

RAGHAV ACADEMY

CMA FINAL GROUP- III

PAPER -16

**DIRECT TAX LAWS AND INTERNATIONAL
TAXATION**

**{ INCOME TAX LAWS AND ASSESSMENT OF
INTERNATIONAL TRANSACTION }**

VOLUME - II

BY

CMA UJJAWAL JAIN

*THIS BOOK IS DEDICATED TO MY
BELOVED PARENTS*

MR. ARUN KUMAR JAIN

&

MRS. SEEMA JAIN

THEY ARE MY SUPER GOD

GOD IS GREAT

AND PARENTS ARE GREATEST

A VERY
PRECIOUS THANKS TO
CA RAGHAV GOEL
&
SAKSHI
AGARWAL

{ WHOSE BLESSINGS IS ALWAYS WITH
ME }

*AN EXTREMELY MOTIVATIONAL SONG
DURING MY CMA JOURNEY*

पिघला दे ज़ंजीरें
बना उनकी शमशीरें
कर हर मैदान फ़तेह ओ बंदेया
कर हर मैदान फ़तेह

घायल परिंदा है तू दिखला दे ज़िन्दा है तू
बाक़ी है तुझमें हौसला
तेरे जुनूँ के आगे, अम्बर पनाहें माँगे
कर डाले तू जो फैसला
रुठी तकदीरें तो क्या, टूटी शमशीरें तो क्या
टूटी शमशीरों से ही हो
कर हर मैदान फ़तेह, कर हर मैदान फ़तेह
कर हर मैदान फ़तेह रे बंदेया
हर मैदान फ़तेह

*SPECIAL THANKS TO
MR. MUJTABA ZAIDI*

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“BEHIND EVERY SUCCESSFUL BUSINESS DECISION,
 THERE IS ALWAYS A CMA”

CHAPTER 1: MINIMUM ALTERNATE TAX [MAT]

[SECTION 115JB]- MINIMUM ALTERNATE TAX (MAT) OR TAX ON BOOK PROFIT:

At times it may happen that a taxpayer, being a company, may have generated income during the year, but by taking the advantage of various provisions of Income-tax Law (like exemptions, deductions, depreciation, etc.), it may have reduced its tax liability or may not have paid any tax at all. Due to increase in the number of zero tax paying companies, MAT was introduced by the Finance Act, 1987 with effect from assessment year 1988-89.

Later on, it was withdrawn by the Finance Act, 1990 and then reintroduced by Finance (No. 2) Act, 1996, w.e.f. 1-4-1997. The objective of introduction of MAT is to bring into the tax net “zero tax companies” which in spite of having earned substantial book profits and having paid handsome dividends, do not pay any tax due to various tax concessions and incentives provided under the Income-tax Law.

STEPS TO BE TAKEN UNDER SECTION 115JB [MAT] ARE AS UNDER:

1. **PREPARE PROFIT AND LOSS ACCOUNT AS PER SCHEDULE III OF THE COMPANIES ACT, 2013;**
2. **ADJUST THE SAID PROFIT ARRIVED AS PER SCHEDULE III TO BOOK PROFIT U/S 115JB(1);**
3. **COMPUTE TAX @15% OF THE SAID BOOK PROFIT;**
4. **AND COMPARE TAX ARRIVED **IN POINT 3** WITH INCOME TAX LIABILITY COMPUTED AS PER NORMAL PROVISIONS OF INCOME TAX ACT, 1961 AND THEN **HIGHER OF TWO WILL BE PAID AS TAX AMOUNT.****

APPLICABLE TO:

Any company (whether Indian or Foreign, resident or non-resident, closely held or widely held company).

Circumstance in which MAT is applicable: Where the income-tax, payable on the total income (being computed under this Act in respect of any previous year) **is less than 15%** of its book profit

Treatment:

- Such book profit shall be deemed to be the total income of the assessee; and
- The tax payable by the assessee on such total income shall be the amount of income-tax at the rate of **15% (plus surcharge, Health & Education cess)**

CHAPTER 1: MINIMUM ALTERNATE TAX [MAT]

Other Points

◆ **Unit in IFSC:** Where the assessee is a unit located in an International Financial Services Centre and derives its income solely in convertible foreign exchange, the rate of MAT shall be 9%.

