of computation of Capital Gains [Sec. 48]
55	CG: Practice questions of earlier 7 headings covered, Determination of holding period, Sec. 49(1)
56	CG: Meaning of Cost of Acquisition, Meaning of Cost of Improvement
57	CG: Exemption under section 54
58	CG: Exemption under section 54B and 54D
59	CG: Exemption under section 54EC and 54EE
60	CG: Exemption under section 54F
61	CG: Sec. 50
62	CG: Sec. 50C and 51
63	CG: Sec. 112
64	CG: Sec. 112A
65	CG: Sec. 111A
66	CG: Computation of LTCG under section 112A
67	CG: Self-generated assets
68	IFOS: Introduction and Dividend
69	IFOS: Casual incomes and Interest incomes
70	IFOS: Gift, Sec. 57, Sec. 58 and Sec. 10(15)
71	Clubbing: Sec. 60, 61, 63, 64(1) and 64(1A)
72	Clubbing: Sec. 64(2)
73	Set-off: Intra-head and Inter-head Provisions
74	Set-off: Carry Forward Provisions and Miscellaneous
75	Deductions: Sec. 80A, 80AC, 80B, 80C, 80CCC, 80CCD and 80CCE
76	Deductions: Sec. 80D, 80DD, 80DDB, 80E, 80EEA and 80EEB
77	Deductions: Sec. 80G
78	Deductions: Sec. 80GG, 80GGA, 80GGB, 80GGC, 80JJA, 80QQB, 80RRB and 80U
79	Deductions: Sec. 80-IAB, 80-IBA, 80TTB and 80U
80	Agricultural income
81	Alternate Minimum Tax
82	Assessment of Individuals
83	Assessment of HUF
84	Return of Income
85	TDS and Advance Tax
86	Some Leading Cases of Supreme Court

**Books Recommended:**

1. Concept Building Approach to Income Tax Law & Practice (Assessment Year 2020-21) – By Dr. Naveen Mittal – Published by Cengage Learning India Pvt. Ltd. [B.Com.(H)]
2. Principles of Income Tax Law & Practice (Assessment Year 2020-21) – By Dr. Naveen Mittal – Published by Cengage Learning India Pvt. Ltd. [B.Com.]

**Relevant original source:**

[www.incometaxindia.gov.in](http://www.incometaxindia.gov.in)

[www.incometaxindiaefiling.gov.in](http://www.incometaxindiaefiling.gov.in)

**For official use only**

**Office of the Accountant General  
(Audit-II)**

**Andhra Pradesh , Hyderabad**

## **Motor Vehicle Tax Manual**

**(Third Edition)**

**Issued by  
The Accountant General  
(C&RA)  
Andhra Pradesh , Hyderabad**

## **PREFACE**

The audit of receipts of motor vehicles tax of the Government of Andhra Pradesh was undertaken from 1<sup>st</sup> July, 1973. This manual was first issued in 1982. The present one is a revised edition incorporating the amendments and changes upto the end July , 2007. This manual has been prepared in accordance with the directions contained in paragraph 54 of the Comptroller and Auditor General's Manual of Standing Orders (Administration) Volume I and keeping in view the law the procedure applicable to the levy of various kinds of fees and taxes on motor vehicles, for the guidance of the officers and staff conducting Local Audit. The relevant provisions of the Law and procedure for assessment and collection of taxes have been set out brierly for an efficient performance of local audit. The taxes and fees leviable under the Act and Rules are reviewed by the Government from time to time. The rates in force at the time of audit has to be looked into by the audit parties. The instructions in this manual are to be treated as supplementary to those contained in the codes and manuals issued by the Comptroller and Auditor General of India. The provisions of this manual should not be quoted as authority in support of audit objections raised. The provisions of the relevant Acts and Rules as well as departmental instructions accepted in audit should be the basis of objections.

The State Receipt Audit (Headquarters) Section will be responsible for keeping the manual up-to-date.

Suggestion for improvement of this manual are welcome from members of the office.

Errors or omissions in the manual may be brought to the notice of the State Receipt Audit Headquarters Section.

**Date**

**ACCOUNTANT GENERAL  
(C&RA)**

## CONTENTS

CHAPTER	PAGES
1. Introduction.....	.....
2. Historical and Legislative Background – the First Act of Government of India.....	.....
3. Organisational Setup.....	.....
4. Definitions .....	.....
5. Licences, Registration and Permits .....	.....
6. A.P. Motor Registers and Returns of the department.....	.....
7. Records, Registers and Returns of the Department .....	.....
8. Procedure and Principles of Audit .....	.....
9. Computerisation in Transport Department.....	.....

## **CHAPTER-1**

### **INTRODUCTION**

Constitutional responsibility of the Comptroller and Auditor General of India, Article 151 of the Constitution of India

**1.1** Article 151 of the Constitution of India lays down that the Reports of the Comptroller and Auditor General of India relating to accounts of the Union and of the State shall be submitted to the President or the Governor of a State, as the case may be, who shall cause them to be laid before each House of the Parliament or Legislature. The Audit Reports thus relate to the totality of the accounts of the Union or State and this totality would include receipts also. The audit of receipts is thus included in the powers of the Comptroller and Auditor General of India.

**1.2** Further, Section 16 of the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971, specifically enjoins upon the Comptroller and Auditor-General to audit all receipts of the Union and of the States and to satisfy himself that the rules and procedures in that behalf are designed to secure an effective check on the assessment collection and proper allocation of revenue. For that purpose, the Comptroller and Auditor-General is authorised to undertake such examination of the accounts, as he thinks fit and to report, thereon.

**1.3 AUDITING STANDARDS:** Auditing Standards prescribe the norms of principles and practices, which the Auditors are expected to follow in the conduct of Audit. They provide minimum guidance to the Auditor (it means the Auditing Institutions represented by the Field Audit Party) that helps determine the extent of auditing steps and procedures that should be applied in the audit and constitute the criteria or yardstick against which the quality of audit results are evaluated.

The norms of Principles and Procedures to be followed by Audit are prescribed in "Auditing Standards" (2nd Edition, 2002) which, inter-alia, include the following:

**A) Basic Postulates:** The basic postulates for auditing standards are basic assumptions, consistent premises, logical principles and requirements which held in developing auditing standards and serve the auditors in forming their opinions and reports, particularly in cases where no specific standards apply.

The Basic Postulates are :

1) The Supreme Audit Institution of India (SAI) should comply with the International Organisation of Supreme Audit Institutions (INTOSAI) auditing standards in all matters that are deemed material.

- 2) The SAI should apply its own judgement to the diverse situations that arise in the course of Government auditing.
- 3) With increased public consciousness, the demand for public accountability of persons or entities managing public resources has become increasingly evident so that there is a need for the accountability process to be in place and operating effectively.
- 4) Development of adequate information, control, evaluation and reporting systems within the Government will facilitate the accountability process, Management is responsible for correctness and sufficiency of the form and content of the financial reports and other information.
- 5) Appropriate authorities should ensure the promulgation of acceptable accounting standards for financial reporting and disclosure relevant to the needs of the Government, and audited entities should develop specific and measurable objectives and performance targets.
- 6) Consistent application of acceptable accounting standards should result in the fair presentation of the financial position and the results of operations.
- 7) The existence of an adequate system of internal control minimises the risk of errors and irregularities.
- 8) Legislative enactments would facilitate the co-operation of audited entities in maintaining and providing access to all relevant data necessary for a comprehensive assessment of the activities under audit.
- 9) All audit activities should be within the SAIs audit mandate.
- 10) SAIs should work towards improving techniques for auditing the validity of performance measures
- 11) SAIs should avoid conflict of interest between the auditor and entity under audit.

**B) General Standards:** 1)The general auditing standards describe the qualifications of the auditor and the auditing institution so that they may carry out the tasks of field and reporting standards in a competent and effective manner. These standards apply to all types of audit for both auditor and audit institutions. While auditing, the auditor should be independent, competent and due care should be taken in planning, specifying, gathering and evaluating evidence and in reporting findings, conclusions and recommendations.

- 2) The legal mandate provided in the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act, 1971 provides for full and free access for the CAG and his auditors to all premises and records relevant to audited entities and their operations and provides adequate powers to the CAG to obtain relevant information from persons or entities possessing it.
- 3) The audit department seek to create among audited entities an understanding of its role and function, with a view to maintaining amicable relationships with them. Good relationships can help the SAI to obtain information freely and frankly and to conduct discussions in an atmosphere of mutual respect and understanding.

**C) Field standards** (1): The purpose of field standards is to establish the criteria or overall framework for the purposeful, systematic and balanced steps or actions that the auditor has to follow. These steps and actions represent the rules of investigation that the auditor, as a seeker of audit evidence, implements to achieve a specific result.

(2) The filed standards establish the framework for conducting and managing audit work. They are related to the general auditing standards, which set out the basic requirements for undertaking the tasks covered by the field standards. They are also related to reporting standards, which cover the communication aspect of auditing, as the results from carrying out the field standards constitute the main source for the contents of the opinion or report.

- (3) The field standards applicable to all types of audit are:
- a) The auditor should plan the audit in a manner, which ensures that an audit of high quality is carried out in an economic, efficient and effective way an in a timely manner.
  - b) The work of the audit staff at each level and audit phase should be properly supervised during the audit; and a senior member of the audit staff should review documented work.
  - c). The auditor, in determining the extent and scope of the audit, should study and evaluate the reliability of internal control.

i) **Planning:** The auditor should plan the audit in a manner, which ensures that an audit of high quality is carried out without wastage of resources in an economic, efficient and effective way in a timely manner.

- 1) the following planning steps are normally included in an audit:
  - a) Collect information about the audited entity and its organisation in order to assess risk and to determine materiality.
  - b) Define the objective and scope of the audit.
  - c) Undertake preliminary analysis to determine the approach to be adopted and the nature and extent of enquiries to be made later.
  - d) Highlight special problems foreseen when planning the audit.
  - e) Prepare a budget and a schedule for the audit.
  - f) Identify staff requirements and a team for the audit, and
  - g) Familiarise the audited entity about the scope, objectives and the assessment criteria of the audit and discuss with them as necessary.

ii). **Supervision:-** The work of audit staff at each level and audit phase should be properly supervised during audit, and a senior member should review documented work.

1. The following paragraphs explain supervision and review as an auditing standard.
2.
  - A. Supervision is essential to ensure the fulfillment of audit objectives and the maintenance of the quality of the audit work. Proper supervision and control is therefore necessary in all cases, regardless of the competence of individual auditors.
  - B. Supervision should be directed both to the substance and to the method of auditing. It involves ensuring that:
    - a. The members of the audit team have a clear and consistent understanding of the audit plan.
    - b. The audit is carried out in accordance with the auditing standards and practices of the SAI.
    - c. The audit plan and action steps specified in that plan are followed unless a variation is authorised.

- d. Working papers contain evidence adequately supporting all conclusions, recommendations and opinions
  - e. The auditor achieves the stated audit objectives and
  - f. The audit report includes the audit conclusions, recommendations and opinions, as appropriate.
1. All audit work should be reviewed by a senior member of the audit staff before the audit opinions or reports are finalised. It should be carried out as each part of the audit progresses. Review bring more than one level of experience and judgement to the audit task and should ensure that:
    - a. All evaluations and conclusions are soundly based and are supported by competent, relevant and reasonable audit evidence as the foundation for the final audit opinion or report.
    - b. All errors, deficiencies and unusual matters have been properly identified, documented and either satisfactorily resolved or brought to the attention of a more senior SAI officer, and
    - c. Changes and improvements necessary to conduct of future audits are identified, recorded and taken into account in later audit plans and in staff development activities.
  3. This standard emphasis's the importance of involvement of each higher level of supervision and does not in any way absolve the lower levels of audit staff carrying out field investigations from any negligence in carrying out assigned duties.

**iii) Study & Evaluation of Internal Control:** The auditor, in determining the extent and scope of the audit, should study and evaluate the reliability of internal control and depends on the objectives of the audit and on the degree of reliance intended. Where accounting or other information systems are computerized, the auditor should determine whether internal controls are functioning properly to ensure the integrity, reliability and completeness of the data.

**iv) Compliance with Applicable laws and regulations:** In performance audit an assessment should be made of compliance with applicable laws and regulations when necessary to satisfy the audit objectives. The auditor should provide reasonable assurance to detecting illegal acts that could significantly affect audit objectives and should be alert to situation or transaction that could be indicative of illegal acts that may have an indirect effect on the audit reports.

The following paragraphs explain compliance as an auditing standard.

1. Reviewing compliance with laws and regulations is especially important when auditing government programmes because decision-makers need to know if the laws and regulations are being followed, whether they are having the desired results, and, if not, what revisions are necessary. Additionally government organisations, programmes, services, activities, and functions are created by laws and are subject to more specific rules and regulations.
2. Those planning the audit need to be knowledgeable of the compliance requirements that apply to the entity being audited. Because the laws and regulations that may apply to a specific audit are often numerous, the auditors need to exercise professional judgement in determining those laws and regulations that might have a significant impact on the audit objectives.

3. The auditor also should be alert to situations or transactions that could be indicative of illegal acts that may indirectly impact the results of the audit. When audit steps and procedures indicate that illegal acts have or may have occurred, the auditor needs to determine the extent to which these acts affect the audit results
4. In conducting audits in accordance with this standard, the auditors should choose and perform audit steps and procedures that, in their professional judgement, are appropriate in the circumstances. These audit steps and procedures should be designed to obtain sufficient, competent, and relevant evidence that will provide a reasonable basis for their judgement and conclusions.
5. Generally, management is responsible for establishing an effective system of internal controls to ensure compliance with laws and regulations. In designing steps and procedures to test or assess compliance, auditors should evaluate the entity's internal controls and assess the risk that the control structure might not prevent or detect non-compliance.
6. Without affecting the SAI's independence, the auditors should exercise due professional care and caution in extending audit steps and procedures relative to illegal acts so as not to interfere with potential future investigations or legal proceedings. Due care would include considering the concerned laws and relevant legal implications through appropriate forum to determine the audit steps and procedures to be followed.

v) **Audit Evidence:** Competent, relevant and reasonable evidence should be obtained to support the auditor's judgment and conclusions regarding organization, programme, activity or function under audit.

The following paragraphs explain audit evidence as an auditing standard.

1. The audit findings, conclusions and recommendations must be based on evidence. Since auditors seldom have the opportunity of considering all information about the audited entity, it is crucial that the data collection and sampling techniques are carefully chosen. When computer-based system data are an important part of the audit and the data reliability is crucial to accomplishing the audit objective, auditors need to satisfy themselves that the data are reliable and relevant.
2. Auditor should adequately document the audit evidence in working papers, including the basis and extent of the planning, work performed and the findings of the audit. Working papers should contain sufficient information to enable an experienced auditor having no previous connection with the audit to ascertain from them the evidence that supports the auditor's significant findings and conclusions.
3. Adequate documentation is important for several reasons, It will:
  - a. Confirm and support the auditor's opinions and reports
  - b. Increase the efficiency and effectiveness of the audits.
  - c. Serve as a source of information for preparing reports or answering any enquiries from the audited entity or from any other party.
  - d. Serve as evidence of the auditor's compliance with Auditing Standards
  - e. Facilitate planning and supervision.

- f. Help the auditor's professional development.
  - g. Help to ensure that delegated work has been satisfactorily performed, and
  - h. Provide evidence of work done for future reference.
4. The auditor should bear in mind that the content and arrangement of the working papers reflect the degree of the auditor's proficiency, experience and knowledge.

**vi). Analysis of Financial Statements:** In all types of audit when applicable auditor should analyse the financial statement to establish whether applicable accounting standards for financial reporting and disclosure are complied with and should perform to such degree that a rational basis is obtained to express an opinion on financial statements.

- a. The auditor should thoroughly analyse the financial statements and ascertain whether:
- b. financial statements are prepared in accordance with acceptable accounting standards;
- c. Financial statements are presented with due consideration to the circumstances of the audited entity;
- d. Sufficient disclosures are presented about various elements of financial statements; and
- e. The various elements of financial statements are properly evaluated, measured and presented.

The methods and techniques of financial analysis depend to a large degree on the nature, scope and objective of the audit, and on the knowledge and judgement of the auditor.

2. Where the SAI is required to report on the execution of budgetary laws, the audit should include:

- a. For revenue accounts, ascertaining whether forecasts are those of the initial budget, and whether the audits of taxes, rates and duties recorded, and imputed receipts, can be carried out by comparison with the annual financial statements of the audited activity;
- b. For expenditure accounts, verifying credits to assist budgets, adjustment laws and, for carryovers, the previous year's financial statements.

3. Where the SAI is required to report on systems of tax administration or systems for realising non-tax receipts, along with a systems study and analysis of realization of revenue/receipts, detection of individual errors in both assessment and collection is essential to highlight audit assertions regarding the system defects and comment on their efficiency to ensure compliance.

#### **D) Reporting Standards:**

1. On the completion of each audit assignment, the Auditor should prepare a written report setting out the audit observations and conclusions in an appropriate form; its content should be easy to understand, free from ambiguity and supported by sufficient, competent and relevant audit evidence

and be independent, objective, fair, complete, accurate, constructive and concise.

2. With regard to fraudulent practice or serious financial irregularities detected during audit or examined by audit, a written report should be prepared. This report should indicate the scope of audit, main findings, total amount involved, modus operandi of the fraud or the irregularity, accountability for the same and recommendations for improvement of internal control system, fraud prevention and detection measures to safeguard against recurrence of fraud/serious financial irregularity.
3. The audit report should be complete. This required that the report contains all pertinent information needed to satisfy the audit objectives, and to promote an adequate and correct understanding of the matter reported. It also means including appropriate background information.
4. In most cases, a single example of a deficiency is not sufficient to support a broad conclusion or a related recommendation. All that it supports is that a deviation, an error or a weakness existed. However, except as necessary, detailed supporting data need not be included in the report.
5. Accuracy required that the evidence presented is true and the conclusions be correctly portrayed. The conclusions should flow from the evidence. The need for accuracy is based on the need to assure the users that what is reported credible and reliable.
6. The report should include only information, findings and conclusions that are supported by competent and relevant evidence in the auditor's working papers. Reported evidence should demonstrate the correctness and reasonableness of the matters reported.
7. Correct portrayal means describing accurately the audit scope and methodology and presenting findings and conclusions in a manner consistent with the scope of audit work.
8. Objectivity required that the presentation through out the report be balanced in content and tone. The audit report should be fair and not be misleading and should place the audit results in proper perspective. This means presenting the audit results impartially and guarding against the tendency to exaggerate or over emphasize deficient performance. In describing shortcomings in performance, the Auditor should present the explanation of the audited entity and stray instances of deviation should not be used to reach broad conclusions.
9. The tone of reports should encourage decision-makers to act on the auditor's findings and recommendations. Although findings should be presented clearly and forthrightly, the auditor should keep in mind that one of the objectives is to persuade and this can best be done by avoiding language that generate defensiveness and opposition.
10. Being convincing requires that the audit results be presented persuasively and the conclusions and recommendation followed logically from the facts presented. The information presented should be sufficient to convince the readers to recognise the validity of the findings and reasonableness of audit conclusions. A convincing report can help focus the attention of management on matters that need attention and help stimulate correction.
11. Clarity requires that the report be easy to read and understand. Use of non-technical language is essential. Wherever technical terms and unfamiliar abbreviations are used, they should be clearly defined. Both logical

Organisation of the material and precision in stating the facts and in drawing conclusions significantly contribute to clarity and understanding. Appropriate visual aids (such as photographs, charts, graphs and maps etc.,) should be used to clarify and summarise complex material.

12. Being concise requires that the report is not longer than necessary to convey the audit opinion and conclusions. Too much of details detracts from the report and conceals the audit opinion and conclusions and confuses the readers. Complete and concise reports are likely to receive greater attention.
13. Being constructive requires that the report also includes well thought out suggestion, in broad terms, for improvements, rather than how to achieve them. In presenting the suggestions due regard should be paid to the requirements of rules and orders, operational constraints and the prevailing milieu. The suggestions should be discussed with sufficiently high level functionaries of the entities and as far as possible, their acceptances obtained before these are incorporated in the report.
14. Timeliness requires that the audit report should be made available promptly to be of utmost use to all users, particularly to the auditee organisations and/or Government who have to take requisite action.

**1.4** Audit of receipts often involves interpretation of the related statutes and rules, notifications and orders issued thereunder. Interpreting the law, rules, notifications etc., the following points have to be borne in mind.

Where a particular term has been defined in the Act, that definition is to be followed. In the absence of any such definition, if any, in enactment's which are perimateria may be followed. For example, in interpreting terms not defined in the Andhra Pradesh Motor Vehicles Taxation Act, 1963, definition in the Motor Vehicles Act, 1988, can be followed. If the terms have not been defined in the Acts, which are perimateria, definitions in the Andhra Pradesh General Clauses Act are to be taken as the guideline.

If there is judgement of the Andhra Pradesh High Court that judgement is binding unless it is over-ruled by the Supreme Court. Audit therefore, has to go by case law if any, on the subject.

If a particular section lends itself to two or more interpretations, interpretation consistent with the other sections of the Act may be taken. If a section has doubtful or ambiguous meaning, it must be resolved in favour of the tax-payer.

Since the laws which revenue is collected provide for judicial remedy or judicial interpretation, the activity of audit should be limited to those matters which are not subject to judicial process.

This manual is intended primarily to lay down certain guide-lines for the revenue audit parties, auditing the offices of the Transport Department. For the efficient discharge of their duties, all members of the audit parties should be thoroughly conversant with the procedure of levy, collection, remittance, refunds, etc., of tax adopted by the Motor Vehicles Department and also with the relevant statutes, rules and case laws.

**1.5.** General principles of receipt audit have been set forth in Sales Tax Revenue Audit Manual Chapter-I. For a study of these principles, reference may be made to that Manual.

**1.6.** In the subsequent chapters of this manual, the basic provision of law and the rules governing the levy and collection of fee and taxes on the motor vehicles are set out.

## **CHAPTER 2**

### **HISTORICAL AND LEGISLATIVE BACKGROUND**

#### **2.1 The First Act Government of India**

The First Act of 1914 was in vogue from 1-4-1915. The Act laid down the general principles mainly intended to regulate and Control Motor traffic in India and authorised the then provincial Governments to prescribe the required rules. The Act (Act IV of 1939) was passed by the Government of India. This Act was brought into effect uniformly throughout India from 1-4-1951.

“This Act was replaced by the “The Motor Vehicles Act, 1988” which was brought into force from 1 July 1989. Central Motor Vehicles, 1989 were also brought into force from 1 July 1989. The Rules provide for various aspects like licensing of drivers of motor vehicles, licensing of conductor, registration of motor vehicles, control of transport vehicles including State Transport Undertakings, insurance of vehicles against third party, constitution of Motor accidents Claims Tribunal, powers of Police etc.

#### **Central Act of 1939**

**2.2.** While the Motor Vehicle Act, 1988, is a Central Act, and applicable to the whole of India, the power to administer this Act and also to make rules under the Act in order to carry out the purposes of the Act, within the territorial jurisdiction of the State is vested with the concerned State Government. This Act merely regulates various matters such as licensing of drivers of motor vehicles, control of traffic insuring of Vehicles fees for driving licence fees for registration, fees for permits etc., and also offences and penalties for contravention of the provisions of the Act. The Act does not envisage levy of taxes which however falls within the legislative jurisdiction of the State Government under the power vested in the State Government under the seventh schedule to the Constitution mentioned below.

#### **Constitutional provisions**

**2.3.** According to Article 265 of the Constitution no tax shall be levied or collected except under the authority of law and hence levy and collection of vehicle

tax are governed by the Acts passed by the parliament/State Legislatures. Under the Constitution the following are within the Legislative jurisdiction of the States:-

1. Taxes on goods and passengers carried by road or in-land waterways
2. Taxes on vehicles whether mechanically propelled or not suitable for use on road, including tram cars, subject to the provisions of entry 35 of list III of the Seventh Schedule to the Constitution (Items 56 and 57 of the II List).

(Item 35 of List III refers to “Taxes on mechanically propelled vehicles” which in the concurrent list and on which both Central and State Governments have jurisdiction).

#### **2.4 Position obtained in the State**

Prior to 1931 tolls and taxes on motor vehicles, were levied by local bodies. The levy of tax on motor vehicles by State Government was first introduced by the former presidency of Madras, with the passing of the Madras Motor Vehicles Taxation Act, 1931. This Act was later adopted by the Andhra State. In the former Hyderabad State, the Motor Vehicles of 1354 Fasli was replaced by the Hyderabad Motor Vehicles Taxation Act from 1-4-55. With the formation of Andhra Pradesh State, the Acts in force in Andhra and Telangana areas were merged and a single consolidated Act viz., Andhra Pradesh Motor Vehicles Taxation Act, 1963, was brought into force from 1-4-63 dealing with the levy and collection of tax on various categories of motor vehicles used or kept for use in the public places in the State. The State Government also framed rules under the central Act, called the Andhra Pradesh Motor vehicles Rules, 1964. These rules replied by the Andhra Pradesh Motor Vehicle Rules 1989 with effect from 1-9-89. (G.O.Ms.No 238(TR II)Dt.1-9-89) Both the taxation Act and Rules, brought uniformity in the matter of levy of tax on passengers and goods throughout the A.P. State.

## **CHAPTER 3**

### **ORGANISATIONAL SET-UP**

3.1 The Transport Department is entrusted with the implementation of the provisions of the Central Act viz., the Motor Vehicles, Act, 1988 and the state Act, viz., Andhra Pradesh Motor Vehicles Taxation Act, 1963, and the rules framed there under.

3.2. The Transport Department under the Transport Commissioner is responsible for collection of taxes, registration of vehicles, licensing of conductors and drivers, etc, and for enforcing the provisions of the Motor Vehicles Act and the rules framed thereunder. He is assisted by an additional Transport Commissioner five Joint Transport Commissioners (of whom one acts as the Secretary of the State transport Authority). One Deputy Transport Commissioner (Headquarters), Four Assistant secretaries and one Regional Transport Officer with supporting ministerial and executive staff. There are also the Transport Authorities Statutory bodies created under section 44 of the Motor Vehicles Act, 1988 at the State level and others at the regional levels for each region which are responsible for the grant of permits for plying vehicles on specified routes and other allied matters.

#### **State Transport authority: -**

3.3. “The State Transport Authority (STA) is constituted under section 68 of the Motor Vehicles Act, 1988. Government of Andhra Pradesh, with Principle Secretary to Government, TR&B department as Chairman, Transport Commissioner as Member, Joint Transport Commissioner and Secretary, STA as Member Secretary and two non-official members, reconstituted the STA for the state of Andhra Pradesh from 13.11.2003 for a period of 3 years. Its main function is (I) to co-ordinate and regulate the activities and policies of the Regional Transport Authority, (ii) to settle all disputes and decide all matters on which difference of opinion arise between RTAs and Government to formulate routes for plying Stage Carriages and (iii) to function as the sole Transport Authority in respect of routes which exceed 160 kms on the trunk roads and also in respect of inter-state and inter-district routes for which stage carriages permits are to be issued. The office of the State Transport Authority forms part of the office of the Transport Commissioner.

(Authority:- Section 68 of Motor Vehicles Act, Rule 158 of A.P.Motor Vehicles Rules, 1989 and G.O.Ms.Nlo.201, TR&B dated 13 November 2003).

**3.4.** There are 17 Deputy Transport Commissioners and one Joint Transport Commissioner. The functional jurisdiction of each of the Deputy Transport Commissioner extends over the district as shown below

Dy. Transport Commissioner	Districts under his jurisdiction.
1. Visakhapatnam	Visakhapatnam and Vizianagaram
2. Srikakulam	Srikakulam
3.Kakinada	East Godavari
4.Eluru	West Godavari
5.Vijayavada	Krishna
6.Guntur	Guntur and Prakasam
7.Nellore	Nellore
8.Chittoor	Chittoor
9.Kurnool	Kurnool, Cuddappah and Anathapur
10.Warangal	Warangal and Khammam
11.Karimnagar	Karimnagar and Adilabad
12.Hyderabad (Rangareddy district)	Rangareddy, Mahaboobnagar and Nalgonda
13.Nizamabad	Nizamabad
14.JointTransportCommissioners,Hyderabad	Hyderabad

**3.5.** In the districts of Visakhapatnam, Krishna, Guntur, East Godavari, West Godavari, Medak and Chittoor, the Deputy Transport Commissioner/Regional Transport Officers are assisted by Additional Regional Transport Officers.

**3.6.** The Deputy Transport Commissioners are ex-officio members of the Regional Transport Authorities in their respective districts. In the districts where the head quarters of the Deputy Transport Commissioner exists, the Deputy Transport Commissioner acts as Member-Secretary of the respective Regional Transport Authority.

### **Regional Transport Authorities**

**3.7** Regional Transport Authorities are constituted under section 68 of the Motor Vehicles Act, 1988, consisting of a Chairman and other members, being not less than two in number, In this state the Collector of each revenue district is the ex-officio Chairman of the Regional Transport Authority and the Deputy Transport Commissioner or Joint Transport Commissioner of the region and the Superintendent of Police are usually the official members. One non-official member is also included in Regional Transport Authority. The Regional Transport Authority is assisted by a Secretary who is the Deputy Transport Commissioner/Joint Transport Commissioner/Regional Transport Officer. The Secretary exercises such powers and discharges such duties as specified in Rule 143 of the Andhra Pradesh Motor Vehicles Rules 1989 e.g., grant of permits to transport vehicles, opening of routes, compounding of offences, altering in seating capacity, etc.

### **3.8.UNIT OFFICES**

With a view to decentralise administration and to be nearer to the public, 32 Unit Offices headed by Motor Vehicle Inspectors have been created in the districts as follows.

Sl.No	Name of the DTC/RTO	Names of Unit Offices
1	DTC. Viskhapatnam	1. Gajuwaka

2	RTO, Rajahmundry	1. Amalapuram
3	DTC Eluru	1. Kovvuru, 2. Tadepalligudem, 3. Jangareddygudem
4	RTO, Bhimavaram	1. Tanuku
5	DTC, Vijayawada	1. Nandigama, 2. Vuyyuru, 3. Nuzivd
6	RTO, Gudivada	1. Machilipatnam
7	DTC, Guntur	1. Tenali, 2. Piduguralla
8	DTC, Nellore	1. Gudur, 2. Kavali, 3. Sullurpet
9	RTO, Ongole	1. Markapuram, 2. Chirala
10	DTC, Chittoor	1. Madanapalle
11	DTC, Kurnool	1. Adoni
12	DTC, Kadapa	
13	DTC, Warangal	1. Janagaon
14	RTO, Khammam	1. Kothagudem, 2. Sattupalli
15	DTC, Karimnagar	1. Peddapally, 2. Jagitial
16	DTC, Adilabad	1. Nirmal
17	RTO, Nalgonda	1. Bhongir, 2. Suryapet
18	RTO, Mahabubnagar	1. Pebbaire, 2. Gadwal
19	DTC, Nizamabad	1. Kamareddy
20	DTC, Rangareddy	
21	RTO Proddatur	
22	RTO Medchal	
23	RTO Karmanghat	
24	RTO , Amalapuram	

The unit offices attend to the work pertaining to Registration of non-transport vehicles, issue of driving licences in addition to the regular work of MVIs.

**3.13** Seventeen check posts have been established in the state at following places with a view to control the operation of inter state vehicle and for enforcement of provisions of the Motor Vehicle Act, A.P motor Vehicle Taxation Act and the rules made there under.

Sl.No.	Name of the Check Post	District.
--------	------------------------	-----------

1.	Purushottapuram	Srikakulam
2	Bheemuni varipalem	Nellore
3	Narahari pet	Chittoor
4	Adilabad	Adilabad
5	Kattipudi	East Godavari
6	Renigunta	Chittoor
7	Palamaneru	Chittoor
8	Penukonda	Anantapur
9	Shapur	Rangareddy
10	Zaheerabad	Medak
11	Salooraa	Nizamabad
12	Madnoor	Nizamabad
13	Kamareddy	Nizamabad
14	Bhainsa	Adilabad
15	Wankidi	Adilabad
16	Paloncha	Khammam
17	Kothuru	krishna

The check posts at SI.No.1to4 are Integrated Check Posts and under the administrative control of the Deputy Commercial Tax Officers of Commercial Tax Department.

### **Motor Vehicle Inspectors**

**3.10** The technical work of the department relating to inspection of vehicles is looked after by Motor Vehicles Inspectors and Assistant Motor Vehicles Inspectors. The functional jurisdiction of the Motor Vehicle Inspector and Assistant Motor Vehicle Inspectors is normally fixed on the basis of the vehicular strength and area comprising one or more contiguous taluks with headquarters at an important and convenient place in that area.

**3.11** Consequent on the passing of Central Amendment Act 56 of 1969, Sections 64 and 64-A of the Motor Vehicles Act, 1939, dealing with appeals and

revisions, respectively, have undergone major changes. A separate judicial tribunal known as “State Transport Appellate Tribunal” has been constituted with effect from 1-4-1971 with an officer of the rank of District Judge to be assisted by one Secretary of the rank of Regional Transport Officer with the supporting staff. . (The central Motor Vehicle Act 1939 was replaced by Motor Vehicle Act 1988).

**3.12.** The State Transport Appellate Tribunal will entertain and dispose of all appeals against the orders of the Regional Transport Authorities and State Transport Authority. To represent the State before the Tribunal, a State representative of the rank of a Regional Transport Officer has been appointed with effect from July 1973 with supporting staff

In accordance with Section 96 of the Motor vehicles Act, 1988, State Government prescribed “Andhra Pradesh State Transport Appellate Tribunal Rules, 1989” for the conduct and hearing of appeals that may be preferred, the fee to be paid in respect of such appeals and in refund of such fee and the forms to be used for these purposes.

**3.14.** Government have also appointed a State Representative in the cadre of Deputy Transport Commissioner with supporting staff to represent before the State Transport Appellate Tribunal on behalf of the State Transport Authority and the Regional Transport Authorities and their respective secretaries.

## **CHAPTER -4**

### **DEFINITIONS**

**4.1.** The State Governments have been empowered under Section 28, 38, 65, 111, 138 and 176 of the Motor Vehicles Act, 1988 to make suitable rules. It is under these powers that the State Government have framed known as the Andhra Pradesh Motor vehicles Rules, 1989.

**4.2.** The important provisions of the Motor Vehicles Act, 1988, with reference to the Rules framed thereunder in so far as they are relevant for the purpose of audit are discussed below.

**4.3.** The various terms used in the Motor vehicles Act, 1988 have been defined in Section 2 of the Act. Some of the definitions have been elaborated by judicial pronouncements. A few of the most important definitions as interpreted by case laws are given below:-

**(i). Contract Carriage:** - “Contract carriage” means a Motor vehicle which carries a passenger or passengers for hire or reward under a contract expressed or implied for the use of the vehicle as a whole at or for fixed or agreed rate or sum-

- a). On a time basis whether or not with reference to any route or distance, or
- b). from one stop to another, and in any other case without stopping to pick up or set down passengers not included in the contract anywhere during the journey, and includes-
- i). a maxi cab; and (ii) a motor cab notwithstanding the separate fares are charged for its passengers;

(Section 2(7) of M.V.Act 1988)

**(ii). Stage Carriage:** “Stage Carriage” means motor vehicle carrying or adapted to carry more than six persons excluding the driver which carries passengers for hire or reward at separate fares paid by or for individual passengers either for the whole journey or for stages of journey..

**(iii). Omnibus:** - “Omnibus” means any motor vehicle constructed or adapted to carry more than six persons excluding the driver.

**(iv). Permit:** - “Permit” means a permit issued by a State or Regional Transport Authority or an authority prescribed in this behalf under the Act authorising the use of a motor vehicle as transport vehicle;

(Section 2(31) of the Act)

**(v). Motor Vehicle:-** “Motor Vehicle” or “Vehicle” means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer, but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding twenty-five cubic centimeters (Section 2(28) of the Act).

The machineries not adapted for use on roads and not having any purpose to serve on the roads have been held to be not motor vehicles (AIR1968). Whether a particular vehicle is a motor vehicle has to be decided on the facts of each case bearing in mind its use and suitability for use on the roads. Trailer is a motor vehicle even when drawn by a tractor (ILR 1958).

Excavators and road rollers were motor vehicles for the purpose of the M.V. Act and that they were registered under that act, as they were suitable for use on roads. Merely because a motor vehicle was put to specific use such as being confined to enclosed premises would not render the same to be a different kind of vehicle (Bose Abraham Vs State of Kerala – AIR 2001 SC 834).

**(vi). Public Place:** - “Public place” means a road, street, way or other place, whether a through fare or not, to which the public has a right of access, and includes any place or stand at which passengers are picked up or set down by a stage carriage

(section 2(34) of the Act). The criterion is whether the public have a right of access to the place and not merely that the public have access (Rajamal 1970 ACJ 44 Mad;).

**(vii). Public Service Vehicle:-** “Public Service Vehicle” means any motor vehicle used or adapted for use for the carriage of passengers for hire or reward and includes a maxi cab, a motor cab, contract carriage and stage carriage. A private motor car carrying passengers for hire or reward without licence amounts to use of a car as public service vehicle (A.I.R 1966). A company hiring cars for carrying its own staff on company’s business does not amount to use of cars of public service vehicles sine the staff of the Company cannot be said to be passengers (A.I.R. 1964). Similarly hoteliers using car for carrying customers from station to hotel and back with out any extra charge does not amount to sue of a car as a public service vehicle. It is not the class of vehicle under which a motor vehicle is registered but it is the actual use of the vehicle at the relevant time or use for which it is actually adapted which determines the question for purpose of tax (A.I.R. 1967).

**(viii). Goods Carriage:** - “Goods Carriage” means any motor vehicle constructed or adapted for use solely for the carriage of goods, or any motor vehicle not so constructed or adapted when used for the carriage of goods; (Section 2(14) of the Act).

**(ix). Laden Weight:-** in relation to a motor vehicle or a trailer attached to it means of a permit is issued to the motor vehicle under the Motor vehicles Act, 1988 (hereinafter referred to as Motor Vehicles Act), the maximum laden weight specified for the motor vehicle or the trailer in the certificate of registration of the motor vehicle, and in case such weight is not specified in such certificate, the maximum laden weight of the motor vehicle or the trailer determined in such manner as may be prescribed; vide section 2(b) of the Andhra Pradesh Motor vehicles Taxation Act.

**(x). Un Laden Weight:-** “Unladen Weight” means the weight of a vehicle or trailer including all equipment ordinarily used with the vehicle or trailer when working, but excluding the weight of a driver or attendant; and where alternative parts or bodies are used the unladen weight of the vehicle means the weight of the

vehicle with the heaviest such alternative part of body; - vide section 2(48) of the Motor Vehicles Act.

**(xi). Gross Vehicle Weight:** - “Gross Vehicle Weight” means in respect of any vehicle the total weight of the vehicle and load certified and registered by the registering authority as permissible for that vehicle; vide 2(15) of the Motor Vehicles Acts.

**(xii). Private Service Vehicle:** - Private Service Vehicle means a motor vehicle constructed or adapted to carry more than six persons excluding the driver and ordinarily used by or on behalf of the owner of such vehicle for the purpose of carrying persons for, or in connection with, his trade or business other wise than for hire or reward but does not include a motor vehicle used for public purposes: (Section 2(33) of the Act).

**(xiii). “Public Service Vehicle”:-** “Public Service Vehicle” means a motor vehicle used or adapted to be used for te carriage of passengers for hire or reward, and includes a maxi cab, a motor cab, contract carriage, and state carriage; (Section 2(35) of the Act).

**(xiv). “Town Service”:** - For the purpose of taxation a town service route shall mean route as prescribed under rule 258 of the Andhra Pradesh Motor vehicles Rules and determined as such by the Transport Authority Rule 258 runs as under:-

the Regional Transport Authority shall subject to the following restrictions, determine which are town service routes:-

i).At least one terminus of every town service shall lie within the limits of municipality or any buildup place notified in the Andhra Pradesh Gazette as town for this purpose by the Regional Transport Authority concerned, with the prior concurrence of the State Transport Authority;

ii) No route of town service shall extend more than 8 kilometers beyond the limits of the municipality or town from which it starts provided that this restriction shall not apply to any town service routes which were in existence on the date of coming of these rules into force (or in respect of those routes for which specific permission of the Transport Commissioner is obtained);

iii) No route shall be determined as both town and mofussil service routes.

**“Express Service”** shall mean, in so far as buses plying on town service routes are concerned a service on town service route as prescribed in rule 258 of the Andhra Pradesh Motor Vehicles Rules and permitted to ply with limited halts as prescribed by the Transport Authority.

In so far as express buses plying on mofussil routes are concerned, express service shall have the same meaning of express stage carriage as defined under the rule 2 (1)(c) of the Andhra Pradesh Motor Vehicles Rules which runs as under:

**“Express Stage Carriage” means,**

- (i) A carriage plying on city and town routes ‘Non stop or with limited halts’ as may be prescribed by the transport authority; or
- (ii) A carriage plying non-stop on mofussil routes of short distances as may be prescribed by the transport authority; or
- (iii) A carriage plying on mofussil routes with limited halts, as may be prescribed by the transport authority”.

(G O Ms.No.319 Transport R&B (TRVII) dt.28-10-1981.)

**(xv). “Maxi cab”:** - means any motor vehicle constructed or adapted to carry more than six persons but not more than twelve passengers, excluding the driver, for hire or reward (Section 2(22) of the Act)

**xvi). “Motor cab”:** - “Motor cab” means any motor vehicle constructed or adapted to carry not more than six persons excluding the driver (Section 2(25) of the Act).

## **CHAPTER 5**

### **LICENCES, REGISTRATION AND PERMITS**

#### **Licensing of drivers of Motor Vehicles**

5.1. According to Section 3 of the Act, no person shall drive a motor vehicle in any public place without an effective driving Licence, granted by a competent authority referred to in Rule-3 of the Andhra Pradesh Motor Vehicles Rules, 1989.

a) A learner's licence valid for 6 months is issued on payment of the prescribed fee (Rule 10 to 13 of Central Motor Vehicle Rules and Rule 23 of A.P. Motor Vehicle Rules). For the renewal of learner's licence, additional fee is charged (Rule 35).

b) The procedure for issue of driving licence to drive as a paid employee or to drive a transport vehicle is contained in sub-section (9) of the Act read with Rules 14 to 21 of Central Motor Vehicles. Every application for a driving licence shall be in Form '4' along with the necessary fees for driving and testing.

5.2. For issue of duplicate licences, separate fees is prescribed under Rule 18 of the Andhra Pradesh Motor Vehicles Rules. If a licence is lost or destroyed, defaced or torn, duplicate licence may be issued on payment of the prescribed fee (vide Rules 13 to 22 and 24).

5.3. Application for approval of schools and establishments for imparting instructions to drivers of motor vehicles shall be made to the licensing officer concerned accompanied by prescribed fee (Rule 24 of Central Motor Vehicle Rules).

#### **Renewal of Licences**

5.4.“A licence issued to drive a transport vehicle, be effective for a period of five years. In the case of licence to drive a transport vehicle carrying goods of dangerous or hazardous nature be effective for a period of one year and renewal thereof shall be subject to the condition that the driver undergoes one day refresher course

of the prescribed syllabus. In case of any other licence, if the person obtaining a licence or renewing it has attained the age of 50 years on the date of issue or renewal, be effective for a period of 20 years from the date of such issue or renewal or until the date on which such person attains the age of 50 years, which ever is earlier. If the person has attained the age of 50 years on the date of issue or renewal, the licence be effective for a period of 5 years from the date of such issue or renewal, on payment of prescribed fee.