◆ **Book Profit should be as per Schedule III to the Companies Act, 2013:** Every company shall prepare its Statement of Profit and Loss for the relevant previous year in accordance with the provisions of **Schedule III** to the Companies Act, 2013. However, in case of **banking, insurance or electricity company**, such statement should be prepared as per provisions of the Act which **governs such company**.

◆ While preparing the annual accounts:

a) the accounting policies;
b) the accounting standards followed for preparing such accounts;
c) the method and rates adopted for calculating the depreciation,
shall be the same as have been adopted for the purpose of preparing such accounts and laid before the company at its **annual general meeting**.

◆ **When assessing officer has power to alter profit:** Where the statement of profit and loss has been prepared in accordance with Schedule III to the Companies Act, 2013 and which has been scrutinised and certified **by the statutory auditors** and relevant authorities, the Assessing Officer **has no power** to scrutinise net profit in the statement of profit and loss except to the extent provided in Explanation [Apollo Tyres Ltd. -vs.- CIT (SC)]

◆ **Report from Accountant:** Every company to which this section applies, shall furnish a report in the prescribed form [Form 29B] from **an accountant**, certifying that the book profit has been computed in accordance with the provisions of this section along with the return of income filed u/s 139 or along with the return of income furnished in response to a notice u/s 142(1)

◆ **Life Insurance Business:** The provision of this section shall not apply to any income accruing or arising to a company from life insurance business referred to in sec. 115B.

◆ **Companies opting for sec. 115BAA and sec. 115BAB:** The provision of this section shall not apply to a person who has exercised the option referred to u/s 115BAA [**INCOME TO NON-RESIDENT & NON-CITIZEN SPORTS PERSON**] and u/s 115BAB. [**CORPORATE TAX RATE FOR NEW MAUFACTURING COMPAINES**]

CHAPTER 1: MINIMUM ALTERNATE TAX [MAT]

♦ **Foreign Company:** The provisions of this section shall not be applicable and shall be deemed never to have been applicable to an assessee, being a foreign company, **if:**

i. The assessee is a resident of a country or a specified territory with which India has an agreement referred to in **sec. 90** or the Central Government has adopted any agreement **u/s 90A** and the assessee does **not** have a permanent establishment in India in accordance with the provisions of such agreement; or

ii. the assessee is a resident of a country with which India does not have an agreement of the nature referred above and the assessee **is not required** to seek registration under any law for the time being in force relating to companies.

Taxpoint: The MAT provision is not applicable to an assessee, being a foreign company, where its total income comprises solely of profits and gains from business referred to in section 44B or 44BB or 44BBA or 44BBB and such income has been offered to tax at the rates specified in those sections.

44B- non-resident person engaged in the business of operation of ships. then the income will be treated **@7.5%** of the aggregate amount received.

44BB- covered business of exploration etc., of mineral oils by non-resident. then the income will be treated **@10%** of the aggregate amounts received.

44BBA- non-resident person engaged in the business of operation of aircrafts. then the income will be treated **@5%** of the aggregate amount received.

44BBB- covered business of civil construction, etc, by non-resident. then the income will be treated **@10%** of the aggregate amounts received.

♦ **No impact of MAT on losses:** Nothing shall affect the determination of the amounts in relation to the relevant previous year to be carried forward to the subsequent year or years under the provisions of sec. 32(2) or 72(1) (ii) or 73 or 74 or 74A(3).

♦ **Other provision will apply:** All other provisions of this Act **like Advance Tax, interest, etc. shall apply to every company, mentioned in this section.**

CHAPTER 1: MINIMUM ALTERNATE TAX [MAT]

COMPUTATION AND MEANING OF BOOK PROFIT [EXPLANATION 1 TO SEC. 115JB]:

Book profit means the profit as shown in the statement of profit and loss for the relevant previous year: As **increased** by (if following amount is debited in the Statement of Profit & Loss):

(a) the amount of income-tax paid or payable, and the provision therefore;

IT INCLUDES:

1. Any interest under Income Tax Act;
2. Dividend distribution tax
3. Surcharge and cess on income-tax.

IT DOES NOT INCLUDE:

4. Penalty paid or payable under this Act
5. Any tax, interest or penalty paid or payable under Wealth Tax Act or other Act;
6. Securities Transaction Tax;

(b) the amounts carried to any reserves, by whatever name called;

(c) the amount set aside to provisions made for meeting liabilities, other than ascertained liabilities;

Any provision made to meet unascertained liabilities like provision for gratuity or future losses, etc. should be added back. However, if the provision for gratuity has been made on the basis of actuarial valuation, it becomes ascertained liability, hence should not be added back.

(d) the amount by way of provision for losses of subsidiary companies;

(e) the amount or amounts of dividends paid or proposed;

(f) the amount or amounts of expenditure relatable to any income to which sec. 10 [exempted income] or sec. 11 or sec. 12 apply [Charitable trust].

(g) the amount or amounts of expenditure relatable to income being share of profit from AOP, if such share is exempt u/s 86.

CHAPTER 1: MINIMUM ALTERNATE TAX [MAT]

(h) expenditure relating to following income of a foreign company if tax payable on such income under normal provision is less than **15%**:

- (A) the capital gains arising on transactions in securities; or
- (B) the interest, royalty or fees for technical services chargeable to tax u/s 115A to 115BBE **[TAX @5%]**

(i) notional loss on transfer of a capital asset, being share or a special purpose vehicle to a business **trust** in **exchange** of units allotted by the trust or the amount representing notional loss resulting from any change in carrying amount of said units or the amount of loss on transfer of units

(j) the amounts of expenditure relatable to income by way of royalty in respect of patent chargeable to tax u/s 115BBF **[TAXABLE @10%]**

(k) the amount of depreciation

(l) the amount of deferred tax and provision thereof

(m) the amount set aside as provision for diminution in the value of any asset (like asset written-off, etc.)

(n) the amount standing in revaluation reserve relating to revalued asset on the retirement or disposal of such asset (if not credited to the statement of Profit and Loss)

(o) gain on transfer of units referred to in sec.47(xvii) [asset sold but not treated as transfer for the purpose of capital gain] computed by taking into account the cost of the shares exchanged with units referred to in the said clause or the carrying amount of the shares at the time of exchange where such shares are carried at a value other than the cost through statement of profit or loss, as the case may be;

CHAPTER 1: MINIMUM ALTERNATE TAX [MAT]

AS REDUCED BY:

(i) the amount withdrawn from any reserve or provision if any such amount is credited to the statement of profit and loss.

An amount withdrawn from reserve being created before 1-4-1997 otherwise than by way of a debit to the statement of profit and loss shall not be reduced.

An amount withdrawn from reserves created or provisions made on or after 1-4-1997 shall not be reduced from the book profit unless the book profit of such year has been increased by those reserves or provisions (out of which the said amount was withdrawn) in that year.

(i) the amount of income to which any of the provisions of sec. 10 or sec. 11 or sec. 12 apply, if any such amount is credited to the statement of profit and loss.

(iii) share of profit from AOP, if such share is exempt u/s 86.

(iv) following income of a foreign company if tax payable on such income under normal provision is less than 15%:

(A) the capital gains arising on transactions in securities; or

(B) the interest, royalty or fees for technical services chargeable to tax u/s 115A to 115BB

(vi) the amount representing,—

(A) notional gain on transfer of a capital asset, being share of a special purpose vehicle to a business trust In exchange of units allotted by that trust referred to in sec.47(xvii); or

(B) notional gain resulting from any change in carrying amount of said units; or

(C) gain on transfer of units referred to in sec.47(xvii),

if any, credited to the statement of profit and loss; or

(vii) the amount of loss on transfer of units referred to in sec.47(xvii) computed by taking into account the cost of the shares exchanged with units referred to in the said clause or the carrying amount of the shares at the time of exchange where such shares are carried at a value other than the cost through statement of profit or loss, as the case may be;

CHAPTER 1: MINIMUM ALTERNATE TAX [MAT]