(Section 14 of the Act)

The licence shall be renewed on an application in from 9 accompanied by a prescribed fee, if the application for renewal is made within 30 days from the date of expiry of licence. When an application is filed after 30 days from the date of expiry but before the expiry of 5 years, a higher rate of fee is prescribed. If an application is made after the expiry of 5 years, the applicant has to undergo, the test of competence before obtaining the renewal.

#### **Licensing of conductors of stage carriages**

**5.5.** No person shall act as a conductor of a stage carriage without an effective conductor's licence issued by a competent authority as referred to in Rule 46. Every application for a conductor's licence or renewal shall be made in accordance with the provisions of section 30 of the Act read with Rules 47 to 56. A conductor's licence issued under Section 30 shall be valid for 3 years (Section 36 read with Section 15). Application for renewal of conductor's licences, shall be accompanied by the fee prescribed.

#### **Duplicate Conductor's Licences**

**5.6.** As referred to in rules 29 to 31 relating to issue of duplicate driving licences, duplicate conductor's licences shall also be issued in the same manner (Rule 59).

#### **Registration of Motor Vehicles**

**5.7.** According to Section 39 of the Act, no person shall drive a motor vehicle or allow a motor vehicle to be driven in a public place unless the said motor vehicle has been registered by the Registering Authority as defined in Section 2(37) of the Act read with Rule 79 of the Andhra Pradesh Motor Vehicles Rules, i.e. Regional Transport Officers, Additional Regional Transport Officers and Motor Vehicle Inspectors.

An application for registration of a motor vehicle shall be made in Form 20 to the registering authority within a period of 7 days from the date of taking delivery of such vehicle, excluding the period of journey and shall be accompanied by:-

- a) Such certificate in Form 21,
- b) Valid insurance certificate,
- c) Copies of proceedings of the STA or Transport Commissioner or such authority as prescribed by the State Government for the purpose approval of the design in the case of trailer or semi trailer.
- d) Proof of address by way of any one of the prescribed documents.
- e) Temporary registration, if any
- f) Roadworthiness certificate in Form 22 from the manufacturers, Form 22A from the body builder.
- g) Customs clearance certificate in the case of imported vehicles along with the licence and bond, if any, and
- h) Appropriate fee as prescribed in Rule 81

In respect of vehicles temporarily registered, application shall be made before the temporary registration expires.

The registration of the vehicles has to be done on payment of the prescribed fees. As the rates of fees are revised from time to time the rates in vogue at the time audit have to be referred to

On receipt of the application and after processing the application the registering authority shall assign a distinguished mark in accordance with the S0444-(E) dated 12.06.1989 of Government of India. This registration number shall be displayed on the vehicle. The vehicle shall for all purposes be identified with reference to this registration number which is also noted in the registration certificate in Form 23 or 23-A (in electronic medium as smart card) issued to the owner after registration of the vehicle.

Under section 41 of Motor Vehicles Act read with Rule 48 of CMV Rules, the certificate of registration issued in Form 23 or 23-A for a motor vehicle other than a transport vehicle shall be valid only for a period of 15 years from the date of issue. An application for renewal of a certificate of registration shall be made to the registering authority in whose jurisdiction the vehicle is, not more than 60 days

before the date of expiry accompanied by the appropriate fee. The registration can be renewed after obtaining certificate of fitness for a period of 5 years from the date of grant of certificate of fitness (Rules 52 of CMV Rules).

**5.8. Temporary Registration** -The owner a motor vehicle may apply to any registration authority or other prescribed authority to have the vehicle temporarily registered in the prescribed manner and for the issue in the prescribed manner of a temporary certificate of registration and a temporary registration mark. A temporary registration shall be valid only for one month and can be extended by such further period as the registering authority or other prescribed authority may allow under the circumstances specified in sub-section (2) of Section 43. All applications for temporary registration shall be made in Form 20 either to the registering authority or to the dealer, dealing in the new motor vehicle recognised by the Transport Commissioner, and the exercise of this power by the dealer shall be in respect if the new vehicles released or sold by him, vide Rule 84 of the Andhra Pradesh Motor Vehicle Rules,1989

**Note:** - The vehicles referred to in the table under Rule 102 are exempted from the payment of registration fee.

Under Section 47 of the Act, a vehicle registered in one State and kept in another State for a period exceeding 12 months shall not be used in that State unless a fresh registrationmark is assigned by the registereing authroity of that State. When an applicant makes an application within 30 days of the completion of 12 months, he shall not be required to pay any fee. In other cases, the fee payable would be regulated in accordance with the rates specified in Rule 101 as for fresh registration.

Under Section 49 of the Act, change of residence or place of business of a registered owner of a motor vehicle shall be intimated to the registering authority of the place to which his residence or place of business is shifted within 30 days, of any such change. On receipt of such application the registering authority shall make necessary entries in the registration certificate on payment of prescribed fee. Necessary entries should also be made in the ‘B’ Register. Whenever the ownership of a vehicles is transferred the transferer shall within fourteen days from the date of transfer, intimate the fact of transfer to the registering authority marking a copy to

the transferee. The transferee is also required to report the transfer to the registering authority in whose jurisdiction he resides, followed by an application in the manner prescribed, accompanied by necessary fee (Rule 55 of CMV rules). If the certificate of registration is reported as lost or destroyed, the registering authority shall issue a duplicate registration certificate on payment of the prescribed fee. When the registration certificate is completely written up or becomes soiled, the issue of duplicate registration certificate will be on payment of the prescribed fee (Rule 53(2) of CMV rules).

Under section 51 read with Rule 117 application for noting the hire purchase shall be made in the prescribed form accompanied by necessary fee. For cancellation of the hire purchase agreement, separate fees is payable. (Rule 105 of A.P rules and Rule 61 of CMV Rules.).

Under section 52, a registered owner of a motor vehicle which has undergone change (contrary to the particulars noted in the registration certificate) shall intimate the fact to the registering authority for approval of the changes. On receipt of the application, accompanied by prescribed fee (Rule 81), alterations made are approved by the registering authority.

**Note:** -All these important changes are recorded in B. register.

**5.9. Trade Certificates:-** Trade Certificates are issued by the Registering Authority to the dealers of motor vehicles in its area for use in the course of their business. A trade certificate shall be issued on payment of the prescribed fee. When a trade certificate is lost or destroyed, a duplicate certificate is issued on payment of necessary fee.

**5.10. Fitness Certificates:-** Under Section 56, a transport vehicle shall not be deemed to have been validly registered for the purpose of Section 39, unless it is covered by a valid fitness certificate in form 38 issued by the prescribed authority or by an authorised testing station. As per Rule 107 of A.P. Motor Vehicle Rules, a certificate of fitness under Section 56 shall be granted or renewed by the Inspector of Motor vehicles and also by the authorised testing stations as approved under Sub-

section (2) of Section 56 subject to the general control and directions of the registering authority. The period of validity fitness certificate shall be regulated as per Rule 62 of CMV Rules, as follows,

1 New Transport Vehicle	two years
2 Renewal in respect of Vehicles mentioned at 1	one year
3 Renewal in respect of vehicles Covered by Tourist permits.	three years
4 Fresh registrations of imported Vehicles	same period as in the case of vehicles manufactured in India having regard to the date of manufacturer

The fee payable for the issue/renewal of fitness certificate shall be as prescribed in Rule 81 of CMV Rules.

**5.11. Control of transport vehicles:** - Section 66 deals with the scope and usage of vehicles for hire or reward on public roads, vehicles which are exempted from obtaining the permit are indicated in sub-section 3 of Section 66. Under Section 67, State Government have powers to issue direction from time to time on the following issues:-

- 1 fixation of fares and freights for stage carriages, contract carriages, and public carriers.
- 2 prohibition or restriction of the conveying of long distance goods traffic by private and public carriers.
- 3 grant of permits for alternative routes and areas to persons who have been displaced consequent on approval of schemes under Section 102.
- 4 any other issue which the State Government consider necessary to give effect to any agreement entered into with the Centre and other States.

The State Government is empowered under Section 68 to constitute the State Transport and Regional Transport Authorities with officials and non-officials as members as specified therein.

The jurisdiction and control of operation of each Regional Transport Authority extends to the entire revenue district. The State transport Authority, shall have jurisdiction over the entire State and performs functions as specified under Sub-Section 3 of Section 68 read with Rules 158 and 160. The State Transport Authority and the Regional Transport Authority shall have a Secretary appointed by the Government under Rules 151 and 130 respectively. The powers and functions of these Secretaries are those as laid down under Rules 153 and 143.

**5.12. Grant of permits:** - There are four categories of permits for motor vehicles, viz, stage carriages, contract carriages, private service vehicles and goods vehicles.

The procedure for granting the different permits is given below.

**i) Stage Carriages:** - A permit may be granted by the Transport Authority either suo moto after following the prescribed procedure by inviting fresh applications or an application made, which will also be subjected to user procedure. Generally, under section 69, an application for a permit shall have to be made in accordance with the said section tot he authorities specified therein. Every application for a stage carriage permit, shall contain in the particulars as set forth in section 70. On receipt of this application, the Transport Authority shall consider the need or otherwise for the issue of permit in accordance with the requirements of section 71.

Every application shall be made in the form prescribed under Rule 171 accompanied by a fee under Rule 195. On receipt of the application, the trasnprot authority shall decide the applications for grant of stage carriage permits in accordance with rule 179 of Andhra Pradesh Rules read with Section 71 of the Act.

As permits are granted with the prime objective of serving the public interest under section 47(a), it should be seen in audit whether this is kept in view by the Transport Authority and whether unreasonable delays in granting permits resulted in loss of tax revenue that could have accrued to Government but for the delay in granting the permits.

**ii).      Grant of contract carriage permits: -** As in the case of stage carriages, the Transport Authority before considering an application for the grant of contract carriage permit, shall consider the need and extent to which the grant of permit is necessary in relation to the contract carriage permits already issued and in force (Section 74).

An application for a contract carriage permit shall be made in accordance with the provisions of section 73 and in the form P.C.O.A. as referred to in Rule 205 accompanied by the prescribed fee.

After considering the application under section 74, the Transport Authority may grant the permit under Section 51.

**iii).      Grant of private carrier permits:-** Permits under this category will be granted to applicants to use their vehicles solely in connection with their own business. An application for the private carrier permit shall be made in four PTUA. (Rule 171), accompanied by the prescribed fee (Rule 195). After taking a decision under section 76 as to the need for granting a permit, the Transport Authority may grant the permit.

**iv).      Grant of Goods carriage permit :-** A Transport Authority while considering the applications for grant of the goods carrier permits shall have to satisfy the conditions specified in Section 79 and fix the number of permits to be issued in each region. Applications for goods carrier permits will be made in accordance with section 79 and in for P.U.O.A. (Rule 171), accompanied by prescribed fee (Rule 195).

On receipt of the application as specified above, these shall be notified under Section 80 inviting representations, if any for and against the grant of permits. After the period fixed for representation is over, the grant of permit is decided and the permit issued in accordance with section 80.

**5.13. Renewal of permits:-** A permit other than on temporary permit or special permit shall be effective from the date of issuance or renewal for a period of five years.

A permit may be renewed on an application made not less than fifteen days before the date of its expiry.

Although Section 81 (2) prescribes time limit for filing the applications for renewal, the Transport Authority may entertain the belated renewal applications, if it is satisfied that the applicant was permitted by good and sufficient cause from making an application within the time specified. (Section 81(3)).

According to section 58(2) an application for renewal shall be made and disposed of as if the application is for a fresh permit. Consequently, an application for stage carriage permit and public carriage permit shall have to be notified under section 57(3) and then the renewal granted.

Section 87(d) contemplates the issue of a temporary permit pending decision on the renewal of a pucca permit. In all cases, where the permit is renewed after the date of expiry of the original permit, it has to be seen whether the vehicles have plied with temporary permits after the expiry of the pucca permits. If not, cases of stoppages of vehicles either due to not effecting the renewal before the expiry of the pucca permits or due to default on the part of the permit holder or due to administrative delays, resulting in non collection of taxes for the relevant period, should be brought out. According to the conditions of permit, cases of stoppages for periods beyond 15 days vide Rule 187(2) attract provisions of section 86. In all such cases, it has to be examined whether action under section 86 was taken against the permit holder for long stoppages and whether the compounding fees has been levied and collected.

**5.14. Variation of Conditions of Permit:-** At the time of grant of permit, a set of conditions is attached to each category of permit in accordance with sections 72(2), 74(2) 76(3), 79(2) and 84 read with Rule 185. These conditions can be revised

by the authority which granted the permit. The variation of the conditions of permit are generally of the following types:-

- 1 Variation of the existing route either by was of curtailment or extension in respect of stage carriages:
- 2 Increase or decrease in the number of trips performed by the stage carriages:
- 3 Increase or decrease in the seating capacity in respect of stage carriages:
- 4 Replacement of a vehicle:
- 5 Increase of laden weight in respect of goods vehicles:
- 6 Revision of existing schedule of timings

In respect of the stage carriages and goods carriages, applications for variation of conditions of permits shall be treated as applications for fresh permits requiring notification under section 80(3). The forms of applications are the same as those for fresh permits. Fees at the prescribed rates are payable for variation of conditions of permits

The provisions of Section 80(3) would apply in case of variation of conditions of permit extension or curtailment of the existing route, and increase or decrease in the number of trips. Cases of curtailment of route, or number of trips, or reduction in the seating capacity involve reduction of rate of tax and consequential loss of revenue to Government. Such cases have to be initially examined and reviewed carefully even though the decisions taken by the Transport Authorities are quasi-judicial in nature. Similarly, cases involving extension of route, increase of trips, increase of seating capacity, etc., result in the enhancement of taxes. In cases where variation is granted, it has to be checked whether the taxes have been collected at the enhanced rates from the date the changes are effected.

Under section 83, holder of a permit can replace a vehicle covered by a permit by another vehicle only with the permission of the Transport Authority which granted the permit under Section 211, every application for replacement shall be accompanied by prescribed fee. The circumstances under which the Transport Authority can reject an application for replacement are specified under Rule 240.

Normally, replacement of vehicle involving reduction of seating capacity or laden weight should be specially scrutinised.

**5.15. Transfer of permits:-** (I). In the normal circumstances under section 82 a vehicle covered by a permit shall not be transferred from one person to another without specific permission of the Transport Authority.

Under Rule 220, the permit holder as well as the transferee have to make a Joint application for the transfer of permit to the Transport Authority which granted the permit accompanied by the fee prescribed at different rates for stage carriages, goods carriers etc.

When the consent of either or both the parties to the transfer of permit is withdrawn before transfer is sanctioned, the Transport Authority shall stop further proceedings. The fee paid will not be refunded in any circumstances after an application has been made (Rule 224).

After observing the procedure laid down in Rules 221 to 224, the Transport Authority shall give effect to the transfer in accordance with Rule 252. Although any arrears outstanding against a vehicle can be recovered irrespective of its change of hands, it is imperative that all arrears are realised before the transfer of permit is given effect to.

(ii) **Transfer on the death of a permit holder (section 82(3)):-** When the holder of a permit dies, the successor shall use the vehicle for 3 months as if the permit was granted to him, provided he sends intimation of the death of the permit holder to the Transport Authority within 30 days from the date of death. An application should also be made within 3 months to the Transport Authority for the transfer of permit as required under section 61(2) accompanied by a fee, as per Rule 276.

**5.16. Disciplinary action against the permit holder:-** Under Section 86, the Transport Authority which granted the permit is empowered to take action for violation of any of the conditions referred to under Rule 185. Under Section 177, prosecution can be launched for any kind of infringement of the provisions of the Act

and the Rules.. Action can also be taken under section 86, cases of acquittal wherever prosecutions are launched should be scrutinised to see that such acquittal is not due to any negligence of the department. Section 60 empowers the Transport Authority to suspend or cancel the permit or compound the offence. The amount of compounding fee towards compounding of offences shall in no case be less than the minimum prescribed in Rule 217 for various types of offences. However penalties and Compounding fee can be reduced proportionately, by recording the reasons for such partial condonation of the offences.(Authority:-G.O.No.125,TR&B dated 23-6-93.) One important point to be borne in mind in this connection is that the compounding fee can be levied only if the party agrees to compound the offence and not otherwise. In other words, party's consent is essential for the levy of compounding fee, unlike a fine imposed by a court of law. The permit holder is generally given a time of 10 days under Rule 216 to remit the compounding fee ordered by the Transport Authority. All cases of offences compounded, are entered in a separate register known as Register of Compounding Fee where in the amount compounded and the due date based on Transport Authority's proceedings are noted. It was with reference to this register and the resolution of the Transport Authority that the payment of compounding fee is watched. There may be cases wherein on account of the inordinate delay of check reports the Transport Authority might drop action. Such cases should be carefully examined.

**5.17. Temporary Permits:** - Section 87 of the Act contemplates that under the circumstances specified therein a temporary permit can be issued, for a maximum period of four months. Section 87(1)(a) relates to issue of temporary permits in connection with fairs and festivals. Each festival and the duration for which temporary permits can be issued are approved by the Regional Transport Authority, and recorded in a separate register. Sub-clause (b) relates to issue of temporary permits for seasonal business. Sub-clause (c) relates to issue of temporary permits for particular temporary needs. This sub-clause is invoked in most of the cases relating to issue of temporary permits on new routes increase of buses on existing routes and variation of existing routes where the grant of pucca permit involves considerable time. Every application for issue of temporary permit under section 62 shall be made in form PTA, (Rule 171) accompanied by prescribed fees.

**5.18.** Section 87(2) also contemplates the issue of temporary permits under the circumstances where no pucca permits can be issued, on account of the order of a court or other competent authority restraining the issue of pucca permit. In cases, where even after following the prescribed procedure, the Regional Transport Authority decides to open a new route or increase the number of buses on the existing routes, it is quite likely that the actual issue of permits gets delayed on account of stay/suspension orders issued by Court/Appellate authorities on appeals filed by the existing operators of the routes. Wherever the disposal of these cases in Courts /Appellate authorities takes considerable time, Government would be put to loss of revenue by way of taxes recoverable in respect of vehicles for which permits would have been issued but for stay orders. It has to be seen whether in all such cases covered by stay orders or suspension the Transport Authorities have invoked the provisions of section 62(2) and granted temporary permits.

**5.19.** Under section 87(2) Transport Authorities are empowered to issue temporary permits under Section 88 to be valid in other regions and other states, with the concurrence given generally or for a particular occasion by the Transport Authority of the other region or other State.

**5.20.** As a result of the agreements entered into with other states under section 88(5), there is a provision in the Inter-State agreements to issue temporary permits for vehicles to ply in the neighboring states under section 87 with the concurrence granted generally or for a particular occasion vide section 88(7). In all these cases since the temporary permits are issued without prejudice to the rights and obligations of the regular permit holders on those routes tax shall have to be collected for the respective states in accordance with the schedule of rates notified under section 9(1) of the Andhra Pradesh Motor Vehicle Taxation Act. For the purpose of uniformity the issue of temporary permits to vehicles plying in other states is centralized (permits are issued by the State Transport Authorities). At the end of every month, a statement showing the temporary permits issued by each state will be furnished to other states with full particulars such as vehicle number, laden weight, tax paid etc. The Statements so received, are checked with tax schedules and less taxes, if any, recovered from the concerned states.

**5.21.** Under Section 88(8) permits are also issued to public service vehicles by the Transport Authorities to any place beyond its jurisdiction for the purpose of carrying passengers for hire or reward without picking up or setting down passengers enroute. These permits are known as special permits or tourist permits. The permits shall be granted on an application in form P.T.O.V.A. (Rule 171) accompanied with the prescribed fee (Rule 196(2)). These temporary permits are generally granted for the period for which the need exists. For extension of these temporary permits, additional fee is payable (Rule 225(2)). Special permits are issued for a maximum period of 3 months and extended for a further period of 1 month only (Rule 202).

**5.22. Inter-Regional routes:** - Under Section 69 the Transport Authority in whose jurisdiction major portion of a route lies, shall be the competent authority to consider and grant the permit. The procedure to be followed in granting these permits shall be the same as intra –regional permits. But the approval of the Transport Authority / Authorities in whose jurisdiction, the route passes has to be obtained, before granting permit (vide rule 175) Where the permit has been issued with-out the approval of the other Transport Authority / Authorities the permit shall not be valid in the region of that Authority / Authorities unless it is countersigned by that authority. A separate application has to be made for the countersignature of the other Transport Authority accompanied by the fee prescribed (Rule 226).

Delays in countersigning the permits apart from the public inconvenience result in loss of tax revenue, and should be looked into.

**5.23. State Wide Permits:-** The Regional transport Authority of one region may grant a permit in respect of a motor cab other than three wheelers to ply as a contract carriage to be valid throughout the state without the counter-signature of the Regional transport Authority of the other region. (Rule 176).

The Regional Transport Authority of one region may grant a permit in respect of a private service vehicle to be valid throughout the state without the countersignature of the Regional Transport Authority of other regions (Rule 176-A).

**5.24. Inter-state Transport:** - The Inter-State traffic or passengers and goods transport shall be regulated by mutual agreements between the respective States. Under Section 88(5)) every proposal to enter into agreement with other states shall be notified in the official gazettes, inviting representations and finally approved under Sn.88. It is according to these agreements that the grant and countersignature of permits of stage carriages, goods vehicles, taxicabs etc., are being regulated. The grant of stage carriage permits on recognised interstate routes shall be regulated on the basis of service mileage. The grant of countersigned permits in respect of goods vehicles on selected routes shall be with reference to a fixed number. All permits granted and countersigned under the reciprocal agreements shall be entitled for exemption from payment of tax to the reciprocating State by virtue of the notification issued under section 9(1) of the Andhra Pradesh Motor Vehicle Taxation Act. Any permits countersigned outside the purview of the agreement are subject to payment of separate tax.

Every permit issued in pursuance of the agreement shall be countersigned by the other state on an application with the necessary fee (vide Section 88(6)and Rule 198).

**5.25.** Sub section (12) and (13)of section 88 of the Motor Vehicle Act contemplates in issue of All India Tourist Vehicles permits valid for the whole of India or in such contiguous State not less than three in number including the State in which the permit is issued on payment of prescribed on the registration fee.

Sub section 12 and 13 of Section 88 the Motor Vehicles Act contemplates the issue of national permits for a specified number of goods carriages on payment of the prescribed authorisation fee under the explanation to this section. ‘National Permit’ means permit granted by the appropriate authority to goods carriages to operate throughout the territory of India or in such contiguous states not being less than four in member, including the state in which the permit is issued. The authorisation fee means the annual fee, not exceeding one thousand rupees, which may be charged by the appropriate authority of a state to enable the motor vehicles covered by All India Tourist Permit or national permits to be used subject to the payment of Taxes or fee, if any, levied by the state concerned.

### **Tourist permits:-**

An application for the grant of permit in respect of a vehicle shall be made in Form 45 to the State Transport Authority. A tourist permit shall be deemed to be invalid from the date on which the motor vehicle covered by the permit completes 9 years in the case of a motor cab and 8 years where the motor vehicle is other than as motor cab unless the motor vehicle is replaced.

Where the vehicle covered by a tourist permit as proposed to be replaced by another, the other vehicle shall not be more than two years old on the date of such replacement. The period of 9 years or 8 years shall be completed from the date of initial registration of the Motor Vehicles (Rule 82 of CMV Rules).

An application for a grant of authorisation of a tourist permit shall be made in form 46 and shall be accompanied by a fee of Rs.500 per annum in the form of a bank draft. The authority, which grants the authorisation shall issue the permit holder, receipts for such taxes or fees in respect of each bank draft. The bank drafts received in respect of taxes or fee shall invariably be forwarded by the authority, which grants the authorisation to the respective states. The period of validity of an authorisation shall not exceed one year at a time. (Rule 83 of CMV Rules)

Additional conditions of tourist permits are prescribed in Rules 85 of CMV Rules.

### **National permits.**

An application for the grant of a national permit shall be made in Form 48 to the prescribed authority. No national permit shall be granted for a multi axle goods carriages which is more than 15 years old at any point of time and it is more than 12 years old in respect of a goods carriage, other than multi axle. No national permit shall be granted in respect of a multi axle trailer approved to carry a goods vehicle weight of more than 50 tonnes, which is more than 25 years at any point of time, the period of 25 years being completed from the date of initial registration of the said trailer. (Rule 86, 88 of CMV Rules)

An application for the grant of an authorisation for a national permit shall be made in Form 46 and shall be accompanied by a fee of Rs.500 per annum in the shape of a bank draft. Separate receipts have to be issued for each bank draft. The

bank drafts received in respect of taxes or fees shall be invariably be forwarded by the authority who grants the authorisation to the respective states (Rule 87 of CMV Rules)

Additional conditions for national permit are prescribed in Rule 90 of CMV Rules.

**5.26. Reserve Stage Carriages:** - According to the conditions attached to the permits of stage carriages (vide Rule 188) it is obligatory on the part of the permit holder to ensure that the state carriages are always available for service. On account of break down the vehicles might not be in a position to perform the service temporarily. To meet such contingencies reserve stage carriages, otherwise known as spare buses are required to be maintained by the permit holder. Tax has to be paid for such stage carriages also but at a lesser rate. The form of application, the fee therefore and the procedure for the grant of spare buses permits are the same as those prescribed for the grant of regular route permit excepting the fact that the notification inviting applications and notifying the application will not be necessary. In short, the permits for spare buses will be issued as and when application are made. Operators who have permits for more than 5 buses including temporary permits should compulsorily maintain a minimum requisite number of spare buses as mentioned in the table under Rule 188. For the purpose of computation of the number of permits (including temporary permits) held by a person, all the permits held by him irrespective of the transport authorities in the State which granted the permits shall be taken into account. Action, can be taken under Section 86 against the defaulting operators who violate these provisions. Permits held by operations owning more than 5 buses should invariably be verified to ascertain whether the requirements of Rule 188 for obtaining spare bus permits for the minimum number required have been fulfilled, as otherwise, it would result in loss of tax revenue to Government. Non-maintenance of spare buses as provided in Rule 188 or as provided under the scheme of STUs is compoundable under Rule 217 with minimum compounding fees of Rs.600 per vehicle per month or part thereof.

**5.27. Special provisions relating to State Transport Undertakings:-**  
Chapter IV-A of the Act exclusively deals with the grant of permits and regulation of buses relating to State Transport Undertakings. Under section 68-B the provisions of this chapter would prevail over Chapter-IV of the Motor Vehicles Act, 1988. The

object and purpose for which passenger transport is provided in the State Public Sector are as specified under section 68-C. Where the State Transport Undertakings proposes to take over a route operated by private sector, it shall prepare a scheme and publish the schemes in the local newspapers and in the gazette, (Rules 315 to 317 read with Sn.68-D). Under Rule 318 interested persons viz., either general public or private operators who are affected by the nationalization may file their objections to the State Govt. within 30 days from the date of publication of the schemes in the gazette, and there after, the Government after hearing the objections if any may either approve or modify the scheme. Such approved or modified schemes shall again be republished in the gazette and shall be known as approved schemes and the area or route covered by the said schemes shall be known as the notified area and /or notified route.

**5.28.** After the scheme is approved by the Government and published in the Gazette, the Andhra Pradesh State Road Transport Corporation, would apply for route permits in place of private operators (SN.68-F). Under Rule 321 powers for granting the permits are exercised by the Secretaries of the State Transport Authority and Regional Transport Authority who grant the permits applied for simultaneously rendering the permits of other private operators in effective.

**5.29.** Any scheme approved by Government under Sn.68(D) can be cancelled or modified by the State Transport Undertaking with the prior approval of the Govt.(Sn.68E(1)). The Government is also empowered under Section 68(E)(2) to modify any approved scheme after giving opportunity to the State Transport Undertaking concerned and any other persons interested.

Under section 99(2), during the period between the date of publication of the draft scheme and the date of publication of the approved scheme, no fresh permit can be granted and existing permits have to be renewed for limited periods. As public interest would suffer on account of non-issue of fresh permits during the above period, provision has been made under Section 99(2) for the issue of Temporary permits. Such temporary permit shall be valid for a period of one year from the date of issue or till the date of final publication of the scheme under Section 100, whichever is earlier.

In the case of a State Transport Undertaking the State Transport Authority in its discretion authorize the State Transport Undertaking to use any stage carriage covered by a permit, whether regular or temporary issued by any State Transport Authority in the State to ply on any one the routes for which permits have been granted by the Transport Authorities in the State subject to the condition laid down in Rule 309(2) of the A.P. Motor Vehicle Rules 1964. (G.O Ms. No.122 TR & B Dt. 24-04-80).

**5.30.** Every scheme published and approved by the state Transport Undertaking shall indicate minimum and maximum buses, seating capacity indicating the range from minimum and maximum number of trips to be performed.

**5.31.** Construction, equipment and maintenance of Motor Vehicles:- Chapter V of the Act exclusively deals with the type of constructions of various categories of motor vehicles their equipment and maintenance.

In stage carriages, tax is collected with reference to the seating capacity of the bus and also the total daily kilometer age traveled by the bus. Seating arrangements in stage carriages, have to be provided in accordance with the provisions of Rules 331 to 334 . in cases of fresh registration of stage carriages, the number of seats to be provided will be specified in the certificate issued by the manufacturer with detailed drawings of the seating arrangement. These documents will be scrutinised by the Motor Vehicle Inspector who will ensure by physical inspection of the vehicle that the seating arrangement confirms to the provisions of the rules. In all cases of fresh registrations and in cases where any reduction in the number of seats originally provided for is noticed it should be ensured that such reduction confirms to the provisions of the rules (SRA Circular MVT/4-4/12/77-78 175, dt.06.04.1981).

**5.32. Seating capacity:-** The seating capacity of a public service vehicle (Other than a motor cab, an auto rickshaw, or an express stage carriage or a deluxe stage carriage, or a deluxe or air conditioned contract carrier or a cargo bus) should be directly proportionate to the wheel base of the vehicle and the minimum number of seats to be provided shall be as follows:

Wheel Base	Minimum seating capacity
	Including driver / conductor.
254 to 293 Cms.	16
294 Cms to 305 Cms	20
306 Cms to 343 Cms	25
344 Cms to 407 Cms	30
408 Cms to 432 Cms	35
433 Cms to 496 Cms	45
497 Cms to 534 Cms	50
535 Cms and above	55

The minimum seats mentioned above may be reduced by two seats in the case of vehicle having separate entrance and exit and by four sets in the case of stage carriage permitted to ply on fair weather routes.

Provided further that the minimum number as reduced may be further reduced by one fifth in the case of stage carriages operating in city or town service routes in case such reduction is to provide necessary gangway to permit the standing passengers.

The above rule will not apply to vehicles registered prior to 07.02.1981 but will apply to such vehicles if the body is reconstructed on or after 07.02.81. (G.O.Ms.No.90 Transport dated 07.02.81).

### **Standing passengers**

Standing passengers can be allowed in vehicles according to the formula prescribed in rule 335 of the A.P. Motor Vehicle Rules.

**5.33. Laden Weight of Transport Vehicles:-** As per S.O.No.728(E) dated 18.01.1996 issued by the Central Government, in relation to the transport vehicles (other than motor cab) of various categories as detailed in the schedule to the notification, the maximum gross vehicle weight and the maximum safe axle weight

of each axle of such vehicles shall, having regard to the size, nature and number of tyres and maximum weight permitted to be carried by the tyres, be

- 1      Vehicle manufacturers rating of the gross vehicle weight and axle weight respectively for each make model as duly certified by the testing agencies of consideration of Rule 126 of the CMV Rules 1989, or
- 2      The maximum gross vehicle weight and the maximum safe axle weight of each vehicle respectively, as specified in the schedule to the notification, or
- 3      The maximum load permitted to be carried by the tyres specified in the Rule 95 of the CMV Rules, 1989 for the size and number of tyres, fitted on the axles of the relevant make and model, whichever is less.

The maximum gross vehicle weight in respect of all such transport vehicles, including multi axle vehicles shall not be more than the sum total of all the maximum safe axle weight put together subject to the restrictions, if any, on the maximum gross vehicle weight given in the schedule to the notification.

**5.34. Offences penalties and procedure:** - Section 192 deals with trial of offences relating to plying of vehicles without registration or permit Sn.207 empowers seizure of vehicle when used without registration or permit. This section read with section 8 of Andhra Pradesh Motor Vehicle Taxation Act empowers the checking officer to seize vehicles not only for plying without permit and registration but also for plying without payment of taxes. Under section 200 00 of the Motor Vehicles Act the officers of the Transport department not below the rank of an Asst. Motor Vehicle Inspector and in Police Department not below the rank of Sub-Inspector of Traffic Police in the city and Inspector of Police in other places are empowered to compounded offences for violation of provisions of certain sections of the M.V. Act 1988 as per the minimum rates prescribed under rule 217. Where compounding fees are collected by the police Department, the amount should be remitted to “0041” and a monthly statement should be sent by the Police department to the concerned R.T.O. by 10<sup>th</sup> of the succeeding month.

**5.35. Nature of audit checks:** - It should be ensured that the rates of taxes are properly applied to different types of vehicles such as stage carriages, contract carriages, Omnibuses and goods Carriers. Wherever reserve stage carriages have to

be maintained it should be seen that the number of such carriages is according to the prescribed minimum and taxes at concessional rates are applied to the reserve stage carriages, only when full rates are collected on all the stage carriages holding regular including temporary permits. In regard to fees for driving licence, conductors licence, registration of vehicles, transfer of vehicles, etc., audit check would be confined to review of registers kept by the Department including checks of the individual cases and of the arrangements made for reconciliation of departmental figures of receipts with those of treasury. In addition it would be necessary to see that the appropriate rte of licence fees have been collected in accordance with the procedure/rules prescribed in the Act/Rules. Non-fulfilment of statutory requirements in regard to driving licences, conductor licence, etc., can be detected only by the enforcement staff of the Department by physical check but audit might satisfy itself that the cases of evasion reported by the enforcement staff are perused to their finality as prescribed in the Acts.

(b). As a check against issue of licences/permits on production of fraudulent challans in support of remittances or on receipt of cash without issue of proper receipt for the cash received, a test audit of the licence fee register/permit fee register should be conducted to see whether in respect of licences/permits issued during the period selected for test audit and the challans/cash received is supported by duplicate challans/proper counterfoil of the receipt issued to the party and has been taken to cash book/challan register. Check of the system of reconciliation of departmental figures with Treasury figure will bring out cases of issue of licences/permits on production of fraudulent Treasury challans.

(c). New registrations/licences permits should be scrutinized with special care to the extent prescribed.

**5.36.** As per section 140 of the Act, where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner/owners of the vehicle shall, jointly and severally, be liable to pay compensation in respect of such death or disablement. The amount of compensation payable in respect of death of any person shall be a fixed sum of Rs.50,000 and in case of permanent disability it shall be a fixed sum of Rs.25,000.

For payment of compensation in case of hit and run motor accidents, in accordance to the Section 163 of the Act, Central Government introduced “Solatium Scheme, 1989” with effect from 1 July 1989 vide S.O.440 (E) dated 2 June 1989. According to this, the District Collector will be the “Claims Settlement Commissioner” and Mandal Revenue Officer is the “Claims Enquiry Officer”. The Claims Enquiry Officer will process the claim application after holding enquiry and on receipt of report; the Claims Settlement Commissioner shall sanction the claim and communicate it to the nominated office of the Insurance Company. The nominated office of the insurance company shall made payment to the claimant by dispatching a cheque/DD through Registered Post with intimation to all the concerned authorities.

As per section 163-A of the Act, the owner of the motor vehicle or the authorized insurer shall be liable to pay compensation in case of death or permanent disability as indicated in the Schedule to the Act. As per the Section 163-B, where a person is entitled to claim compensation under section 140 and section 163-A, he shall file he claim under either of the said sections and not under both.

## **CHAPTER 6**

### **ANDHRA PRADESH MOTOR VEHICLE TAXATION ACT**

#### **General**

**6.1.** As already mentioned, the Motor Vehicle Act, 1939 is a regulatory Act and not fiscal statute. The Motor Vehicle Taxation Act is enactment by the State Legislature and deals exclusively with the taxation matters pertaining to motor vehicles plying in the State. This is a fiscal statute dealing with the conditions under which motor vehicles have to be taxed, the rates at which they have to be taxed, the conditions under which exemption from/reduction in taxation can be granted etc.

#### **Levy of Tax**

**6.2.** Liability to Tax:- According to Sn.3 of the Act, Govt is competent to direct the levy of tax in respect of every motor vehicle used or kept for use in a public place in the State, not exceeding the maximum specified in Schedule-I of the Andhra Pradesh Motor Vehicle Taxation Act issued under Section 3(1).

**6.3.** “Rule 12-A of the Andhra Pradesh Motor Vehicles Taxation Rules 1963, provides that for the purposes of Sn.3 of the Act, a motor vehicle shall be deemed to be kept for use and is liable to tax unless the registered owner or the person having possession or control of the motor vehicle intimates in writing to the licensing officer before the commencement of the quarter for which tax is due that the motor vehicle shall not be used after expiry of the period for which tax has already been paid. The Licensing Officer shall on receipt of the intimation acknowledge its receipt”. (G.O.Ms.160 Tr, R&B (Tr.II) dt.23.04.83). In view of the first proviso to Rule 12-A, the owners of non-transport vehicles who fail to file the stoppage reports as prescribed in the rule are entitled to give an affidavit subsequently with full details to the effect that the vehicle was not in existence, or that it was disposed of to another person and that he is no more in possession of it or that tax was paid for that vehicle elsewhere in the same State or in some other State. When the affidavit is filed as discussed above and if the licensing officer is satisfied that the facts mentioned in the affidavit are correct, it shall be deemed that the vehicle has not been kept for use. The manner in which the affidavits have got to be filed and how they have to be accepted has been specified in the instructions issued by the Transport

Commissioner. Further, Rule 12 A shall not apply to vehicles for which life tax or lump sum tax is prescribed.

(Authority G.O.Ms.No.350 TR&B dated 24 February 1987)

**6.4.** There may be cases where the requirements of Rule 12-A might not have been fulfilled in respect of motor vehicles resulting in the vehicles being brought under the category of vehicles ‘kept for use’. For failure to fulfil the requirements of Rule 12-A the licensing officers are entitled to draw the presumption that the vehicle has been kept for use. With this view, the licensing officer shall issue a show cause notice to the registered owner of a vehicle to explain the liability for payment of tax. The registered owner can however produce adequate evidence that the vehicle has not been kept for use. It is only after conducting necessary enquiry and verification that the licensing officer can come to the conclusion that the vehicle was not kept for use.

**6.5(a). Payment of tax:-** According to Section 4(1)(a), tax payable under section 3 for a quarter/half year/year should be paid in advance by the registered owner within 30 days from the date of commencement of the period. As per section 6 of taxation act penalty “not exceeding”was Omitted vide G.O.Ms.No.110 TR&B dated 7-7-2003 and penalty shall be leviable at rate of 50% if the tax is paid in the First month of the quarter, 100% if the tax is paid in the second month of the quarter and 200% if the tax is paid beyond two months from the beginning of the quarter

However,for the payment of quarterly tax, the Grace period of 15 days was extended till the end of the first month of every quarter.

Therefore the penalty levied shall be 100% if tax is paid in the second month of the quarter and 200% of the tax is paid beyond the two months from the beginning of the quarter. The payment of taxes is watched through a register known as the Demand Collection and Balance Register. The entries relating to the motor vehicles noted in the Demand Collection and Balance Registers have to be reconciled once a quarter with the B. registers, permit register, route-wise register, timings register and fitness certificate registers to ensure the correctness of the adoption of the seating capacity, date of issuing of permits, total number of trips and maximum kilometerage etc., in respect of stage carriages permitted laden wait in respect of non-transport vehicles

which are relevant to the determination of the rates of taxes payable and a certificate to this effect is required to be appended by the ministerial head of the office. Besides those checks, the rate of tax noted “Demand” column of the Demand Collection and Balance registers is required to be attested by the head of office. In addition to the above, any changes such as increase of seating capacity, increase of daily total kilometarage, increase of permitted laden weight etc., attracting the liability to pay tax at a higher rate than the rates fixed prior to the commencement of the period shall also be noted in the Demand, Collection and Balance and other registers under the attestation of the head of the office. During scrutiny of such cases the Demand, Collection and Balance registers and other allied registers have to be correlated and checked to ensure whether the difference of taxes has been collected in accordance with rule 5 of Andhra Pradesh Motor Vehicles Taxation Rules. Checking the correctness of demand noted in Demand, Collection and balance register is an important item of work in local audit.

**6.5(b) Calculation of Tax.** -The manner in which tax as required under Sn.4 is to be paid, shall be in accordance with Sn.11 read with rule 13 of Andhra Pradesh Motor Vehicle Taxation Rules. According to these provision, the registered owner is required to file an application to the licensing officer enclosing the registration certificate, insurance certificate with the demand draft/pay order obtained from any schedule bank for the amount due towards tax. According to rule 3, the registration certificate shall contain an endorsement indicating the tax payable. It is with reference to this endorsement that the adequacy of the tax paid by the registered owner is checked by the licensing officer. The adequacy of tax is also checked with reference to demands shown in the Demand, Collection and Balance registers and a licence, as specified under Sn.4(3)(a) is issued by the licensing officer to the registered owner making necessary entries in the registration certificate and collection column of the Demand, Collection and Balance registers indicating the amount of tax paid and the number of the token issued. The demand drafts accepted by the licensing officer are accounted for in a separate register and adjusted to Government Account. Any non-adjustment or delays in the adjustment of demand drafts should be pointed out.

The taxation licenses or tax tokens are supplied by the Transport Commissioner to all the licensing officers of the State. The licences received by the licensing officers are accounted for in separate registers known as the stock register for taxation licences where the issue of licences from day to day are noted. Licences issued to the motor vehicles are accounted for in a register known as "Issue register of taxation licences" wherein entries would be made as and when applications are received and licences are issued. The "Stock register" and "Tax token issue register" have to be scrutinised during audit to see whether or not any of the tokens received by the licensing officer has remained unaccounted for and whether the total number of licences issued for the quarter/half year/year, as the case may be, tally with the total numbers of tokens shown under collection column of Demand, Collection and Balance statement for the quarter/half year/year, and the discrepancies, if any, should be examined in detail. According to the Second Proviso to Rule 13A of the Andhra Pradesh Motor Vehicles Taxation Rules, the owner of a non-transport vehicle may remit the tax to the Post Master of the Post Office concerned who functions as Licensing Officer. The conditions in which the tax has to be accepted by the Post Office and the prescribed returns evidencing the payment of tax collections to Government Account to be forwarded to the Departmental Licensing Officer is indicated in G.O.Ms.No.312, TR&B (Tr.II) dt.20.09.1982.

**6.6.** The demand, Collection and Balance registers is posted either at the time of issue of tax token or after issue of tax tokens; with reference to the entries in the tax token issue registers. The entries in the collection column of the Demand, Collection and Balance Registers have to be attested by the ministerial head of the office as per the instructions issued by the Transport Commissioner.