- (viii) the amount of income by way of royalty in respect of patent chargeable to tax u/s 115BBF;
- (ix) the amount of depreciation debited to the statement of profit and loss (excluding the depreciation on account of revaluation of assets);
- (x) the amount withdrawn from revaluation reserve and credited to the statement of profit and loss, to the extent it does not exceed the amount of depreciation on account of revaluation of assets referred above;
- (xi) the amount of brought forward loss or unabsorbed depreciation, whichever is less as per books of account.
- ◆ the loss shall not include depreciation;
 - ◆ the provisions of this clause shall not apply if the amount of loss brought forward or unabsorbed depreciation, is nil;

Exception:

The **aggregate** (not lower) amount of unabsorbed depreciation & loss brought forward shall be reduced, in case of a:

- a. company, and its subsidiary and the subsidiary of such subsidiary, where, the Tribunal, on an application moved by the Central Government u/s 241 of the Companies Act, 2013 has suspended the Board of Directors of such company and has appointed new directors who are nominated by the Central Government u/s 242 of the said Act;
 - b. company against whom an application for corporate insolvency resolution process has been admitted by the Adjudicating Authority under Insolvency and Bankruptcy Code, 2016
- (xi) the amount of deferred tax, if any such amount is credited to the statement of profit and loss
 - (xii) the amount of profits of sick industrial company for the assessment year commencing on and from the assessment year relevant to the previous year in which the said company has become a sick industrial company and ending with the assessment year during which the entire net worth of such company becomes equal to or exceeds the accumulated losses.
- Net worth means paid up capital + free reserve.

CHAPTER 1: MINIMUM ALTERNATE TAX [MAT]

ILLUSTRATION 1:

Apple Industries Ltd. provides the following information for the financial year 2019-20:

Net profit as per statement of profit and loss after debiting/crediting the following:	RS. 120 lakh
Proposed dividend	RS. 30 lakh
Profit from unit established in SEZ	RS. 20 lakh
Provision for income-tax	RS. 18 lakh
Provision for deferred tax	RS. 10 lakh
Provision for permanent diminution in value of investments	RS. 3 lakh
Depreciation debited to statement of profit and loss RS. 10 lakh includes depreciation on revaluation of assets to the tune of	RS. 1 lakh

Brought forward losses and unabsorbed depreciation as per books of the company are as follows : (RS. in lakh)

Previous Year	Brought Forward Losses	Unabsorbed Depreciation
2015 – 16	1	4
2016 – 17	1	1
2017 – 18	10	5

Compute the book profit of the company as per section 115JB for the assessment year 2020-21.

Solution:

Computation of Book Profit of Apple Industries Ltd. for the A.Y.2020-21 (RS. In lakhs)

Particulars	Details	Amount
Net profit as per books of accounts	120	
Add:		
Proposed Dividend	30	
Provision for income tax	18	
Provision for deferred-tax	10	
Provision for permanent diminution in value of investments	3	
Depreciation	10	71
		191
Less:		
Depreciation (ignoring depreciation of revaluation)	9	
Lower of brought forward loss and unabsorbed depreciation	10	19
Book Profit		172

CHAPTER 1: MINIMUM ALTERNATE TAX [MAT]

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CHAPTER 1:MINIMUM ALTERNATE TAX [MAT].

ILLUSTRATION 1:

Business income (before adjusting brought forward losses) & Book Profit of X Ltd. for various years are as follow:

Year 1	Year 2	Year 3	Year 3
Business Income as per other provisions of the Act	(-) RS. 2,00,000	RS. 1,50,000	RS. 1,50,000
Book Profit	RS. 1,00,000	RS. 60,000	RS. 2,50,000

In the aforesaid case, tax shall be computed as under:

Particulars	Year 1	Year 2	Year 3
Business Income after set off	(-) RS. 2,00,000	Nil [NOTE 1]	RS. 1,00,000 [NOTE 1]
Tax on above @ 30% [A]	Nil	Nil	RS. 30,000
Book Profit	RS. 1,00,000	RS. 60,000	RS. 2,50,000
15% of Book Profit [B]	RS. 15,000	RS. 9,000	RS. 37,500
Tax [Higher1 of A & B]	RS. 15,000	RS. 9,000	RS. 37,500
Add: Surcharge*	Nil	Nil	Nil
Tax & Surcharge	RS. 15,000	RS. 9,000	RS. 37,500
Add: Health & Education Cess	RS. 600	RS. 360	RS. 1,500
Tax Liability (R/off)	RS. 15,600	RS. 9,360	RS. 39,000

NOTE:

1. Loss of Year 1 RS.2,00,000 [out of RS.1,50,000 is first set-off with Year 2 income and remaining RS.50,000 is set-off with Year 3 income].
2. As total income of the company does not exceed RS. 1 crore, hence surcharge is not applicable.
It is to be noted that when a company is liable to pay tax u/s 115JB, book profit of the company shall be considered as total income of the company.

CHAPTER 1:MINIMUM ALTERNATE TAX [MAT].

ILLUSTRATION 2:

Apple Industries Ltd. provides the following information for the financial year 2019-20:

Net profit as per statement of profit and loss after debiting/crediting the following:	RS. 120 lakh
Proposed dividend	RS. 30 lakh
Profit from unit established in SEZ	RS. 20 lakh
Provision for income-tax	RS. 18 lakh
Provision for deferred tax	RS. 10 lakh
Provision for permanent diminution in value of investments	RS. 3 lakh
Depreciation debited to statement of profit and loss RS. 10 lakh includes depreciation on revaluation of assets to the tune of	RS. 1 lakh

Bought forward losses and unabsorbed depreciation as per books of the company are as follows : (RS. in lakh)

Previous Year	Brought Forward Losses	Unabsorbed Depreciation
2015 – 16	1	4
2016 – 17	1	1
2017 – 18	10	5

Compute the book profit of the company as per section 115JB for the assessment year 2020-21.

SOLUTION:

Computation of Book Profit of Apple Industries Ltd. for the A.Y.2020-21 (RS. In lakhs):

Particulars	Details	Amount
Net profit as per books of accounts	120	
Add:		
Proposed Dividend	30	
Provision for income tax	18	
Provision for deferred-tax	10	
Provision for permanent diminution in value of investments	3	
Depreciation	10	71
		191
Less:		
Depreciation (ignoring depreciation of revaluation)	9	
Lower of brought forward loss and unabsorbed depreciation	10	19
Book Profit		172

CHAPTER 1:MINIMUM ALTERNATE TAX [MAT].

ILLUSTRATION 3:

The book profits of a company in the previous year 2019-20 computed in accordance with section 115JB are RS. 60,00,000. If the total income for the same period computed as per the provisions of the Income-tax Act, 1961 is RS. 12,00,000 calculate the tax payable by the company in the assessment year 2020-21 and also indicate whether the company is eligible for any tax credit.

Solution:

Computation of Tax Liability of for the A.Y. 2020-21:

Particulars	Amount
Total Income	12,00,000
Tax on above [A]	3,60,000
Book Profit	60,00,000
Tax on above [B]	9,00,000
Tax liability [Higher of (A) and (B)]	9,00,000
Add: Health & Education Cess	36,000
Tax & Cess payable u/s 115JB [B]	9,36,000

ILLUSTRATION 4:

X Ltd. charged depreciation on its fixed assets at the rate prescribed in the income tax rules. However, the Assessing Officer disallowed the same and allowed the rate as prescribed in the Companies Act, 2013 for the purpose of computation of book profit under section 115JB for the previous year 2019-20. Examine the legality of action taken by the Assessing Authority.

SOLUTION:

This issue was settled by the Supreme Court in Malayala Manorama Co. Ltd. -vs.- CIT. The Apex Court observed that for the purpose of computation of book profit under section 115JB, the Assessing Officer's power is restricted to examining whether the books of account are certified by the authorities under the Companies Act as having been properly maintained in accordance with the Companies Act.

Thereafter, he only has the limited power of making additions and deductions as provided for in Explanation 1 to section 115JB. The Assessing Officer does not have the jurisdiction to go behind the net profit shown in the profit and loss account except to the extent provided in Explanation 1 to section 115JB.