**6.7.** By virtue of notification issued under Sn.3 (1) of the Act the rates of tax for the periods for which taxes were already paid can be increased. In such cases, the tax paid in respect of any motor vehicle for the subsequent period shall be adjusted towards the arrears due on account of increase of rates of tax, vide Rule 12(B) of the Andhra Pradesh Motor Vehicles taxation Rules.

Rates of tax and procedure for collection tax

**6.8. Classification of Vehicles for purposes of taxation:-** For purposes of taxation motor vehicles are broadly divided into two categories, viz., transport vehicles and non-transport vehicles. The tax on the former category is more than the tax on the latter, because transport vehicles are those used for commercial purposes for hire or reward while non-transport vehicles are those used by the owner of the vehicles for their own purposes and not for hire or reward. The transport vehicles are of the following categories:

1. Stage carriages. (including reserves or spares Buses).
2. Contract carriages
3. Goods vehicles.
4. Tractor trailer combinations.
5. Omni buses.

With effect from 01.01.1979, stage carriages have been divided into 2 categories viz., express buses and ordinary buses. The tax on express buses is more than that on ordinary buses and the rate also varies according to the distance plied, and the classification of the routes viz., town services and other i.e., mofussil services.

The goods carriage also fall into 2 categories viz., Public Service Vehicle and Private Service Vehicle. Public Service vehicles which are used for commercial purposes i.e., for hire or reward while the private Service Vehicle are used by the registered owner for his own purposes. There is however no difference in tax applicable between these two categories of vehicles.

Omni-buses fall under a peculiar category of their own. These vehicles are not classified as Public Service vehicles and as such no permit is required to be taken for plying such vehicles under Sn.42 of M.V. Act. However, they are taxed on per seat basis. (SRA Hqrs. Cir, 20 dt.10.07.81 and G.O.Ms.214 TR VII, dt.03.07.80).

With effect from 24 January 2003, Omni buses with seating capacity between 8 in all and 10 in all and their chassis were brought under life tax. Omni buses owned recognised educational institution of run by managing committees registered under societies registration act 1860 are taxed on the basis of their un-laden weight upto 27

November 2002 and from 31 January 2003 onwards. For the period from 28 November 2002 to 30 January 2003 they were taxed based on their seating capacity.  
(Authority: G.O.Ms.No.15 TR&B Dated 31 January 2003)

**Non-Transport vehicles:-** The rate of taxation applicable to non-transport vehicles have been rationalised with effect from 01.01.79 and subsequently revised from time to time.

Government introduced green tax respect of Transport and non Transport vehicles vide G.O.Ms.No.238 (TR&B) dated.23-11-2006 as follows.

1) Transport Vehicles that have completed 7 years of age from the date of their registration.                           Rs.200/-p.a

2) Non Transport Vehicles that have completed 15 years of age from the date of their registration.

a) Motor cycles                                   Rs.250/-for 5 years.

b) Other then Motor Cycles    Rs.500/-for 5 years.

There shall not be any levy of Green Tax if the Vehicle is Operated by LPG,CNG Battery or Solar Power.

**6.9. Temporary permits:-** Under Sn.87 of the Motor Vehicles Act, temporary permits are issued to other state vehicles to visit this state in pursuance of the inter-state agreements. This is known as short term licensing agreement. Under Sn.4(4) of the Andhra Pradesh Motor Vehicles Taxation Act the legislation has fixed separate rates of taxes payable for 7 days and 30 days in respect of the above categories of vehicles. The maximum rates of taxes approved by the Legislature are given in the second schedule to the Andhra Pradesh Motor vehicles Taxation Act. By virtue of the powers under Sn.4(4) Govt. have also issued notification laying down rates of tax payable for vehicles of other state plying in this state temporarily. At present, short term licensing agreements exist between the states of Tamilnadu, Karnataka, Maharashtra and Andhra Pradesh, Orissa, Gujarat and Madhya Pradesh. The Secretaries of State Transport Authorities and the Regional Transport Authorities of the above states have been empowered to act as the licensing officers, for issue of licences authorising their vehicles to ply temporarily in Andhra Pradesh

State. The collection and remittance of tax under Sn. 4(I)(a) read with Sn. 11 of the Act is done by means of demand drafts. The licensing officers of other states are required to furnish two statements in Forms I and II to the Transport Commissioner of Andhra Pradesh. Form I indicates the temporary permits issued by them to their vehicles to ply in Andhra Pradesh State. Form II indicates the demand drafts received by them and sent to the State Transport Authority, Hyderabad in respect of vehicles permitted to ply in this State. The consolidation and scrutiny of these statements is done by the State Transport Authority, Hyderabad. The correctness of the taxes collected from other state vehicles has to be checked at the office of the State Transport Authority with reference to Form I and II mentioned above. Similar procedure exists for issue of temporary permits to Andhra Pradesh vehicles to ply in other states by the licensing officers of this state.

**6.10. Payment of taxes:-** Under Sn.5(1)(a), no motor vehicles shall ply a public place without a taxation licence issued under Sn.4(3)(a). The taxation licence is the sole evidence of payment of tax to be relied upon by the checking officers in addition to the registration certificate (R.C). although the registered owner of a motor vehicle is required to exhibit the registration certificate and the taxation licence whenever the motor vehicle is used on a public road, it is generally the case that both the records are not kept in the vehicle at the time of check by the checking officers. Sn. 8 empowers the checking officers to seize the vehicles in such circumstances excepting the vehicles belonging to Central Govt., State Govt., and public sector undertakings. The check reports of the vehicles should be carefully scrutinised in audit to ensure whether the fact of payment of tax was verified by the checking officers at the time of check of the vehicle. If tax was not paid, it should be seen whether action was taken to realise the tax due along with penalty in accordance with Sn.6 read with rule 12 and 13.

**6.11.** Normally all payments of taxes have to be made within the period specified under Sn. 4(1)(a). The period specified in this sub-section is known as the grace period which is at times extended by Govt. by issue of a notification. After the expiry of the grace period, the licensing officer has to communicate the full details of the vehicles for which taxes have not been paid including the cases coming under rule 12-A to filed staff, check-posts and other authorities, for causing verification.

This communication shall normally be made within 5 days after the expiry of the grace period or extended grace period.

**6.12.** The field staff and the staff at the check post to whom the lists of non-payment of taxes is communicated are required to verify the genuineness of the stoppages and ascertain the intention of the owner of vehicle, to satisfy the term 'kept for use' and submit verification reports to the licensing officers in the proforma prescribed. These reports, on their receipt by the licensing officers shall be noted in the balance column of the Demand, Collection and Balance register under attestation of the head of the office. The correctness of these entries should be checked with reference to entries in the stoppage register.

If on the other hand, as a result of verification, it is found that the vehicle has either been used or kept for use, the licensing officer shall take action under Section 6 read with rule 12 and 13 to collect tax with penalty.

**6.13. Filing of Stoppage Reports:-** Section 4 read with Rule 12-A enables the registered owner of the vehicle to file the intimation of the stoppage of vehicle before the commencement of the quarter for which tax is due. Therefore, during audit, the records maintained at check posts and the diaries of checking officers should be checked carefully with the Demand, Collection and Balance registers to ensure that no vehicle escapes tax on account of fraudulent filing of intimation of stoppage by the registered owners. (Rule 12-A amended in G.O.Ms.No.160 T, R&B Tr. VII, 23.04.83).

**6.14. Goods vehicle Report:-** Under rule 242 of the Andhra Pradesh Motor vehicle Rule of 1964, every driver of a goods vehicle is required to maintain in a record known as goods vehicle report in which full details of the movement of the vehicle from day to day and the commodity carried etc., are recorded.

**6.15. Trip Sheets:-** Similarly in respect of stage carriages, under rule 267 of the Andhra Pradesh Motor Vehicles Rules the driver or conductor of a State carriage

(except that of Andhra Pradesh State Road Transport Corporation) is required to maintain a trip sheet in form T.S.S. or T.S.C.

**6.16.** The above records are very important and essential to determine the usage of the Vehicle or otherwise. The enquiry reports submitted by the Motor vehicle Inspectors should necessarily contain the fact of the verification of the above records (especially trip sheets) to confirm whether elaborate enquiries in respect of stoppage of vehicles were conducted.

**6.17. Timing Register of Stage carriage of Police Station:-** Under rule 266 of the Andhra Pradesh Motor vehicles Rules, the Transport authority may also direct that every stage carriage shall stop at such stations on its route as the Transport Authority may prescribe and the conductor of every stage carriage shall enter in the register known as T.G.R. maintained at the police station the particulars specified therein. This record also has an important role in the process of verification of stoppage reports. The Transport Commissioner has also issued instructions in Memo, 26014/K3/73, dt.26.10.73 that the Regional Transport Officers should personally verify all the stoppages in respect of stage carriages and 50 per cent in respect of goods vehicles.

**6.18. Statistical Returns and Control Charts of APSRTC:-** According to rule 273-A of the Andhra Pradesh Motor Vehicles Rules, the provisions of Rules 267 to 272 of Andhra Pradesh Motor Vehicles Rules do not apply to the stage carriages of Andhra Pradesh State Road Transport Corporation. But as per the proviso to rule 293-A, statistical returns and control charts are required to be maintained by the drives or conductors of the Road Transport Corporation. In these records full details of the day to day operations are recorded. Under the same proviso, these records can be asked to be produced for verification by the offices referred to in rule 272. In so far as the verification of stoppages of vehicles of Andhra Pradesh State Road Transport Corporation is concerned, the enquiry report should contain a mention about the verification of the records referred to in rule 293-A.

**6.19. Remittance of tax-Levy of Penalties for Late payment.-**Section 4 and 11 of the Andhra Pradesh Motor Vehicles Taxation Rules specify the dates

before which and the manner in which taxes have to be paid. Non-payment of tax, belated payment of tax in accordance with the above rules is to be dealt with under Section 6 read with rules 12 and 13. Though instructions were issued by the Transport Commissioner fixing certain rates of penalties for late payment and non-payment of taxes courts have held that the act licensing officers under Sn.6 was Quasi judicial and also discretionary in nature, and that any interference by the higher authorities in the jurisdiction of licensing officers in the matter of levy of penalties is bad in law. In pursuance of the decision of the courts, the Transport Commissioner has issued detailed instructions in Memo No.8296/D3/71 dt.31-7-71 and amended in Memo No.4700/D3/73 dt.25-5-73 and Memo No.17614/D3/74,dt.3-2-75. All cases of levy of penalty under section 6 should be checked during audit to see whether there has been non-levy of penalty in any case and whether the quantum of penalty has been uniform in cases the same type of irregularity.

**6.20. Temporary Registration.-**Rule 6 the Andhra Pradesh Motor Vehicles Taxation Rules read with Section 4 of Andhra Pradesh Motor Vehicles Taxation Act stipulates that in respect of motor vehicles purchased during the quarter and registered under section 23 (pucca registration ) and Section 43 of Motor Vehicles Act.(Temporary Registration ) tax shall be paid in advance for such quarter/half year at the time of registration of the vehicle. Normally/the taxes are being collected at the time of registration itself. Under section 25 of Motor Vehicles Act, the vehicle can be registered temporarily in the circumstances stated therein. Under Rule 84 of Andhra Pradesh Motor Vehicles Rules, dealers of Motor Vehicles are also empowered to register motor vehicles temporarily. These dealers are require to collect the fee for temporary registration and forward the concerned challans towards fee to the registering authority in whose jurisdiction they reside or have their principal place of business with a monthly statement of temporary registrations made. Since no motor vehicle can ply in a public place without a taxation licence as required under Section 5 of Andhra Pradesh Motor Vehicles Taxation Act, the registered owner of the motor vehicle shall necessarily obtain a token from the licensing officer. All files relating to pucca registration of motor vehicles have to be checked by audit to ensure whether the taxes due have been collected from the date on which the vehicles were temporarily registered

**6.21. Refund of Tax :-** As per section 4(1)(b) of the A.P. Motor Vehicles Taxation Act where a vehicle has not been used in a public place for a period of not less than a month, refund will be sanctioned at the rates to be notified by the Govt. The notification issued in G.O.Ms.No.82, Transport Roads and Buildings (Tr.II) dt.26.03.80 under section 4(1)(b) specified the rate of taxes refundable. In granting refund under section 4(1)(b) the conditions stipulated in the above notification have to be fulfilled. Condition (I) stipulates that the tax licence and the certificate of registration along with the report of intimation of stoppage specifying the place of stoppage shall be surrendered to the licensing officer concerned within 5 days from the date of issue of licence in the case of a claim for refund of tax for the whole period for which tax is paid and within 5 days from the commencement of a calendar month in the case of claim for refund of tax for the said calendar month or for the said subsequent calendar months. Under the proviso to conditions (i) when the said documents are not surrendered in time, the licensing officer at his discretion may sanction the refund upon the representation made by the applicant, if it is proved. Beyond doubt that the Vehicle was not used during the relevant period.Under condition (ii) no refund shall be made in case where tax is paid after its non payment detected or after the commencement of proceedings by issue of a show cause notice or a demand notice unless the licensing officer is satisfied that special circumstances warrant the payment of such refunds. Under condition (iii) if a motor vehicle was detained for contravention of any law, order or regulation prohibiting or regulating the transport of goods or passengers or persons, no refund shall be payable in respect of a motor vehicle for the above period of detention etc. Neither Sn.4(1)(b) nor the notification issued thereunder contemplated any application to be made by the registered owner of a vehicle except when the surrender of tax licence is not made within time due to unavoidable reasons. But generally refunds are granted on an application made by the registered owner of a vehicle along with the taxation licence. Although the powers of the licensing officer in accepting the late surrender of taxation licence are discretionary, it should be seen in audit (I) whether the circumstances in which the claimant has not been able to surrender the taxation licence within the specified period are genuine and (ii) whether the late surrender of licence has hampered the efforts of the departmental officer is bring definite about the stoppage of the vehicle during that period. As soon as a refund application is made, it shall be noted in a separate register known as Refunds register and then

communicated to the motor vehicles Inspector for verification of the geniuses of the stoppage of the vehicle. On receipt of the verification report, refund will be sanctioned as per the above notification making an entry of refund in the original challan in which tax was credited to Govt. account and in the Demand Collection and Balance register and in the registration certificate.

**6.21.** There may be cases where refunds of taxes would arise for the reason that taxes were paid at the rates higher than the normal rates of tax or taxes having been paid twice erroneously. Such payments are known as payments made in excess or by mistake respectively. The orders issued in G.O.Ms.2420 Home Transport II, dt.28-12-63 as amended in Govt. Memo No.382/66-3 Home Transport II,dt.25-3-66 and G.O.Ms.2345 Home Transport II,dt.10-125-64 Authorise the secretary, Regional Transport Authority and State Transport Authority and to grant refunds in such cases Subject to the condition that the claim is made within one year in cases where payments are made under protest and three years payments are made by mistakes. The conditions stipulated in the notification issued under sn.4(1)(b)discussed earlier do not apply in these cases, although the procedure to be followed in recording the refunds is the same as in other cases.

6.23. While verifying the refund cases, it should be seen in audit whether any refunds in contravention of the above principles have been granted in respect of stage carriages.

**6.24. Spare or Reserve Stage Carriages:-** Under proviso to item 4(iv) of the notification issued under Sn.3(1), spare buses which are otherwise known as reserve stage carriages are taxed at concessional rates of tax without any reference to the route kilometerage performed in a day. This concessional rate of tax is admissible only when the permit holder pays tax in full in respect of all route buses covered by permits irrespective of stoppage. If full tax is not paid in respect of any route bus, the spare buses shall not be eligible to any concessional rate of tax. There is no question of refund of tax in respect of such buses viz., regular route buses. The minimum of reserve vehicles to be maintained with reference to number of permits is indicated in rule 188 of Andhra Pradesh Motor Vehicles Rules.

**6.25.** Exemptions or Reduction of Tax:- Under Sn.9, the Govt. is empowered to issue notifications granting exemption, or reduction in the rates of tax or other modifications not involving an enhancement in the rates of taxes payable or cancel or very any such exemption, reduction or other modification. Govt. have issued notification exempting from tax several categories of vehicles. While examining the cases of exemptions, it should be seen that such exemptions are covered by orders of competent authority. According to Sn. 10 of Andhra Pradesh Motor Vehicle Taxation Act, motor vehicles designed and used solely for agricultural and mining purposes are excluded from the purview of the other sections of the Act, subject to the fulfillment of the conditions stipulated therein.

**6.26.** While examining the cases of motor vehicles coming under Sn.10 it should be specially seen that the condition specified in the explanations under section 10 have been fulfilled.

**6.27.** As regards the motor vehicles used for agricultural purposes Govt. have relaxed the conditions relating to the distance G.O.Ms.No.53 TR&B (Tr-II) dt.13.03.92. No such relaxation is available for vehicles used for mining purposes.

**6.28.** Section 4 provides for the remittance of tax before the commencement of the quarter or within fifteen days from the commencement of the quarter. Under G.O.Ms.No.83 Transport Roads & Bldgs (Tr.II) Dept. Dt.26.03.80, the Government have issued orders reducing the tax payable in respect of motor vehicle used or kept for use in a public place in the state of Andhra Pradesh after the expiry of the first month of the quarter, a half-year or an year as the case may be, to a sum calculated at one third of the quarterly rate of tax specified in the notification under section 3 of the said Act, multiplied by the number of months in the quarter, the half year or the year as the case may be, in which the motor vehicle is so used or kept for use. While accepting the tax proportionately as per notification, there must be an intimation from the registered owner with reference to the Rule 12-A to enable him to claim exemption for the period for which tax has not been paid.

In such cases, normally, the responsibility to accept the stoppage of the vehicle or otherwise rests with the licensing officer and the acceptance of tax

proportionately cannot be withheld on the sole ground that the stoppage has not been verified. Acceptance of proportionate tax in respect of vehicles covered by stoppage reports shall be done by the head of the office in view of the fact that the tax paid proportionately is accepted pending verification of the stoppage for the earlier periods. Therefore, whenever an application is made for acceptance of tax proportionately i.e. last two months/one month of the quarter and if by that time, the stoppage report has not been received from the Motor Vehicle Inspector, the withholding of the acceptance of tax for want of stoppage verification report is bad in law. In such circumstances, an undertaking is required to be obtained from the registered owner of the vehicle to the effect that he would be liable for any tax and penalty if it is found that the vehicle has plied during the period of stoppage. Besides the above the registered owner will be required to produce the G.V.R. or T.S.S.forms of the vehicle while producing the challan. In all such cases while accepting the proportionate tax, entries will be recorded in the Demand Collection and Balance register and the stoppage register and the attestation of the head of the office.

As per Section 6A of A.P.M.V. Taxation Act, every registered owner who owns or keeps in his possession or control more than 2000 vehicles for plying on hire or reward shall pay in respect of all such motor vehicles a tax at such rates not exceeding 15% of the gross traffic earnings. In G O Ms.No.118 (TR&B) Dept.dated.7-6-05, Government prescribed the rate of taxes as 5% on City services and 7% on mofussil services on Gross Traffic Earnings.

The reduction of M.V.Tax is Subject to the following conditions.

- 1) Town (Urban) Services shall include plying on the Strength of pucca permits covered by the schemes published to run stage carriages as town services and temporary permits beyond provisions in Hyderabad and Vishakapatnam.
- 2) Separate financial accounts shall be maintained for Town (Urban) and other services for the purpose of filing statements for preliminary and final assessment of taxes.

#### **6.29. Some important notifications:**

- (i) **G.O.Ms.601 Home (Tr.II)dt.27-3-63.Inspection and Fitness Certificate.**- Under this notification, Govt. have exempted from payment of tax any vehicle which is during the course of any specified taxation period, used only for the purpose of inspection and obtaining a certificate of fitness under section 38 of the

M.V.Act 1988 and which is not used for any other purpose during the whole of the period.

**(ii) G.O.Ms.No.81 TR&B (TRII)dt.27-4-1993,Temporary Permits to other State**

**Vehicle.-** According to this notification, tax is payable by Transport Vehicles belonging to other states and operating within the state on temporary permits for period not exceeding seven days and for a period not exceeding thirty days, at the rates prescribed subject to the conditions maintained in the Government Order.

**(iii). G.O.Ms.No.601 Home (tr.II)dt.27-3-63.Trade Certificate.-**This notification relates to the grant of exemption, to motor vehicle using public roads under trade certificates. Under Rule 131 of Motor Vehicles Rules the vehicle can be used with a trade certificate for the purpose referred to in said rule. The clarification issued by the Transport Commissioner in Memo No.22705/D3/72 dt. 29-7-72 may be kept in view while examining cases coming under this notification. Under proviso to Section 3 of A.P.M.V. Taxation Act 1963,in respect of chassis of Motor Vehicle passing through this state from a manufacturer to a dealer under a temporary certificate of registration for as period not exceeding seven days the rate of tax shall be one twentieth of the tax payable for a quarter (Act 5 of 1979 with effect from 28-12-78)

“Fair whether Routes” –G.O.Ms.No.221 TR&B (TR-II) Dated 7-11-1996.

According to this notification “Fair Whether Route” means a route along a road, which is motorable only during fair weather season, or a route along a road, which is not wholly maintained by the R&B Department or a Local Authority. The rate of tax payable in respect of every stage carriage plying on a fair weather rout as fixing from time to time should be checked in audit.

In respect of reserve stage carriages on a spare bus (by whatever name called) of an operator the tax payable shall be at Rs.205 for every passengers which the vehicle is permitted to carry, if the tax for the corresponding period in respect of all his regular stage carriages covered by valid permit have been paid irrespective of stoppage or otherwise of the vehicle. However the condition of payment of tax for all his regular stage carriages shall not be insisted upon in so far as they relate to fair weather routes subject to the condition that the spare bus shall not to be operated on the fair weather routes on which route buses are under stoppage.

The total distance permitted to be covered by the vehicle in a day for the calculation of levy of tax for stage carriages plying on fair weather routes shall be reckoned duly excluding the portion of the route as travels along a road not maintained by R&B department or any Local Authority or any Devasthanam or a path or track which is not a road.

During audit, the list of fair weather routes should be gathered and examined with reference to the following points:-

1. Whether the departmental officers have been periodically inspecting the routes in consultation with the Zilla Parishad and Roads and Buildings Department to conclude whether the routes continue to be fair weather routes.
2. Whether the payment of taxes is made by the operators for all the quarters of the year.
3. Whether effective action has been taken to convert the routes as all weather routes by undertaking repairs to the routes.

**(v). G.O.Ms.No.222 TR&B (TR-II) Department Dt.7.11.96, State Carriages not covered by Regular Permits and exclusively used in connection with Fairs and Festivals:-** According to this notification, the vehicles that are not covered by regular stage carriage permits, either for a regular route or as a spare bus, and exclusively used in connection with the fairs and festivals specified in the notification, tax shall have to be collected @Rs.30/- per seat per week.

Since these vehicles are not already covered by regular stage carriage permits, and therefore normal stage carriage tax has not been paid, the rate of tax payable under this notification is higher.

Refund of the is not admissible under any circumstances under this notification.

**(vi). G.O.Ms.No.223 Transport, R&B (Tr.II) Department, dt.7.11.96 Stage carriages covered by regular permits and use in connection with Fairs and**

**Festivals:-** According to this notification, tax at a flat of Rs.81/- per vehicle per day shall be collected for stage carriages including spare buses performing additional trips in connection with fairs and festivals for which temporary permits are issued under section 87(1)(a) of the Motor Vehicles Act. This tax shall be accepted only when the normal tax has been paid.

Temporary permits under Section 62(1)(a) in connection with fairs and festivals would be issued in respect of only those fairs and festivals as approved by the Regional Transport Authorities. Therefore, during audit the list of fairs and festivals approved by the Regional Transport Authority the files relating to grant of temporary permits for such fairs and festivals and Demand, Collection and Balance registers should be scrutinised thoroughly to ensure that the additional tax as per this notification has been collected.

**(vii) G.O.Ms.No.57, Transport, Roads** Buildings Tr-II) dated 13-3-92 effective from 1-4-1992). In the caseof Tractor-trailer combinations or trailiers to be drawn by any tractor (which is covered by the valid tax payment either individually or in combination with any trailer) ownerd by agriculturists shall be taxed at the rate of Rs.300 (Rupees three hundred only) per quarter, provided that it is-

- i). used for agricultural operationsof the ragisteredowner beyond a distance of 24 kilometres from the limits of the agricultural lands owned or occupied by him or used byrond the nearest market place; or
- ii). used for agricultural operationsof any ohter agriculturist but not for hire or reward beyond or within a distance of 24 kilometres from the limits of the agriculturist lands owned or occupied by him or used beyond the nearest market place; or
- iii). used for tranport of material ohter than for hire or reward.

**(viii). Govt. of India Vehicles /Vehicles belonging to Central Govt. Undertakings /Autonomous bodies etc., Notification Act 5 of 1963:-** Under the above notification, Govt. of Andhra Pradesh exempted tax payable in respect of all motor vehicles belonging to Central Govt. other than those used for carriage of passengers or goods for hire or reward. However, exemption is not applicable in respect of vehicles belonging to Central Govt. Undertakings/Autonomous Bodies etc. This may be kept in view by the field audit parties.



## **CHAPTER 7**

### **RECORDS, REGISTERS & RETURNS OF THE DEPARTMENT**

The important records maintained in the Regional Transport Offices are dealt with in the following paragraphs.

#### **B. Registers**

7.1. The liability for payment of tax under the Andhra Pradesh Motor Vehicles Taxation Act 1963, arises on all the vehicles registered and used or kept for use. Every owner of a motor vehicle shall as soon as a vehicle is acquired, file an application in the prescribed form along with the requisite fee to the Registering Authority vide rule 86 of Andhra Pradesh Motor Vehicle Rule 1964, in whose jurisdiction the owner of the vehicle resides or has his business. The correctness of the application with reference to the physical inspection of the vehicle and requirements of the provisions of Chapter V of the Motor Vehicles Act, 1988, and the Rules framed thereunder will be checked by the motor vehicles inspector and then the vehicle will be allotted a registration number in the serial order assigned in the registers known as ‘B’ registers. This is the basic record which contains the full particulars of the motor vehicle such as Unladen Weight, Registered Laden Weight, make of the vehicle, seating capacity etc., which forms the basis for the levy and collection of tax..

Motor Vehicles originally registered in other states or regions brought into this state either on transfer of ownership or due to change of address will usually be entered in a separate ‘B’ register as and when separate applications are made by the concerned owners of the motor vehicles.

All vehicles registered and entered in the ‘B’ Register should find a place in the Demand, Collection and Balance register irrespective of the fact whether some of them are exempted from payment of tax. To ensure that no case escapes assessment, with reference to page number of the Demand, Collection and Balance register is indicated in the ‘B’ Register and vice versa.

#### **Audit Checks**

(a). It may be seen during audit whether the fees collected for registering the vehicles are in accordance with the fees prescribed.

(b). In respect of goods vehicles whether the Registered laden weight has been fixed upto 31-3-83. From 1-4-83 whether the procedure laid down in Ministry of Shipping and Transport Notification dated 35-9-82 has been followed.

In respect of stage carriages, contact contract carriages and Omnibuses whether the seating capacity noted is in accordance with the particulars furnished in the application for registration of vehicles. In respect of any changes in the seating capacity noted in the register, it may be seen whether the approval of Regional Transport Authority has been obtained for such changes

**7.2. Demand, Collection and Balance Registers.-** This is an important register for recording the demand, Collection and balance of taxes payable in respect of every motor vehicle registered and used or kept for use in the region. From the audit point of view, this is the most important record, which requires careful and thorough scrutiny as, it is, a ledger account of each vehicle, the demand column representing debit and the collection column representing credit. It also contains in the remarks column information relating to stoppage reports, refunds and similar notings which affect the demand or the rate of tax collected. The registers are maintained categorywise such as stage carriages, goods vehicles, contract carriages, cars, motor cycles, tractor-trailer combinations etc., and one page in each ledger is set apart for each vehicle. The demands in the Demand Collection and Balance Register are checked quarterly and a certificate to that effect is appended to the Demand Collection and Balance Register by the ministerial head of the office.

#### **(a) Transport Vehicles**

**(i) Stage carriages:-** The tax for stage carriages is based on the seating capacity and permitted route length i.e., length of the route on which the vehicles are operated and total number of trips performed in a day in order to arrive at the daily kilometreage. Permit register is the basis for levy of tax. This in turn is based on the Regional Transport Authority's proceedings on the subject or scheme notifications in respect of Andhra Pradesh State Road Transport Corporation Buses. In order to check the correctness of the rates in the Demand, Collection and Balance Register, the entries

relating to route length in the permit registers, Register of operators CS. 68, route wise register and timings register etc., have to be correlated and verified.

### **Audit Checks**

It may be seen during audit that

- (a) all entries in the Demand Collection and Balance Register are attested by the proper authority:
  - (b). in respect of stage carriages, reserve stage carriages, contract carriages and omni-buses, it may be verified whether the stage carriage is an express or an ordinary bus, the tax demanded is in accordance with the prescribed rates and also with reference to the seating capacity noted in the ‘B’ register and the total distance permitted to be covered in a day by stage carriages is in accordance with the permit register:
  - (c). where no tax has been collected for a quarter or part of a quarter, whether the reasons therefor such as stoppage of the vehicles etc., are recorded.
  - (d). in respect of goods vehicles, the tax demanded is in accordance with the registered Laden Weight as noted in the ,B, Register and also as per rates approved by the Government from time to time:
  - (e). the details regarding the validity of permit and Fitness Certificate noted in the register are in accordance with the permit register and Fitness Certificate Register:
  - (f). the entries regarding stoppage of vehicle, refunds etc., noted in the remarks column of Demand Collection and Balance have to be carefully gone through and it be ensured that the stoppage report of the vehicle has been verified and the refund allowed is in accordance with the prescribed scale.
- (ii). Goods Vehicles:-** The criteria for levy of tax is the permitted Laden Weight (Registered Laden Weight). The permitted laden weight noted in the Demand Collection and Balance register has to be checked with the permitted Laden Weight noted nit he permit register and registered Laden Weight noted in the ‘B’ register. Various orders and instructions issued on the fixation of Registered Laden Weight other orders on the subject have to be kept in view while checking the correctness of the Registered Laden Weight noted in the Demand Collection and Balance registers.
- (iii). Contract carriages and taxis:-** Tax levied is based on the seating capacity of the vehicle (noted in the permit register, and also ‘B’ register). The correctness of the

seating capacity as noted in the Demand Collection and Balance register may be cross checked with the entries in the permit register and ‘B’ register.

a)as per Ordinance No.3/2006 dt.25-05-06 Government brought the High end Motor Cabs costing Rs.3,50,000/-and Road Rollers under the purview of one time tax (life tax)

**(b). Non – transport vehicles**

Cars, Omnibuses:- Tax is levied bases on the unladen weight and seating capacity in respect of cars and omnibuses respectively.

The checking of demand in respect of the above vehicles will be with reference to the entries in ‘B’ registers.

7.3. In all cases of transport vehicles, it is necessary that the validity of the permit and Fitness Certificates are noted in the Demand Collection and Balance Register.

7.4. From tax token register, the amount of tax paid, tax token number and date of issue will be posted in the collection column of the demand, Collection and Balance register. The correctness of the collection particulars are verified and attested by the ministerial head of the office.

7.5. Where taxes due are not paid in the manner prescribed, the vehicle owner is required to file a stoppage report under rule 12(A) of the Andhra Pradesh Motor Vehicles Taxation Rules to the licensing officer before the commencement of the quarter for which tax is due. This report will be entered not only in a register known as stoppage register but also an entry shall be made in the balance column of the demand collection and Balance Register. The verification of reports by the Motor Vehicles Inspector Regarding stoppages are also entered in the Demand Collection and balance Register in the balance column and attested by the Regional Transport officer. Any changes in seating capacity, route length or laden weight attracting change in rates of tax are also indicated in the Demand Collection and Balance registers under attestation of the ministerial head of the office.

## **Audit Checks**

- (a). The tax demanded and collected is in accordance with the various rates approved by Government.
- (b). Where no taxes paid it may be seen whether there is any advance intimation from the owner about the nonusage of the vehicle.
- (c). In respect of refunds, whether refund of tax is in accordance with the prescribed scale.

## **Tax Token issue Register**

7.6. All the applications received from the motor operators for issue of tokens will be entered in the register date wise and in serial order of receipt. Separate registers are maintained for transport and non-transport vehicles. The entries in the register would indicate registration number category of the vehicle, amount of tax paid. Amount of the demand draft presented, the demand draft No. and date and the name of the bank which issued the demand draft and the token number issued to the vehicle. These particulars are carried over to the demand collection and balance register. After the expiry of the grace period or extended grace period as the case may be all payments of tax are subject to levy of penalties as laid down in Section 6 of the Andhra Pradesh Motor Vehicles Taxation Act read with Rule 13 of the Andhra Pradesh Motor Vehicles Taxation Rules. All the payments of arrears after the grace period either voluntarily or by detections shall be supported by additional remittances by way of penalties. The total amount of tax collected for the quarters as arrived at in this register should tally with the total of the Demand Collection and Balance register and agree with the total collection reported in Demand Collection and Balance Statement submitted to the Transport Commissioner.

## **Demand Draft Register.**

7.7. All cases of payments of tax by means of demand draft should be entered in this register bank-wise and branch-wise. The drafts received in a day shall normally be presented to the bank for adjustment to Govt. account within 3 days from the date of receipt in the office. In the last column of the register, challan No. and date of adjustment of the demand draft to Government account will be noted under

attestation of the head of the office. The transactions in this register shall be carried over to the cash book by means of an abstract and checked by the head of the office daily to ensure that there is no undue delay either in the presentation of the draft to the bank or in the adjustment of the draft to Government account by the bank. The total amount arrived at in this register per quarter should also agree with the totals of the tax token issue register and also total collection shown in the quarterly Demand, Collection and balance statement.

#### **Audit checks**

It may be seen whether

- (a). the tax token issued and noted in this register agrees with the tax token issue register and necessary entries were accordingly made in the Demand, Collection and Balance register under proper attestation:
- (b). the demand drafts are properly accounted for and remitted periodically into the State Bank of India / State Bank of Hyderabad without any delay and challan numbers are noted against each demand draft.

#### **Register of Stoppages**

7.8. Under Rule 12-A of the Andhra Pradesh Motor Vehicles Taxation Rules, vehicle owners are required to intimate the stoppage of vehicles during the quarter, to the licensing officer before the commencement of the quarter for which tax is due. All such intimations will be entered in this register as and when received under attestation of the head of the office. All the stoppage reports received by the licensing officer along with other cases of non-payment shall be referred to the filed staff, i.e., Motor Vehicle Inspectors who shall ensure the physical verification of the stoppage of the vehicles during the quarter and submit verification reports by the 10<sup>th</sup> of the month succeeding the quarter. Similarly, when the stopped vehicle resumes service, the resumption report shall also be entered in the relevant columns of the register indicating therein the number of the tax token issued to the vehicle.

#### **Audit Checks**

- (a). The Stoppage Registers after proper verification are noted in the remarks column of Demand, Collection and Balance of the respective vehicles.

(b). In pending cases, whether the department is pursuing the cases properly with the subordinate officers.

(c). The stoppage reports have to be test checked (by the Regional Transport Officer to the extent of 100% in the case of stage carriages and 50% in the case of goods vehicles).

#### **Register showing the stock issue and balance of taxation licences**

7.9. Taxation licences (tax tokens) are printed and supplied by the Transport Commissioner depending upon the requirements indented by the licensing officers. All the licences issued by the licensing officers should be entered in the this register. This register and the licensess shall be kept in the personal custody of the ministerial head of the office who shall release the stocks depending upon the day to day requirements duly making necessary entries in the register. The total number of licences issued as per this register shall necessarily tally with the total number of tax token issue register and also the total number of vehicles taxed and indicated in the Demand, Collection and balance statement. The balance of licences shall at the end of the quarter, be surrendered to the respective Deputy Transport Commissioners with full details of the stocks received issued, balance etc., who shall after necessary verification destroy them.

#### **Audit Checks**

##### **It is to be seen that**

- (a) All the licences received from the Transport Commissioners during each quarter are properly accounted for in the register under proper attention.
- (b) The last token number in the tax token issue registers agrees with the next number of tax token shown as balance in the stock register.
- (c) All the unused tax tokens are destroyed periodically and a certificate of destruction is sent to the Transport Commissioner.

#### **Challan register**

**7.10** All payments due under the Motor Vehicles Act, 1988, and the Rules framed thereunder are to be entered in this register (sub-head and detailed head-wise). As and when applications are received for purpose such as permits, licences conductors and drivers badges etc., particulars of challans are entered in this register and the application are released for issue of necessary permits etc. This registers shall be maintained sub-headwise and also with reference to the dates prescribed for the closure of the treasury accounts to ensure early reconciliation. At the closure of the month, the totals are struck and reconciled with treasury accounts and the genuineness of remittances verified through the triplicate copies of challans received direct from treasuries. The total collection as per this register (sub-head wise) shall agree with total furnished in the monthly income statement furnished to the Transport Commissioner.

### **Audit Checks**

#### **IT is to be seen that**

- (a) The challan Nos. noted in the Demand Draft Registers agree with the challan register.
- (b) Reconciliation of departmental receipts with reference to challan register with the treasury receipt is being done regularly and certificate of reconciliation is obtained from the treasury.
- (c) In respect of challans relating to other sub-treasuries of the district (other than Huzur Treasury) the department has taken proper action to verify the remittances with reference to the lists sent by each Sub-Treasury Officer.
- (d). It may be particularly seen that the challans register is maintained with reference to challans received in Regional Transport Officer's Office and not copied from the Treasury records.

### **Refunds Register**

**7.11** As per the notification issued under Sn.4(1)(b) of the Andhra Pradesh Motor Vehicles Tax Act, refund of proportionate taxes are admissible at the rates specified in the said notification where the vehicle has not been used for the entire quarter or part thereof, the period not being less than one full month.

Applications for refund shall be filed as per the conditions of the said notification, and in cases where it is established that refund is admissible a refund order shall be issued along with a refund voucher duly making necessary entries in the Demand, Collection and Balance registers and other relevant registers such as register of challan etc., as in accordance with the Act and Rules.

### **Register of Compounding Fee**

7.12 Under Section 60(3) of the Motor Vehicles Act, the Transport Authority, instead of suspending or cancelling the permit for violation of conditions of permit laid down therein, may compound an offence for the amount mutually agreed upon by the Transport Authority and also by the Secretary depending upon the authority who issued the permit. The entries in this register shall be made in the order of the agenda of the meeting of the Transport Authority under attestation of the head of the office as soon as the meeting takes place. Normally a maximum period of 10 days is allowed to the party (Rule 244 of Andhra Pradesh Motor Vehicles Rules). As and when payments are made by treasury challans, the relevant columns of the register are posted under the attestation of the head of the office. All non-payments as per this register shall be periodically communicated to the Motor Vehicle Inspectors for recovery under the Revenue Recovery Act and position reviewed at periodical intervals.

### **Audit Checks**

#### **It may be seen that**

- (a). the compounding fees noted in the register are not less than the minimum of compounding fees prescribed by the Govt. for each offence:
- (b). compounding fees to be recovered with reference to each check report have been correctly carried in this register:
- (c). the fees are realised within the period of ten days prescribed; under Rule 244(2).
- (d). in cases of long pending cases, the reasons for their pendency should be analysed.

### **Counter Register.**

7.13. The total amount realised by way of fee in this Register and the total in the challans register should tally with the figures furnished in the monthly consolidated income statements sent to the Transport Commissioner.

#### Audit Checks

It may be seen that the total amount shown in this register agrees with the amount shown in the challan register.

#### **Register of check reports.**

7.14 While conducting surprise checks to ensure the implementation of the provisions of the Motor Vehicle Act the Andhra Pradesh Motor Vehicle Taxation Act and the Rules framed thereunder, the checking officers prepare the check reports on motor vehicles called the vehicle check report in the prescribed form in quadruplicate, deliver two copies to the driver and the owner and forward one copy to the Regional Transport Officer for taking departmental action against the permit holder in respect of vehicles covered by permits, and against the owner of the registered vehicle, where the vehicles are not covered by permits and which violate the provisions of section 33 of Motor Vehicles Act. These check reports are entered in a separate register known as Register of check reports. To ensure that all the check reports prepared by the ports. To ensure that all the check reports prepared by the checking officers have been duly accounted for in the records of the Regional transport Officer, the account number registered on the check report immediately on its receipt in the office, is noted on the office copy of the check report of the checking officer. Similarly check reports sent to other regions for action shall not be closed unless an acknowledgement in token of receipt of the check report is received from the concerned authority. On receipt of the check report, action is pursued under section 60 or 33 of the Motor Vehicles Act by issue of notice to the registered owner or permit holder. Usually the result of action, such as suspension of permit or registration, cancellation of permit or registration and compounding of offence and result of action against the driver and conductor and result of prosecution where departmental action does not lie are noted in the relevant columns of this Register and then the case is closed intimating the authority from whom the check report is received.

### **Audit Checks**

It may be seen that:

- (a) all the check reports received from the Assistant Motor Vehicle Inspectors / Motor Vehicle Inspectors, Regional Transport Officer, Flying Squad / Deputy Transport Commissioner and other Regional Transport Officers are entered without any omission;
- (b). Whether the action taken by the department in respect of each case is in accordance with the relevant provisions of act and rules;
- (c). In respect of long pending cases, proper action has been initiated;
- (d). Dropped cases should be carefully scrutinised so as to see that there are no lapses or violation of rules etc.

### **Register of history sheets**

**7.15.** This record indicates the offences committed by a permit holder from the date of issue of permit. Full particulars of the vehicles and the routes on which they ply and the date of expiry of permit, the date of offence, the nature of offence and the result of action taken on the offence committed etc., are noted in this register. The register is maintained operator-wise. The entries in this register have to be correlated with the register of compounding fee and the register of checks reports.

### **Audit Checks**

- (a). In respect of check reports relating to vehicles plied without valid permits/tax token, it may be seen that necessary action has been taken to raise demand for payment of tax with penalty and that this demand ahs been entered in the Arrear Register of the Andhra Pradesh State Road Transport Corporation
- (b). In respect of cases dropped by Regional Transport Authority it may be particularly seen whether the reasons were recorded by the Regional Transport Authority for dropping such cases.
- (c). Where taxes with penalty are demanded initially but taxes only are collected, the non-collection of penalty may be commented upon.

### **Register of seized vehicles**

**7.16.** Section 8 of the Andhra Pradesh Motor vehicles Taxation Act contemplates seizure of motor vehicles for failure to pay the tax due under the said Act. In such cases, basides the collection of tax, due to Government, action has to be taken under

Section 6 of the Andhra Pradesh Motor Vehicles Taxation Act to collect penalty also. Therefore, all cases of check reports involving seizure of vehicles for non-payment of taxes shall be entered in this register to ensure prompt follow up action. Particulars of amount collected as shown under column 8 of the register have to be correlated with the entries in the demand draft register and tax token issue register.

### **Audit checks**

It may be seen that the seized vehicles kept in police stations continue to be available pending payment of tax and that the Police Department does not release the vehicle, without the concurrence of the Transport Department.