CHAPTER 1:MINIMUM ALTERNATE TAX [MAT].

Where an assessee is consistently charging depreciation in its books of account at the rates prescribed in Income-tax Rules and the accounts of the assessee have been prepared and certified as per the provisions of the Companies Act, the Assessing Officer does not have any jurisdiction under section 115JB to rework the net profit of the assessee by substituting the rates of depreciation prescribed under the Companies Act.

Applying the ratio of the Supreme Court decision to this case, it may be concluded that the action of the **Assessing Officer is not correct.**

ILLUSTRATION 5:

The net profit of Renuka Ltd. an Indian company, as per its profit and loss account prepared as per the Income-tax Act, 1961 is RS. 90,00,000 after debiting and crediting following items:

Particulars	AMOUNT IN RS.
Provision for income-tax	5,00,000
Provisions for deferred tax	3,00,000
Proposed dividend	7,50,000
Depreciation including depreciation on revaluation of assets RS. 20,00,000 debited to profit and loss account	60,00,000
Profit from industrial unit in SEZ area	80,000
Provision for permanent diminution in the value of investments	70,000
Compute tax liability under section 115JB for the assessment year 2020-21.?	

SOLUTION:

Computation of Book Profit for the purpose of Sec. 115JB:

Particulars	Details	Amount
Net profit as per books of accounts		90,00,000
Add:		
Provision for income tax	5,00,000	
Provisions for deferred tax	3,00,000	
Provision for permanent diminution in the value of investments	70,000	
Proposed dividend	7,50,000	
Depreciation	60,00,000	76,20,000
		1,66,20,000
Less:		
Depreciation (without considering depreciation on revaluation)	40,00,000	
Profit from industrial unit in SEZ area	Nil	40,00,000
Book Profit		1,26,20,000

CHAPTER 1:MINIMUM ALTERNATE TAX [MAT].

Computation of Tax Liability under section 115JB:

Particulars	Amount
Book profit u/s 115JB	1,26,20,000
15% of book profit	18,93,000
Add: Surcharge [As total income exceeds RS. 1,00,00,000/-]	1,32,510
Tax & Surcharge	20,25,510
Add: Health & Education Cess @ 4%	81,020
Tax Liability u/s 115JB	21,06,530

The tax liability u/s 115JB is required to be compared with tax liability calculated on income calculated as per other provisions of the Act.

ILLUSTRATION 6:

Sun bright Ltd., an Indian company furnished following particulars of its income for the previous year 2019-20. Calculate its total income and income tax liability for the assessment year 2020-21:

PARTICULARS.	AMOUNT IN RS.
Income from business	5,20,000
Dividend received during the year:	
— from Indian company	20,000
— from foreign company	5,000
Gains from transfer of capital assets:	
— short term capital gains	25,000
— long term capital gains	50,000
Agricultural income in India	35,000

ADDITIONAL INFORMATION:

- (i) Business expenses already charged from business income include RS. 10,000 revenue expenditure and RS. 30,000 capital expenditure on family planning programme for employees.
- (ii) Company has debited following donations in the profit and loss account of the business of company.
 - Rajiv Gandhi Foundation: RS. 50,000 ; and
 - Prime Minister's National Relief Fund: RS. 25,000.

CHAPTER 1:MINIMUM ALTERNATE TAX [MAT].

SOLUTION:

Computation of Total Income of Sun Bright Ltd. for the Assessment Year 2020-21:

Particulars	Amount	Amount
Income from Business		
Profit as per Profit & Loss A/c		5,20,000
Add: Disallowed Expenditure		
(i) Donation	75,000	
(ii) Capital Expenditure on Family Planning (RS. 30,000 - RS. 6,000)	24,000	99,000
		6,19,000
Capital Gain		
- Long term	50,000	
- Short term	25,000	75,000
Income from Other Sources		
Dividend from		
- Indian Company	Exempt	
- foreign Company*	5,000	
Agricultural Income	Exempt	5,000
Gross Total Income		6,99,000
Less: Deduction u/s		
- 80G (Prime Minister's National Relief Fund + 50% of Rajiv Gandhi Foundation)		50,000
Total Income		649000

COMPUTATION OF TAX LIABILITY:

Particulars	Tax on LTCG	Other Income
Total Income	50,000	5,99,000
Rate	20%	30%
Tax	10,000	1,79,700
Total tax		1,89,700
Surcharge		Nil
Tax including surcharge		1,89,700
Health & Education Cess @ 4%		7,588
Total tax (Rounded Off)		1,97,290

CHAPTER 1:MINIMUM ALTERNATE TAX [MAT].

ILLUSTRATION 7:

Following is the profit and loss account of Z Ltd. for the year ended on 31-3-2020:

Particulars	Amount	Particulars	Amount
To Raw material consumed	20,00,000	By Sale-	
To Rent	5,00,000	Export	50,00,000
To Salary & Wages	10,00,000	Domestic	30,00,000
To Depreciation	5,00,000	By Closing Stock	10,00,000
To Provision for contingencies	75,000		
To Wealth Tax of earlier year	50,000		
To Loss of subsidiary co.	50,000		
To Custom Duty	40,000		
To Proposed dividend	1,00,000		
To Provision for Income tax	1,05,000		
To Net Profit	45,80,000		
	90,00,000		90,00,000

ADDITIONAL INFORMATION:

- (1) Interest on bank loan relating to year 2017-18 has been paid during the previous year RS. 1,00,000.
- (2) Whole of Custom duty is unpaid.
- (3) Company is entitled to get deduction u/s 80G RS. 1,00,000
- (4) For the purpose of Income tax, depreciation is RS. 4,00,000.
- (5) Turnover of the company during the previous year was RS. 65 crores and it is life time highest turnover achieved by the company.
- (6) In past few years, company had suffered losses, following balances are still unabsorbed:

As per Income tax Act	As per books of Accounts	RS. 3,50,000
Depreciation	--	RS. 3,50,000
Losses	RS. 42,50,000	RS. 4,00,000

Compute tax liability of the company?

CHAPTER 1:MINIMUM ALTERNATE TAX [MAT].

SOLUTION:

Computation of total income of Z Ltd. for the A.Y.2020-21 (as per other provisions of the Act):

Particulars	Details	Amount
Net profit as per books of accounts		45,80,000
Add: Expenditure disallowed but debited in P/L A/c		
Excess Depreciation	1,00,000	
Provisions for Contingencies	75,000	
Wealth Tax	50,000	
Loss of subsidiary company	50,000	
Proposed Dividend	1,00,000	
Provision for income tax	1,05,000	
Unpaid customs duty	40,000	5,20,000
		51,00,000
Less: Expenditure allowed but not debited in P/L A/c		
Interest on bank loan of earlier years	1,00,000	
		50,00,000
Less: Brought forward business loss	42,50,000	
Gross Total Income	7,50,000	
Less: Deduction u/s 80G	1,00,000	
Total Income		6,50,000

Computation of Book Profit of Z Ltd. for the A.Y.2020-21:

Particulars	Details	Amount
Net profit as per books of accounts		45,80,000
Add:		
Provision for contingencies	75,000	
Loss of subsidiary company	50,000	
Proposed Dividend	1,00,000	
Provision for income tax	1,05,000	
Depreciation	5,00,000	8,30,000
		54,10,000
Less:		
Depreciation (as assets are not revalued)	5,00,000	
Lower of unabsorbed depreciation and brought forward loss (as per books of account)	3,50,000	8,50,000
Book Profit		45,60,000

CHAPTER 1:MINIMUM ALTERNATE TAX [MAT].