**7.17. Register of Appeals, Revisions and Writs:** - All cases of appeals, revisions and writs arising out of the provisions of the Motor Vehicles Act, the Andhra Pradesh Motor vehicles taxation Act and the Rules framed thereunder, are noted in this register to watch prompt and effective disposal of cases. In cases where the writs or appeals filed by the vehicles owners are allowed, it should be seen whether they were allowed due to inadequate action or negligence of for noncompliance under statutory requirements, with reference to the powers and duties of departmental officers, particularly when they result in loss of revenue to Government.

**7.18. Routewise register:** - This register would indicate in details, the total number of routes in a region, length of the route number of stage carriages plying and the names of operators operating on the route, total daily kilometerage performed by each vehicle, seating capacity of each vehicle number of trips performed by each vehicle. This Register has to be correlated mainly with the Demand Collection and Balance register, permit register, B Register and timings register to ensure the correctness of the total daily kilometerage on the basis of which the rate of tax is worked out.

**7.19:- Operatorwise register:-** In this register, full particulars of the stage carriage permits held by individual operator such as name and address of the owner, registration number of the vehicle, seating capacity, name and distance of the route, and the total daily kilometerage covered and the date of issue of the permit are noted. As in the case of routewise register, the entries in this register are also to be checked

with routewise register, B-register, Demand, Collection and Balance register and the Timings register as to the correctness of the rate of tax fixed.

**7.20. Permit renewal date register (Renewal watch register) for stage carriages, goods carriers, private carriers and contract carriages:-** According to Section 58(1)(a) of Motor Vehicles Act, a stage carriage or a contract carriage permit issued would be valid for a period of not less than 3 years and not more than 5 years as specified by the RTA in the permit. Similarly, goods carrier permits or private carrier permits would be valid for 5 years vide Sn.58(1)(b) ibid. Renewal beyond the period specified above would be granted by the Regional Transport Authorities on applications made in accordance with Section 58(2) of Motor Vehicles Taxation Act. A separate Register for each category of vehicles is maintained. All the permits due to expire from time to time will be entered in this Register. As and when applications are received, the relevant columns of the register are posted. The applications for renewals have to be checked up with reference to this register to see as to how many renewal applications are received and disposed of and whether the requisite fee has been collected in all the cases including the cases which attract the provisions of sub-section (3) of section 58 of the Motor vehicles Act.

Particulars of remittance of requisite fee have to be verified with the register of challans and individuals files. The correctness of renewal of permits is also checked with entries in the register of history sheets.

**7.21. Permit register for stage carriages, goods carriers, private carriers and contract carriages:-** This Register is an office copy of the permits issued to the permit holders of the different categories of vehicles. A separate register is maintained for each of the above category of the vehicles. Each permit will be entered in a separate page. Full particulars of the registration number of the vehicle, make, model, seating capacity, laden weight in the case of goods vehicles, filed of operation period of validity of the permits, schedule of timings, distance of the route, number of trips authorised to be performed total daily kilometerage and particulars of remittance of fee paid, etc., are entered in this register.

This register has to be checked with the Demand, Collection and Balance register, routewise register and timings register to verify the correctness of the demand fixed in respect of the above categories of vehicles.

**7.22. Temporary permit register (Stage carriages, private carrier, goods carrier and contract carriages):-** This register is an office copy of the temporary permits issued. A separate register is maintained for each of the above categories of vehicles. Since most of the cases coming under this register do not have pucca permit this register has to be checked with the Demand, Collection and Balance register to see whether all the vehicles covered by temporary permit have been accounted for in the Demand, Collection and Balance register and the taxes due have been collected. This register is to be correlated with the register of important festivals.

**7.23. Register of registered operators :-** General public and motor operators desirous of knowing the important orders, notification, etc., relating to transport department will be furnished copies of such documents on payment of fee of Rs.25 per annum. All applications received for enrolment as registered operators will be entered in this register.

It has to be verified from this register that the requisite fee has been collected from the registered operators. Entries from the dispatch register can be correlated with the above register to check whether important orders and notifications have been sent only to registered operators who have paid the requisite fee

**7.24. Registers maintained by the Motor Vehicles Inspectors, (a) fitness Certificate Register:-** Under Sn.38 of Motor Vehicles Act, all transport vehicles shall necessarily have fitness certificates before they are put to use on public roads. The competent authority to issue fitness certificate is the Motor Vehicles Inspector who shall maintain a register in which full particulars of the vehicle inspected with all details will be recorded. The entries in this register will have to be checked with the applications entertained by the Motor Vehicles Inspector and reference to the challans (maintained in Regional Transport Officers) to ensure that every fitness certificate is issued after collecting the prescribed fee. This register is also to be

checked with the Demand Collection and Balance register to ensure that fitness certificates are issued only after verifying that taxes have been paid.

**(b). Register showing the driving tests conducted by the Motor Vehicle**

**Inspectors:-** Every applicant seeking a driving licence is required to undergo a test of competence before the actual issue of licence. All the applications for driving licences will be filed before the Motor vehicle Inspector and entered in this register. This register has to be checked with the applications filed in the office and with the register of challans to ensure that the fee for the test of competence has been collected.

**(c). Register of inspection of vehicles for registration:-** Every owner of a

motor vehicle seeking to register a motor vehicle shall have to file an application in form 'E' accompanied by the fee prescribed. These applications shall be entertained by the Motor Vehicle Inspector in the first instance who shall certify as to the fitness of the vehicle for registration after physical inspection of the vehicle. Full particulars of the vehicle inspected for registration will be noted in this register and then the applications are forwarded to the office. The collection of fee for registration and inspection has to be checked with the individual registration files available in the Regional Transport Officers office along with 'B' register and register of challans.

**7.25. Registers to be maintained at checkposts, Register of Vehicles passing through the checkpost:-** The Motor Vehicle Inspector in charge of the checkpost is required to maintain this register. Full particulars of the vehicles passing through the checkpost, validity of records of the vehicle (carried in the vehicle), commodities carried, date and time of passing of the vehicle is noted in this register. Signature of the driver or conductor in charge of the vehicle at the time of checking will also be recorded in this register.

An extract of this register will be communicated to the Regional Transport Officer to check whether any vehicle has plied without payment of tax.

**7.26. Returns to be submitted by the departmental officers:-** Some of the important periodical returns submitted by the Regional Transport Offices to the Transport Commissioner are indicated below:

- (i). Demand, Collection and balance Statement:- This statement is prepared by the Regional transport offices every quarter indicating the total demand collection and balance of all taxable vehicles and is submitted to the Transport Commissioner with a copy to Dy. Transport Commissioner. This statement also contains additional particulars of revenues outstanding at the commencement of the quarter, amount accrued during the quarter, amount collected during the quarter, amount written off during the quarter and the balance of arrears outstanding at the end of the quarter.
- (ii). Monthly statement of progress in the collection of arrears:- This is a monthly statement required to be furnished in forms I to V and abstracts I and II showing the yearwise split and written off and the balance outstanding at the end of the month. The details for the balance such as arrears covered by stay orders with or without security, arrears covered by write off proposals, arrears covered by Revenue Recovery Act and arrears collectable by department are also indicated in this statement. Further, details as to the amounts due from private operators of the state, arrears due from the Andhra Pradesh State Road Transport Corporation, arrears due from other departments of the Government and arrears due from private operators and Governments of other states are also given in this statement.
- (iii). Statement showing the particulars of fresh registration and cancellation of old vehicles:- This is a quarterly statement furnished by the Regional Transport Officers to the Transport Commissioner. Full details of the new vehicles registered and cancellation of registration of old vehicles under all categories are indicated in this statement. This statement will be useful to check whether all the taxable vehicles are taken into account in the Demand, Collection and Balance register for purpose of taxation.
- (iv). Statement showing the revenue realised, vehicles registered, number of vehicles taxed, and exempted etc:- This is an annual statement furnished by the Regional Transport Officers to the Transport Commissioner in the prescribed proforma

particulars of vehicles taxes, exempted, total number of vehicles on roll and other details contained in this statement have to be checked with the Demand, Collection and Balance registers and challan registers to see whether the revenue realised and incorporated in this statement agree with the figures in the other registers.

## **CHAPTER-8**

### **PRODUCERE AND PRINCIPLES OF AUDIT**

**8.1** The supreme court has held that it would be information of law if it is stated by a person, body or authority competent and authorised to pronounce upon the law and is invested with authority to do so and that the audit department is also one of the proper machinery to scrutinise and point out the error, if any, in law. While circulating this observation of the Supreme Court, the Comptroller and Auditor General's Office has stated that a heavy responsibility has been placed on the Audit Department by the Supreme Court in the matter of legal interpretation. It has been further observed by the Comptroller and Auditor General's Office that no interpretation should be given unless it is supported by High Court Judgement or Supreme Court Judgement or the opinion of the law Ministry or the instructions of the department tribunal it self, provided they are not contrary to law. In case of doubt, where the Accountant General feels that his point of view is to prepared to that of the Department, but for which no direct authority in case law is available, reference should be made to the Comptroller and Auditor General's Office for decision.

**8.2.** The audit department should not in any way substitute itself for the revenue authorities in the performance of their statutory duties, but should satisfy it self in general that the departmental machinery is sufficiently safeguarded against error and fraud and that so far as can be judged, the procedure is calculated to give effect to the requirement of law.

**8.3.** Audit does not consider it the main part of its duties to review the judgement exercised or the decision taken in individual cases by officers entrusted with those duties, but it must be recognised that an examination of such cases may be an important factor in judging the effectiveness of assessments procedure. Where, for example, information received in any individual case is insufficient to enable, Audit to see how the requirement of law has been complied with Audit may consider it its duty to ask for further information to enable it to form the judgement required of it as to the effectiveness of the system. It is however, towards forming a general judgement rather than to the detection of individual errors that the audit enquiries

should be directed. The detection of individual error is incidental rather than the object of audit.

**8.4. Principles of receipt audit:** -The main principles to be followed in conducting revenue audit are laid down in paras 74 to 86 of Manual of Standing Orders Technical Volume I and are broadly as follows.

- (a). Audit has to satisfy it self that the rules and provision in respect of receipt that are payable into the consolidated fund of the State are designed to secure an effective check on the assessment, collection and proper allocation of revenue.
- (b). That the procedures and checks are properly applied for the purpose of ascertaining that they are being duly observed. Audit may make such examination of accounts as it thinks fit and report thereon.

It will be seen from the above that the scope of audit is unqualified and is left to the discretion of the Comptroller and Auditor General.

Members of audit department will have access to the relevant records and papers of the Revenue Department but they should observe secrecy in the same way as the officers of the department.

**8.5. Audit against Documentation:-** The effectiveness of audit depends largely on the document and records maintained and made available for audit in the Regional Transport Offices. In the initial stages of audit, attention should be directed to see whether there is proper documentation in regard to levy, assessment and collection without which effective audit is not possible. If in the course of this scrutiny, any additional documentation is deemed necessary or any additional columns or information could be added to the existing documents in Governments interests, the same should be suggested to the Government.

**8.6.** In relation to levy of taxes and refunds of taxes audit has to satisfy itself by such test checks as it may consider necessary that the internal procedures adequately provide for and secure.

- (i). The collection and utilisation of date necessary for the computation of demands or refunds under law.
- (ii). The prompt raising of demands on tax payers in the manner required by law;
- (iii). Regular accounting of demands, collection and refunds;
- (iv). The correct accounting and credit to Govt. account of revenues reallsied;
- (v). that proper safeguards exist, to ensure that there is no wilful omission to levy or collect taxes or to issue refunds;
- (vi). That claims on tax payers are pursed with due diligence and are not abandoned or reduced except with adequate justification by the proper authority;
- (vii). That double refunds, fraudulent or forged refund orders or other losses of revenue through fraud, default or mistakes are promptly brought to light and investigated and;
- (viii). That penalties recoverable for belated payment of tax or for other reasons are correctly calculated in accordance with law and that there is no omission to levy or collect the penalties

**8.7.** To discharge these functions effectively, the staff engaged in local audit must be thoroughly conversant with the process and procedures relating to levy and collection of taxes and the laws and the rules governing them.

**8.8. Procedure of Audit:-** The audit of the accounts of the transport officers should be done as prescribed in Comptroller and Auditor General's letter No.1320. Revenue A/8-73, Cir.No.3 dated 5.3.1973. The Audit party normally consists of two Asst. Audit Officers and one auditor. The inspection by a gazetted office should be so arranged that he may be present towards the end of each audit for drafting the local audit report and to discuss with the head of the office inspected.

**8.9.** The important records maintained in the transport offices the returns submitted by them and the checks to be exercised by audit have been dealt within the preceding chapter (dealing with records, registers and returns of the department). On the first day of audit the senior Asst. Audit Officer / Section Officer of the party should make out a statement showing the distribution of work among his party members. The distribution of work should in accordance with the revised allotment

of specific duties to the members in audit parties specified in circular No.6 of 1984 No.252-Rec-A-IV/3(I)-84/gr.I, dt.28.02.84 by C&AG of India.

**8.10.** When an irregularity is noticed, it should be brought to the notice of the departmental officer; by issuing an audit enquiry. Utmost care should be taken in drafting the enquiries. They should be courteously worded and should not be indicative of any directions to the departmental officer. They should bring out the defects and irregularities and the money value of objections should as far as practicable be indicated with full details in support thereof. The departmental officer should be requested to verify the objections and taken such action as deemed fit.

**8.11.** The local audit report should be drafted by the inspecting officer towards the end of audit, after examining the replies furnished by the departmental officer to the audit enquiries. The form of local audit report should be the one followed for other receipt audits and this should be in three parts, viz., part I containing introductory portion and unsettled objections from previous reports and Part II containing major irregularities and important points. This should again be divided into two sections A&B. Objections which are likely to be commented upon in the audit reports should be included in Section – A while others should be included in Section B. Part III would contain other minor objections. In support of the major irregularities included in Part II, extracts of copies of the relevant G.Os notifications or judgements etc., which have a bearing on the objection must be enclosed.

**8.12.** The report should be discussed with the departmental officer before it is sent to the headquarters section. After the report is discussed, a certificate should be got recorded by the departmental officer, on the first page of the report as follows:-

“Certified that the report has been fully discussed and the facts mentioned, therein have been verified and found correct”

No reply to Part III of the report is required but its disposal should be watched during next audit.

**8.13.** The local audit report should be edited by the Head quarters Revenue Audit Section and issued after approval by Senior Deputy Accountant General. The report should be sent to the concerned Regional Transport Officer / Deputy Transport Commissioner with copies to the Deputy Transport Commissioner / Transport Commissioner as the case may be, with a request to send the replies through the controlling officer. Major irregularities and points should be brought to the notice of the Govt. and the Transport Commissioner through special letters. The headquarters section will be responsible for processing the draft paragraphs to be included in the Audit Report. Wherever possible, consolidated paragraphs should be prepared by clubbing individual cases of the same type. An objection book and an adjustment register should be maintained for recording, watching and pursuing objections having money value. Similarly, a progress register should also be maintained for watching the receipt of draft local audit report in the head quarters section, their issue etc. these registers should be closed monthly and submitted to Branch Officer/Senior Deputy Accountant General.

**8.14.** A statement of inspection reports pending for over six months and another statement showing the objections outstanding for over six months in the prescribed form should be sent to Comptroller and Auditor General every quarter in the first week of June, September, December and March every year. The money value of audit objections should also be indicated in the returns furnished. A quarterly report showing the offices from which first replies to the local audit reports are not received, is also communicated to the head of department. If first replies, are not received for six months, such cases are reported to Government.

**8.15.** In order to expedite settlement and dropping of objections the Officers of the Audit Department are vested with powers to settle and drop objections upto certain monetary value. The existing limits are given below.

For settlement of accepted objections:

1	Accountant General	Full powers
2	Group Officer	Rs.1,00,000
3	Headquarters Audit Officer dealing with particular state receipt	Rs. 25,000
4	Headquarters Asst. Audit Officer	Rs. 1,000

For dropping objections not accepted by the Department.

All non-accepted objections raised upto and inclusive of audit cycle 1979-80 not sustainable or cannot be processed as a draft para became they are old can be dropped by Group Officer if the under assessment or loss involved is Rs.1 lakh and less and by A.G. if such value exceeds Rs.1 lakh. If the nature of the dropped objections is of a recurring type, similar objections should be taken in current audit cycle and process them as a Draft para.

In respect of objections raised in 1980-81 and after the monetary limits are as follows.

Accountant General	Full Powers
Group Officers	Rs.25,000
Audit Officer	Rs. 1,000

(A.G's note orders dt.19.09.84 on the Cr. AG's Cir. No.928 Rec. A-IV/52-80 Circular 25 dt.20.8.84).

**8.16.** The headquarters section should arrange to obtain government orders, notifications departmental circular instructions, clarifications and judgements of courts etc., affecting the motor vehicles receipts and examine them. If as a result of such examination, it is found necessary, to take up any issue with Government or the Transport Commissioner, it should be done promptly. Copies of important orders or circulars should be communicated to the audit parties for their guidance. A review of the audit reports of other States should also be undertaken and cases of important irregularities commented in those report should be communicated to the audit parties for their guidance.

**8.17.** The headquarters section should also co-ordinate the activities of departmental audits and serve as a link wherever necessary in the Central or State or vice versa, for example, if a certain receipt item has the effect of affecting the receipt in another head, it may be necessary to inform the other audit party and ensure proper checking.

## **ALLOCATION OF AUDIT WORK AMONG MEMBERS OF STATE**

### **RECEIPT AUDIT PARTIES**

**Note 1:** The documents having asterisk mark against them in the following lists will be reviewed by the Audit Officer incharge of the Audit Party with a view to picking up audit objections. Wherever a percentage for review by Audit Officer has been fixed by this office already or elsewhere herein percentage will apply. Otherwise 10 per cent of cases/documents may be reviewed. The percentages of audit already prescribed will continue except to the extent changes are indicated herein.

**Note 2:** The Audit Officer incharge of party will discuss as an item of work the outstanding objections in local audit reports and their settlement (or earmarking them for dropping) or their conversion into draft paragraphs.

**Note 3:** Though the work allocation to each individual member of the party should be specific and not vague, in the overall interest of completing the work in time allowing for the varying talents of members of an audit party, on the spot adjustment of work allotment of work may be made by Audit Officer or Senior Assistant Audit Officer incharge of audit party. This should be an exception and not become the rule. Therefore, in all the lists below even if it is not mentioned, it is to be understood that there exists an item of work for Assistant Audit Officer/Section Officer reading “Any item of work allotted by Audit Officer” and for Auditor reading “Any item of work allotted by Audit Officer or Assistant Audit Officer designated by Audit Officer”. In the interest of work Audit officer will be free also to allot any item of work to himself instead of allotting it to Assistant Audit Officer or Auditor as per these lists.

**Note 4:** In the local audit report with the superscription “O/N” the name of member of party detecting a potential draft para point should be mentioned in brief to draft para sent to Headquarters also. During the visits to parties, the group officers should also review some of the high value audit cases done or to be done by Audit Officer/Assistant Audit Officer and Audit Report material detected by him should be mentioned by Audit Officer/Assistant Audit Officer in the Local Audit Report against his name.

## **MOTOR VEHICLE TAX AND PASSENGER AND GOODS TAX**

### **I. Audit Officer**

1. Revenue of items marked with asterisk and discussion of outstanding Local Audit paras.
2. Allocation of work to Audit Officer, Assistant Audit Officer/Section Officer/Auditor enable cross check with records in other Excise and Taxation Offices with those in Motor Vehicle Registration Offices, where all the taxes in this Section (E) and connected taxes are not dealt in same office.
3. Payment of passenger and goods tax in lumpsum in excess of Rs.5000/- (Audit Officer may raise or lower this limit to ensure that 25 per cent of all lumpsum payments of high value are audited by him).

### **II. Assistant Audit Officer/Section Officer**

1. Audit of registers and files dealing with recovery and demand of vehicle (token) tax and fee for registration and re-registration and fitness certificate.
2. Audit of registers and files dealing with recovery, remittance and demand of fees, penalty etc., under National, Zonal and Bilateral permit schemes, including watching and checking recoveries and dues from other states and finding system defects.
3. Audit of registers and files dealing with recovery of tax or licence fees for plying contract and stage carriage vehicles and renewal of licences.
4. Audit of registers and files dealing with Assessment of rates of vehicle tax based on vehicle weight etc.
5. Audit of assessment files relating to passenger and goods tax bases on freight/seating capacity of vehicle or weight, other than compounded rate or lumpsum payments including assessment of such tax on stage and contract carriages.
6. Payments of passenger and goods tax at compounded rates or as lumpsum above Rs.1,000 and below Rs.5,000 (or such limits as Audit Office may fix to ensure that 50 per cent of such payments are audited by Assistant Audit Officers).
7. Audit of files dealing with levy of fines, penalties, composition fees on compounding of offence, appeal fees, refunds (other than refund of token tax) and exemption.

### **III. Auditor**

1. Audit of registers and files dealing with issue or renewal of driving licences and conductor's licences.
2. Check of 10% recoveries posted in D&C and such register/registers with payment documents or treasury records e.g. challans.
3. Collection of details of 10 per cent of entries in records of vehicles transferred to jurisdiction of other offices in same or other states for tracing in other offices by reference to other audit parties or other Accountant General (Audit)/Director of Audit to see if tax is being recovered in the other offices without break.
4. Check of cash books, receipt books and other registers and relevant records.
5. Records in outposts, if any.
6. Refunds of token tax.
7. Payment of passenger and goods tax compounded or made in lumpsum where amount does not exceed Rs.1,000.

(Audit Officer may raise or lower this limit to ensure that 25 per cent of such payments are audited by Auditor).

(Cr.Ar.G.Cir.No.6 of 1984 No.252 – Rec – A-IV/3(I)-84/gr.I, dt.28.2.84).

### **Verification of remittances with Treasury**

The following procedure has been prescribed.

1. 2 Months Credits as appearing in the Departmental records have to be checked with the original records of the treasury.
2. In addition to the above, 5% of the receipts/credits appearing in the Demand Collection Balance Register/Collection Register/Tax posting Register/Licence Fee Register etc., also have to be verified with the original records of the treasury.

(C&Ar.G's Circular No.13 of 1974 dt.8.8.74 and C&Ar.G's Lr.No.139-Rec-A-IV/8-73 KW, dt.18.3.75, and SRA (Hq) Circular No.6 SRA /1-28/A/Genl. Dt.29.4.75.

## **CHAPTER - 9**

### **CHAPTER ON COMPUTERISATION**

#### **CFST – CITIZEN FRIENDLY SERVICES OF TRANSPORT DEPARTMENT**

Computerisation in the department was first taken up in the year 1988 and implemented in phased manner. Government has appointed an Evaluation Committee in G.O.Ms.NO.278, Tr.R&B Department, dated.30<sup>th</sup> march1999 to guide the department in computerisation of its offices. After several meetings the committee has selected M/s Tata Infotech Ltd. as service provider for the Transport Department on ‘Facility Management’ basis.

#### **OVERVIEW:**

The objective of computerisation is to make the Transport Department Citizen friendly in its functioning and provide SMART services to the public. It is intended to build comprehensive database and provide on-line services to the public covering all gamut of services of Transport Department like Issue of Driving Licenses, Registration, Permits, Taxation etc. All the offices in the state have inter-connectivity through APSWAN. A logo also has been chosen for this project namely ‘CFST’, which stands for Citizen Friendly Services of Transport Department. APTS has been appointed as technical consultants.

After watching the software demonstration by 4 different companies, the evaluation committee has finally chosen the software developed by M/s. Tata Infotech Ltd., as it is comprehensive application software, covering all aspects of the Transport Department’s functions. This software is operable on Windows NT and supported by Oracle database. It is also seen that it is compatible for inter-connectivity. The Application software developed by M/s. Tata Infotech Ltd, has been purchased on one time basis including source code, which can be replicated / modified through out the state including in e-seva project.

The officials of Transport Department have under taken a System Study along with the representatives of M/s. Tata Infotech Ltd. and finalised the software

requirement specifications (SRS). Further, the Acceptance Criteria and the Acceptance Test Plan have also been finalised and signed.

The main objectives of computerization is as follows:

**Objectives:**

- Improved citizen services
  - \* Issue of learner licences – Same day
  - \* Issue of driving licences – Same day
  - \* Renewal of driving licences – 2 hours – Same day
  - \* Issue of duplicate driving licences – 2 hours – Same day
  - \* International Driving Permit – 2 hours – Same day
  - \* Registration of vehicles – Same day
  - \* Issue of Duplicate Registration Certificate – 2 hours – Same day
  - \* Effecting Transfer of ownership – Same day
  - \* Endorsement of Hire purchase agreement / termination – Same day
  - \* Effecting Change of residence / place of business – Same day
  - \* Issue of tax tokens – 2 hours – Same day
  - \* Issue of Permits – Same day
  - \* Issue of Fitness Certificates – Same day

- Improved Revenue collections.
- Centralised information for effective decision making.

**Achievements:**

- Connectivity to e-seva centers for payment of vehicle taxes
- Introduction of SMS Systems to relevant personnel for retrieving vehicles and license particulars.
- Interconnectivity between CFST system and Police Department for online transmission of data.
- Introduction of ELLR System (Testing on Computer).
- Computerisation of 31 Unit offices across the state

The retrieval of data from the computer system has to be generated by executing queries which is detailed in the Annexure.

**Queries:**

- To retrieve to list of non payment of taxes in respect of Transport Vehicles (Active and inactive)
- To obtain a list of challan remittances
- List of amounts received by way of Challans, Cash & Demand drafts
- List of vehicles for which penalty was short collected etc.

**A.O./SRA(MVT Manual Updation)**

**Sr. A.O./SRA**

**Sr. DAG/SRA**





**SATHYABAMA**

INSTITUTE OF SCIENCE AND TECHNOLOGY

(DEEMED TO BE UNIVERSITY)

Accredited "A" Grade by NAAC | 12B Status by UGC | Approved by AICTE

[www.sathyabama.ac.in](http://www.sathyabama.ac.in)

---

**SCHOOL OF MANAGEMENT STUDIES**

**UNIT I INCOME TAX LAW AND PRACTICE –SBAX1022**

# **Chapter 1**

## **Income Tax in India --- An Introduction**

### **BRIEF HISTORY OF INCOME TAX IN INDIA**

In India, Income tax was introduced for the first time in 1860, by Sir James Wilson in order to meet the losses sustained by the Government on account of the Military Mutiny of 1857. Thereafter; several amendments were made in it from time to time. In 1886, a separate Income tax act was passed. This act remained in force up to, with various amendments from time to time. In 1918, a new income tax was passed and again it was replaced by another new act which was passed in 1922. This Act remained in force up to the assessment year 1961-62 with numerous amendments. The Income Tax Act of 1922 had become very complicated on account of innumerable amendments. The Government of India therefore referred it to the law commission in 1956 with a view to simplify and prevent the evasion of tax. The law commission submitted its report-in September 1958, but in the meantime the Government of India had appointed the Direct Taxes Administration Enquiry Committee submitted its report in 1956. In consultation with the Ministry of Law finally the Income Tax Act, 1961 was passed. The Income Tax Act 1961 has been brought into force with 1 April 1962. It applies to the whole of India including Jammu and Kashmir.

#### **Income-tax law in India**

The income tax law in India consists of the following components:

1. Income tax Acts
2. Income tax rules
3. Finance Act
4. Circulars, notifications etc
5. Legal decision of courts.

#### **Finance Act:**

Every year, the Finance Minister of the Government of India presents the Budget to the Parliament. Once the Finance Bill is approved by the Parliament and gets the assent of the President of India, it becomes the Finance Act.

#### **Income-tax Rules:**

The administration of direct taxes is looked after by the Central Board of Direct Taxes (CBDT). The CBDT is empowered to make rules for carrying out the purposes of the Act. For the proper administration of the Income-tax Act, the CBDT frames rules from time to time. These rules are collectively called Income-tax Rules, 1962.

#### **Important Definitions**

##### **Assessment Year : Section 2(9)**

“Assessment year” means the period starting from April 1 and ending on March 31 of the next year. Eg: Assessment year 2013-14 which commences on April 1, 2013 and ends on March 31, 2014. Income of previous year of an assessee is taxed during the assessment year at the rates prescribed by the relevant Finance Act for tax rates.

### **Previous year : section 3**

Income earned in a particular year is taxable in the next year. The year in which income is earned is known as previous year and the next year in which income is taxable is known as assessment year. In other words, previous year is the financial year immediately proceeding the assessment year.

### **Exceptions to the general rule that previous year's income is taxable during the assessment year**

In the following situations income of an assessee is liable to be assessed to tax in the same year in which he earns the income:

- a. Income of non-residents from shipping;
- b. Income of persons leaving India either permanently or for a long period of time;
- c. Income of bodies formed for short duration;
- d. Income of a person trying to alienate his assets with a view to avoiding payment of tax;
- e. Income of a discontinued business.

### **Person : Section 2(31)**

The term "person" includes:

1. an individual;
2. a Hindu undivided family;
3. a company;
4. a firm;
5. an association of persons or a body of individuals , whether incorporated or not;
6. a local authority; and
7. every artificial juridical person not falling with in any of the preceding categories.

### **Assessee : Section 2(7)**

Every person in respect of whom, any proceeding under the act has been taken for the assessment of his income or of the income of any other person in respect of which he is assessable or of the loss sustained by him or by such other person or the amount of refund due to him or to such other person may be called an assessee.

### **Deemed Assessee:**

A person who is deemed to be an assessee for some other person is called "Deemed Assessee".

### **Assessee In Default:**

When a person is responsible for doing any work under the Income Tax Act and he fails to do it, he is called an "Assessee in default".

### **Assessment [Section 2(8)]**

This is the procedure by which the income of an assessee is determined by the Assessing Officer.

### **Basis Of Charge Of Income Tax Sec : 4**

To know the procedure for charging tax on income, one should be familiar with the following:

- 1. Annual tax -** Income-tax is an annual tax on income.
- 2. Tax rate of assessment year -** Income of previous year is chargeable to tax in the next following assessment year at the tax rates applicable for the assessment year. This rule is, however, subject to some exceptions
- 3. Rates fixed by Finance Act -** Tax rates are fixed by the annual Finance Act and not by the Income-tax Act. For instance, the Finance Act, 2013, fixes tax rates for the Assessment year 2013-14.
- 4. Tax on person -** Tax is charged on every person
- 5. Tax on total income -** Tax is levied on the "total income" of every assessee computed in accordance with the provisions of the Act.

## **INCOME : Section2 (24)**

The definition of the term “income” in section 2(24) is inclusive and not exhaustive. Therefore, the term “income” not only includes those things that are included in section 2(24) but also includes those things that the term signifies according to its general and natural meaning. Income, in general, means a periodic monetary return which accrues or is expected to accrue regularly from definite sources. However, under the Income-tax Act, 1961, even certain income which do not arise regularly are treated as income for tax purposes e.g. Winnings from lotteries, crossword puzzles.

Section 2(24) of the Act gives a statutory definition of income.

At present, the following items of receipts are included in income:—

- (1) Profits and gains.
- (2) Dividends.
- (3) Voluntary contributions received by a trust/institution created wholly or partly for charitable or religious purposes or by an association or institution
- (4) The value of any perquisite or profit in lieu of salary taxable under section 17.
- (5) Any special allowance or benefit other than the perquisite included above, specifically granted to the assessee to meet expenses wholly, necessarily and exclusively for the performance of the duties of an office or employment of profit.
- (6) Any allowance granted to the assessee to meet his personal expenses at the place where the duties of his office or employment of profit are ordinarily performed by him or at a place where he ordinarily resides or to compensate him for the increased cost of living.
- (7) The value of any benefit or perquisite whether convertible into money or not, obtained from a company either by a director or by a person who has a substantial interest in the company or by a relative of the director or such person and any sum paid by any such company in respect of any obligation which, but for such payment would have been payable by the director or other person aforesaid.
- (8) The value of any benefit or perquisite, whether convertible into money or not, which is obtained by any representative assessee mentioned under section 160(1)(iii) and (iv), or by any beneficiary or any amount paid by the representative assessee for the benefit of the beneficiary which the beneficiary would have ordinarily been required to pay.
- (9) Deemed profits chargeable to tax under section 41 or section 59.
- (10) Profits and gains of business or profession chargeable to tax under section 28.
- (11) Any capital gains chargeable under section 45.
- (12) The profits and gains of any insurance business carried on by Mutual Insurance Company or by a cooperative society, computed in accordance with Section 44 or any surplus taken to be such profits and gains by virtue of the provisions contained in the first Schedule to the Act.
- (13) The profits and gains of any business of banking (including providing credit facilities) carried on by a co-operative society with its members.
- (14) Any winnings from lotteries, cross-word puzzles, races including horse races, card games and other games of any sort or from gambling, or betting of any form or nature whatsoever.
- (15) Any sum received by the assessee from his employees as contributions to any provident fund or superannuation fund or Employees State Insurance Fund (ESI) or any other fund for the welfare of such employees.

(16) Any sum received under a Keyman insurance policy including the sum allocated by way of bonus on such policy will constitute income. "Keyman insurance policy" means a life insurance policy taken by a person on the life of another person where the latter is or was an employee or is or was connected in any manner what so ever with the former's business.

(17) Any sum referred to clause (va) of Section 28. Thus, any sum, whether received or receivable in cash or kind, under an agreement for not carrying out any activity in relation to any business; or not sharing any know-how, patent, copy right, trade-mark, licence, franchise, or any other business or commercial right of a similar nature, or information or technique likely to assist in the manufacture or processing of goods or provision of services, shall be chargeable to income tax under the head "profits and gains of business or profession".

(18) Any sum of money or value of property referred to in section 56(2)(vii) or section 56(2)(viia).

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

#### **Gross Total Income Sec: 80b (5)**

As per section 14, the income of a person is computed under the following five heads:

1. Salaries.
2. Income from house property.
3. Profits and gains of business or profession.
4. Capital gains.
5. Income from other sources.

If the income is not derived from any of the above sources, it is not taxable under the act. The aggregate income under these heads is termed as "gross total income".

#### **Total Income Sec : 2(45)**

Total income means the the amount left after making the deductions under section 80C to 80U from the gross total income.

#### **Casual Income**

Any receipt which is of a casual and non-recurring nature is called casual income. Casual income includes the following receipts:

1. Winning from lotteries,
2. Winning from crossword puzzles,
3. Winning from races (including horse races),
4. Winning from card games and other games of any sort
5. Winning from gambling or betting of any form or nature.

### **RATES OF INCOME TAX FOR THE ASSESSMENT YEAR 20203-21**

**General Rates** (Excluding short term capital gains specified in sec:111A, long term capital gains, winning from lottery, cross word puzzle, races, etc.):

Individual- Super senior citizen (80 years or more):

Upto Rs: 2,50,000 : Nil

Rs: 500,001 to 10,00,000 : 20%

Above Rs:10,00,000 : 30%

**Individual- Senior citizen (60 years or more but less than 80 years):**

Upto Rs: 3,00,000	: Nil
Rs: 3,00,001 to 5,00,000	: 5%
Rs: 5,00,001 to 10,00,000	: 20%
Above Rs:10,00,000	: 30%

**Other individuals, (Above 80 years)**

Upto Rs: 5,00,000	: Nil
Rs: 5,00,001 to 10,00,000	: 20%
Above Rs: 10,00,000	: 30%

**Special Rates:**

On short term capital gains specified in Sec. 111A	: 15%
On long term capital gains	: 20%
On gains from listed shares without indexing the cost of acquisition	: 10%
On winnings from lottery, cross word puzzle, horse race, etc.	: 30%

Surcharge: Nil

**Education Cess:** 3% on the amount of income tax.

**Agriculture income**

Agriculture income is exempt under the Indian Income Tax Act. This means that income earned from agricultural operations is not taxed. The reason for exemption of agriculture income from Central Taxation is that the Constitution gives exclusive power to make laws with respect to taxes on agricultural income to the State Legislature. However while computing tax on non-agricultural income agricultural income is also taken into consideration. As per Income Tax Act income earned from any of the under given three sources meant Agricultural Income;

- (i) Any rent received from land which is used for agricultural purpose.
- (ii) Any income derived from such land by agricultural operations including processing of agricultural produce, raised or received as rent in kind so as to render it fit for the market, or sale of such produce.
- (iii) Income attributable to a farm house subject to the condition that building is situated on or in the immediate vicinity of the land and is used as a dwelling house, store house etc.

Now income earned from carrying nursery operations is also considered as agricultural income and hence exempt from income tax.

In order to consider an income as agricultural income certain points have to be kept in mind:

- (i) There must me a land.
- (ii) The land is being used for agricultural operations.
- (iii) Agricultural operation means that efforts have been induced for the crop to sprout out of the land .
- (iv) If any rent is being received from the land then in order to assess that rental income as agricultural income there must be agricultural activities on the land.
- (v) In order to assess income of farm house as agricultural income the farm house building must be situated on the land itself only and is used as a store house/dwelling house.

**Certain income which is treated as Agriculture Income:**

- (a) Income from sale of replanted trees.
- (b) Rent received for agricultural land.
- (c) Income from growing flowers and creepers.
- (d) Share of profit of a partner from a firm engaged in agricultural operations.
- (e) Interest on capital received by a partner from a firm engaged in agricultural operations.
- (f) Income derived from sale of seeds.

**Certain income which is not treated as Agricultural Income:**

- (a) Income from poultry farming.
- (b) Income from bee hiving.
- (c) Income from sale of spontaneously grown trees.
- (d) Income from dairy farming.
- (e) Purchase of standing crop.
- (f) Dividend paid by a company out of its agriculture income.
- (g) Income of salt produced by flooding the land with sea water.
- (h) Royalty income from mines.
- (i) Income from butter and cheese making.
- (j) Receipts from TV serial shooting in farm house is not agriculture income.

**Partly agriculture income**

Partly agricultural income consists of both the element of agriculture and business, so non agricultural part of the income is taxed. Some examples for partly agricultural income are given below:

**1. Profit of business other than Tea**

This rule applicable to agricultural produce like cotton, tobacco, and sugarcane etc, here the market value of the agricultural produce raised by the Assessee for utilizing it as raw material for his business will be deducted out of the total profit of such Assessee while calculating tax on his income.

**2. Profit from Tea manufacturing**

If a person using his own tealeaves grown by him for his tea manufacturing business, then 60 % of his income will be treated as agricultural income and the remaining 40 % will be treated as business income. So he has to pay tax on that remaining 40% of income.

**3. Income from the manufacturing of centrifuged latex or cenex**

If a person manufacturing centrifuged latex by using his own made raw then, 65 % of the income derived from the sale of the same is treated as agricultural income so he has to pay tax remaining part of the income.

**4. Income from the coffee manufacturing**

a) 75% of the income derived from the sale of coffee grown and cured by the seller in India is deemed to be agricultural income 25% is taken as business income.

b) 65% the income derived from the sale of coffee grown, cured, roasted and grounded by the seller in India is deemed to be agricultural income 40% is taken as business income.

**Illustration:1** Mr. Ramsanth had estates in Rubber, tea and coffee. He derives income from them. He furnishes the following particulars of his income for the year ending 31-3-2013.

Manufacture of rubber Rs: 5,00,000

Manufacture of coffee grown and cured Rs: 3,50,000

Manufacture of tea Rs: 7,00,000

Compute taxable income of Ramsanth for the A.Y. 2013-14.

**Solution :**

## **Computation of Taxable income for the A.Y.2013-14:**

Manufacture of rubber ( 35% is non-agricultural income) : 175,000

Manufacturing of Coffee (25% is non-agricultural income): 87,500

Manufacturing of tea ( 40% is non-agricultural income) : 2,80,000

**Taxable Income** : 5,42,500

## **Capital and revenue receipts and expenditure**

Receipts which are non-recurring (not received again and again) by nature and whose benefit is enjoyed over a long period are called "Capital Receipts", e.g. money brought into the business by the owner (capital invested), loan from bank, sale proceeds of fixed assets etc. Capital receipt is shown on the liabilities side of the Balance Sheet.

receipts which are recurring (received again and again) by nature and which are available for meeting all day to day expenses (revenue expenditure) of a business concern are known as "Revenue receipts", e.g. sale proceeds of goods, interest received, commission received, rent received, dividend received etc.

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

No.	Revenue Receipt	Capital Receipt
1	It has short-term effect. The benefit is enjoyed within one accounting period.	It has long-term effect. The benefit is enjoyed for many years in future.
2	It occurs repeatedly. It is recurring and Regular in nature.	It does not occur again and again. It is nonrecurring and irregular in nature.
3	It is shown in profit and loss account on the credit side.	It is shown in the Balance Sheet on the liability side.
4	It does not produce capital receipt.	Capital receipt, when invested, produces revenue receipt e.g. when capital is invested by the owner, business gets revenue receipt (i.e. sale proceeds of goods etc.).
5	This does not increase or decrease the value of asset or liability.	The capital receipt decreases the value of asset or increases the value of liability e.g. sale of a fixed asset, loan from bank etc.
6	Sometimes, expenses of capital nature are to be incurred for revenue receipt, e.g. purchase of shares of a company is capital expenditure but dividend received on shares is a revenue receipt.	Sometimes expenses of revenue nature are to be incurred for such receipt e.g. on obtaining loan (a capital receipt) interest is paid until its repayment.

### **Difference between Capital Expenditure and Revenue Expenditure:**

No.	Revenue Expenditure	Capital Expenditure
1	Its effect is temporary, i.e. the benefit is received within the accounting year.	Its effect is long-term, i.e. it is not exhausted within the current accounting year-its benefit is received for a number of years in future.
2	Neither an asset is acquired nor is the value of an asset increased.	An asset is acquired or the value of an existing asset is increased.
3	It has no physical existence because it is incurred on items which are used by the business.	Generally it has physical existence except intangible assets.
4	It is recurring and regular and it occurs repeatedly.	It does not occur again and again. It is nonrecurring and irregular.
5	This expenditure helps to maintain the business.	This expenditure improves the position of the business.
6	The whole amount of this expenditure is shown in trading P & L A/c or income statement.	A portion of this expenditure (depreciation on assets) is shown in trading & P & L A/c and the balance are shown in the balance sheet on asset side.
7	It does not appear in the balance sheet.	It appears in the balance sheet until its benefit is fully exhausted.
8	It reduces revenue (profit) of the business	It does not reduce the revenue of the concern.

### **Residential Status And Tax Incidence**

Tax incidence on an assessee depends on his residential status. The residential status of an assessee is determined with reference to his residence in India during the previous year. Therefore, the determination of the residential status of a person is very significant in order to find out his tax liability. Residence and citizenship are two different things. The incidence of tax has nothing to do with citizenship.

### **Residential Status of an Individual**

As per section 6, an individual may be (a) resident and ordinarily resident in India, (b) resident but not ordinarily resident in India, or(c) non-resident in India. The following are the two sets of conditions for determining the residential status of an individual:

#### **Basic conditions :**

He is in India in the previous year for a period of 182 days or more

**OR**

He is in India for a period of 60 days or more during the previous year and has been in India for a period of 365 days or more during 4 years immediately preceding the previous year.

**Note:** In the following two cases, an individual needs to be present in India for a minimum of 182 days or more in order to become resident in India:

- (a) An Indian citizen who leaves India during the previous year for the purpose of taking employment outside India or an Indian citizen leaving India during the previous year as a member of the crew of an Indian ship.
- (b) An Indian citizen or a person of Indian origin who comes on visit to India during the previous year (a person is said to be of Indian origin if either he or any of his parents or any of his grandparents was born in undivided India).

**Additional Conditions:**

(i) He has been resident in India in at least 2 out of 10 previous years [according to basic condition noted above] immediately preceding the relevant previous year.

AND

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

**Resident**

An individual is said to be resident in India if he satisfies any one of the basic conditions.

**(A) Resident And Ordinarily Resident**

An individual is said to be resident and ordinarily resident in India if he satisfies any one of the basic conditions and both of the additional conditions.

**(B) Resident But Not Ordinarily Resident**

An individual is said to be resident but not ordinarily resident in India if he satisfies any one of the basic conditions but not satisfies both of the additional conditions.

**Non-Resident**

An individual is a non-resident in India if he satisfies none of the basic conditions.

**Residential Status Of A Hindu Undivided Family**

As per section 6(2), a Hindu undivided family (like an individual) is either resident in India or non-resident in India. A resident Hindu undivided family is either ordinarily resident or not ordinarily resident.

**HUF : Resident or Non-Resident**

A Hindu undivided family is said to be resident in India if control and management of its affairs is wholly or partly situated in India. A Hindu undivided family is non-resident in India if control and management of its affairs is wholly situated outside India.

A resident Hindu undivided family is an ordinarily resident in India if the karta or manager of the family (including successive kartas) satisfies the following two additional conditions as laid down by section 6(6)(b).

**Additional condition (i)** Karta has been resident in India in at least 2 out of 10 previous years [according to the basic condition mentioned in immediately preceding the relevant previous year]

**Additional condition (ii)** Karta has been present in India for a period of 730 days or more during 7 years immediately preceding the previous year.

If the Karta or manager of a resident Hindu undivided family does not satisfy the two additional conditions, the family is treated as resident but not ordinarily resident in India.

### **Residential Status of Firm and Association of Persons**

As per section 6(2), a partnership firm and an association of persons are said to be resident in India if control and management of their affairs are wholly or partly situated within India during the relevant previous year. They are, however, treated as non-resident in India if control and management of their affairs are situated wholly outside India.

### **Residential Status of a Company**

As per section 6(3), an Indian company is always resident in India. A foreign company is resident in India only if, during the previous year, control and management of its affairs is situated wholly in India. However, a foreign company is treated as non-resident if, during the previous year, control and management of its affairs is either wholly or partly situated out of India.

### **Illustration:2**

Mr. Alex Joseph, an American, came to India for the first time 10-01-2009 and left for Britain on 15-09-2009. He again came to India on 01-05-2012 and left for Korea on 15-06-2012. Determine his residential status.

### **Solution:**

During the previous year 2012-13, Mr. Alex Joseph was in India only for 46 days only. So he is a non-resident for the assessment year 2013-14.

### **Illustration:3**

Mr. Ahammed Khan, a citizen of India went to Tokyo to join a course in Business Administration on 01-03-2012 and came back to India on 5<sup>th</sup> September, 2012. Determine his residential status for the A.Y 2013-14.

### **Solution:**

During the P.Y. 2012-13, Ahammed Khan was in India for a period of 208 days (26+31+30+31+31+28+31), and therefore he satisfies the basic conditions. As he satisfies both the additional conditions, he is ordinarily resident for the A.Y. 2013-14.

### **Scope of Total Income (Section 5) :**

#### **Resident and ordinarily resident:**

Total income of an assessee who is resident and ordinarily resident includes:

- (a) any income received or deemed to be received in India during the previous year by or on behalf of the assessee ; or
- (b) any income accrues or arises or deemed to accrue or arise to him in India during the previous year ; or
- (c) any income accrues or arises to him outside India during such year.

#### **Resident but not ordinarily resident:**

- (a) any income received or deemed to be received in India during the previous year by or on behalf of the assessee ; or
- (b) any income accrues or arises or deemed to accrue or arise to him in India during the previous year ; or
- (c) any income accrues or arises to him outside India from a business controlled in or a profession set up in India.

#### **Non- resident:**

- (a) any income received or deemed to be received in India during the previous year by or on behalf of the assessee ; or any income accrues or arises or deemed to accrue or arise to him in India during the previous year.

## The following table is the scope / chargeability of tax on income

	R.O.R.	RNOR.	NR
<b>Foreign Income</b> Income accrued/Deemed to be accrued Income arised /Deemed to be arised Received or Deemed to be received	Taxable	Taxable	Taxable
<b>Foreign Income</b> Income which accrues or arises outside India from			
1. Business controlled in India 2. controlled out side India	Taxable Taxable	Taxable Not taxable	Not taxable Not taxable
2. Profession:			
Set up in India	Taxable	Taxable	Not taxable
Set up out side India	Taxable	Not taxable	Not taxable
3. any other:			
Irrespective of the place of control	Taxable	Not taxable	Not taxable

# **Income Exempt from Income Tax**

The following Income is exempt from Income tax:-

1. Agriculture Income [Sec. 10(1)]
2. Payments received from family income by a member of HUF [Sec. 10(2)]
3. Share of profit from a firm [Sec. 10(2A)]
4. Interest received by a non resident from prescribed securities [Sec. 10(4)]
5. Interest received by a person who is resident outside India on amounts credited in the non-resident (External) account [Sec. 10(4)]
6. Leave travel concession provided by as employer to his Indian citizen employee, Sec. 10(5)]
7. Remuneration received by foreign diplomats of all categories [Sec. 10(6)]
8. Salary received by a foreign citizen as an employee of a foreign enterprise provided his stay in India does not exceed 90 days [Sec. 10(6)(vi)]
9. Salary received by a non-resident foreign citizen as a member of ship's crew provided his total stay in India does not exceed 90 days [Sec. 10(6)(vii)]
10. Remuneration received by an employee, being a foreign national, of a foreign government deputed in India for training in a Government establishment or public sector undertaking [Sec. 10(6)(xi)]
11. Tax paid on behalf of foreign companies [Sec. 10(6A)]
12. Tax paid by Government or an Indian concern in case of a non-resident / foreign company [Sec. 10(6B)]
13. Income arising to notified foreign companies from services provided in or outside India in project connected with the security of India [Sec. 10(6C)]
14. Foreign allowance granted by the Government of India to its employees posted abroad [Sec. 10(7)]
15. Remuneration received from a foreign Government by an individual who is in India in connection with any sponsored co-operative technical assistance programme with a foreign Government and the income of the family members of such employee [Sec. 10(8)and(9)]
16. Remuneration / fee received by non-received consultants and their foreign employees [Sec. 10(8A),(8B) and (9)]
17. Death-cum-retirement gratuity [Sec. 10(10)]
18. Commuted value of pension and any payment received by way of commutation of pension by an individual out of annuity plan of LIC or any other insurer from a fund set up by that corporation or insurer [Sec. 10(10A)]
19. Leave salary [Sec. 10(10AA)]
20. Retrenchment compensation [Sec. 10(10B)]
21. Compensation received by victims of Bhopal gas leak disaster [Sec. 10(10BB)]
22. Compensation from the Central Government or a state Government or a local authority received by an individual or his legal heir on account of any disaster [Sec. 10(10BC)]
23. Compensation received from a public sector company at the time of voluntary retirement or separation [Sec. 10(10C)]
24. Tax on perquisite paid by employer [Sec. 10(10CC)]

25. Any sum (including bonus) on life insurance policy (not being a keyman insurance policy) [Sec. 10(10D)]
26. Any amount from provident fund paid to retiring employee [Sec. 10(11)]
27. Amount from an approved superannuation fund to legal heirs of the employee [Sec. 10(13)]
28. House rent allowance subject to certain limits [Sec. 10(13A)]
29. Special allowance granted to an employee [Sec. 10(14)]
30. Interest from certain exempted securities [Sec. 10(15)]
31. Payment made by an Indian company, engaged in the business of operation of an aircraft, to acquire an aircraft on lease from a foreign Government or foreign enterprise [Sec. 10(15A)]
32. Scholarship granted to meet the cost of education [Sec. 10(16)]
33. Daily allowance of a member of parliament or state Legislature (entire amount is exempt), any other allowance subject to certain conditions [Sec. 10(17)]
34. Rewards given by the central or state Government for literary, scientific or artistic work or attainment or for service for alleviating or for service for alleviating the distress of the poor, the weak and the ailing, or for proficiency in sports and games or gallantry awards approved by the Government [Sec. 10(17A)]
35. Pension and family pension of gallery award winners [Sec. 10(18)]
36. Family pension received by family members of armed forces [Sec. 10(19)]
37. National property income of any one place occupied by a former ruler [Sec. 10(19A)]
38. Income from local authorities [Sec. 10(20)]
39. Any income of housing boards constituted in India for planning, development or improvement of cities, town or villages [Sec. 10(20A)]
40. Any income of an approved scientific research association [Sec. 10(21)]
41. Income of specified non- agencies [Sec. 10(22B)]
42. Any income (other than interest on securities income from property income received for rendering any specific services and income by way of interest or dividends) of approved professional bodies [Sec. 10(23A)]
43. Any income received by any person on behalf of any regimental fund or non public fund established by the armed forces of the union for the welfare of the past and present members of the such forces or their dependents [Sec. 10(23AA)]
44. Income of funds established for the welfare of employees [Sec. 10(23AAA)]
45. Any income of the pension fund set by LIC or any other insurer approved by the controller of insurance or insurance Regulatory and development authority [Sec. 10(23AAB)]
46. any income (other than business income) of a trust or a society approved by Khadi and village industries commission [Sec. 10(23B)]
47. Income of an authority whether known as Khadi and village industries board or by any other name for the development of Khadi and village industries [Sec. 10(23BB)]
48. Income of the European Economic Community derived in India by way of, interest, dividends or capital gains in certain cases [Section 10(23 BBB)]
49. Any income arising to anybody or authority established, constituted or appointed under any enactment for the administration of public religious or charitable trusts or endowments or societies for religious or charitable purposes [Section 10(23BBA)]

50. Income of SAARC Fund for Regional Projects, set up by Colombo Declaration [Section 10(23BBC)]
51. Any income of Secretariat of Asian Organisation of Supreme Audit Institutions [Section 10(23BBD)]
52. Any income received by any person on behalf of specified national funds and approved public charitable trust or institution [Section 10(23C)]
53. Income of Mutual Fund set up by — a public sector bank or a public financial institution [Section 10(23D)]
54. Any income by way of dividend, or long term capital gains of venture capital funds and venture capital companies [Section 10(23F)]
55. Income of a member of Scheduled Tribe, living in Nagaland, Manipur, Tripura, Arunachal Pradesh and Mizoram from any source arising by reason of his employment therein and income by way of dividend and interest on securities [Section 10(26)]
56. Any income accruing or arising to any resident of Ladakh from any source therein or out of India before the assessment year 1989-90, provided that such person was resident in Ladakh in the previous year relevant to the assessment year 1962-63 [Section 10(26A)]
57. Any income of a statutory Central or State corporation or of a body/institution, financed by the Government formed for promoting the interest of Scheduled Castes/Tribes [Section 10(26B)]
58. Income of co-operative society formed for promoting interests of members of Scheduled Castes/Scheduled Tribes [Section 10(27)]
59. Income by way of subsidy from Tea Board for replanting or replacement of tea bushes or for the purpose of rejuvenation or consolidation of areas used for cultivation of tea in India [Section 10(30)]
60. Subsidy received by planters of Rubber, Coffee, Cardamom [Section 10(31)]
61. Income of a minor child up to Rs. 1,500 in respect of each minor child whose income is includable under section 64(1A) [Section 10(32)]
62. Any income by way of Capital gains on transfer of US-64 units [Section 10(33)]
63. Dividend on or after April, 2003 from domestic companies [Section 10(34)]
64. Income on units of Mutual Funds on or after April 1, 2003 [Section 10(35)]
65. Long term Capital gains on transfer of listed Equity Shares purchased during 1-3-2003 to 29-2-2004 [Section 10(36)]
66. Capital gain to individual/HUF on compensation received on compulsory acquisition of urban agriculture land [Section 10(37)]
67. Long term capital gain in some cases [Section 10(38)]
68. Sum received without consideration from international sporting event held in India [Section 10(39)]
69. Income of Industrial Units situated in trade-free zones, specified technology parks etc. [Section 10A]
70. Income from specified 100% export oriented undertakings [Section 10B]
71. Income from property held for approved charitable or religious purposes [Section 11]
72. Specified Income of Registered political parties [Section 13A]



**SATHYABAMA**

INSTITUTE OF SCIENCE AND TECHNOLOGY

(DEEMED TO BE UNIVERSITY)

Accredited "A" Grade by NAAC | 12B Status by UGC | Approved by AICTE

[www.sathyabama.ac.in](http://www.sathyabama.ac.in)

**SCHOOL OF MANAGEMENT STUDIES**

**UNIT II - INCOME TAX LAW AND PRACTICE –  
SBA1404**

## **UNIT II INCOME FROM SALARIES**

Salary is the remuneration received by or accruing to an individual, periodically, for service rendered as a result of an express or implied contract. The actual receipt of salary in the previous year is not material as far as its taxability is concerned. According to Income Tax Act there are certain conditions where all such remuneration is chargeable to income tax:

1. When due from the former employer or present employer in the previous year, whether paid or not
2. When paid or allowed in the previous year, by or on behalf of a former employer or present employer, though not due or before it becomes due.
3. When arrears of salary is paid in the previous year by or on behalf of a former employer or present employer, if not charged to tax in the period to which it relates.

**Section 17(1)** of the Income tax Act gives an inclusive and not exhaustive definition of “Salaries”, which includes:

- (i) Wages
- (ii) Annuity or pension
- (iii) Gratuity
- (iv) Fees, Commission, allowances perquisites or profits in lieu of salary
- (v) Advance of Salary
- (vi) Amount transferred from unrecognized provident fund to recognized provident fund
- (vii) Contribution of employer to a Recognized Provident Fund in excess of the prescribed limit
- (viii) Leave Encashment
- (ix) Compensation as a result of variation in Service contract etc.
- (x) Contribution made by the Central Government to the account of an employee under a notified Pension scheme.

### **Arrears of Salary**

Salary in arrears / advance, received in lump sum, is liable to tax in the year of receipt. Relief can be obtained for salary arrears u/s 89(1) of the Income Tax Act.

### **Pension**

Pension is a payment made by the employer after the retirement or death of employee as a reward for past service. It is normally paid as a periodical payment on monthly basis but certain employers may allow an employee to forgo a portion of pension in lieu of lump sum amount. This

is known as commutation of pension.

The treatment of these two kinds of pension is as under:

**Periodical pension (or uncommuted pension):** It is fully taxable in the hands of all employee, whereas government or non-government.

### **Commutted pension**

For employees of government organizations, local authorities and statutory corporations, it is fully exempted from tax, hence not included in gross salary.

For other employees, commuted value of half of the total value of pension is exempted from tax. Any amount received over and above this amount is taxable, so included in gross salary. If, however, the employee is also receiving gratuity (another retirement benefit along with pension), then one third of the total value of pension is exempted from tax. Amount received in excess of this is taxable, so included in gross salary.

Pension received by employee is taxable under the head "Salaries". However, family pension received by legal heirs after death of employee is taxable under 'Income from other sources'. For Central Government Employees joined on or after 1-1-2004, 10% of Salary is compulsory deducted towards Pension with a matching contribution from the Govt. and is Non-Taxable u/s 80CCD. Only Terminal Benefit is charged to tax.

### **Gratuity**

Gratuity is the payment made by the employer to an employee in appreciation of past services rendered by the employee. It is received by the employee on his retirement. Gratuity is exempted up to certain limit depending upon the category of employee. For the purpose of exemption, employees are divided into 3 categories:

#### **(i) Government employees and employees of local authority:**

In case of such employees, the entire amount of gratuity received by them is exempted from tax. Nothing will be added to gross salary.

#### **(ii) Employees covered under Payment of Gratuity Act, 1972**

In case of employees who are covered under Payment of Gratuity Act, the minimum of the following amounts are exempted from tax:

- 1.) Amount of gratuity actually received.
- 2.) 15 days of salary for every completed years of service or part thereof in excess of six months. ( $15 / 26 \times [\text{basic salary} + \text{Dearness Allowance}] \times \text{No. of years of service} + 1$  [if fraction > 6 months]).
- 3.) Rs.10, 00,000 (amount specified by government).

### **(iii) Other employees.**

In case of employees not falling in the above two categories, gratuity received from the employers is exempt to the extent of minimum of following amounts:

1. Actual amount of gratuity received.
2. Half month average salary for every completed year of service  
( $1/2 \times$  average salary of last 10 months  $\times$  completed years of service).
3. Rs. 10, 00,000 (amount specified by government).

Salary = 10 months average salary preceding the month of retirement. = Basic Pay + Dearness Allowance considered for retirement benefits + commission (if received as a fixed percentage on turnover).

#### **Illustration:1**

Mr. Ashikh retired in September, 2012 after having put in 42 years of service in a company.

His average salary for 10 months preceding Sept. 2012 was Rs:2500 p.m. He received a gratuity of Rs;60,000. Compute his taxable gratuity.

#### **Solution:**

Mr.Ashikh is not covered by the Payment of Gratuity Act,1972. He has put in 42 years of completed service. Here, least of the following is exempted:

$\frac{1}{2}$  month's salary for every completed years of service ( $2500 \times \frac{1}{2} \times 42$ ) = **52,500**

Actual amount of gratuity received = Rs: 60,000

Statutory limit = Rs: 10,00,000

#### **Computation of taxable Amount of Gratuity**

<b>Particulars</b>	<b>Rs:</b>
Amount of gratuity received	60,000
Less: amount exempted	52,500
Taxable Gratuity	7500

## **Illustration 2:**

Mr. Athul, covered under the Payment of Gratuity Act, 1972, retires on 10<sup>th</sup> January, 2013 after serving the company for 16 years. At the time of retirement his basic salary was Rs:4,400 p.m. and DA Rs:800 p.m. On retirement he receives Rs:1,00,000 as gratuity. Compute the amount of gratuity exempt U/s 10(10).

### **Solution :**

As Mr. Athul is covered by the Payment of Gratuity Act, 1972, out of the gratuity received by him, the least of the following is exempted u/s 10(10):

15 days salary for every completed years of service:

$$(4400+800) \times 15/26 \times 16 \text{ years} = \mathbf{48,000}$$

Actual amount of gratuity received = Rs: 1,00,000

Statutory limit = Rs:10,00,000

Therefore exempted amount = 48,000.

## **Leave Salary**

Employees are entitled to various types of leave. The leave generally can be taken (casual leave/medical leave) or it lapses. Earned leave is a kind of leave which an employee is said to have earned every year after working for some time. This leave can either be availed every year, or get encashment for it. If leave is not availed or encashed, it is allowed to be carried forward. This leave keeps getting accumulated and is encashed by employee on his retirement.

The tax treatment of leave encashment is as under:

- (i) **Encashment of leave while in service.** This is fully taxable and so is added to gross salary.
- (ii) **Encashment of leave on retirement.** For the purpose of exemption of accumulated leave encashment, the employees are divided into two categories. They are Govt employees and Other employees.

- State or Central Government employees:

Leave encashment received by government employees is fully exempted from tax. Nothing is to be included in gross salary

- Other employees:

Leave encashment of accumulated leave at the time of retirement received by other employees is exempted to the extent of minimum of following four amounts:

1. Amount specified by Central Government (3,00,000).

2. Leave encashment actually received.
3. 10 months average salary ( $10 \times$  average salary of 10 months preceding retirement).
4. Cash equivalent of unavailed leave.

(Leave entitlement is calculated on the basis of maximum 30 days leave every year, cash equivalent is based on average salary of last 10 months).

Salary = Basic Pay + Dearness Allowance (forming a part of salary for retirement benefits) + Commission (if received as a fixed percentage on turnover).

### **Illustration:3**

Mr.Afsal was employed in a company. He took voluntary retirement on 1<sup>st</sup> December, 2012 after completing 25 years of service. On 1<sup>st</sup> January, 2013 his salary was Rs: 4,000 p.m. after adding the annual increment. The total leave availed during service is 10 months and actual amount received is Rs: 1,60,000 on encashment. Compute the amount exempt regarding encashment of earned leave.

### **Solution:**

The exempted amount of leave encashment is least of the following:

Cash equivalent of earned leave (15 months leave $\times$ Rs:4,000)	= Rs: 60,000
months average salary (10 months $\times$ Rs; 4,000)	= Rs: 40,000
Actual amount of leave salary received	= Rs: 1,60,000
Statutory Limit	= Rs: 3,00,000

Therefore, the exempted amount of leave salary is Rs: 40,000.

### **Illustration:4**

Mr. Abhijith retired on 31<sup>st</sup> October, 2012 after serving 20 years. He received Rs: 96,000 as leave encashment for 12 months. His average salary at the time of retirement amounted to Rs: 7,400. He had 2 months leave at his credit. Find the taxable amount of leave encashment.

### **Solution:**

Exempted amount of leave encashment is least of the following:

Cash equivalent of earned leave (2 months leave $\times$ Rs:7,400)	= <b>Rs: 14,800</b>
months average salary (10 months $\times$ Rs; 7,400)	= Rs: 74,000
Actual amount of leave salary received	= Rs: 96,000
Statutory Limit	= Rs: 3,00,000

Therefore, the taxable amount of leave salary =  $96,000 - 14,800 = \text{Rs: } 81,200$

## **Retrenchment Compensation 10(10B)**

Retrenchment compensation is the compensation received by a workman at the time of (i) closing down of the undertaking.(ii) transfer (irrespective of by agreement/compulsory acquisition) if the following conditions are satisfied:

1. Service of workmen interrupted by transfer
2. Terms and conditions of employment after transfer are less favourable
3. New employer is not under a legal obligation whether under the terms of transfer or otherwise to pay compensation on the basis that the employee's service has been continuous and has not been interrupted by transfer. The exemption is granted to the least of the followings:
  - (i) Actual amount received
  - (ii) Amount determined under the Industrial Disputes Act, 1947
  - (iii) Maximum Limit Rs 5,00,000

### **Illustration:5**

Mr, Adithya Raveendran is employed in a company at Allahabad since 1<sup>st</sup> October,1998. He is getting a salary of Rs:12,000 p.m. and Rs:2,400 p.m. as DA since 1-1-2011. His service was terminated on account of retrenchment of employees on 1-7-2012 and he was paid Rs:96,000 as compensation. Compute taxable amount of compensation for the AY 2013-14.

### **Solution:**

The exempted amount of retrenchment compensation is least of the following:

Actual retrenchment compensation received = Rs: 96,000

15 days salary for every completed years of service=  $14 \times \frac{1}{2} \times 14400 = \text{Rs:1,00800}$ .  
Maximum limit Rs: 5,00,000

Sum calculated as per Industrial Dispute Act, 1947 = not given Therefore,  
taxable amount of retrenchment compensation= 96,000—96,000 = Nil

## **Voluntary Retirement Compensation 10(10c)**

The following Conditions are to be met for claiming exemption:

- (i) An individual, who has retired under the Voluntary Retirement scheme, should not be employed in another company of the same management.
- (ii) He should not have received any other Voluntary Retirement Compensation before from any other employer and claimed exemption.

(iii) Exemption u/s 10(10C) in respect of Compensation under VRS can be availed by an Individual only once in his lifetime.

Exemption is allowed to the least of the followings:

- (i) Actual amount received
- (ii) Maximum Limit Rs 5,00,000
- (iii) The highest of the following:

- 1. Last drawn salary  $\times$  3  $\times$  No. of fully completed years of service
- 2. Last drawn salary  $\times$  Balance of no. of months of service left.

### **Taxable Value of Allowances**

Allowance is a fixed monetary amount paid by the employer to the employee (over and above basic salary) for meeting certain expenses, whether personal or for the performance of his duties. These allowances are generally taxable and are to be included in gross salary unless specific exemption is provided in respect of such allowance. For the purpose of tax treatment, we divide these allowances into 3 categories:

- I. Fully taxable cash allowances
- II. Partially exempt cash allowances
- III. Fully exempt cash allowances.

### **Fully Taxable Allowances**

Dearness Allowance and Dearness Pay

City Compensatory Allowance

Tiffin / Lunch Allowance

Non practicing Allowance

Warden or Proctor Allowance

Deputation Allowance

Overtime Allowance

Fixed Medical Allowance

Servant Allowance

Other allowances:- There may be several other allowances like family allowance, project allowance, marriage allowance, education allowance, and holiday allowance etc. which are not covered under specifically exempt category, so are fully taxable.

## **Partly Exempted Allowances**

House Rent Allowance or H.R.A. [Sec. 10(13A) Rule 2A]

Conditions for claiming exemption:

1. Assessee is in receipt of HRA.
2. He has to pay rent.
3. Rent paid is more than 10% of salary.

An allowance granted to a person by his employer to meet expenditure incurred on payment of rent in respect of residential accommodation occupied by him is exempt from tax to the extent of least of the following three amounts:

- a) House Rent Allowance actually received by the assessee
- b) Excess of rent paid by the assessee over 10% of salary due to him
- c) An amount equal to 50% of salary due to assessee (If accommodation is situated in Mumbai, Kolkata, Delhi, Chennai) ‘Or’ an amount equal to 40% of salary (if accommodation is situated in any other place).

Salary for this purpose includes Basic Salary, Dearness Allowance (if it forms part of salary for the purpose of retirement benefits), Commission based on fixed percentage of turnover achieved by the employee.

While claiming exemption the following points are considered :

1. The exemption shall be calculated on the basis of where the accommodation is situated.
2. If the place of employment is the same for the whole year, then exemption shall be calculated for the whole year.
3. If there is a change in place during the previous year, then it will be calculated on a monthly basis
4. Exemption should be calculated in respect of the period during which rental accommodation is occupied by the employee during the previous year.
5. Salary for the period during which rental accommodation is not occupied shall not be considered.

### **Illustration:6**

Mr. Aswin is entitled to a basic salary of Rs 5,000 p.m. and dearness allowance of Rs 1,000 p.m., 40% of which forms part of retirement benefits. He is also entitled to HRA of Rs 2,000 p.m. He actually pays Rs 2,000 p.m. as rent for a house in Delhi. Compute the taxable HRA.

**Solution:**

Salary for HRA =  $(5,000 \times 12) + (40\% \times 1,000 \times 12) = 64,800$

Particulars	Rs:	Rs:
Amount received during the financial year for HRA		24,000
Less: Exemption u/s 10(13A) Rule 2A Least of the followings:		
(a) Actual amount received	24,000	
(b) 50% of Salary of Rs 64,800	32,400	
(c) Rent paid less 10% of Salary [ $2,000 \times 12 - 10\% \text{ of } 64,800$ ]	17,520	17,520
Taxable HRA		6,480

**Entertainment Allowance**

This allowance is first included in gross salary under allowances and then deduction is given to only central and state government employees under Section 16 (ii).

**Special Allowances for meeting official expenditure**

Certain allowances are given to the employees to meet expenses incurred exclusively in performance of official duties and hence are exempt to the extent actually incurred for the purpose for which it is given. These include travelling allowance, daily allowance, conveyance allowance, helper allowance, research allowance and uniform allowance.

**Special Allowances to meet personal expenses:**

There are certain allowances given to the employees for specific personal purposes and the amount of exemption is fixed.

- i. **Children Education Allowance:** This allowance is exempt to the extent of Rs.100 per month per child for maximum of 2 children (grand children are not considered).
- ii. **Children Hostel Allowance:** Any allowance granted to an employee to meet the hostel expenditure on his child is exempt to the extent of Rs.300 per month per child for maximum of 2 children.
- iii. **Transport Allowance:** This allowance is generally given to government employees to compensate the cost incurred in commuting between place of residence and place of work. An amount uptoRs.800 per month paid is exempt. However, in case of blind and orthopedically handicapped persons, it is exempt up to Rs. 1600 p.m.

**iv. Running Allowance** (Out of station allowance ): An allowance granted to an employee working in a transport system to meet his personal expenses in performance of his duty in the course of running of such transport from one place to another is exempt up to 70% of such allowance or Rs.10000 per month, whichever is less.

**v.) Tribal area allowance:** Exemption is available as Rs: 200 p.m.

**vi) Under ground allowance :** Exempted up to Rs:800 p.m.

### **Fully Exempt Allowances**

(i)Foreign allowance: This allowance is usually paid by the government to its employees being Indian citizen posted out of India for rendering services abroad. It is fully exempt from tax.

(ii)Allowance to High Court and Supreme Court Judges of whatever nature are exempt from tax.

(iii) Allowances from UNO organization to its employees are fully exempt from tax.

### **Perquisites**

Perquisites are defined as any casual emolument or benefit attached to an office or position in addition to salary or wages. . Perquisites are taxable and included in gross salary only if they are

(i) allowed by an employer to an employee, (ii) Allowed during the continuation of employment, (iii) directly dependent on service, (iv) resulting in the nature of personal advantage to the employee and (v) derived by virtue of employer's authority.

As per Section 17 (2) of the Act, perquisites include:

1. Value of rent free accommodation provided to the employee by the employer.

2. Value of concession in the matter of rent in respect of accommodation provided to the employee by his employer.

3. Value of any benefit or amenity granted free of cost or at a concessional rate in any of the following cases:

a) by a company to an employee who is a director thereof

b) by a company to an employee who has substantial interest in the company

c) by any employer to an employee who is neither a director, nor has substantial interest in the company, but his monetary emoluments under the head 'Salaries' exceeds Rs.50, 000.

4. Any sum paid by the employer towards any obligation of the employee.

5. Any sum payable by employer to effect an assurance on the life of assessee.

6. The value of any other fringe benefit given to the employee as may be prescribed

### **Classification of Perquisites**

For tax purposes, perquisites specified under Section 17 (2) of the Act may be classified as follows:

(1) Perquisites that are taxable in case of every employee, whether specified or not

(2) Perquisites that is taxable in case of specified employees only.

(3) Perquisites that is exempt from tax for all employees

#### **Perquisites Taxable in case of all Employees**

The following perquisites are taxable in case of every employee, whether specified or not:

1. Rent free house provided by employer

2. House provided at concessional rate

3. Any obligation of employee discharged by employer e.g. payment of club or hotel bills of employee, salary to domestic servants engaged by employee, payment of school fees of employees' children etc.

4. Any sum paid by employer in respect of insurance premium on the life of employee

5. Notified fringe benefits (on which fringe benefit tax is not applicable) – it includes interest free or concessional loans to employees, use of movable assets, transfer of moveable assets.

#### **Perquisites taxable in case of Specified Employees only**

Specified Employee:

An Individual will be considered as a Specified Employee if:

- He is a director of a company, or
- He holds 20% or more of equity voting power in the company,
- Monetary salary in excess of 50,000: His income under the head salaries, (from any employer including a company) excluding non-monetary payments exceeds 50,000. For the above purpose, salary, should be arrived at after making the following deductions:

(a) Entertainment Allowance

(b) Professional Tax.

The following perquisites are taxable in case of such employees:

1. Free supply of gas, electricity or water supply for household consumption

2. Free or concessional educational facilities to the members of employees household
3. Free or concessional transport facilities
4. Sweeper, watchman, gardener and personal attendant
5. Any other benefit or amenity

#### **Perquisites which are tax free for all the employees**

This category includes perquisites which are tax free for the employees and also other perquisites on which employer has to pay a tax (called Fringe Benefit Tax) if they are given to the employees and so are not taxable for them.

The following perquisites are exempt from tax in all cases and hence not includable for the purpose of tax deduction at source under section 192 during the financial year 2008-09:

1. Provision for medical facilities subject to limit
2. Tea or snacks provided during working hours
3. Free meals provided during working hours in a remote area or an offshore installation
4. Perquisites allowed outside India by the Government to a citizen of India for rendering service outside India.
5. Sum payable by an employer through a recognized provident fund or an approved superannuation or deposit-linked insurance fund established under the Coal Mines Provident Fund or the Employees Provident Fund.
6. Employer's contribution to staff group insurance scheme.
7. Leave travel concession subject to Sec.10 (5)
8. Payment of annual premium by employer on personal accident policy effected by him on his employee
9. Free educational facility provided in an institute owned/maintained by employer to children of employee provided cost/value does not exceed ` 1,000 per month per child (no limit on no. of children)
10. Interest-free/concessional loan of an amount not exceeding 20,000
11. Computer/laptop given (not transferred) to an employee for official/personal use.
12. Transfer without consideration to an employee of a movable asset (other than computer, electronic items or car) by the employer after using it for a period of 10 years or more.
13. Traveling facility to employees of railways or airlines.

14. Rent-free furnished residence (including maintenance thereof) provided to an Official of Parliament, a Union Minister or a Leader of Opposition in Parliament.
15. Conveyance facility provided to High Court Judges u/s22B of the High Court Judges (Conditions of Service) Act, 1954 and Supreme Court Judges u/s 23A of the Supreme Court Judges (Conditions of Service) Act, 1958.
16. Conveyance facility provided to an employee to cover the journey between office and residence.
17. Accommodation provided in a remote area to an employee working at a mining site or an onshore oil exploration site, or a project execution site or an accommodation provided in an offshore site of similar nature.
18. Accommodation provided on transfer of an employee in a hotel for not exceeding 15 days in aggregate.
19. Interest free loan for medical treatment of the nature given in Rule 3A.
20. Periodicals and journals required for discharge of work.
21. Tax on perquisite paid by employer [Sec.10 (10CC)]

22. Other Exempted Payments:

- i. Bonus paid to a football player after the World Cup victory to mark an exceptional event
- ii. Payment made as a gift in appreciation of the personal qualities of the employee.
- iii. Payment of proceeds of a benefit cricket match to a great cricket player after he retired from test match.
- iv. Trust for the benefit of employee's children

**Valuation of Perquisites**

**Valuation of Medical Facilities**

Medical facilities provided to employee are exempt from tax.

A. Medical benefits within India which are exempt from tax include the following:

- a) Medical treatment provided to an employee or any member of his family in hospital maintained by the employer.
- b) Any sum paid by the employer in respect of any expenditure incurred by the employee on medical treatment of himself and members of his family :
  - (i) In a hospital maintained by government or local authority or approved by the government for medical treatment of its employees.

- (ii) In respect of the prescribed diseases or ailments in any hospital approved by the Chief Commissioner.
  - (iii) Premium paid by the employer on health insurance of the employee under an approved scheme.
  - c) Premium on insurance of health of an employee or his family members paid by employer
- Limited Exemption: If the ordinary medical treatment of the employee or any member of his family is done at any private hospital, nursing home or clinic, the exemption is restricted to Rs.15,000.

B. Medical Treatment outside India which is exempt from tax includes the following:

- a) Any expenditure incurred by employer on the medical treatment of the employee or any member of his family outside India.
- b) Any expenditure incurred by employer on travel and stay abroad of the patient (employee or member of his family) and one attendant who accompanies the patient in connection with such treatment, shall be exempt to the following extent :
  - (i) The expenditure on medical treatment and stay abroad shall be exempt to the extent permitted by the Reserve Bank of India.
  - (ii) The expenditure on travel shall be exempt in full provided the gross total income of the employee (including this expenditure) does not exceed Rs.2,00,000.

### **Valuation of rent free accommodation**

For the purpose of valuation of house, employees are divided into 2 categories:

- a) Central and State Government employees:** If accommodation is provided by the State or Central Government to their employees, the value of such accommodation is simply the amount fixed by the government (called the licence fees) in this regard.
- b) Other Employees:** The valuation of accommodation for this category of non government employees depends upon whether the accommodation given to the employee is owned by the employer or taken on lease.

#### **1. Accommodation owned by employer**

In cities having population exceeding 25 lakhs as per 2001 census

: 15% of Salary Less Rent actually paid by employee

In cities having population exceeding 10 lakhs but not exceeding 25 lakhs as per 2001 census

: 10% of Salary Less Rent actually paid by employee

In other places:

7.5% of Salary Less Rent actually paid by employee

## **2. Accommodation is taken on lease / rent by the employer**

Rent paid by the employer or 15% of Salary whichever is lower Less Rent recovered from employee

## **3. Accommodation in a hotel**

24% of salary paid/payable or actual charges paid/payable whichever is lower Less Amount paid or payable by the employee

## **4. Valuation of accommodation in case of Employees on transfer:**

(a) For the first 90 days of transfer: Where accommodation is provided both at existing place of work and in new place, the accommodation, which has lower value, shall be taxable.

(b) After 90 days : Both accommodations shall be taxable.

Valuation of furnished accommodation where the accommodation is furnished, 10% per annum of the original cost of furniture given to the employee shall be added to the value of unfurnished accommodation. If the furniture is taken on rent by employer, then actual hire charges are to be added to the value.

## **Definition of salary for rent free accommodation:**

Basic Salary + Taxable cash allowances + Bonus or Commission + any other monetary payment. (It does not include dearness allowance if it is not forming part of basic salary for retirement benefit, allowances which are exempt from tax, value of perquisites specified under Section 17(2), employer's contribution to provident fund account of employees).

## **Sweeper, gardener or watchman provided by the employer**

The value of benefit of provision of services of sweeper, watchman, gardener or personal attendant to the employee or any member of his household shall be the actual cost to the employer. The actual cost in such a case is the total amount of salary paid or payable by the employer or any other person on his behalf for such services as reduced by any amount paid by the employee for such services. If the above servants are engaged by the employer and facility of such servants are provided to the employees, it will be a perquisite for specified employees only. On the other hand, if these servants are employed by the employee and wages of such servants are paid / reimbursed by the employer, it will be taxable perquisite for all classes of employees.

## **Free Supply of Gas, Electricity or Water**

The value of these benefits is taxable in the hands of specified employees, if the connection is taken in the name of the employer, and is determined according to the following rules:

- a) If the employer provides the supply of gas, electricity, and water from its own sources, the manufacturing cost per unit incurred by the employer shall be the value of perquisite.
- b) If the supply is from any other outside agency, the value of perquisite shall be the amount paid by the employer to the agency supplying these facilities.
- c) Where the employee is paying any amount in respect of such services, the amount so paid shall be deducted from the value of perquisite calculated under (a) or (b).
- d) Where the connection for gas, electricity, water supply is in the name of employee and the bills are paid or reimbursed by the employer, it is an obligation of the employee discharged by the employer. Such payment is taxable in case of all employees under Section 17 (2) (iv).

### **Free Education**

- a) Cost of free education to any member of employees' family provided in an educational institution owned and maintained by the employer shall be determined with reference to reasonable cost of such education in a similar institution in a nearby locality. For education facilities provided to the children of employee (excluding any other member of house hold), the value shall be nil, if the cost of such education per child does not exceed Rs.1, 000 per month.
- b) Where free education facilities are allowed to any member of employees' family in any other educational institution by reason of his being in employment of that employer, the value of perquisite shall be determined as in (a).
- c) In any other case: The value of benefit of providing free or concessional educational facilities for any member of the house hold (including children) of the employee shall be the amount of expenditure incurred by the employer.
- d) While calculating the amount of perquisite in all in above cases, any amount paid or recovered from the employee in this connection, shall be deducted

### **Free Transport**

The value of any benefit provided by any undertaking engaged in the carriage of passengers or goods to any employee or to any member of his household for private journey free of cost or at concessional rate in any conveyance owned or leased by it shall be taken to be the value at which such benefit is offered by such undertaking to the public as reduced by the amount, if any, paid by or recovered from the employee for such benefit. In case of employees of the Railways and airlines, the value of transport facility shall be exempt.

**Use of any movable asset other than computer or laptops or other assets already mentioned**  
10% of Actual Cost if owned by the employer; or Actual rental charge paid/payable by the employer less Amount recovered from employee.

## **Leave Travel Concession (LTC)**

Leave Travel Concession is a non-taxable perquisite available for salaried class. An Employee with his dependent family members can avail of this facility to travel anywhere in India / native place. Exemption is limited to the amount actually spent. The amount exempt is the value of any travel concession or assistance received or due to the assessee.

1. **Journey by Air:** Economy Class Airfare of India Airlines by the shortest route or the actual amount spent, whichever is lower.
2. **Journey by Rail:** A/C 1st Class rail fare by the shortest route or actual amount spent, whichever is lower.
3. Where the place of destination is connected by Rail: Air-conditioned first class Rail fare by the shortest route or the actual amount spent for the journey performed by road whichever is lower.
4. Where the place of destination is NOT connected by Rail :
  1. *If Recognized public transport exists:* First Class or Deluxe Class fare by the shortest route or the actual amount spent whichever is lower.
  2. *If No recognized public transport exists:* Air-conditioned first Class Rail fare by the shortest route or the actual amount spent whichever is lower.

These exemptions is available only for 2 journeys performed in a block of 4 calendar years.  
Family of an Individual means:

- Spouse and children of the individual, and
- Parents, brothers and sisters of the individual or any of them, wholly or mainly dependent on the Individual

## **Taxability of Perquisites Provided By Employers**

### **Taxability of Motor Car Benefits**

<b>Owner of Car</b>	<b>Expenses borne by</b>	<b>Purpose</b>	<b>Taxable Value of Perquisite</b>
1(a) Employer	Employer	Fully official	Nil
1(b) Employer	Employer	Fully private	Total of: (i) Actual expenditure on car (ii) Remuneration to chauffeur (iii) 10% of the cost of car (normal wear & tear) Less: Amount charged from employee
1(c)(i) Employer	Employer	Partly official and partly personal	Cubic Capacity of Car Engine up to 1.6 litres` Rs 1,800 p.m+ Rs 900 p.m. for Chauffeur Cubic Capacity of Car Engine above 1.6 litres Rs2,400 p.m. + Rs 900 p.m. for Chauffeur
1(c)(ii) Employer	Employee	Partly official and partly personal	Cubic Capacity of Car Engine up to 1.6 litres Rs 600 p.m + Rs 900 p.m. for chauffeur Cubic Capacity of Car Engine above 1.6 litres Rs900 p.m. + Rs 900 p.m. for chauffeur
2(i) Employee	Employer	Fully official	Nil
2(ii) Employee	Employer	Partly official and partly personal	Actual expenditure incurred. Less: Car cubic capacity up to 1.6 litres [i.e. value as per 1(c)(i)] Or Car cubic capacity up to 1.6 litres above 1.6 litres [i.e. value as per 1(c )(i)]
3(i) Employee Owns other auto motive but not car	Employer	Fully official	Not a perquisite
3(i) Employee Owns other auto motive but not car	Employer	Partly for official use	Actual expenditure incurred by employer. Less: Rs 900 p.m

### **Free meals during office hours**

Actual cost to the employer in excess of Rs 50 per meal less: amount recovered from the employee. Tea or non-alcoholic beverages and snacks during working hours is not taxable.

### **Gifts**

Value of any gift or voucher or taken other than gifts made in cash or convertible into money (e.g. gift cheques) on ceremonial occasion. In this case if the aggregate value of gift during the previous year is less than Rs 5,000, then it is not a taxable perquisite.

### **Profit in lieu of salary**

Profit in lieu of salary means any amount received by the employee from the employer due to its employee employer relationship other than normal compensation what he receive from employer.

- The amount of any compensation due to or received by an assessee from his employer or former employer at or in connection with the termination of his employment or modification of his term of employment
- Any payment from Unrecognized Provident Fund( URPF) or such other fund to the extent to which it does not consist of contribution by the assessee or interest on such contribution.
- Any sum received under a keyman insurance policy including the sum allocated by way of bonus on such policy.
- Any other amount from employer except the following:
  - Gratuity exempted u/s 10(10)
  - House rent allowance
  - Retrenchment compensation
  - Superannuation fund
  - Statutory provident fund or public provident fund
  - Recognized provident fund, if does not include contribution of assessee and interest thereon
  - Keyman insurance policy and bonus
  - Any amount received prior to employment or after the cession of employment
  - Any received from ex-employer

### **Illustration:7**

Mr. Sajad is now working in a private company at Chennai and he gets a monthly salary of Rs: 9,000. He is provided with a rent free unfurnished accommodation for which he pays a monthly rent of Rs:300. Calculate taxable perquisite.

**Solution:**

15% of salary: $108000 \times 15/100$	= 16,200
Less rent paid by the employee	= 3,600
Therefore, Value of unfurnished accommodation	= <b>12,600</b>

**Provident Fund**

Provident Fund Scheme is a welfare scheme for the benefit of employees. Under this scheme, certain amount is deducted by the employer from the employee's salary as his contribution to Provident Fund every month. The employer also contributes certain percentage of the salary of the employee to the Fund. The contributions are invested outside in securities. The interest earned on it is also credited to the Provident Fund Account. At the time of retirement, the accumulated balance is given to the employee.

**(i) Statutory Provident Fund**

This is set up under the provisions of Provident Fund Act, 1925.  
Contribution is made by Employer and Employee.

Assessee's Contribution: will get Deduction u/s 80C

Employer's Contribution- Not taxable  
Interest credited- Fully exempted

Withdrawal at the time of retirement/resignation/termination, etc- Exempted u/s 10(11)

**(ii) Recognized Provident Fund**

This is set up under the Employee's Provident Fund and Miscellaneous Provisions Act, 1952 (PF Act, 1952) and is maintained by private sector employees.

Assessee's Contribution- will get Deduction u/s 80C

Employer's Contribution-Amount exceeding 12% of salary is taxable  
Interest credited-Exempted up to 9.5% p.a. Any excess is taxable.

Withdrawal at the time of retirement/ resignation/termination, etc-Exempted u/s 10(12) Subject to conditions.

**(iii) Unrecognized Provident Fund**

If a provident fund is not recognized by the Commissioner of Income Tax, it is known as unrecognized PF.

Assesee's Contribution: will not get Deduction u/s 80C. No Income Tax Benefit  
Employer's Contribution- Not taxable at the time of contribution

Interest credited- On Employee's contribution taxable under the head "Other Sources" and, on Employer's contribution not taxable at the time of credit.

Withdrawal at the time of retirement/resignation/termination, etc- Employee's contribution thereon is not taxable. Interest on employees share is taxable under the head income from other sources.

Employer's contribution and interest thereon is taxable as Profits in lieu of Salary, under "Salaries"

#### **iv) Public Provident Fund**

The Central Government has established the Public Provident Fund for the benefits of general public to mobilize personal savings. Any member of general public (whether salaried or self employed) can participate in this fund by opening a Provident Fund Account at the State Bank of India or its subsidiaries or other nationalized banks. A salaried employee can simultaneously become member of employees provident fund (whether statutory, recognized or unrecognized) and public provident fund. Any amount may be deposited (subject to minimum Rs.500 and maximum of Rs.70, 000 per annum) under this account. The accumulated sum is repayable after 15 years.

Assesee's Contribution: will get Deduction u/s 80C

Interest credited- Fully exempted

Withdrawal at the time of retirement/resignation/termination, etc-Exempted u/s 10(11)

#### **Deductions:**

The income chargeable under the head salaries is computed after making the following deductions under Section 16:

1. Entertainment Allowance [section 16(ii)] of the Act as given earlier, entertainment allowance received from employer is first included in gross salary and thereafter, a deduction is allowed to government employees (State or Central Government) to the extent of least of following 3 amounts:

(i)Rs.5000

(ii)20% of basic salary

(iii) Amount of Entertainment Allowance actually received during the year.

2. Professional Tax [Section 16(iii)] of the Act.

Professional tax or tax on employment levied by a State under Article 276 of the Constitution is allowed as a deduction only in the year when it is actually paid. If the professional tax is paid by

the employer on behalf of the employee, it is first included in gross salary as a perquisite (since it is an obligation of employee fulfilled by employer) and then the same amount is allowed as deduction on account of professional tax from gross salary.

**Illustration:8**

Mr. Abhijith is getting a salary of Rs 12,000 p.m. w.e.f. 1.4.2011. He is promoted w.e.f. 31.12.2011 and got arrears of Rs75,000. Bonus for the year 2012-13 is Rs15, 000 remains outstanding but bonus of Rs 12,000 for the year 2011-12 was paid on 1st January 2013. In March 2013, he got two months salary i.e. April and May 2013 in advance. Compute the

gross salary for the assessment year 2013-14.

**Solution:**

**Computation of Gross Salary for the Assessment Year 2013-14**

Salary : Rs $12,000 \times 12$	1,44,000
Arrears of Salary	75,000
Bonus for the year 2012-13 : (Receivable)	---
Bonus for the year 2011-12 : (Received)	12,000
Advance of Salary: April & May 2013 ( $12,000 \times 2$ )	24,000
Gross Salary	2,55,000

**Illustration:9**

Following particulars are furnished by Muhammed Labeeb, a citizen and resident in India:  
Basic salary after deduction of contribution to RPF Rs: 2,40,000

Own contribution to RPF Rs:20,000 Interest  
credited to RPF @9.5% Rs:3,600

HRA (house is at Kolar and rent paid amount to Rs:30,000) Rs: 14,400 Unit-linked insurance plan contribution paid by employer Rs: 2,000.

Compute taxable income from salary of Muhammed Labeeb for the A.Y.2013-14.

**Solution:**

Computation of Income from Salary for the assessment year 2013-14

Basic salary ( 2,40,000+20,000)	2,60,000
HRA (14,400-4,000)	10,400
Ulip paid by employer	2,000
Gross Salary	2,72,400
<b>Less:</b> Deductions	Nil
Taxable Salary	2,72,400

**Notes: Least of the following is exempt:**

Actual HRA Rs:14,400

Excess of rent paid over 10% of salary (30000-26000) Rs:4,000  
40% of salary Rs: 1,04,000

**Illustration :10**

Mr. Varun furnished the following particulars of his income for the financial year 2013-13:

Salary	15000 p.m.
D A	1250 p.m.
Entertainment Allowance	1000 p.m.
Employer's and employee's contribution to RPF	24000 each
Interest from PF @ 9.5% p.a.	19000
City compensatory allowances	200 p.m.
Medical allowances	10000
He has been provided with the facility of unfurnished house by the employer in a town (population less than 10 lakhs) for which the employer charge Rs:500 per month. The fair rent of the house is Rs: 30,000 p.a. The house is owned by the employer.	
The employer has employed for him a sweeper @ Rs:200 p.m. and a servant a2 Rs:750 p.m.	

Compute taxable income under the head 'salary' for the AY 2013-14

**Solution:****Computation of Income from Salary for the assessment year 2013-14**

Salary	180000
DA	15000
Entertainment allowance	12000
CCA	2400
Medical allowance	10000
Employer's contribution to RPF in excess of 12% of salary	2400
Sweeper	2400
Servant	9000
Concession in rent	9330
Gross Salary	242530
Less: Deductions	nil
Taxable salary	2,42,530

**Notes:** Concession in Rent:

7.5% of Salary ( 180000+12000+2400+10000)      Rs: 15,330

Less : Rent Charged      Rs: 6,000

-----  
Rs: 9,330

=====

**Illustration:11**

Mr. Justin Kuriakose retired on 31-10-2012 after serving 20 years. He received Rs;96,000 as leave encashment for 12 months. His average salary at the time of retirement amounted to Rs:7,400. He had 2 months leave at his credit. Find out the taxable amount of Leave encashment.

**Solution:**

The exempted amount of leave salary is least of the following:

10 months average salary ( 7400 x10 )	Rs:74000
Actual amount of leave encashment received	Rs:96,000
Amount of leave salary at his credit (7400x2)	<b>Rs:14,800</b>
Maximum limit	Rs:3,00,000

**Computation of taxable Amount of Leave Salary**

Amount of leave salary received	96,000
Less: amount exempted	14,800
Taxable amount of leave salary	81,200

**Illustration:12**

From the following particulars calculate the salary income of Mr. Reshin for the assessment year 2013-14:

Basic pay Rs: 5500 p.m.

HRA Rs:2400 p.m.

DA Rs: 5,000 p.m.

Entertainment Allowance Rs:1,200 p.m.

CCA Rs: 600 p.m.

Education allowance for 2 children (total) Rs: 800 p.m.

Reshin and his employer (a private company) contribute to RPF @ 14% of salary. He lives in a rented house at Alleppy on amonthky rent f Rs: 3000.

**Solution:**

Computation of income from salary of Mr. Reshin for the Assessment Year 2013-14

Basic pay	66000
HRA (28800-26400)	2400
D A	60000
Entertainment allowance	14400
CCA	7200
Education allowance ( 9600-2400)	7200
Employer's contribution to RPF in excess of 12%	1320
Income from Salary	1,58,520

**Illustration:13**

Mr. Akhildas is employed as an engineer in Indian railways. He is getting Rs:7,000 p.m. as basic pay; Rs:2,500 p.m. as D.A. and Rs:2,500 p.m. as dearness pay. During the year 2012-13, he received the following allowances also:

Rs: 16,500 as running allowance p.m.

Rs: 200 p.m. per child as educational allowance for his 2 children

One of his son is staying in a hostel on which Akhildas is spending Rs:800 p.m. He is getting Rs:500 p.m. for his as hostel allowance for meeting their expenditure.

Rs: 250 p.m. as CCA.

Rs:400 p.m. as uniform allowance , fully spent for employment purposes.

Rs: 1250 p.m. as HRA. He pays Rs:1500 p.m. as rent to house owner. He contributes 10% of his basic pay and DA to SPF and the Indian railway contributes a similar amount.

Compute his taxable salary for the AY 2013-14.

**Solution:**

Computation of taxable salary of Mr.Akhildas for the A Y 2013-14

Basic pay (7500 x 12)		90,000
D A (2500 x 12)		30,000
D P (2500 x 12)		30,000
House Rent Allowance:		
HRA received (1250 x 12)	15,000	
Less: exempted	6,000	9,000
Running Allowance:		
Running allowance received	16,500	
Less: 70% of allowance or Rs:10,000  p.m, whichever is less)	10,000	6500
Education allowance (200x12x2)	4,800	
Less: exemption for 2 children (100x12x2)	2,400	2,400
Hostel allowance (500x12)	6,000	
Less: exempted (300x12)	3,600	2,400
Uniform Allowance (400x12)	4,800	
Less: exempted	4,800	.....
CCA (250 x12)		3,000
Gross Salary		1,73,300
Less : Deduction u/s 80C (PF)		12,000
Income from Salaries		1,61,300

*Calculation of exempted amount of HRA:*

*Least of the following is exempted:*

$$\begin{array}{ll} \text{HRA received (Rs:1,250 x12)} & = 15,000 \\ \text{Excess of rent paid over 10% Of salary (18,000-12,000)} & = \mathbf{6,000} \\ \text{40% of salary (1,20,000x40%)} & = 48,000 \end{array}$$

### **Illustration :14**

Mr.Suhil is a government employee. He draws a monthly salary of Rs;20,000 and Rs: 500 p.m. as entertainment allowance. Find out the amount of deduction for the entertainment allowance.

#### **Solution:**

Least of the following is exempted:

$$\begin{array}{ll} \text{Actual Entertainment Allowance received (500x12)} & = 6,000 \\ \text{Statutory Limit} & = \text{Rs: } 5,000 \\ \\ \text{20% of Salary } 2,40,000 \times 20\% & = \text{Rs: } 48,000 \end{array}$$

Therefore the amount of deduction for the entertainment allowance is Rs: 5,000.



**SATHYABAMA**

INSTITUTE OF SCIENCE AND TECHNOLOGY

(DEEMED TO BE UNIVERSITY)

Accredited "A" Grade by NAAC | 12B Status by UGC | Approved by AICTE

[www.sathyabama.ac.in](http://www.sathyabama.ac.in)

**SCHOOL OF MANAGEMENT STUDIES**

**UNIT III – INCOME TAX LAW AND PRACTICE –SBAA1404**

## UNIT III

### INCOME FROM HOUSE PROPERTY

The annual value of a property, consisting of any buildings or lands appurtenant thereto, of which the assessee is the owner, is chargeable to tax under the head ‘Income from house property’. However, if a house property, or any portion thereof, is occupied by the assessee, for the purpose of any business or profession, carried on by him, the profits of which are chargeable to income-tax, the value of such property is not chargeable to tax under this head.

Thus, three conditions are to be satisfied for property income to be taxable under this head:

1. The property should consist of buildings or lands appurtenant thereto.
2. The assessee should be the owner of the property.
3. The property should not be used by the owner for the purpose of any business or profession carried on by him, the profits of which are chargeable to income-tax.

#### **Ownership of house property**

It is only the owner (or deemed owner) of house property who is liable to tax on income under this head. Owner may be an individual, firm, company, co-operative society or association of persons. The property may be let out to a third party either for residential purposes or for business purposes. Annual value of property is assessed to tax in the hands of the owner even if he is not in receipt of the income. For tax purposes, the assessee is required to be the owner in the previous year only.

#### **Deemed Owner [Section 27]**

**1. Owner:** An Individual shall be considered as owner of a property when the document of title to the property is registered in his name.

**2. Deemed Owner:** Under the following circumstances, Income from House Property is taxable in the hands of the Individual, even if the property is not registered in his name —

- Where the Property has been transferred to spouse for inadequate consideration other than in pursuance of an agreement to live apart.
- Where the Property is transferred to a minor child for inadequate consideration (except a transfer to minor married daughter)
- Where the Individual holds an imitable estate.
- Where the Individual is a member of Co-operative Society, Company, or other Association

and has been allotted a house property by virtue of his being a member, even though the property is registered in the name of the Society / Company / Association.

- Where the property has been transferred to the individual's name as part-performance of a contract u/s 53A of the Transfer of Property Act, 1882. (i.e. Possession of the Property has been transferred to Individual, but the Title Deeds have not yet been transferred).
- Where the Individual is a holder of a Power of Attorney enabling the right of possession or enjoyment of the property.
- Where the property has been constructed on a leasehold land.
- Where the ownership of the Property is under dispute.

A) Where the property is taken on a lease for a period of not less than 12 years, then the lessee shall be deemed as the owner of the property.

### **House Property Income Is Exempt From Tax To Certain Persons**

- 1) An Ex-Ruler for his occupation (palace)
- 2) Local Authority.
- 3) Approved Scientific Research Association.
- 4) Institution for the development of Khadi and Village Industries.
- 5) Khadi and Village Industries Boards.
- 6) A body or authority for administering religious or charitable Trust or endowments.
- 7) Certain Funds, educational institutions, hospitals etc.
- 8) Registered Trade Union.
- 9) Statutory Corporation or an institution or association financed by the Government for promoting in the interests of members of SC or ST.
- 10) Co-operative Society for promoting the interest of the members of SC or ST.
- 11) Charitable Trust.
- 12) Political Parties

## **DETERMINATION OF ANNUAL VALUE**

The basis of calculating Income from House property is the ‘annual value’. This is the inherent capacity of the property to earn income and it has been defined as the amount for which the property may reasonably be expected to be let out from year to year. It is not necessary that the property should actually be let out. The municipal value of the property, the cost of construction, the standard rent, if any, under the Rent Control Act, the rent of similar properties in the same locality, are all pointers to the determination of annual value.

### **Gross Annual value**

The Gross Annual Value is the municipal value, the actual rent (whether received or receivable) or the fair rental value, whichever is highest. If, however, the Rent Control Act applies to the property, the gross annual value Fair rental value or municipal value whichever is higher or Standard rental value whichever is less. If the property is let out but remains vacant during any part or whole of the year and due to such vacancy, the rent received is less than the reasonable expected rent, such lesser amount shall be the Annual value.

#### **The principle of determining GAV is :**

Expected Rental Value OR  
Actual Rent received for full year,  
Whichever is more.

Here, Expected Rental Value is calculated as follows:

If the let out property is not subject to Rent Control Act ERV is:  
FRV or MRV whichever is higher.

If the let out property is subject to Rent Control Act ERV is:

FRV or MRV whichever is higher  
OR

Standard Rental Value ,  
Whichever is less.

### **Municipal Tax**

Municipal Tax includes services tax like Water Tax and Sewerage Tax levied by any local authority. It can be claimed as a deduction from the Gross Annual Value of the Property.

### **Conditions:**

- a) Paid by Owner. The tax shall be borne by the owner and the same was paid by him during the previous year.
- b) Property let out: Municipal Tax can be claimed as a deduction only in respect of let out or deemed to be let out properties (i.e. more than one property self occupied).
- c) Year of payment: Municipal Tax relating to earlier previous years, but paid during the current previous year can be claimed as deduction only in the year of payment.
- d) Advance Taxes: Advance Municipal Tax paid shall not be allowed as deduction in the year of payment, but can be claimed in the year in which it falls due.
- e) Borne by Tenant: Municipal taxes met by tenant are not allowed as deduction.

### **.Unrealized Rent**

Unrealized Rent means the rent not paid by the tenant to the owner and the same shall be deducted from the Actual Rent Receivable from the property before computing income from that property, provided the following conditions are satisfied:

- a) The tenancy is bonafide
- b) The defaulting tenant should have vacated the property
- c) The assessee has taken steps to compel the defaulting tenant to vacate the property
- d) The defaulting tenant is not in occupation of any other property owned by the assessee
- e) The assessee has taken all reasonable steps for recovery of unrealized rent or satisfies the Assessing Officer that such steps would be useless.

### **Deduction from Net Annual Value**

**A. Standard Deduction u/s 24(a):** Standard deduction of 30% of NAV (Net Annual Value) shall be allowed to the assessee.

### **B. Interest on Loan u/s 24(b):**

- 1. Purpose of loan:** The loan shall be borrowed for the purpose of acquisition, construction, repairs, renewal or reconstruction of the house property.
- 2. Accrual basis:** The interest will be allowed as a deduction on accrual basis, even though it is not paid during the financial year.
- 3. Interest on interest:** Interest on unpaid interest shall not be allowed as a deduction.

**4. Brokerage:** Any brokerage or commission paid for acquiring the loan will not be allowed as a deduction.

**5. Prior period interest:** Prior Period Interest shall be allowed in five equal installments commencing from the financial year in which the property was acquired or construction was completed.

*Note: Prior period interest means the interest from the date of borrowing of the loan up to the end of the financial year immediately preceding the financial year in which acquisition was made or construction was completed.*

**6. Interest on fresh loan to repay existing loan:** Interest on any fresh loan taken to repay the existing loan shall be allowed as a deduction.

**7. Inadmissible interest:** Interest payable outside India without deduction of tax at source and in respect of which no person in India is treated as an agent u/s 163 shall not be an allowable expenditure. [Section25]

**8. Certificate:** The assessee should furnish a certificate from the person from whom the amount is borrowed.

### **Income From Self – Occupied House Property**

The annual value of one self-occupied house property is taken as ‘Nil’. From the annual value, only the interest on borrowed capital is allowed as a deduction under section 24. The amount of deduction will be:

- 1.** Either the actual amount accrued or Rs.30,000/- whichever is less
- 2.** When borrowing of money or acquisition of the property is after 31.3.1999 - deduction is Rs.1,50,000/- applicable to A.Y 2002-03 and onwards.

However, if the borrowing is for repairs, renewals or reconstruction, the deduction is restricted to Rs.30, 000. If the borrowing is for construction/acquisition, higher deduction as noted above is available. If a person owns more than one house property, using all of them for self-occupation, he is entitled to exercise an option in terms of which, the annual value of one house property as specified by him will be taken at Nil. The other self occupied house property/is will be deemed to be let-out and their annual value will be determined on notional basis as if they had been let out.

**Annual Value of a house property which is partly self – occupied and partly let out:** If a house property consists of two or more independent residential units, one of which is self – occupied and the other unit(s) are let out, the income from the different units is to be calculated separately.

**Illustration:1**

Compute Gross annual value:

Actual rent Rs: 24,000 p.a.

Fair rent Rs:28,000 p.a.

Standard rent Rs: 20,000 p.a.

**Solution:**

Gross Annual Value = ERV or Actual Rent Received for full year, whichever is higher.  
Here Rent Control Act is applicable.

FRV =Rs: 28,000 ; SRV = 20,000

Therefore, ERV = 20,000.

Actual Rent = 24,000

So, GAV = 24,000.

**Illustration:2**

Calculate annual rental value from the following particulars for the assessment year 2013-14. Actual rent Rs: 14,000 p.m.; MRV Rs: 1,20,000 p.a.; FRV Rs:1,32,000 p.a. Standard rent Rs: 1,38,000. During the P.Y. the assessee is not able to realise two months rent.

**Solution:**

Expected Rental Value = 1,32,000

Actual rent for the full year ( $14,000 \times 12$ ) = 1,68,000

Therefore, GAV = 1,68,000.

Annual Value = 1,68,000 – unrealised rent

$$= 1,68,000 - 28,000 = 1,40,000.$$

=====

**Illustration:3**

Compute gross annual value for the AY 2013-14:

FRV Rs: 1,32,000 p.a.; Actual rent Rs:12,000 p.m.; MRV Rs:1,20,000 p.a., Standard rent Rs: 1,30,000.

**Solution:**

Expected Rental Value = Rs: 1,30,000  
 Actual rent for full year (12,000 x 12) = Rs:1,44,000  
 Therefore, GAV = Rs: 1,44,000.

=====

**Illustration:4**

Rinju is the owner of 2 houses. From the following, find out annual value of the houses:

	<u>House-1</u>	<u>House-2</u>
Municipal value	30,000	35,000
Actual rent	40,000	32,000
FRV	36,000	30,000
SRV	30,000	36,000
Municipal tax paid	4,000	3,500

**Solution:**

MRV or FRV (higher)	36,000	35,000
SRV	30,000	36,000
ERV (Lesser of the above 2)	30,000	35,000
Actual Rent	40,000	32,000
<b>GAV (higher of 3 and 4)</b>	<b>40,000</b>	<b>35,000</b>
Less : Municipal Taxes	4,000	3,500
Annual Value	36,000	31500

**Illustration:5**

Mr. Abhinand constructed one house in 2010. Half of the portion is let out and the remaining half is used for his residence. The following particulars are available:

MRV Rs: 12,500; Rent received Rs:10,000 ; Municipal taxes Rs:2,500 ; Ground rent Rs:250 ; Repairs Rs:2,000 ; Interest on loan taken for construction Rs: 2,500.

Compute income from house property of Mr. Abhinand for the AY 2013-14.

**Solution:**

Computation of Income from house property

Let out portion:

GAV (MRV =6250 or Rent received, whichever is higher) :	10,000
Less : municipal rent ( $\frac{1}{2}$ )	: 1,250

-----

Net Annual Value	: 8,750
------------------	---------

Deductions:

30% of annual value	: 2,625
Interest on loan taken for construction	: 1,250

----- : 3,875

Income from let out portion	4,875
-----------------------------	-------

Self-occupied portion:

Net Annual Value	: Nil
------------------	-------

Deductions:

Interest on loan taken for construction	: 1,250
---	---------

-----

Income from self occupied portion	--1,250
-----------------------------------	---------

-----

Income from House Property	<b>3,625</b>
----------------------------	--------------

**Illustration:6**

The following information is available in respect of two houses of owned by Neeraj.

He let out the first house for a yearly rent of Rs: 11,000. He paid Rs:1,000 as interest on borrowings. He paid Rs: 100 as insurance premium. He let out his second house at a monthly rent of Rs:1,200. It is not rented out for 3 months. The unrealised rent for the past 5 years was Rs: 13,000. Compute the income from house property of Mr. Neeraj for the AY 2013-14.

**Solution:****Computation of Income from house property for AY 2013-14**

First House:

Annual Value	:	11,000
Less : Deductions:		
Standard deduction (30%)	:	3,300
Interest on loan	:	<u>1,000</u> : <u>4,300</u> 6,700
Second House:		
Annual Value	:	14,400
Less : Loss for vacancy period	:	3,600
Unrealised rent	:	<u>13,000</u> <u>16,600</u> <u>--2,200</u>

Income from House Property = 4,500.

=====

## **Income from Business or Profession**

### **Business : Sec 2 (13)**

Business includes any trade, commerce, or manufacture or any adventure or concern in the nature of trade, commerce, or manufacture. Or practical purpose business means the purchase and sale or manufacture of a commodity with a view to make profit. Business includes banking, transport business or any other adventure. Profit of an isolated transaction is also taxable under this head.

### **Profession**

A profession is a vocation founded upon specialized educational training, the purpose of which is to supply objective counsel and service to others, for a direct and definite compensation, wholly apart from expectation of other business gain. For example the work of lawyer, doctor auditor engineer and so on. Vocation means activities which are performed in order to earn livelihood. For example brokerage, music, dancing etc.

The following items are chargeable under the head income from business or profession. (section28)

- The profits and gains of any business or profession, which was carried on by the assessee at any time during the previous year;
- Any compensation or other payment, due or received by the following:-
- Any person, by whatever name called, managing the whole or substantially the whole of the affairs of an Indian company, at or in connection with the termination of his management or the modification of the terms and conditions relating thereto;
- Any person, by whatever name called, managing the whole or substantially the whole of the affairs in India of any other company, at or in connection with the termination of his office or the modification of the terms and conditions relating thereto;
- Any person, by whatever name called, holding an agency in India for any part of the activities relating to the business of any other person, at or in connection with the termination of any agency or the modification of the terms and conditions relating thereto;
- Any person, for or in connection with the vesting in the Government, or in any corporation owned or controlled by the Government, under any law for the time being in force, of the management of any property or business;
- Income, derived by a trade, professional or similar association from specific services performed for its members;

- Profits on sale of a license granted under the Imports (Control) Order, 1955, made under the Imports and Exports (Control) Act, 1947;
- Cash assistance (by whatever name called), received or receivable by any person against exports under any scheme of the Government of India;
- Any duty of customs or excise repaid or repayable as drawback to any person against exports under the Customs and Central Excise Duties Drawback Rules, 1971;
- The value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession;
- Any interest, salary, bonus, commission or remuneration, by whatever name called, due to, or received by, a partner of a firm from such firm.
- Income from speculative transactions.
- Any sum received under a key man insurance policy including bonus.
- Any sum whether received or receivable in cash or in kind , under an agreement for :

**(A)** Not carrying out any activity in relation to any business or

**(B)** Not sharing any know how, patent, copyright, trade mark, licence franchise or any likely to assist in the manufacture or processing of goods or provision of services.

□Any sum whether received or receivable in cash or kind, on account of any capital asset (other than land or goodwill or financial instrument) being demolished , discarded or transferred , if the whole of the expenditure on such capital asset has been allowed as deduction under section 35AD.

However, it is provided that where any interest, salary, bonus, commission or remuneration, by whatever name called, or any part thereof has not been allowed to be deducted under Clause (b) of section 40, the income under this clause shall be adjusted to the extent of the amount not so allowed to be deducted.

In the following cases, income from trading or business is not taxable under the head "profits and gains of business or profession":-

- Rent of house property is taxable under the head "Income from house property". Even if the property constitutes stock in trade of recipient of rent or the recipient of rent is engaged in the business of letting properties on rent.
- Deemed dividends on shares are taxable under the head "Income from other sources".
- Winnings from lotteries, races etc. are taxable under the head "Income from other sources".

General Principles governing the computation of taxable income under the head "profits and gains of business or profession:-

- Business or profession should be carried on by the assessee. It is not the ownership of business which is important, but it is the person carrying on a business or profession, who is chargeable to tax.
- Income from business or profession is chargeable to tax under this head only if the business or profession is carried on by the assessee at any time during the previous year. This income is taxable during the following assessment year.
- Profits and gains of different business or profession carried on by the assessee are not separately chargeable to tax i.e. tax incidence arises on aggregate income from all businesses or professions carried on by the assessee. But, profits and loss of a speculative business are kept separately.
- It is not only the legal ownership but also the beneficial ownership that has to be considered.
- Profits made by an assessee in winding up of a business or profession are not taxable, as no business is carried on in that case. However, such profits may be taxable as capital gains or as business income, if the process of winding up is such as to involve the carrying on of a trade.
- Taxable profit is the profit accrued or arising in the accounting year. Anticipated or potential profits or losses, which may occur in future, are not considered for arriving at taxable income. Also, the profits, which are taxable, are the real profits and not notional profits. Real profits from the commercial point of view mean a gain to the person carrying on the business and not profits from narrow, technical or legalistic point of view.
- The yield of income by a commercial asset is the profit of the business irrespective of the manner in which that asset is exploited by the owner of the business.
- Any sum recovered by the assessee during the previous year, in respect of an amount or expenditure which was earlier allowed as deduction, is taxable as business income of the year in which it is recovered.
- Modes of book entries are generally not determinative of the question whether the assessee has earned any profit or loss.
- The Income tax act is not concerned with the legality or illegality of business or profession. Hence, income of illegal business or profession is not exempt from tax.
- Profits and losses of speculation business carried on by an assessee are kept separate.
- Profits made in winding up of a business by the sale of assets in one lot are not taxable as business profit but as capital gain. The profit on the sale of stock in trade will be taxable as business

profit, because the sale of goods under any circumstances is a transaction in the nature of trader and hence its profit is taxable as business profit.

- Tax is levied on the actual profit of the previous year and not on the anticipated profit.

### **Speculative Transactions and Taxability of Speculation Business**

Speculative Transaction [Section 43(5)]: “Speculative Business” means a transaction in which a contract for purchase/sale of any commodity/stocks/ shares is settled otherwise than by the actual delivery or transfer of the commodity or scrips. Transactions not regarded as speculative transaction.

### **Deduction In Respect Of Losses Incidental to Business**

- A loss (other than capital loss), which is incidental to the trade, is allowable in computing the business profits on ordinary principles of commercial trading. Such trading losses can be claimed as deduction provided the following conditions are satisfied:
- Loss should be real in nature and not notional or fictitious;
- It should be a revenue loss and not capital;
- Loss should have resulted directly from carrying on of business i.e. it should be incidental to business;
- Losses should have actually occurred during the previous year;
- There should be no direct or indirect restriction under the Act against the deductibility of such loss. E.g. Loss of stock-in-trade on account of fire, embezzlement/theft of cash in course of business, or loss on account of advances/guarantees granted during course of business, are admissible in the computation of taxable income on the basis of common principles of accounting and commercial expediency.

### **Amounts expressively allowed as deduction [ U/s 30 to 37 ]**

Deduction In Respect Of Rent, Rates, Taxes, Repairs and Insurance, etc. for Buildings, Plant and Machinery and Furniture [Section 30 And 31]

The following are allowable as deduction in computing the income under the head ‘Profits and Gains of Business or Profession’ –

1.Rent of the premises is allowed ad deduction. However, notional rent paid by proprietor is not allowed as deduction. But rent paid by him to its partner for using his premises is allowed as deduction.

**2.** Current repairs if the assessee bears the cost of repairs are allowed as deduction. However, Capital repairs incurred by the assessee are never allowed as deduction whether premises is occupied as a tenant or as an owner. Instead the capital repairs incurred shall be deemed to be a building and depreciation shall be claimed.

**3.** Any sum on account of Land Revenue, Local Taxes or Municipal Taxes subject to section 43B.

**4.** Insurance charges against the risk of damage or destruction of building is allowed as deduction.

**5.** In respect of repairs and insurance of machinery, plant & furniture used for the purpose of business or profession the following deductions are allowable:

**I.** Amount of expenditure incurred on current repairs of machinery, plant or furniture used in the business is deductible.

**II.** The amount paid for current repairs shall not include any expenditure in the nature of capital expenditure.

#### **Depreciation [Section 32]:**

In respect of depreciation of-

**(I)** buildings, machinery, plant or furniture, being tangible assets;

**(II)** know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature, being intangible assets acquired on or after the 1st day of April, 1998, owned, wholly or partly, by the assessee and used for the purposes of the business or profession

Tea Development account, coffee development account and rubber development account (section 33AB)

Certain deduction is allowed to assessee growing and manufacturing tea or coffee or rubber in India.

For this purpose, the assessee is required to

**I.** Deposit in a special account with the national bank for Agriculture and rural development in accordance with the scheme approved by the tea board or the coffee board or rubber board or deposit any amount in on an account opened by the assessee (known as deposit account) in accordance with the deposit scheme framed by the tea Board or the Coffee Board or the rubber board as the case may be, with the previous approval of the central government.

**II.** The deposit should be made within a period of six months from the end of the previous year or before furnishing the return of income whichever is earlier.

**III.** In computing taxable profits from the above business the following deduction will be allowed in respect of the above deposit:

- (A) A sum equal to the amount so deposited or
- (B) 40% of the profits from such business (before making deduction under this section and before setting off brought forward business losses) whichever is less.

**IV.** This deduction shall be allowed only if the accounts of such business from the previous year concerned have been audited by a chartered accountant and the audit report is furnished along with the return of income.

Deduction in respect of prospecting for or extraction or production of petroleum or natural gas or both India (Section 33ABA)

(1) Where an assessee is carrying on business consisting of the prospecting for, or extraction or production of, petroleum or natural gas or both in India and in relation to which the Central

Government has entered into an agreement with such assessee for such business, has before the end of the previous year—

(A) deposited with the State Bank of India any amount or amounts in an account (hereafter in this section referred to as the special account) maintained by the assessee with that Bank in accordance with, and for the purposes specified in, a scheme (hereafter in this section referred to as the scheme) approved in this behalf by the Government of India in the Ministry of Petroleum and Natural Gas; or

(B) deposited any amount in an account (hereafter in this section referred to as the Site Restoration Account) opened by the assessee.

### **Expenditure on scientific research (section 35)**

The word 'Scientific Research' has been defined as 'an activity for the extension of knowledge in the fields of natural or applied sciences including agriculture, animal husbandry or fisheries'. Such an activity may result in an improved efficiency and thereby increases the productivity of the process. So, in order to encourage people to enhance the productivity, government has provided certain tax incentives under this section for expenditure incurred in respect of Scientific Research.

Such Scientific research may be carried out for the purpose of

- (A) Extension of business;
- (B) Providing medical facilities to the employees.

Deduction under this section is allowed in two ways

**(A)** When assessee takes up scientific research on his own

**(B)** When assessee contributes amount for scientific research to an approved body.  
The provisions of both are given below.

**(A)** When assessee takes up scientific research on his own:

When assessee carries on any scientific research, the expenditure incurred by him for such may be

- Revenue expenditure or
- Capital expenditure.

The treatment of above is as follows.

**(A) Revenue expenditure:**

Any revenue expenditure incurred by the assessee in respect of scientific research within **3 years** immediately preceding the year of commencement of business shall be allowed deduction in the year of commencement. Such revenue expenditure may be in respect of salaries (excluding any perquisites) payable to the staff involved in the research; for acquiring the inputs required to carry out the research or any such eligible expenditure.

**(B) Capital expenditure:**

Any Capital expenditure incurred by the assessee is deductible **100%** in the year it is incurred.

(4) Amount contributed to National Laboratory [Section 35(2AA)]:

Any amount contributed by the assessee to a National laboratory\* or University or IIT or to a specified person (approved by prescribed authority) with a specific direction that the amount shall be used for the purpose of scientific research, shall be given a weighted deduction of **2 times** (from the Assessment year 2012-13. For AY2011-12, it is given to the extent of 1.75 times only and before that 1.25 times only)

\*National Laboratory

Any laboratory functioning at national level under the aegis of

**(1)** Indian Council of Agricultural Research

**(2)** Indian Council of Medical Research

**(3)** Council of Scientific and Industrial Research

**(4)** Defence Research and Development Organisation

**(5) Department of Electronics**

**(6) Department of Bio-technology**

**(7) Department of Atomic Energy**

In all the above cases, deduction shall not be denied on the ground that subsequent to such contribution by the assessee, approval granted to the donee has been withdrawn by the prescribed authorities.

Conditions to be fulfilled in order to claim depreciation under section 32

In order to claim depreciation under Section 32, the following conditions are required to be fulfilled:

(1) Depreciation is available on ‘assets’ and ‘block of assets’: The assets may be tangible (Buildings, Machinery, Plant and Furniture) or intangible (know-how, patents, copyrights, trademarks, licences, franchises, etc.) in nature.

‘Block of Assets’ means group of assets comprising of tangible or intangible assets in respect of which the same rate of depreciation is prescribed.

### **Rates of Depreciation In Case Of Block of Assets**

Tangible Assets Rate

#### **Building:**

Residential Buildings except hotel and boarding houses ..... 5%

Non-residential Buildings [office, factory, godown, hotels, ..... 10%

boarding houses but other than (1) above and (3)(i)below]

**(I) (i) Buildings for installing Plant and Machinery forming part of water supply or water treatment system for infrastructure business u/s 80-India IA (4)(i). (ii) Purely temporary erections such as wooden structures..... 100%**

#### **(II) Furniture And Fittings:**

**(4) Furniture and Fittings including electrical fitting s (“Electrical Fittings” include electrical wiring, switches, sockets, other fittings and fans, etc ..... 10 %**

#### **(III) Plant And Machinery**

- (5)** Motor Cars not used in business of running them on hire; and Plant & Machinery other than those covered in other Blocks ..... 15%
- (6)** Ships and vessels ..... 20%
- (7)** Motor buses, Lorries and taxis used in business of running on hire; Moulds used in rubber and plastic goods factories; Plant & Machinery used in semi-conductor industry including circuits; ....30%
- (8)** Aeroplane- Aeroengines; Life-saving Medical Equipments ..... 40%
- (9)** Glass and Plastic containers used as refills ..... 50%
- (10)** (i) Computer including computer software (ii) Books (iii) Gas Cylinders including valves and regulators (iv) Glass Manufacture – Melting Furnaces, Mineral Oil Concerns;.....60%
- (11)** Flour Mills-Rollers, Rolling Mill rolls in Iron and Steel Industry; Energy renewal and energy saving devices; Rollers in Sugar Works 80%
- (12)** (i) (a) Books (annual publications) owned by assessee carrying on profession; and (b) Books owned by assessee carrying on business in running lending libraries (ii) Plant and Machinery in water supply and treatment system for infrastructure u/s 80IA(4)(i); Wooden part in artificial silkmanufacturing Plant & Machinery; Cinematograph films-Bulbs of studio lights; Wooden Match frames in Match factories; Mines and Quarries-rubs, ropes, lamps, pipes; Salt works – Clay and salt pans, etc.; Air-pollution, Water-pollution, Solid waste control equipments and Solid waste recycling system ... 100%

### **Intangible Assets**

- (13)** Know-how, patents, copyrights, trademarks, licences, franchises, or any other business or commercial rights of similar nature 25%

### **Concept of “Written Down Value” (WDV) [Section 43(6)]**

WDV in general: In case of assets acquired in previous year, WDV= Actual cost to the assessee. In case of assets acquired before previous year, WDV = Actual cost to assessee less depreciation actually allowed (including unabsorbed depreciation, if any) to the assessee.

WDV in case of Block of Assets:

Written down Value of the block of assets as on 1st day of previous year

Add: Actual Cost of asset falling within the block, acquired during previous year

Less : Moneys payable (including scrap) for asset falling within block which is sold, discarded, demolished, destroyed during the previous year to the extent of (A) + (B) above

WDV of block of assets eligible for depreciation

### **Carry Forward and Set-Off Of Unabsorbed Depreciation [Section 32(2)]**

**(1)** Amount of depreciation remaining unabsorbed shall be allowed to be carried forward whether or not the business/asset to which it relates exists. It shall be treated as part of current year depreciation.

**(2)** Return of loss is not required to be submitted to carry forward unabsorbed depreciation.

**(3)** Brought forward business losses (speculative or non-speculative) under Section 72(2) and 73(3) shall be given priority of set off over unabsorbed depreciation.

**(4)** While allowing unabsorbed depreciation, the expression 'Profit and Gains Chargeable to Tax'

**Illustration:** 1 The net profit of business of Mr. Baveesh as disclosed by its P&L account was Rs:3,25,000 after charging the following:

Municipal taxes on house property let out Rs:3,000

Bad debt written off Rs:15,000

Provision for bad and doubtful debts Rs: 16,000

Provision for taxation Rs: 15,000

Depreciation Rs: 25,000

Depreciation allowance as per rule is Rs:20,000.

Compute taxable business profit.

#### **Solution:**

#### Computation of income from business

Particulars	Rs	Rs
Net profit		3,25,000
Add: Municipal taxes	30000	
Provision for bad debts	16000	
Provision for taxation	15000	
Excess depreciation	5000	39,000
Business Profit		3,64,000

**Illustration:2**

From the following P&L account, compute income from business:

**PROFIT AND LOSS ACCOUNT**

To Salaries	14,600	By G/p	1,35,000
To household expense	2000		
To income tax	900		
To Gifts	900		
To business expense	2,200		
To LIC premium	2,100		
To bad debt reserve	800		
To N/P	1,11,500		
	1,35,000		<b>1,35,000</b>

**Solution:**

Computation of income from business for the A Y 2013-14

Net Profit as per P&L Account : 1,11,500

Add : Expenses Disallowed:

Household expenses	2,000		
Income tax	900		
Gift	900		
LIC Premium	2,100		
Bad debt reserve	<u>800</u>	<u>6,700</u>	
Income from business			1,18,200
			=====

**Illustration:3**

Dr. Biju is a medical practitioner in Mahe. From the following, calculate his income from profession for the AY 2013-14:

Gross receipt from dispensary	2,35,000
Gross receipt from consultation	1,65,000
Operation fee	2,50,000
Visiting fee	50,000
Gifts from patients	30,000
Medicines purchased	1,25,000
Closing stock of medicines	35,000
Salaries paid to employees	1,50,000
Surgical equipments purchased	48,000
Dr. Biju wanted to attend a medical seminar in Australia to update the knowledge and spent an amount of	25,000
Medical books purchased	20,000
He owns a house whose MRV is Rs:50,000. Half portion of the house is used for profession. Expenses paid on house are municipal tax=30% of MRV ; Repairs Rs:10,000 ; and renovation expenses Rs:30,000.	

**Solution:**

Computation of income from profession for the AY 2013-14

Gross receipts from dispensary	2,35,000	
Gross receipts from consultation	1,65,000	
Operation fee	2,50,000	
Visiting fee	50,000	
Gifts from patients	30,000	7,30,000
Less : Expenses :		
Medicines ( 1,25,000—35,000)	90,000	
Salaries to employees	1,50,000	
Surgical equipments ( Depreciation : 15% )	7,200	
Visit to Australia to attend a medical seminar	25,000	
Medical Books ( Depreciation : 60% )	12,000	
Expenses on house used for profession:		
Municipal tax (50,000 x 10% x $\frac{1}{2}$ )	2,500	
Repairs ( 10,000 x $\frac{1}{2}$ )	5,000	
Total		2,91,700
Income from profession		4,38,300

**Illustration:4**

The following is the Receipts and Payments account of Mr. Akhilesh, a practicing Chartered Accountant for the year ended 31-03-2013:

Receipts	Rs:	Payments	Rs:
Audit fee	19,210	Office expenses	10,000
Consultation	10,000	Office rent	5,000
Tribunal appearance	15,000	Salaries and wages	12,050
Miscellaneous	20,000	Printing and Stationeries	1,000
Interest on Govt. security	10,000	subscription	3,000
Rent received	10,000	Purchase of books(annual publication)	1,300
Presents from clients	10,000	Travelling expenses	5,800
		Interest on bank loan	3,000
		Donation to National Defence Fund	5,000

Loan from bank was taken for the construction of the house in which he lives. MRV of the house is Rs: 8,000 and the local taxes Rs: 800 p.a. One-fourth of travelling expenses are not allowable. Compute income from profession for the A Y 2013—14.

**Solution:**

Computation of income from business for the AY 2013-14

Particulars	Rs:	Rs:
Audit Fees	19,210	
Consultation Fee	10,000	
Tribunal appearance	15,000	
Miscellaneous	20,000	

Presents from clients	10,000	74,210
Less: Allowable Expenses:		
Office expenses	10,000	
Office rent	5,000	
Salaries and wages	12,050	
Printing and stationery	1,000	
Subscription	3,000	
Purchase of books (100% depreciation)	1,300	
Travelling expenses ( $5,800 \times \frac{3}{4}$ )	4,350	36,700
Income from Profession		37,510

### Illustration:5

Calculate the amount of depreciation on the assets of a mill:

Factory building W.D.V. on 01-04-2012 Rs: 14,00,000

Additions made on 01-06-2012 Rs: 6,00,000

Rate of depreciation 10%

The part of factory building which was destroyed by fire, for which the insurance company accepted the claim for Rs: 60,000 and scrap value realised amounted to Rs:10,000.

### Solution:

#### Computation of Depreciation

Factory building : W.D.V on 1-4-2012	Rs: 14,00,000
--------------------------------------	---------------

Additions made on 1-6-2012	Rs: 6,00,000
----------------------------	--------------

-----

Rs: 20,00,000

Less: Amount received from the insurance company Rs:60,000

Amount received from the sale of scrap Rs:10,000 Rs: 70,000  
Written Down Value of factory building for the AY 2013-14 Rs: 19,30,000  
Therefore, Depreciation @ 10% **Rs: 1,93,000**

=====

### Illustration:6

From the following figures, you are required to calculate the depreciation admissible during the previous year:

	<u>Plant &amp; Machinery(Rs:)</u>	<u>Building(Rs:)</u>
W.D.V. at the beginning of the year	3,75,000	15,00,000
Purchased during the year	4,50,000	Nil
Sales during the year	7,75,000	3,00,000

### Solution:

#### Computation of Depreciation

Particulars	Plant & Machinery	Building
	Rate = 15%	Rate = 10%
W.D.V at the beginning of the year	3,75,000	15,00,000
Add: Purchase	4,50,000	Nil
Total	8,25,000	15,00,000
Less: sales	7,75,000	3,00,000
W.D.V.	50,000	12,00,000
Depreciation	7,500	1,20,000



**SATHYABAMA**

INSTITUTE OF SCIENCE AND TECHNOLOGY

(DEEMED TO BE UNIVERSITY)

Accredited "A" Grade by NAAC | 12B Status by UGC | Approved by AICTE

[www.sathyabama.ac.in](http://www.sathyabama.ac.in)

---

**SCHOOL OF MANAGEMENT STUDIES**

**UNIT IV - INCOME TAX LAW AND PRACTICE –  
SBA1404**

## UNIT IV

### CAPITAL GAINS

Profits or gains arising from the transfer of a capital asset made in a previous year are taxable as capital gains under the head “Capital Gains”. The capital gain is chargeable to income tax if the following conditions are satisfied:

1. There is a capital asset.
2. Assessee should transfer the capital asset.
3. Transfer of capital assets should take place during the previous year.
4. There should be gain or loss on account of such transfer of capital asset.

**Capital Asset:** Sec. 2(14): Capital Asset means property of any kind (Fixed, Circulating, movable, immovable, tangible or intangible) whether or not connected with business or profession.

Exclusions —

- a. Stock-in-trade
- b. Personal effects of the assessee i.e., personal use excluding jewellery, costly stones, silver, gold
- c. Agricultural land in a rural area i.e., an area with population more than 10,000.
- d. 6½% Gold Bonds, 1977 or 7% Gold Bonds, 1980 or National Defence Bonds, 1980 issued by the Central Government
- e. Special Bearer Bonds, 1991 issued by the Central Government.
- f. Gold Deposit Bonds issued under Gold Deposit Scheme 2000

#### **Kinds of capital assets**

There are two kinds of capital assets

**Short-term capital asset:** Sec. 2(42A): means a capital asset held by an assessee for not more than thirty six months immediately preceding the date of its transfer. However, in the following cases, an asset, held for not more than twelve months, is treated as short-term capital asset—

- a. Quoted or unquoted equity or preference shares in a company

- b. Quoted Securities
- c. Quoted or unquoted Units of UTI
- d. Quoted or unquoted Units of Mutual Funds specified u/s. 10(23D)
- e. Quoted or unquoted zero coupon bonds

**Long-term capital asset: Sec. 2(29A):** means a capital asset which is not a short-term capital asset. Under the existing law, profits and gains arising from the transfer of capital asset made in a previous year is taxable as capital gains. A capital asset is distinguished on the basis of the period of holding. A capital asset, which is held for more than three years, is categorized as a long-term capital asset. However, if the capital asset is in the nature of equity, it is categorized as a long- term capital asset if it is held for more than one year. All capital assets other than long-term capital asset are termed as a short-term capital asset.

### **Transfer of capital asset**

Transfer includes:

- Sale of asset
- Exchange of asset
- Relinquishment of asset (means surrender of asset)
- Extinguishments of any right on asset (means reducing any right on asset)
- Compulsory acquisition of asset.

The definition of transfer is inclusive, thus transfer includes only above said five ways. In other words, transfer can take place only on these five ways. If there is any other way where an asset is given to other such as by way of gift, inheritance etc. it will not be termed as transfer.

### **Year of chargeability to tax**

Capital gains are generally charged to tax in the year in which ‘transfer’ takes place.

### **Long term capital gains**

Long term Capital gains, if the assets like shares and securities, are held by the assessee for a period exceeding 12 months or 36 months in the case of other assets. Units of UTI and specified mutual funds will now be eligible for treatment as long term capital assets if they are held for a period exceeding 12 months.

Long term Capital gains are computed by deducting from the full value of consideration for the transfer of a capital asset the following:

- Expenditure connected exclusively with the transfer;
- The indexed cost of acquisition of the asset, and
- The indexed cost of improvement, if any, of that asset.

**The method of computing capital gains is given below:**

<b>Short-term Capital Gain</b>	<b>Long-term Capital Gain</b>
A. Find out Full Value of Consideration	A. Find out Full Value of Consideration
B. Deduct:	B. Deduct:
(i) Expenditure incurred wholly and exclusively in connection with such Transfer. (ii) Cost of Acquisition (iii) Cost of Improvement (iv) Exemption provided by Ss. 54B, 54D & 54G, 54GA	(i) Expenditure incurred wholly and exclusively in connection with such Transfer. (ii) Indexed Cost of Acquisition (iii) Indexed Cost of Improvement (iv) Exemption provided by Ss. 54, 54B, 54D, 54EC, 54ED, 54F & 54G, 54GA
C. (A-B) is the short-term capital gain	C. (A-B) is the long-term capital gain

#### **Differences between Long term capital gains and Short term capital gains**

<b>Long Term Capital Gain</b>	<b>Short Term Capital Gain</b>
It arises out of transfer of long term capital assets	It arises out of transfer of short term capital assets
Tax rate is 20%	Rates applicable to all other incomes
Cost of acquisition and cost of improvement are indexed on the basis of CII.	No indexing is done.
If LTCA is acquired before 1-4-1981, then the fair market value of the asset as on 1-4-1981 is taken as the value of acquisition.	No such option is available to STCA.

Long term capital loss can be set off only against long term capital gain.	Short term capital loss can be set off against short term capital gain or long term capital gain.
--	---

### **Full value of consideration**

Full value of consideration means and it includes the whole or complete sale price or exchange value or compensation including enhanced compensation received in respect of capital asset in transfer. The following points are important to note in relation to full value of consideration.

1. The consideration may be in cash or kind.
2. The consideration received in kind is valued at its fair market value.
3. It may be received or receivable.
4. The consideration must be actual irrespective of its adequacy.

When shares, debentures or warrants are received under employees stock option plan or scheme are transferred under a gift or an irrecoverable trust , the market value on the date of transfer shall be deemed to be the full value of consideration received or accruing as a result of transfer for computation of capital gains.

### **Cost of Acquisition**

Cost of Acquisition (COA) means any capital expense at the time of acquiring capital asset

under transfer, i.e., to include the purchase price, expenses incurred up to acquiring date in the form of registration, storage etc. expenses incurred on completing transfer. In other words, cost of acquisition of an asset is the value for which it was acquired by the assessee. Expenses of capital nature for completing or acquiring the title are included in the cost of acquisition.

acquisition.

**Cost to the previous owner deemed to be the cost of acquisition:** If the asset is acquired by an assessee in the following circumstances the cost of acquisition of the asset shall be deemed to be the cost for which the previous owner of the property acquired it.

1. On any distribution of asset on the total or partial partition of a HUF or
2. Under gift or will
3. By succession , inheritance or devolution or

- 4.** any distribution of assets on the dissolution of a firm, body of individuals or other association of persons at any time before 1-04-1987. Or
- 5.** On Any distribution of asset on the liquidation of a company or
- 6.** Under a transfer to a revocable or an irrevocable trust or
- 7.** On transfer by a parent company to its Indian subsidiary company which is wholly owned by a parent company or
- 8.** On the transfer by a subsidiary company to its Indian holding company which owns whole of the share capital of the subsidiary company or
- 9.** On the transfer of capital asset by the amalgamating company to the amalgamated company if the amalgamated company is an Indian company. Or
- 10.** On transfer of shares of an Indian company by amalgamated foreign company to the amalgamated foreign company. Or
- 11.** On the transfer of capital asset in a scheme of amalgamation of a banking company with a banking institution sanctioned and brought into force by the central government or
- 12.** When any members of HUF converts his self acquired property into HUF property or
- 13.** On transfer of capital asset by the predecessor cooperative bank to the successor cooperative bank in a business organization or
- 14.** On transfer of shares in the predecessor cooperative bank in lieu of shares allotted in the successor cooperative bank in a business reorganization or
- 15.** On transfer of capital asset or intangible asset by a firm to a company as a result of succession of the firm by a company or
- 16.** On succession of a sole proprietary concern by a company.

### **Cost of share or security**

If the share or security was acquired before 1st April 1981, the cost of acquisition will be the actual cost or fair market value on 1st April 1981 whichever is beneficial to the assessee. If it is acquired after 31st march 1981, the actual cost is the cost of acquisition.

### **3. Cost of bonus shares**

The cost of bonus shares or security which is received by the assessee without any payment on the basis of his holding any financial asset will be as under

(a) Where bonus share or security was received prior to 1st April 1981, the fair market value on 1st April 1981.

(b) In any other case- nil

#### **4. Cost of acquisition of goodwill**

If the asset is purchased from the previous owner –  
purchase price In any other case – Nil

**5. Right issue**-cost of acquisition in the case of right issue is amount actually paid to acquire it.

**6. Capital asset acquired before 1st April 1981**- total cost of the asset to the assessee or the fair market value on 1st April 1981.

**7. Capital asset acquired by the previous owner before 1st April 1981**- total cost of the asset to the previous owner or the fair market value on 1st April 1981.

**8. Cost of acquisition of shares or debentures**- shares or debentures acquired in consideration of conversion of debenture, debenture stock or deposit certificate shall be deemed to be the cost of original debentures, debenture stocks or deposit certificates converted.

#### **Cost of Improvement**

Cost of improvement is the capital expenditure incurred by an assessee for making any addition or improvement in the capital asset. It also includes any expenditure incurred in protecting or curing the title. In other words, cost of improvement includes all those expenditures, which are incurred to increase the value of the capital asset.

cost of improvement x CII for the year in which

the asset is sold

Indexed Cost of improvement = .....  
.....

CII for the year in which the  
improvement To  
asset took place.

Any cost of improvement incurred before 1st April 1981 is not considered or it is

ignored. The reason behind it is that for carrying any improvement in asset before 1st April 1981, asset should have been purchased before 1st April 1981. If asset is purchased before 1st April we consider the fair market value. The fair market value of asset on 1st April 1981 will certainly include the improvement made in the asset.

**Computation of capital gains in case of slump sale:** Any gain arising from the slump sale effected in the previous year shall be chargeable as long term capital gains of the previous year in which the transfer take place.

### **Expenditure on transfer**

Expenditure incurred wholly and exclusively for transfer of capital asset is called expenditure on transfer. It is fully deductible from the full value of consideration while calculating the capital gain. Examples of expenditure on transfer are the commission or brokerage paid by seller, any fees like registration fees, and cost of stamp papers etc., travelling expenses, and litigation expenses incurred for transferring the capital assets are expenditure on transfer.

**Note:** Expenditure incurred by buyer at the time of buying the capital assets like brokerage, commission, registration fees, cost of stamp paper etc. are to be added in the cost of acquisition before indexation.

### **Exemption from Capital Gains**

Capital gain arising on the transfer of property used for residence: -

The exemption u/s 54 relates to the capital gain arising out of transfer of residential house. The exemption is available to only Individual assessee. The exemption relates to the capital gains arising on the transfer of a residential house.

Conditions: Exemption is available if: -

1. House Property transferred was used for residential purpose.
2. House Property was a long term capital asset.
3. Assesses has purchased another house property within a period of one year before or two years after the date of transfer or has constructed another house property within three years of date of transfer i.e. the construction of the new house property should be completed within three years. The date of starting of construction is irrelevant. Where the amount of capital gain is not utilized by the assessee for acquisition of new house before the due date, it shall be deposited by him on

or before the due date of furnishing the return of income in an account opened under the capital gain account scheme 1988.

Amount of Exemption will be the least of: -

1. Capital Gain
2. Cost of new house.

Withdrawal of exemption: If the newly acquired house property is transferred within three years of acquisition. Thus the earlier exempted capital gain will be charged to tax in the year in which the newly acquired house property is transferred. For that the cost of acquisition of the newly acquired house property will be reduced by the amount of exemption already availed thus the cost will reduce and thus the capital gains on the new house property will be more. Above all the new house property will be a STCA since for withdrawal of exemption it should have been sold within three years of its acquisition thus now the capital gain of the new house property will be STCG which is charged as per the normal rates which may be 30% (a higher rate as compared to the flat rate of LTCG of 20%) in the case of individuals.

#### **Capital gain arising from the transfer of agricultural land (sec 54 B)**

Any capital gain arising on the transfer of agricultural land situated in an urban area is exempt subject to the following conditions

1. The agriculture land is owned by an individual or a HUF
2. The agriculture land was , in the two years immediately preceding the date of transfer, being used either by the assessee or his parent or HUF for agriculture purposes.
3. The assessee has purchased within a period of two years from the date of transfer any other land for agricultural purposes.

The amount of deduction is the capital gain arising from the transfer of such agricultural land is exempt to the extent of the cost of the new agricultural land purchased within two years from the date of transfer.

If the amount of capital gain is not utilized by the assessee for the acquisition of the new agricultural land before due date of furnishing return of income, it shall be transferred to capital gain account scheme.

The exemption is withdrawn if the assessee transfers the new land within 3 years of its purchase.

#### **Capital gain on compulsory acquisition of land and buildings (sec 54 D)**

This exemption is available to all categories of taxpayers. To get exemption the following conditions are to be satisfied.

1. The asset transferred is land or building or any right in land or building which formed part of new industrial undertaking belonging to the tax payer.
2. Asset in question is transferred by way of compulsory acquisition under any law.
3. The asset in question was used for the purpose of industrial undertaking at least for two years immediately before the date of compulsory acquisition.
4. Assessee has purchased any other land or building within a period of three years from the date of receipt of compensation or constructed a building within such a period.
5. If the new asset is not acquired by the due date for furnishing the return of income for the relevant assessment year, the unutilized amount of capital gains must be deposited in a Capital Gains Deposit Account.

The cost of acquisition of the new asset is reduced by the exemption granted from LTCG for a period of 3 years from its date of acquisition.

### **Investment in Financial Assets (Section -54 EC)**

This exemption is available to all categories of taxpayers. To get exemption the following conditions are to be satisfied.

1. The assessee should transfer a long-term capital asset during the previous year.
2. The assessee should invest the whole or part of capital gain in long term specified assets. The long term specified assets include
  - I. Bonds redeemable after three years
  - II. Issued on or after 1.4.2007 and
  - III. Issued by
    - a) National Highway Authority of India (NHAI). Or
    - b) Rural Electrification Corporation Limited (RECL).

The investment made on or after 1.4.2007 in the long term specified asset by an assessee during any financial year shall not exceed fifty lakh rupees. The investment is to be made within six months from the date of transfer of the original capital asset. The bonds should not be transferred or converted into money for a period of three years from the date of acquisition. In case the bonds are transferred within 3 years from the date of their acquisition, the exemption allowed for investment earlier would be taxed in the year of such transfer as capital gains.

For this purpose it would be considered as transfer even if the assessee

takes any loan or advance on the security of the specified securities. For the investment in the bonds deduction under section 80C will not be available.

### **Investment into a residential house (Section 54F)**

If an individual or a HUF having LTCG arising out of sale of capital asset other than a residential house invests in the purchase or construction of a residential house, then, he/it is eligible for exemption.

Cost of New House X Capital

Gains Amount of exemption = .....

Net Consideration

Where net consideration = full value of consideration - cost of transfer.

The time available for investment and the method to be followed for investment after the due date for filing of return of income are the same as mentioned in the scheme in (a) above.

In this case, however, cost of the new asset is not changed. But the assessee should not own more than one residential house other than the residential house in which he has invested as on the date of transfer and also, he should not purchase/construct any other residential house for a period of 1/3 years from the date of transfer. In case he owns more than one residential house as on the date of transfer he is not eligible for this deduction.

In case he purchases/constructs a house within 1/3 years from the date of transfer after getting this deduction, the amount allowed as deduction would be taxed as capital gains in the year of such purchase/construction.

g) Transfer of fixed asset of industrial undertaking effected to shift it from urban area - 54G

This exemption is available to all categories of taxpayers. The conditions for claiming the exemption are as under:

1. The transfer is affected in the course of or in consequence of shifting the undertaking from an urban area to any area other than an urban area.
2. Asset transferred is machinery, plant, building, land or any right in building or land used for the business of industrial undertaking in an urban area.
3. The capital gain is utilized within one year before or 3 years after the date of transfer

- a) for purchasing new machinery or plant or building or land for tax payer's business in that new area; or
- b) shifting of the old undertaking and its establishment to the new area; or
- c) incurring of expenditure on such other purposes as specified in the scheme notified for the purpose.

Exemption of LTCG is given to the extent of the outlay for aforesaid asset and activities. The unutilized amount of capital gain as on the date on which return of income for the relevant Assessment Year is due; must be deposited in a Capital Gains Deposit account.

The cost of acquisition of the new asset is reduced by the exemption allowed from LTCG for a period of 3 years from its date of acquisition.

h) Shifting of an industrial undertaking from urban area to any Special Economic Zone (Sec54GA) Capital gain arising out of shifting of industrial undertaking from urban area to any Special Economic Zone are exempt if the following conditions were satisfied.

1. The transfer should be a long term or short-term capital asset such as plant, machinery, building or land or right in building or land.
2. Such asset has been used for the purpose of business of industrial undertaking situated in urban area.
3. The transfer should be done in connection with shifting of industrial undertaking in SEZ.
4. The amount of capital gain must be used within a period of one year before or three years after the date of transfer to purchase machinery or plant, to acquire land, to construct building for the purpose of business in SEZ.

The unutilized amount of capital gain as on the date on which return of income for the relevant Assessment Year is due; must be deposited in a Capital Gains Deposit account.

Exemption of long term capital gains on transfer of residential property (sec 54 GB)

This exemption is available to an individual or HUF. Capital gain arising out of transfer of a long term capital asset being a residential property (a house or a plot of land) is exempted from tax if the following conditions are satisfied.

1. The assessee utilizes the net consideration for subscription in equity shares of an eligible company before the due date of furnishing the return of income.

If he invests less than the net consideration in equity shares, the proportionate

capital gains shall be exempt.

2. The company utilizes the money within one year from the date of subscription in equity shares by the assessee for the purchase of new plant and machinery.

3. If the company does not utilize the consideration, received for issue of shares to the assessee, for purchase of new plant and machinery before the due date of furnishing return of income by the assessee, the consideration not so utilized shall be deposited in specified banks or institution in notified scheme.

If the amount deposited in specified bank etc is not utilized with the mentioned period of time by the company, the proportionate capital gains shall be chargeable to tax of the assessee of the previous year in which the period of one year from the date of subscription in the equity shares by the assessee expires.

If the assessee sells or otherwise transfers the shares or the company sells or otherwise transfers the new plant or machinery within five years from the date of acquisition , the exempted capital gains shall be deemed to be the capital gains of the previous year in which the new plant and machinery is sold or transferred.

If there is a gain on transfer of shares to the assessee, it shall be chargeable to tax in his hands.

If there is a gain on transfer of plant or machinery to the company, the company shall be liable to pay tax on it.

i) Extension of time for acquiring new asset or depositing or investing amount of capital gain: (Section 54H)

Where the transfer of the original asset (residential house and land appurtenant there to (Section 54), agricultural land (Section 54 B), land and building of an industrial undertaking (Section 54D), any long term capital asset (Section 54 EC) and long term capital asset other than residential house is by way of compulsory acquisition under any law, and the amount of compensation awarded for such acquisition is not received by the assessee the date of transfer, the period of acquiring the new asset or the period for depositing or investing the amount shall be extended in relation to the amount of compensation as is not received on the date of transfer.

Tax on capital gains on transfer of equity shares in a company or units of an equity oriented fund In the case of short term capital gains arising from transfer of equity shares in a company or units of an equity oriented fund, the tax payable by the assessee shall be @15% +surcharge of any + education cess 3% on such short term capital gains provided that such a transaction is chargeable to securities transactions tax. Notably, no deduction is available u/s 80C to 80U from above short term capital gains. In case of LTCG on transfer of equity shares or units of equity oriented mutual funds, provided the transaction has been subject to securities transaction tax, the LTCG is not chargeable to tax at all.

If the transaction has not been subjected to securities transaction tax, the LTCG will be taxed @ 10% if no indexing is claimed and @ 20% if cost of acquisition is indexed. The taxpayer has an option to choose from either of the above.

In case the shares / securities are transferred in demat' form, for computing capital gain chargeable to tax, the cost of acquisition and period of holding of any security shall be determined on First in – First - out (FIFO) basis.

Tax on long term  
capital gains Long  
term capital gain tax  
rates

In case of an individual or HUF who are resident in  
India -20% In case of other assesses 20%

### **Illustration:1**

Mr. Vishal sold his residential house for Rs:4,50,000 in November, 2012. Indexed cost of this house was Rs: 1,80,000. He paid 3 % of sale as commission to broker. He purchased another house on 26<sup>th</sup> January, 2013 for Rs:2,00,000. Compute his capital gains for the AY 2013-14

**Solution:** Computation of capital gains for the AY 2013-14

Particulars	Rs:	Rs:
Selling price of the house		4,50,000
Less: Brokerage	13,500	
Indexed cost	1,80,000	1,93,500
Long term capital gain		2,56,500
Less: Cost of new house		2,00,000
Taxable Capital Gain		56,500

### **Illustration:2**

Mr. Anandamurthy showed his block of assets as on 1-4-2012 at a WDV of Rs:1,50,000. He purchased another asset within the block during the year 2012-13 for Rs:40,000. The entire block of assets is sold during the previous year for Rs:2,00,000. Calculate capital gain for the assessment year 2013-14.

**Solution:****Computation of capital gains for the AY 2013-14**

Particulars	Rs:
W.D.V. of assets as on 01-04-2012	1,50,000
Add: Assets purchased during P.Y.	40,000
	1,90,000
Less: Selling Price	2,00,000
Short Term Capital Gain	10,000

**Illustration:3 :**

Mr. Varma purchased a plot in 1986-87 for Rs: 1,40,000. It was sold on 15-1-2013 for Rs:15,80,000 and he paid Rs:1,00,000 as brokerage. He invested Rs:2,00,000 in NHAI bonds on 31-3-2013 and Rs: 3,10,000 in bonds issued by Rural Electrification Corporation Ltd. on 1-8- 2013. Compute his taxable capital gain, if the CII for 1986-87 was 140 and for 2012-13 is 852.

**Solution:****Computation of capital gains for the AY 2013-14**

Particulars	Rs:	Rs:
Selling price of plot		15,80,000
Less: Brokerage	1,00,000	
Indexed cost ( $1,40,000 \times 853/140$ )	8,52,000	9,52,000
L T C G		6,28,000
Less: Exempt u/s 54EC : NHAI Bonds purchased within 6 months from the date of transfer of LTCA		2,00,000
Taxable Capital Gains		4,28,000

**Note:** Bonds of Rural Electrification Corporation Ltd. not purchased within 6 months from the date of transfer of LTCA, hence, not entitled to exemption.

**Illustration:4**

Agricultural land purchased in 1984-85 for Rs: 75,000 sold for Rs: 7,20,000 on 01-05-2012. The assessee purchased another piece of agricultural land on 01-08-2012 for Rs:80,000 and deposited Rs:50,000 in Capital Gains Account Scheme, 1988. Compute the Capital Gain chargeable to tax for the AY 2013-14. CII in 1984-85 was 125 and in 2012-13 is 852.

**Solution:****Computation of capital gains for the AY 2013-14**

Particulars	Rs:	Rs:
Selling price of agri. land		7,20,000
Less: Indexed Cost ( $75,000 \times 852/125$ )		5,11,200
LTCG		2,08,800
Less: Cost of new agri. land	80,000	
Deposit in Capital Gains Account	50,000	1,30,000
Taxable Capital Gains		78,800

**Illustration:5**

From the following information of Narayananmurthy, compute the capital gains for the AY 2013- 14:

Cost of acquisition of residential house in 1983-84 Rs:3,48,000.  
Sale consideration on 01-07-2012 Rs: 31,00,000.

Cost of acquisition of new house prior to the date of filing the IT return Rs:8,00,000.

The CII in 1983-84 and in 2012-13 was 116 and 852 respectively.

### **Computation of capital gains for the AY 2013-14**

Particulars	Rs:
Selling price of house	31,00,000
Less: Indexed cost ( $3,48,000 \times 852/116$ )	25,56,000
LTCG	5,44,000
Less: Cost of new house	8,00,000
Taxable Capital Gains	Nil

#### **Illustration:7**

From the following particulars, calculate capital gains:

Self-generated goodwill of a business sold for Rs: 14,00,000. Bonus shares in B.Ltd. (not listed) and ( being STCA) sold for Rs:8,00,000. Business income Rs: 60,000. LTCl in the transfer of a building Rs: 40,000. Face value of bonus shares sold Rs:6,00,000.

#### **Solution:**

### **Computation of Capital Gains for the AY 2013-14**

Particulars	Rs:	
Selling price of self-generated goodwill(assumed LTCA)	14,00,000	
Less: Cost	Nil	
L T C G	14,00,000	
Less: LTCL on sale of building	40,000	
L T C G		13,60,000
Selling price of bonus share	8,00,000	
Less: Cost	Nil	
S T C G		8,00,000
Taxable Capital Gain		21,60,000

## **Income from other sources**

Under the Income Tax act, income of every kind which is not to be excluded from the total income shall be chargeable to income tax under the head 'Income from other sources', if it is not chargeable to income tax under any of the other heads of income. Thus, income from other sources is a residuary head of income i.e. income not chargeable under any other head is chargeable to tax under this head. All income other than income from salary, house property, business and profession or capital gains is covered under 'Income from other sources'.

The following incomes are chargeable to tax:-

1. Dividend received from any entity other than domestic company. This is because dividend received from a domestic company has been made exempt in the hands of the receiver. Accordingly dividend received from a cooperative bank or dividend received from a foreign company will be taxable as income from other sources.
2. Any pension received by the legal heirs of an employee.
3. Any winnings from lotteries, crosswords, puzzles, races including horse races, card games or other games of any sort or gambling or betting of any form or nature.
4. Income from any plant, machinery or furniture let out on hire where it is not the business of the assessee to do so.
5. Income from securities by way of interest.
6. Any sum received by the assessee from his employees as contribution to any staff welfare scheme. However when the assessee makes the payment of such contribution within the time limit under the scheme of welfare, then the payment will be allowed as a deduction and only the balance amount will be taxable.
7. Income from subletting.
8. Interest on bank deposits
9. Income received under keyman insurance policy including bonus on such policy.
10. An individual or HUF receives in any previous year from any person or persons.
  1. Any sum of money, without consideration, the aggregate value of which exceeds Rs 50,000.

Any immovable property (i) without consideration, the stamp value of which exceeds

Rs 50,000- the stamp duty is taxable.(ii) for a consideration which is less than the stamp duty value of the property by an amount exceeding Rs 50,000- the stamp duty is taxable

3. Any property other than immovable property :

(i) without consideration, the aggregate fair Market value of which exceeds Rs 50,000- the whole of the aggregate fair market value of such property is included under this head as income.

(ii) for a consideration which is less than the aggregate fair market value of the property by an amount exceeding Rs 50,000- the aggregate fair Market value of such property as exceeds such consideration.

**Gift of Cash / Cheque / Draft:**

If, through one or more transactions, gift received is up to Rs 50,000 per financial year, then nothing is taxable. If gift is Rs 50,001 or above, then it is fully taxable. For example, if gift of Rs 70,000 is received in cash, then taxable amount is Rs 70,000 and not Rs 20,000.

**2. Gift of immovable property :** In this case, if Stamp duty value is up to Rs 50,000 then nothing is taxable. If it is above Rs 50,000, then fully taxable. It is applicable for each individual transaction.

Unlike above, if more than one transaction of Gift, below Rs 50,000, than they shall not be aggregated. Similarly, if there is consideration, may be less or say if difference between the actual selling price and Stamp duty value is more than 50,000, then the above law is not applicable. It is applicable only in case of gift i.e. when property is transferred without consideration.

**3. Gift of movable property (one or more transactions):** If fair market value of all movable properties gifted in one financial year is up to Rs 50,000, then nothing is taxable. But if it is more than Rs 50,000, then it is fully taxable.

**4. Movable property transferred for inadequate consideration:** If difference between actual consideration and fair market value is more than Rs 50,000, all transactions of one financial year combined together, then the difference is fully taxable. If difference is up to Rs 50,000, than nothing is taxable

**Exempted Gifts:**

- 1.Money / property received from a relative or by HUF from its members
- 2.Money / property received on the occasion of the marriage of the individual
- 3.Money / property received by way of will/inheritance

4. Money / property received in contemplation of death of the payer. 5. Money / property received from a local authority

6. Money / property received from any fund, foundation, university, other educational institution, hospital, medical institution, any trust, or institution referred to in the section 10(23C). 7. Money / property received from a charitable institute registered u/s 12AA.

11. Interest received on compensation or on enhanced compensation shall be deemed to be the income of the previous year in which it is received.

12. With effect from 2013-14 the following shall be treated as income:

Where a closely held company issue shares to a resident person for consideration exceeding the face value of such shares, the deemed income shall be consideration received- fair market value of the shares.

Apart from the above the following incomes are also shall be chargeable under this head.

1. Income from subletting
2. Interest on bank deposits and loans and securities.
3. Agricultural income from a place outside India.
4. Rent of plot of land
5. Mining rent and royalty.
6. Casual income under a will, contract, trust deed.
7. Salary payable to a member of parliament.
8. Income from undisclosed sources.
9. Gratuity paid to a director who is not an employee of a company.
10. Any casual income exceeding Rs. 5,000.
11. Income from markets, ferries and fisheries etc.
12. Income from leasehold property
13. Remuneration received for writing articles in journals.
14. Salary of M.P, member of legislative assembly or council
15. Interest received on securities of cooperative society

16. Family pension received by the widow and heirs of deceased employees. However the following family pensions are exempt:

(i) Pension received by the widow of an employee of the U.N.O

(ii) Family pension of gallantry awardee.

(iii) Family pension received by the widow or children or nominated person of a member of the armed forces (including para military force) of the union, where the death of such member occurred in the course of operational duties shall be exempt provided the prescribed conditions are satisfied.

17. Amount withdrawn from deposit in national Savings Scheme 1987 on which deduction u/s80 CCA has been allowed including interest thereon.

18. Directors commission for giving guarantee to bank.

19. Directors commission for underwriting shares of a new company.

20. Insurance commission not chargeable under the head business or profession

21. Gratuity received by a director who is not an employee of the company.

22. Tips received by a waiter or taxi driver not being given by his employer.

23. Tax paid by an Indian company on behalf of a foreigner who was sent to India by a foreign company with whom the collaborating company had entered into agreement was Income Of The Foreigner Taxable Under The Head Income From Other Sources.

### **Dividend**

The dividend is the distribution of divisible profits by a joint stock company to its shareholders by way of return on investments in the shares of the company. Dividend from an Indian company is exempted from tax.

Winnings from lotteries & betting, crossword puzzles, horse races and card games etc. sec. 115 BB.

It also includes income through draw of lots, television game shows and similar other games. Taxable at a flat rate of 30% without claiming any allowance or expenditure. Even if income is less than Rs 2,00,000 for the financial year 2012–13, these incomes are fully taxable Income from Units of UTI and Mutual Fund :Income from units of UTI and Mutual Fund is exempt from tax as per section 10(35).

Lottery includes winnings, from prizes awarded to any person by draw of lots or by chance or in any other manner whatsoever, under any scheme or arrangement by whatever name called. Card game and other game of any sort includes any game show, an entertainment programme on television or electronic mode, in which people compete to win prizes or any other similar game. Deductions u/s 80C to 80U is not available against such incomes. Surcharge & education cess will apply in a usual way.

## **TDS Rate**

As per section 194B the TDS rate for lottery, crossword puzzles or card games or other games is 30% [No TDS if lottery etc. up to Rs 10,000—but if amount exceeds Rs 10,000 then TDS on whole amount].

As per section 194BB, the TDS rate for winning from horse races is 30 % [No TDS if winning Up to Rs 5000. But if winnings exceed Rs 5000 then TDS on whole winnings].

Note : No TDS is deducted if Lottery Price is less than Rs.10,000 but still the tax is payable by the assessee. Similarly no TDS in case of Winning from other races, gambling or betting.

## **Interest on securities**

The income from interest on securities shall be chargeable to tax under income from other sources, if it is not taxable under the head income from business or profession.

The following amounts due to an assessee in the previous year shall be chargeable to income tax as interest on securities.

1. Interest on any security of the central or state govt.
2. Interest on debentures or other securities issued by a local authority.
3. Interest on debentures issued by a company (whether Indian or foreign)
4. Interest on debentures or other securities issued by statutory corporation.

## **Kinds of securities**

There are four types of securities.

**Tax free government securities:** The interest on these securities is fully exempt from tax. The interest on such securities is neither included in total income nor taxed.

**Less tax government securities:** These securities are issued by central govt or state government. These securities are taxable securities. But no tax is deducted at source on such securities. Therefore the interest on such securities will not be grossed up.

**Tax free commercial securities:** These securities are issued by local authority or Statuary Corporation or a company in the form of debentures or bonds. Actually the interest is not tax free. Income tax due on this interest is payable by the company or authority or Statuary Corporation. These are called tax free because the assessee is not required to pay tax on it. The interest due to an assessee is grossed up and this grossed up amount is included in the total income.

**Less tax commercial securities:** These are taxable securities. In this case income tax is deducted at source on the amount of interest calculated at the percentage stated on the securities. In this type of securities, if the net amount of interest is given, it has got to be grossed up. If the rate of percentage of interest is given it is not grossed up.

### **Bond washing transaction**

A bond-washing transaction is a transaction where securities are sold sometime before the due date of interest and reacquired after the due date is over. This practice is adopted by persons in the higher income group to avoid tax by transferring the securities to their relatives/friends in the lower income group just before the due date of payment of interest. In such a case, interest would be taxable in the hands of the transferee, who is the legal owner of securities. In order to discourage such practice, section 94(1) provides that where the owner of a security transfers the security just before the due date of interest and buys back the same immediately after the due date and interest is received by the transferee, such interest income will be deemed to be the income of the transferor and would be taxable in his hands. In order to prevent the practice of sale of securities-cum-interest, section 94(2) provides that if an assessee who has beneficial interest in securities sells such securities in such a manner that either no income is received or income received is less than the sum he would have received if such interest had accrued from day to day, then income from such securities for the whole year would be deemed to be the income of the assessee.

### **Grossing up of Interest:**

Interest is paid after TDS at following rates:

Govt. Securities: Nil (In case of 8% saving bonds, if amount of interest exceeds Rs 10,000 then there is a TDS @ 10%)

Listed / Non listed securities: 10%

100

Formula for grossing up: = Net amount received  $\times$  -----

100-- Rate

Note: No tax is deductible on debentures issued by a widely held company if interest is Paid /payable to an individual, resident in India and the aggregate amount of such interest paid or payable during the financial year does not exceed Rs 2500.

### Expenses deductible from Interest income

The following expenses can be claimed as deductions from grossed up Interest income:  
**(a)Collection charges:** e.g. commission or remuneration to a banker or any other agent/broker for the purpose of realizing the interest.

**(b) Interest on loan:** Interest on money borrowed for purchasing the securities can be claimed as deduction. This deduction can exceed the amount received by way of interest. If interest is payable outside India, TDS must be done, otherwise deduction is not available.

**Basis of charge:** Interest on securities is chargeable on receipt basis if the books of accounts of such income are maintained on cash basis. If, however, books of accounts are not maintained or maintained on the basis of mercantile system of accounting, then interest on securities is taxable on accrual basis. Deduction of collection charges, interest on borrowed capital is allowed as per the method of accounting followed by the assessee.

Interest exempt from tax [Sec. 10(15)] Interest on the following is exempt from tax:

1. Interest on notified securities, bonds or certificates:
  - a. National Defence Gold Bonds, 1980
  - b. Special bearer bonds, 1991
  - c. Post office Cash certificates
  - d. National Plan Certificates
  - e. National Plan Savings certificates
  - f. Post Office National Savings Certificates
  - g. Post Office Savings Bank Account
    - (i) Individual account – maximum exemption limit Rs 3,500
    - (ii) Joint account – maximum exemption limit Rs 7,000
  - h. Post Office Cumulative Time Deposit Rules, 1981
  - i. Special deposit Scheme, 1981
  - j. public account in Post office (up to Rs 5,000)
2. Interest on National Relief Bonds (only for individual and HUF)
3. 7% Capital Investment Bonds (only for individual and HUF)
4. Interest on notified bonds/ debentures of Public Sector companies
5. Interest on deposits in a specified scheme made by a retired govt./public sector employee out of retirement benefits.

6. Interest on Gold Deposit bonds

7. Interest received by a non-resident Indian from notified bonds (i.e. NRI bonds). Standard deduction in the case of family pension [Sec. 57(ii)]

In the case of income in the nature of family pension, the amount deductible is Rs. 15,000 or 33 1/3 per cent of such income, whichever is less.

For this purpose “family pension” means a regular monthly amount payable by the employer to a person belonging to the family of an employee in the event of his death.

**DEDUCTIONS AGAINST INCOME FROM OTHER SOURCE U/S 57**

- a. commission or remuneration for realising dividend or interest on securities – Section 57(i)
- b. Repairs, depreciation in case of letting out of plant, machinery, furniture, building etc.
- c. Standard deduction in case of family pension – 57(ii)
- d. Any other expenditure of revenue nature [57(iii)]
- e. Interest on borrowed capital [loan taken to invest in shares/ debentures etc.]

**Illustration:1**

Mr. S.B.Singh, a College Professor, furnished the following particulars. You are required to compute income from other sources:

Examination remuneration Rs: 7,000 Royalty from books and articles Rs: 25,000 Winnings from card games Rs: 6,700 Winnings from State lottery Rs: 30,000

Expenditure on purchase of lottery tickets Rs: 12,000.

**Solution:**

**Computation of Income from Other Sources For the AY 2013-14**

Particulars	Rs:
Examination remuneration	7,000
Royalty from books and articles	25,000
Winnings from card games	6,700
Winnings from State lottery	30,000
Income from other sources	68,700

### **Illustration :2**

Compute income from other sources: Dividend (Gross) Rs:9,600

Expenses incurred for its collection Rs: 500

Receipts from letting of plant and machinery Rs: 10,000 Repairs of Plant and Machinery Rs: 4,000

Insurance premium in respect of plant and machinery Rs: 2,000 Depreciation allowed for letting Rs:4,000

### **Solution:**

#### **Computation of Income from Other Sources For the AY 2013-14**

Particulars	Rs:	Rs:
Receipts from letting of P&M		10,000
Less: Admissible expenses:		
Repairs of P&M	4,000	
Insurance premium in respect of P&M	2,000	
Depreciation allowed for letting	4,000	10,000
Income from other sources		Nil

### **Illustration:3**

From the following particulars submitted by Sri. Mani Shankar Iyer, compute his income from other sources for the AY 2013-14 :

As Director of ABC Ltd. he received Rs: 12,000 p.m. as salary and Rs:1,200 p.m. as entertainment allowance. The company provides him a car for both official and personal use. The personal use is estimated to be 50%. The company incurs an expenditure of Rs:16,000 on running and maintenance of the car {for both official and personal use) and depreciation of the car may be taken as Rs: 14,000.

He was also a Director in another company from which he received Rs: 13,000 as Director's fee.

Interest received on deposits with a Co-operative bank limited Rs:2,000.  
Dividend received from a foreign company Rs: 6,000.

Received winnings from lottery Rs: 24,500

Income from agricultural land in England Rs: 78,000.

Honorarium for delivering lectures in a registered society Rs:1,200.

**Solution:**

**Computation of Income from Other Sources For the AY 2013-14**

Particulars	Rs:
Director's fee	13,000
Interest on deposits with Co-operative Bank	2,000
Dividend from a foreign company	6,000
Winnings from lottery ( 24500 X 100/70)	35,000
Agri. Income from England	78,000
Honorarium for Lectures	1,200
Income from other sources	1,35,200

**Illustration:4**

Compute income from other sources of Mr. Ajayakumar for the AY 2013-14. His investments are :

5% govt. securities Rs: 70,000

7.5% Agra Municipal Bond Rs: 50,000 9% debentures of a company Rs:30,000 7% Capital Investment Bond Rs: 20,000

**Solution:**

**Computation of Income from Other Sources For the AY 2013-14**

Particulars	Rs:
Interest on Govt. Securities ( $70,000 \times 5\%$ )	3,500
Interest on Agra Municipal Bond ( $5,000 \times 7.5\%$ %)	3750
Interest on debentures ( $30,000 \times 9\%$ )	2,700
Interest on Capital Investment Bond	Exempt
Income from Other Sources	9,950

**Illustration:5**

The following are the details relating to Mr. Siddharth for the P.Y. 2012-13. Compute income from other sources:

Income from agriculture in Pakistan Rs: 5,000 Interest on post office savings bank Rs: 1,000 Dividend from foreign company Rs: 700 Dividend from Indian company Rs: 1,000

Rent from sub-letting house Rs: 26,250 Expenses for sub-letting house Rs: 1,000  
Winning from lottery (Net) Rs: 14,000

**Solution:****Computation of Income from Other Sources For the AY 2013-14**

Particulars	Rs:	Rs:
Income from agriculture		5,000
Interest on P.O.S.B.		Exempt
Dividend from foreign company		700
Dividend from Indian company		Exempt
Rent from sub-letting house	26,250	
Less: Expenses	1,000	25,250
Winnings from lottery (14,000 x 100/70)		20,000
Income from Other Sources		50,950



**SATHYABAMA**

INSTITUTE OF SCIENCE AND TECHNOLOGY  
(DEEMED TO BE UNIVERSITY)

Accredited "A" Grade by NAAC | 12B Status by UGC | Approved by AICTE

[www.sathyabama.ac.in](http://www.sathyabama.ac.in)

**SCHOOL OF MANAGEMENT STUDIES**

**UNIT V - INCOME TAX LAW AND PRACTICE –  
SBAA1404**

## UNIT V CLUBBING OF INCOMES

Clubbing of income means Income of other person included in assessee's total income, for example: Income of husband which is shown to be the income of his wife is clubbed in the income of Husband and is taxable in the hands of the husband. Under the Income Tax Act a person has to pay taxes on his income. A person cannot transfer his income or an asset which is his one of source of his income to some other person or in other words we can say that a person cannot divert his income to any other person and says that it is not his income. If he do so the income shown to be earned by any other person is included in the assessee's total income and the assessee has to pay tax on it. Inclusion of other's Incomes in the income of the assessee is called Clubbing of Income and the income which is so included is called Deemed Income. It is as per the provisions contained in Sections 60 to 64 of the Income Tax Act. For example: A purchased a house property in the name of his wife B. A let out this house property. The rental income earned by A in name of his wife B is taxable in the hands of A.

Clubbing of Income takes place in the following cases:

- 1. Transfer of income without transfer of Asset:** If any person transfers income without transferring the ownership of the asset, such income will be taxable in the hands of the transferor. Ex. X owns 4000, 14% debentures of A ltd. of Rs. 100 each , he transfers interest income to his friend Y without transferring the ownership of Debentures . In this case although interest will be received by Y but it is taxable in the hands of X.
- 2. Revocable transfer of Asset:** If any person transfers any asset to any other person in such form and condition that such transfer is revocable at any time during the lifetime of the transferee , the income earned through such asset is chargeable to tax as the income of the transferor. For ex. X transfers a house property to A. However , X has right to revoke the transfer during the life time of A . It is a revocable transfer and income arising from the house property is taxable in the hands of X.
- 3. Remuneration to 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. This provision has an exception. If the remuneration is received by spouse by the application of technical or professional knowledge or experience clubbing provisions will not take place. For ex. X has substantial interest in A ltd. and Mrs. X is employed by A ltd. without any technical or professional qualification. In this case salary income of Mrs. X shall be taxable in the hands of X.
- 4. Income from assets transferred to spouse:** Where an asset is transferred by an individual to his spouse directly or indirectly, otherwise than for adequate consideration or in connection with an agreement to live apart, any income from such asset is deemed to be the income of the transferor. For ex. Mrs. A transfer's 100 debentures of IFCI to her husband without adequate consideration. Interest income on these debentures will be included in the income of Mrs. A.

**5. Income from asset transferred to son's wife:** If an individual, directly or indirectly transfers asset , without adequate consideration to son's wife , income arising from such asset is included in the income of the transferor. For ex. Mrs. A transfer's 100 debentures of IFCI to her son's wife without adequate consideration. Interest income on these debentures will be included in the income of Mrs. A.

**6. Income from asset transfer to a person for the benefit of spouse/ son's wife:** If an individual , directly or indirectly transfers asset , without adequate consideration to a person or an association of persons for the benefit of his/her spouse /son's wife , income arising from such asset directly or indirectly is included in the income of the transferor. For Ex. X transfers Government bonds without consideration to an association of persons, subject to the condition that , the interest income from these bonds will be utilized for the benefit of Mrs. X or Mrs. X son's wife . Interest from bonds will be included in the income of X

**7. Income of a minor child:** All income which arises to the minor shall be clubbed in the income of his parents. Income will be included in the income of that parent whose total income is greater. This case has two exceptions.(1) Income of minor child suffering from specified disability . (2) Income of minor child on account of manual work or involving application of his skill/talent etc.

**\*Substantial Interest:** An individual is deemed to have substantial interest if he beneficially holds equity shares carrying not less than 20% voting power in case of a company or is entitled to not less than 20% of the profits in case of a concern other than a company , at any time during the previous year.

#### **Some special points to remember:**

1. If an individual makes a gift in cash or by cheque to his spouse and that money is utilized by the spouse for purchase of an asset . The income earned by the spouse from that asset will not be clubbed in the income of the individual.
2. In order to invoke clubbing provisions there must be relation of husband and wife. That means if a person transfers asset to his would be spouse before marriage income arising from such asset will not be included in the income of transferor.
3. Negative income is also income. Under the Income Tax Act income does not mean positive income only. The term income includes negative income or loss also.
4. Income from accretion to asset is not taxable in the hands of the transferor.
5. Income from saving out of pin money is not included in the income of husband.
6. Income of minor child is clubbed with the income of the parent whose income after excluding the share of minor's income is greater.

7. If trust is created for the benefit of minor child and income during minority of child is being accumulated and added to corpus of trust and income from increased corpus is given to the child after attaining majority, clubbing provisions are not applicable.

### **Aggregation of Income**

In certain cases, some amounts are deemed as income in the hands of the assessee though they are actually not in the nature of income. These cases are contained in sections 68, 69, 69A, 69B, 69C and 69D. The Assessing Officer may require the assessee to furnish explanation in such cases. If the assessee does not offer any explanation or the explanation offered by the assessee is not satisfactory, the amounts referred to in these sections would be deemed to be the income of the assessee. Such amounts have to be aggregated with the assessee's income.

### **Cash credits (sec 68)**

Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year.

### **Unexplained investments (sec 69)**

Where in the financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year.

### **Unexplained money, etc (Sec 69A)**

Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year.

### **Amount of investments, etc., not fully disclosed in books of account( 69B.)**

Where in any financial year the assessee has made investments or is found to be the owner of any bullion, jewellery or other valuable article, and the Assessing Officer finds that the amount expended on making such investments or in acquiring such bullion, jewellery or other valuable article exceeds the amount recorded in this behalf in the books of account maintained by the

assessee for any source of income, and the assessee offers no explanation about such excess amount or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the excess amount may be deemed to be the income of the assessee for such financial year.

#### **Unexplained expenditure, etc (69C).**

Where in any financial year an assessee has incurred any expenditure and he offers no explanation about the source of such expenditure or part thereof, or the explanation, if any, offered by him is not, in the opinion of the Assessing Officer, satisfactory, the amount covered by such expenditure or part thereof, as the case may be, may be deemed to be the income of the assessee for such financial year :

**Provided** that, notwithstanding anything contained in any other provision of this Act, such unexplained expenditure which is deemed to be the income of the assessee shall not be allowed as a deduction under any head of income.

#### **Amount borrowed or repaid on hundi (69D.)**

Where any amount is borrowed on a hundi from, or any amount due thereon is repaid to, any person otherwise than through an account payee cheque drawn on a bank, the amount so borrowed or repaid shall be deemed to be the income of the person borrowing or repaying the amount aforesaid for the previous year in which the amount was borrowed or repaid, as the case may be:

**Provided** that, if in any case any amount borrowed on a hundi has been deemed under the provisions of this section to be the income of any person, such person shall not be liable to be assessed again in respect of such amount under the provisions of this section on repayment of such amount. For the purposes of this section, the amount repaid shall include the amount of interest paid on the amount borrowed.

#### **Set off, or carry forward and set off**

Set off of loss from one source against income from another source under the same head of income (sec 70.)

(1) Save as otherwise provided in this Act, where the net result for any assessment year in respect of any source falling under any head of income, other than Capital gains, is a loss, the assessee shall be entitled to have the amount of such loss set off against his income from any other source under the same head.

(2) Where the result of the computation made for any assessment year under sections to in respect of any short-term capital asset is a loss, the assessee shall be entitled to have the amount of such loss set off against the income, if any, as arrived at under a similar computation made for the assessment year in respect of any other capital asset.

(3) Where the result of the computation made for any assessment year under sections to in respect of any capital asset (other than a short-term capital asset) is a loss, the assessee shall be entitled to have the amount of such loss set off against the income, if any, as arrived at under a similar computation made for the assessment year in respect of any other capital asset not being a short-term capital asset.

However the following are the exceptions to the general rule.

(1) Loss from speculation business cannot be set off against income from other sources. This loss can be set off only against income from another speculation business.

(2) Loss of specified business cannot be set off against income from other business. This loss can be set off only against income from other specified business.

(3) Long term capital loss cannot be set off against short term capital gain. This loss can be set off only against long term capital gain.

(4) Loss from the activity of owning and maintaining race horses shall be set off against income from owning and maintaining race horses only and not against any other income under the head other sources.

### **Inter head adjustment [Section 71]**

Loss under one head of income can be adjusted or set off against income under another head. However, the following points should be considered:

(i) Where the net result of the computation under any head of income (other than ‘Capital Gains’) is a loss, the assessee can set-off such loss against his income assessable for that assessment year under any other head, including ‘Capital Gains’.

(ii) Where the net result of the computation under the head “Profits and gains of business or profession” is a loss, such loss cannot be set off against income under the head “Salaries”.

(iii) Where the net result of computation under the head ‘Capital Gains’ is a loss, such capital loss cannot be set-off against income under any other head.

(iv) Speculation loss and loss from the activity of owning and maintaining race horses cannot be set off against income under any other head.

### **Carry forward and set off losses**

If it is not possible to set off the losses during the same assessment year in which they occurred, so much of the loss as he has not been so set off out of the following losses can be carried forward for being set off against his income in the succeeding years provided the losses have been determined in pursuance of a return filed by the assessee within the time allowed u/s 139(i) and it is the same assessee who sustained the loss.

- (i) Loss under the head income from house property.
- (ii) Loss of non speculation business or profession.
- (iii) Loss of speculation business.
- (iv) Loss of specified business
- (v) Short term capital loss or long term capital loss.
- (vi) Loss from activity of owning and maintaining race horses.

### **Set-off and carry forward of loss from house property [Section 71B]**

- (i) In any assessment year, if there is a loss under the head ‘Income from house property’, such loss will first be set-off against income from any other head during the same year.
- (ii) If such loss cannot be so set-off, wholly or partly, the unabsorbed loss will be carried forward to the following assessment year to be set-off against income under the head ‘Income from house property’.
- (iii) The loss under this head is allowed to be carried forward up to 8 assessment years immediately succeeding the assessment year in which the loss was first computed.
- (iv) For example, loss from one house property can be adjusted against the profits from another house property in the same assessment year. Any loss under the head ‘Income from house property’ can be set off against any income under any other head in the same assessment year. However, if after such set off, there is still any loss under the head “Income from house property”, and then the same shall be carried forward to the next year.
- (v) It is to be remembered that once a particular loss is carried forward, it can be set off only against the income from the same head in the forthcoming assessment years.

### **Carry forward and set-off of business losses [Sections 72 & 80]**

Under the Act, the assessee has the right to carry forward the loss in cases where such loss cannot be set-off due to the absence or inadequacy of income under any other head in the same year. The loss so carried forward can be set-off against the profits of subsequent previous years. Section 72 covers the carry forward and set-off of losses arising from a business or profession. The assessee’s right to carry forward business losses under this section is, however, subject to the following conditions:-

- (i) The loss should have been incurred in business, profession or vocation.

- (ii) The loss should not be in the nature of a loss in the business of speculation.
- (iii) The loss may be carried forward and set-off against the income from business or profession though not necessarily against the profits and gains of the same business or profession in which the loss was incurred. However, a loss carried forward cannot, under any circumstances, be set-off against the income from any head other than “Profits and gains of business or profession”.
- (iv) The loss can be carried forward and set off only against the profits of the assessee who incurred the loss. That is, only the person who has incurred the loss is entitled to carry forward or set off the same. Consequently, the successor of a business cannot carry forward or set off the losses of his predecessor except in the case of succession by inheritance.
- (v) A business loss can be carried forward for a maximum period of 8 assessment years immediately succeeding the assessment year in which the loss was incurred.
- (vi) As per section 80, the assessee must have filed a return of loss under section 139(3) in order to carry forward and set off a loss. In other words, the non-filing of a return of loss disentitles the assessee from carrying forward the loss sustained by him. Such a return should be filed within the time allowed under section 139(1). However, this condition does not apply to a loss from house property carried forward under section 71B and unabsorbed depreciation carried forward under section 32(2).

### **Carry forward and set off speculation business losses (section 73)**

The loss of a speculation business of any assessment year is allowed to be set off only against the profits and gains of another speculation business in the same assessment year. If a speculation loss could not be set off from the income of another speculation business in the same assessment year, it is allowed to be carried forward for 8 assessment years immediately succeeding the assessment year for which the loss was first computed. Also, it can only be set off against the income of only a speculation business. It may be observed that it is not necessary that the same speculation business must continue in the assessment year in which the loss is set off. However, filing of return before the due date is necessary for carry forward of such a loss.

The following are the other important points regarding carry forward of business losses.

1. Losses of discontinued business of an industrial undertaking after reestablishment or revival. If on account of natural calamities the business of an industrial undertaking is discontinued; but revived within 3 years thereafter, the unabsorbed losses of the undertaking shall be carried forward and set off against the profit of the revived business or any other business up to a maximum period of 8 years.
2. Treatment of losses after succession takes place by inheritance : The loss incurred by the father in the course of carrying on his business can be carried forward and set off by his son , if he succeeds to the business of his father on account of his death.

3. Provisions relating to carry forward and set off of accumulated loss and unabsorbed depreciation allowance in amalgamation or demerger, etc 72A.

### **Losses in speculation business (sec 73)**

(1) Any loss, computed in respect of a speculation business carried on by the assessee, shall not be set off except against profits and gains, if any, of another speculation business.

(2) Where for any assessment year any loss computed in respect of a speculation business has not been wholly set off under sub-section (1), so much of the loss as is not so set off or the whole loss where the assessee had no income from any other speculation business, shall, subject to the other provisions of this Chapter, be carried forward to the following assessment year, and

(i) it shall be set off against the profits and gains, if any, of any speculation business carried on by him assessable for that assessment year ; and

(ii) if the loss cannot be wholly so set off, the amount of loss not so set off shall be carried forward to the following assessment year and so on.

### **Losses under the head Capital gains (sec 74)**

(1) Where in respect of any assessment year, the net result of the computation under the head Capital gains is a loss to the assessee, the whole loss shall, subject to the other provisions of this Chapter, be carried forward to the following assessment year, and

(a) in so far as such loss relates to a short-term capital asset, it shall be set off against income, if any, under the head Capital gains assessable for that assessment year in respect of any other capital asset;

(b) in so far as such loss relates to a long-term capital asset, it shall be set off against income, if any, under the head Capital gains assessable for that assessment year in respect of any other capital asset not being a short-term capital asset;

(c) if the loss cannot be wholly so set off, the amount of loss not so set off shall be carried forward to the following assessment year and so on.

(2) No loss shall be carried forward under this section for more than eight assessment years immediately succeeding the assessment year for which the loss was first computed.

(3) In respect of allowance on account of depreciation or capital expenditure on scientific research, the provisions of sub-section (2) of section 72 shall apply in relation to speculation business as they apply in relation to any other business.

(4) No loss shall be carried forward under this section for more than eight assessment years immediately succeeding the assessment year for which the loss was first computed.

**Illustration:1**

The business income of an individual for the AY 2013-14 has been determined by the AO at Rs: 3,50,000. Later, it is found that he has not considered the following while determining the income: Depreciation for the current year Rs: 12,000

Unabsorbed depreciation carried forward Rs: 15,000

Unabsorbed business loss carried forward from AY 2011-12 Rs: 3,000 Determine the total income for the AY 2011-14.

**Solution:**

**Computation of Total Income for the AY 2013-14**

Particulars	Rs:
Business income as determined by A O	3,50,000
Less: Current year's depreciation	12,000
	3,38,000
Less: Unabsorbed Business Loss of 2011-12	3,000
	3,35,000
Less: Unabsorbed Depreciation	15,000
Total Income	<b>3,20,000</b>

**Illustration:2**

From the following information of a trader, compute the gross total income for the AY 2013-14:

- 1) Income from H.P. Rs: 2,50,000
- 2) Business Loss Rs: 60,000
- 3) Current year's depreciation Rs: 10,000
- 4) Business loss of preceding years Rs: 50,000
- 5) Unabsorbed depreciation of preceding years Rs: 30,000
- 6) STCG Rs: 40,000
- 7) LTCG Rs: 50,000

**Solution :**

**Computation of Total Income for the AY 2013-14**

<b>Particulars</b>	<b>Rs:</b>	<b>Rs:</b>
Income from H.P.		2,50,000
Less: Business loss	60,000	
Current depreciation	10,000	
Unabsorbed depreciation	30,000	1,00,000
		1,50,000
LTCG	50,000	
Less: STCG	40,000	10,000
<b>Gross Total Income</b>		<b>1,60,000</b>

## **Deductions from Gross Total Income**

In computing the total income of an assessee, deductions specified under sections 80C to 80U will be allowed from his Gross Total Income. However, the aggregate amount of deductions under this chapter shall not, in any case, exceed the gross total income of the assessee.

Total Income = Gross Total Income – Deductions under sections 80C to 80U.  
These deductions are divided into two categories. They are:

- A. Deductions in respect of certain payments
- B. Deductions in respect of certain incomes.

### **Deductions in respect of certain payments**

#### **SECTION 80C:**

**Deduction in respect of life insurance premia, deferred annuity, contributions to provident fund, subscription to certain equity shares or debentures, etc.**

**Persons Covered:** Individual /HUF.

**Eligible Amount:** Any sums paid or deposited in the previous year by the assessee —

1. As ***Life Insurance premium*** to effect or keep in force insurance on life of (a) self, spouse and any child in case of individual and (b) any member, in case of HUF.
  - (i). Insurance premium should not exceed 20% of the actual capital sum assured, if the policy is issued before 1-04-2012.
  - (ii). The qualifying amount of life insurance premium on the insurance policy issued on or after 1- 04-2012 shall not exceed 10% of the actual capital sum assured.
  - (iii). The qualifying amount of life insurance premium on an insurance policy issued on or after 1- 04-2013 shall not exceed 15% of the actual capital sum assured if it is on the life of a person who is (a) a person with disability or a person with severe disability or (b) suffering from decease or aliment specified u/s 80DDB.
2. To effect or keep in force ***a deferred annuity contract*** on life of self, spouse and any child in case of individual. Such contract should not contain a provision for cash payment option in lieu of payment of annuity.

3. By way of ***deduction from salary payable by or on behalf of the Government*** to any individual for the purpose of securing to him a ***deferred annuity*** or making provision for his spouse or children. The sum so deducted does not exceed 1/5th of the salary.
4. As contribution (not being repayment of loan) by an individual to ***Statutory Provident Fund***; i.e., any provident fund to which the Provident Funds Act, 1925, applies.
5. As contribution to ***Public Provident Fund*** scheme, 1968, in the name of self, spouse and any child in case of individual and any member in case of HUF.
6. As contribution by an employee to a ***recognized provident fund***.
7. As contribution by an employee to an ***approved superannuation fund***.
8. any subscription to any such security of the central government or any such deposit scheme which is notified by the central govt.
9. Any sum deposited in a ***10 year or 15 year account under the Post Office Savings Bank (CTD) Rules, 1959***, in the name of self and as a guardian of minor in case of individual and in the name of any member in case of HUF.
10. Subscription to the NSC (VIII issue) and IX issue.
11. As a contribution to Unit-linked Insurance Plan (ULIP) of UTI or LIC Mutual Fund (Dhanraksha plan) in the name of self, spouse and child in case of individual and any member in case of HUF.
12. To effect or to keep in force a contract for such annuity plan of the LIC (i.e., Jeevan Dhara, Jeevan Akshay and their upgradations) or any other insurer as referred to in by the Central Government.
13. As subscription to ***any units of any Mutual Fund*** referred u/s. 10(23D) (***Equity Linked Saving Schemes***).
14. As a contribution by an individual to any ***pension fund*** set up by any Mutual Fund referred u/s 10(23D).
15. As subscription to any such deposit scheme of ***National Housing Bank (NHB)***, or as a contribution to any such pension fund set up by NHB as notified by Central Government.
16. As subscription to ***notified deposit schemes*** of (a) Public sector company providing long-term finance for purchase/construction of residential houses in India or (b) Any authority constituted in India for the purposes of housing or planning, development or improvement of cities, towns and villages.

17. As ***tuition fees*** (excluding any payment towards any development fees or donation or payment of similar nature), to any university, college, school or other educational institution situated within India for the purpose of full-time education of any two children of individual.
18. Towards the cost of ***purchase or construction of a residential house property*** (including the repayment of loans taken from Government, bank, LIC, NHB, specified assessee's employer etc., and also the stamp duty, registration fees and other expenses for transfer of such house property to the assessee). The income from such house property should be chargeable to tax under the head "Income from house property".
19. As subscription to ***equity shares or debentures*** forming part of any eligible issue of capital of public company or any public financial institution ***approved by Board***.
20. As ***Term Deposit*** (Fixed Deposit) ***for 5 years or more with Scheduled Bank*** in accordance with a scheme framed and notified by the Central Government.
21. As subscription to any notified bonds of National Bank for Agriculture and Rural Development (NABARD).
22. In an account under the ***Senior Citizen Savings Schemes Rules, 2004***.
23. As ***five year term deposit*** in an account under the ***Post Office Time deposit Rules, 1981***.

**Extent of Deduction:** 100% of the amount invested or Rs. 1,00,000/- whichever is less. However, as per Section 80CCE, the total deduction the assessee can claim u/ss. 80C, 80CCC and 80CCD(1) shall be restricted in aggregate to Rs. 1,00,000/-.

#### **SECTION 80CCC- Deduction In Respect of Contribution to Certain Pension Funds**

**Persons Covered-** Individual.

**Eligible Amount-** Deposit or payment made to LIC or any other insurer in the approved annuity plan for receiving pension.

**Extent of Deduction-** Least of amount paid or Rs. 1,00,000/- .

## **SECTION 80CCD-**

### **Deduction In Respect of Contribution to Pension Scheme of Central Government**

**Persons Covered-** Individual in the employment of Central Government or any other employer on or after 1-1-2004 or any other assessee being an individual.

**Eligible Amount-** Deposit or payment made by the employee and Central Government or individual under a pension scheme notified by the Central Government.

**Extent of Deduction-A)** Aggregate of (a) Amount paid or deposited by the employee and (b) Amount paid or deposited by the Central Government. The total deduction shall be restricted to maximum 10% of salary.

B) Amount deposited by individual, subject to 10% of total income, in a previous year

**80CCE-** The aggregate amount of deductions under section 80C, section 80CCC and 80CCD shall not exceed Rs 1, 00,000.

## **Section 80CCG**

Section 80CCG of the Income-tax Act is also called as Rajiv Gandhi Equity Savings Scheme, 2012 (RGESS). Any resident individual with income less than Rs 12 lakhs who uses demat account for the first time to buy notified shares, mutual funds or ETFs can claim 50% deduction on the invested amount. RGESS was introduced to encourage small investors to participate in the equity markets.

### **Eligibility**

1. The assessee should be a new retail investor. This means you should be using a demat account the first time ever for equities. You should be using a new demat account or if you had a demat account you should have never traded in equities using it before.

2. The gross total income should not exceed Rs 12 lakhs.

3. Investment must be done in

(i) Shares belonging to BSE-100, NSE-100, maharatnas, navratnas or miniratnas. FPOs of these companies or IPOs of PSUs with 51% government shareholding are also eligible.

(ii) Mutual funds and ETFs investing in the above shares are eligible for tax saving through RGESS. NFOs of such funds are also eligible for 80 CCG RGESS deduction.

4. NRIs cannot avail this tax benefit. RGESS tax rebate under section 80CCG is applicable only for residents. Investments will have a total lock-in period of three years. The first year will be a fixed lock-in period where the assessee cannot alter the securities on which deduction has been claimed under 80CCG and the next two years will be flexible lock-in period where the assessee can sell the securities while ensuring that value of the portfolio on which tax benefit has been claimed is maintained.

**Maximum deduction limit:** Maximum investment is capped at Rs 50,000. You can claim only 50% deduction on the amount invested. This deduction can be availed for three consecutive years, based on investments you make in those years, complying with RGESS requirements.

### **Section 80D- Deductions In Respect Of Medical Insurance Premia**

**Eligible Amount** Premium paid on Mediclaim Policy issued by GIC or any other insurer approved by IRDA (Insurance Regulatory and Development Authority).

#### **Extent of Deduction:**

##### **For Individual**

A. For taxpayer his/her spouse and dependent children: 100% of premium paid subject to ceiling of (a) Rs. 20,000/- in the case of premium paid in respect of senior citizen (who has attained the age of 65 years or more) and (b) Rs. 15,000/- in other cases.

B. Additional deduction for parents of the taxpayer whether dependent or not 100% of premium paid subject to ceiling of (a) Rs. 20,000/- in the case of premium paid in respect of senior citizen (who has attained the age of 65 years or more) and (b) Rs. 15,000/- in other cases.

**From Assessment year 2011-12**, the benefit of deduction will be extended to the contribution made to Central Government Health Scheme. However, the aggregate limit for deduction remains the same.

### **Section 80DD- Deduction In Respect Of Maintenance Including Medical Treatment Of Handicapped Dependant**

**Persons Covered-** Resident Individual/HUF.

**Eligible Amount-**(a) Expenditure incurred on medical treatment [including nursing], training and rehabilitation of a disabled dependant, or (b) Any payment or deposit made under a scheme framed by LIC or any other insurer or the administrator or the specified company and approved by the Board for payment of lump sum amount or annuity for the benefit of dependant with disability.

### **Relevant Conditions/Points**

1. The concerned assessee must attach a copy of certificate in the prescribed Form and signed by prescribed medical authority along with return of income filed u/s 139. A fresh medical certificate may be required to be submitted after the expiry of stipulated period depending on the condition of disability as specified in such certificate.
2. Dependant means (a) in case of an individual, the spouse, children, parents, brothers and sisters of such individual and (b) in the case of a Hindu Undivided Family, any member of HUF; and who is dependant wholly or mainly on such individual or HUF for support and maintenance and who has not claimed deduction under section 80U for the assessment year relating to previous year.

**Extent of Deduction**(a) Rs. 50,000/- in case of normal disability or (b) Rs. 100,000/- in case of severe disability.

### **Section 80DDB- Deduction In Respect Of Medical Treatment, Etc.**

**Persons Covered-** Resident Individual/HUF.

**Eligible Amount-** Expenditure actually incurred for the medical treatment of such diseases or ailments specified in Rule 11DD (some of the diseases are parkinsons disease, malignant cancers, full blown AIDS, chronic renal failure, thalassaemia etc.) for self or dependant relative (spouse, children, parents, brothers and sisters) in case of individual or any member of HUF in case of HUF.

### **Relevant Conditions/Points**

1. The concerned assessee must attach a copy of certificate in the prescribed Form No.10-I by a neurologist, an oncologist, a urologist, a haematologist, an immunologist or such other specialist working in Government Hospital along with return of income.individual/HUF
2. The deduction under this section shall be reduced by the amount received under insurance from an insurer or reimbursed by an employer, for the medical treatment of the concerned person.

### **Extent of Deduction**

100% of the expenses incurred subject to ceiling of (a) Rs. 60,000/- in the case of expenses incurred for senior citizen (who has attained the age of 65 years or more) and (b) Rs. 40,000/- in other cases.

### **Section 80E- Deduction in Respect of Interest on Loan Taken for Higher Education**

**Persons Covered-** Individual.

**Eligible Amount-** Any amount paid by way of interest on loan taken from any financial institution or any approved charitable institution for his/her higher education or w.e.f. 1-4-2008 for the purpose of higher education of his/her spouse, children and legal guardian of the Individual.

### **Relevant Conditions/Points**

1. Amount should be paid out of income chargeable to tax.
2. All field of studies including vocational studies pursued after passing the Senior secondary examination or its equivalent from any school, board or university recognized by the central govt. or state govt. or local authority or by any other authority authorised by the central govt. or state govt. or local authority to do so.
3. Approved charitable institution means an institution established for charitable purposes and notified by the Central Government u/s. 10(23C) or referred in 80G(2)(a).
4. Financial institution means banking company or financial institution notified by Central Government.
5. The deduction is allowed in the initial assessment year (i.e., the assessment year relevant to the previous year, in which the assessee starts paying the interest on loan) and 7 assessment years immediately succeeding the initial assessment year or until the interest is paid in full whichever is earlier.

**Extent of Deduction-** Entire amount of interest.

### **Section 80G Deduction In Respect of Donations to Certain Funds, Charitable Institutions, Etc.**

**Persons Covered-**All assessees [except for 80G (2)(c), which is applicable for donations made only by company] to the Indian Olympic Association or to any other Association or Institution for the development of infrastructure for sports & games or the sponsorship of sports & games, in India

**Eligible Amount-** Any sums paid in the previous year as Donations to certain funds, charitable institutions etc. specified u/s. 80G(2).

## **Relevant Conditions/Points**

1. Donation in kind is not eligible for deduction.
2. Donations paid out of another year's income or out of income not includable in the assessment of current year are also eligible for deduction. Lt. F. No. 45/313/66 – ITJ (61) dt. 2-12-1966.

## **Extent of Deduction**

***Without any ceiling of 10% of adjusted Gross Total Income:—***

**(a) 100% of donation if donation given to**

- (i)National Defence Fund set up by the Central Government;
- (ii)Prime Minister's National Relief Fund;
- (iii)Prime Minister's Armenia Earthquake Relief Fund;
- (iv)Africa (Public Contributions — India) Fund;
- (v)National Foundation for Communal Harmony;
- (vii)An approved university/educational institution of National eminence;
- (viii)The Maharashtra Chief Minister's Relief Fund
- (ix)Chief Minister's Earthquake Relief Fund, Maharashtra;
- (x)Any fund set up by the State Government of Gujarat exclusively for providing relief to the victims of earthquake in Gujarat;
- (xi)any Zila Saksharta Samiti constituted in any district under the chairmanship of the Collector of that district;
- (xii) National Blood Transfusion Council or to any State Blood Transfusion Council;
- (xiii)any fund set up by a State Government for the medical relief to the poor;
- (xiv)the Army Central Welfare Fund or the Indian Naval Benevolent Fund or the Air Force Central Welfare Fund,
- (xv) Andhra Pradesh Chief Minister's Cyclone Relief Fund, 1996;
- (xvi) National Illness Assistance Fund;
- (xvii) Chief Minister's Relief Fund or Lieutenant Governor's Relief Fund in respect of any State or Union Territory;
- (xviii) National Sports Fund;
- (xix)National Cultural Fund;
- (xx)Fund for Technology Development and Application;

(xxi) National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disabilities;

(xxii) Any trust, institution or fund to which Section 80G(5C) applies for providing relief to the victims of earthquake in Gujarat (contribution made during January 26, 2001 and September 30, 2001) **or**

**(b) 50% of donation if donation given to:**

Jawaharlal Nehru Memorial Fund; Prime Minister's Drought Relief Fund; National Children's Fund(deduction shall be allowed 100% w.e.f.A.Y 2014- 15) ; Indira Gandhi Memorial Trust; Rajiv Gandhi Foundation.

**With ceiling of 10% of adjusted Gross Total Income:**— Where the aggregate of sums exceed 10% of adjusted gross total income, then such excess amount is ignored for computing such aggregate.

**(a) 100% of qualifying amount, if donation given to** Government or any approved local authority, institution or association to be utilised for the purpose of promoting family planning; Donation by a Company to the Indian Olympic Association or to any other notified association or institution established in India for the development of infrastructure for sports and games in India or the sponsorship of sports and games in India.

**(b) 50% of qualifying amount if donation given to** any other fund or any institution which satisfies conditions mentioned in Section 80G(5); Government or any local authority to be utilised for any charitable purpose other than the purpose of promoting family planning, Any authority constituted in India for the purpose of dealing with and satisfying the need for housing accommodation or for the purpose of planning, development or improvement of cities, towns, villages or both; Any corporation referred in Section 10(26BB) for promoting interest of minority community; For repairs or renovation of any notified temple, mosque, gurudwara, church or other place.

### **Section 80GG Deduction in Respect of Rent Paid**

**Persons Covered** Any assessee other than assessee having income falling u/s 10(13A) (i.e., House Rent Allowance).

**Eligible Amount** Any expenditure incurred by him on payment of rent (by whatever name called) in respect of any furnished or unfurnished accommodation in excess of 10% of his total income, before making any deduction under this section.

**Extent of Deduction-** Lower of (a) Rs. 2,000 per month, or (b) 25% of the total income (after allowing all deductions except under this section), or (c) Expenditure incurred in excess of 10% of the total income (after allowing all deductions except under this section).

## **Section 80GGA Deduction In Respect Of Certain Donations For Scientific Research Or Rural Development**

**Persons Covered-** All assessees:

### **Eligible Amount-**

1. Any sum paid to a scientific research association or to a university, college, or other institution to be used for *scientific research* [approved u/s. 35(1) (ii)];
2. Any sum paid to a university, college, or other institution to be used for *research in social science or statistical research* [approved u/s. 35(1)(iii)];
3. Any sum paid to an association or institution for any *programme of rural development* [approved u/s. 35CCA];
4. Any sum paid to an association or institution for *training of persons for implementing rural development programmes* [approved u/s. 35CCA];
5. Any sum paid to a public sector company or local authority or to an association or institution approved by National Committee for carrying out *any eligible project or scheme* [approved u/s. 35AC];
6. Any sum paid to a *rural development fund* set up and notified by Central Government for the purposes of Section 35CCA(1)(a);
7. Any sum paid to a *National Urban Poverty Eradication Fund* set up and notified by Central Government for the purposes of Section 35CCA(1)(d).

**Extent of Deduction-**100% of the amount paid as donation/contribution.

## **Section 80GGB Deduction in Respect of Contribution Given by Companies to Political Parties or an Electoral Trust"**

**Persons Covered-** Indian company.

**Eligible Amount-** Contribution given by Indian companies to any political parties or an electoral trust.

**Extent of Deduction-**100% of the amount paid as contribution.

## **Section 80GGC- Deduction In Respect of Contribution Given by any Person to Political Parties or an Electoral Trust"**

**Persons Covered-** Any assessee (except local authority and every artificial juridical person wholly or partly funded by the Government).

**Eligible Amount-** Contribution given by assessee to political parties or an electoral trust.

**Extent of Deduction-** 100% of the amount paid as contribution.

### **Illustration:1**

Ram Prakash (70 years of age) gives the following information. Compute deductible amount under sec.80C for the A.Y. 2102-14:

1. Payment of LIC premium for his own life (policy amount Rs: 60,000) Rs: 13,000.
2. Payment of LIC premium on life of his wife Rs: 5,000 (paid out of agricultural income)
3. Contribution to URPF Rs: 24,000
4. Contribution to PPF Rs: 15,000
5. Interest accrued on NSC (VIII issue) including 6<sup>th</sup> year's interest of Rs: 1,500 is Rs:8,000
6. Repayment of loan taken for construction of a residential flat from Housing Development Finance Corporation (includes interest Rs: 34,000) Rs: 80,000.

### **Solution :**

#### **Computation of Deduction under section 80 C for the A.Y.2013-14**

Particulars	Rs:
LIC Premium ---self ( 20% of sum insured )	12,000
LIC Premium --- wife	5,000
Contribution to PPF	15,000
Accrued interest to NSC VIII th issue	7,500
Repayment of housing loan (80,000 – 34,000)	46,000
Total deduction	<b>85,500</b>

**Illustration:2**

From the following information, compute total income for the A.Y. 2013-14:

1. Business income of Surjih, aged 70, is Rs: 13,20,000
2. He deposited Rs: 70,000 in PPF And purchased NSC VIII issue Rs: 50,000
3. He paid interest on loan taken from a financial institution for higher education of his grandson Rs:1,20,000.
4. He spent Rs: 40,000 on medical treatment of disabled dependent.

**Solution:****Computation of Total Income for the A.Y.2013-14**

<b>Particulars</b>		<b>Rs:</b>
Business Income Being GTI		13,20,000
Less: Deduction u/s 80 C :		
PPF and NSC ( Maximum deduction Rs:1,00,000)	1,00,000	
Deduction u/s 80DD:		
Medi. Treatment deduction allowed Rs:50,000)	50,000	
Deduction u/s 80E (interest on loan for high. Edu. Of grand son ---- Not deductible)	---	1,50,000
Total Income		<b>11,70,000</b>

**Illustration :3**

Compute total income of Mr. X, a disabled, for the A.Y 2013-14:

1. Salary income is Rs: 4,30,000
2. He deposited Rs:20,000 in URPF.
3. He paid LIC premium Rs: 45,000 on a policy (issued on 15-6-2012) of Rs: 4,00,000
4. He donated Rs: 20,000 to National Children's Fund by cheque.

**Solution:****Computation of Total Income for the A.Y.2013-14**

<b>Particulars</b>	<b>Rs:</b>	<b>Rs:</b>
Salary Income being GTI		4,30,000
Less: Deduction u/s 80 C : LIC premium (10% of sum assured)	40,000	
Deduction under 80G Donation to NCF (50% of 20,000)	10,000	
Deduction under 80 U (Disabled)	50,000	1,00,000
Total Income		<b>3,30,000</b>

**Illustration:4**

Compute total income of Mr. Xaviour, a non-resident for the A.Y. 2013-14:

1. Salary for 3 months received in India (computed) Rs: 18,000
2. Dividend received in Belgium from British companies Rs: 44,000
3. Interest on SB deposits in SBI Rs: 2,000
4. Taxable income from H.P. Rs:6,800.

**Solution :****Computation of Total Income for the A.Y.2013-14**

<b>Particulars</b>	<b>Rs:</b>	<b>Rs:</b>
Salary		18,000
Income from H.P.		6,800
Interest on SB Deposits		2,000
Gross Total Income		26,800
Less: Deductions	Nil	
<b>Total Income</b>		<b>26,800</b>

**Illustration:5**

From the following , compute Total Income of Mrs. Rajalakshmi for the A.Y. 2013-14:

Income from poultry farming Rs: 30,000

Interest from bank deposits Rs: 4,000

Dividend from shares held in an Indian company (Gross) Rs: 20,000

Income from units of Mutual Fund (Gross) Rs:8,000

Income from other sources Rs:42,000

Donation to National Defence Fund Rs:2,000

**Solution:****Computation of Total Income for the A.Y.2013-14**

<b>Particulars</b>	<b>Rs:</b>	<b>Rs:</b>
Income from Business:		
Income from poultry farming		30,000
Income from Other Sources:		
Interest on deposits	4,000	

Dividend from shares in Indian company	Exempt	
Income from units of UTI	Exempt	
Other incomes	42,000	46,000
Gross Total Income		<b>76,000</b>
Less : Deduction u/s 80G		2,000
Total Income		<b>74,000</b>

## ### Section 2: Tax Hacks for Individuals

Navigating the complex labyrinth of taxes can be daunting for many individuals. However, with the right knowledge and strategies, one can effectively reduce their tax liability while enhancing their financial well-being. This section delves into various tax hacks, encompassing deductions, exemptions, investments in tax-saving instruments, benefits of loans, insurance policies, and salary restructuring strategies.

### #### Utilizing Deductions and Exemptions Effectively

- **Understanding Deductions:** Deductions are specific expenses that the government allows individuals to subtract from their gross total income, thereby reducing taxable income. This includes investments in government-authorized schemes, certain types of loans, and expenses.
- **Maximizing Exemptions:** Exemptions are certain portions of income that are completely free from tax. Common examples include House Rent Allowance (HRA), Leave Travel Allowance (LTA), and Standard Deduction on salary.
- **Optimizing Deductions and Exemptions:** The key to maximizing benefits lies in understanding what deductions and exemptions apply to individual circumstances and ensuring they are fully utilized. For example, individuals should maintain proper records and receipts to claim HRA or LTA.

### #### Investment in Tax-Saving Instruments

- **Equity-Linked Savings Scheme (ELSS):** ELSS funds are a popular tax-saving option under Section 80C of the Income Tax Act. They offer the dual benefit of tax deduction and the potential for higher returns due to their equity exposure. However, they also carry higher risk, and understanding the market is crucial before investing.
- **Public Provident Fund (PPF):** PPF is a long-term investment instrument with a maturity of 15 years, offering tax-free interest and returns. It is a safe investment option and is particularly appealing for those with a low-risk appetite.
- **National Pension System (NPS):** NPS is a government-sponsored pension scheme. Contributions to NPS are eligible for tax deductions under Section 80C, with an additional deduction under Section 80CCD(1B). NPS investments are subject to certain lock-in and withdrawal rules.

### #### Benefits of Home Loans and Education Loans

- **Home Loans:** Taking a home loan can be a significant tax-saving tool. The repayment of the principal amount is eligible for deduction under Section 80C, while the interest component can be claimed as a deduction under Section 24. There are limits to these deductions and specific conditions that must be met.
- **Education Loans:** Interest paid on education loans is eligible for deduction under Section 80E. This deduction can be claimed for a maximum of 8 years starting from the year of starting the repayment. There is no upper limit on the amount of interest that can be claimed.

### #### Insurance Policies and Health-Related Deductions

- **Life Insurance:** Premiums paid for life insurance policies are eligible for deduction under Section 80C. This is applicable for policies for self, spouse, and children. It's important to ensure that the premium does not exceed a certain percentage of the sum assured to avail this deduction.
- **Health Insurance:** Premiums paid for health insurance (mediclaim) policies qualify for deduction under Section 80D. This includes insurance for self, spouse, children, and dependent parents, with higher deduction limits for senior citizens.

- **Medical Expenditure**: Apart from insurance, certain medical expenditures are also tax-deductible. This includes treatment for specified diseases under Section 80DDB and expenses for disabled dependents under Section 80DD.

#### #### Strategies for Salary Restructuring

- **House Rent Allowance (HRA)**: Employees receiving HRA can claim a deduction for their rent payments. The actual HRA deduction is the least of the actual HRA received, 50% of salary (for metros) or 40% (for non-metros), and excess of rent paid over 10% of salary.

- **Leave Travel Allowance (LTA)**: LTA is a tax-exempt allowance for travel expenses when on leave. To claim LTA, actual travel bills need to be submitted. It's applicable for two travels in a block of four years.

- **Optimizing Perquisites and Allowances**: Other components of the salary like food coupons, telephone bill reimbursement, and transport allowance can also be structured efficiently to minimize tax liability.

- **Salary Sacrifice**: This involves restructuring the salary by reducing the taxable salary component and compensating it with tax-free allowances and benefits. However, this needs to be done within the legal framework and company policies.

#### #### Conclusion

Effective tax planning for individuals revolves around a deep understanding of the available avenues for deductions, exemptions, and investments. It requires a strategic approach, considering one's income, financial goals, and risk appetite. Regular updates on tax laws and consulting with tax professionals can further enhance the ability to make informed decisions.

Remember, while these tax hacks are legal and encouraged by the government, they should be used responsibly and within the framework of the law. The primary