Computation of tax liability of Z Ltd.:

Particulars	Amount
Total income as per other provisions of the Act	6,50,000
Tax on above @ 25% [A]	1,62,500
Book profit u/s 115JB	45,60,000
15% of book profit [B]	6,84,000
Tax [Higher of A & B]	6,84,000
Add: Surcharge [As total income is only RS. 45,60,000/-, thus, surcharge is not applicable]	Nil
Tax & Surcharge	6,84,000
Add: Health & Education Cess @ 4%	27,360
Tax Liability (Rounded off)	7,11,360

ILLUSTRATION 8:

Following is the profit and loss account of Z Ltd. for the year ended on 31-3-2020:

Particulars	Amount	Particulars	Amount
To Raw material consumed	23,25,000	By Sale	1,60,00,000
To Rent	3,50,000	By Closing Stock	10,00,000
To Salary & Wages	12,00,000	By Revaluation Reserve	25,000
To Depreciation	5,00,000	By General Reserve	65,000
To Provision for contingencies	75,000	By Dividend from domestic companies	35,000
To Wealth Tax	50,000		
To Provision for bad debts	40,000		
To Proposed dividend	1,00,000		
To Provision for Income tax	1,05,000		
To Net Profit	1,23,80,000		
	1,71,25,000		1,71,25,000

ADDITIONAL INFORMATION:

- (1) The amount of depreciation includes depreciation on revaluation of assets RS. 50,000. Further, for the purpose of Income tax, depreciation is RS. 4,00,000.
- (2) Turnover of the company during the previous year was RS. 530 crores. However, during the financial year

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2017- 18, turnover of the company was RS. 250 crores only.

(3) In past few years, company had suffered losses, following balances are still unabsorbed:

	As per Income tax Act	As per books of Accounts
Depreciation	RS. 66,00,000	Nil
Losses	RS. 35,50,000	Nil

Compute tax liability of the company?

SOLUTION:

Computation of total income of Z Ltd. for the A.Y.2020-21 (as per other provisions of the Act):

Particulars	Details	Amount
Net profit as per books of accounts		1,23,80,000
Add: Expenditure disallowed but debited in P/L A/c		
Excess Depreciation	1,00,000	
Provisions for Contingencies	75,000	
Wealth Tax	50,000	
Provision for bad debts	40,000	
Proposed Dividend	1,00,000	
Provision for income tax	1,05,000	4,70,000
		1,28,50,000
Less: Amount credited to P/L A/c		
Revaluation Reserve	25,000	
General Reserve	65,000	
Dividend from domestic companies	35,000	1,25,000
		1,27,25,000
Less: Brought forward business loss	35,50,000	
		91,75,000
Less: Unabsorbed Depreciation		66,00,000
Total Income		25,75,000

CHAPTER 1:MINIMUM ALTERNATE TAX [MAT].

Computation of Book Profit of Z Ltd. for the A.Y.2020-21:

Particulars	Details	Amount
Net profit as per books of accounts		1,23,80,000
Add:		
Provision for contingencies	75,000	
Proposed Dividend	1,00,000	
Provision for income tax	1,05,000	
Provision for Bad Debts	40,000	
Depreciation	5,00,000	8,20,000
		1,32,00,000
Less:		
Depreciation (ignoring depreciation on revaluation)	4,50,000	
Amount transferred from Revaluation Reserve	25,000	
Amount transferred from General Reserve	65,000	
Dividend from domestic companies	35,000	5,75,000
Book Profit		1,26,25,000

Computation of tax liability of Z Ltd.:

Particulars	Amount
Total income as per other provisions of the Act	25,75,000
Tax on above @ 25% [A]	6,43,750
Book profit u/s 115JB	1,26,25,000
15% of book profit [B]	18,93,750
Tax [Higher of A & B]	18,93,750
Add: Surcharge [As total income is RS. 1,26,25,000]	1,32,563
Tax & Surcharge	20,26,313
Add: Health & Education Cess @ 4%	81,053
Tax Liability (Rounded off u/s 288B)	21,07,370

CHAPTER 2: TAXATION OF CHARITABLE / RELIGIOUS TRUSTS AND INSTITUTIONS.

[SECTION 11(1)] INCOME FROM PROPERTY HELD FOR CHARITABLE OR RELIGIOUS PURPOSES:

The following income shall not be included in the total income of the previous year of the person in receipt of such income:

- (a) Income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India; and, where 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.
- (b) Income in the form of voluntary contribution made **with a specific direction** that they shall form part of the **corpus** of the trust or institution.

[It means the above clause (a) & (b) of section 11(1) are to be treated as fix exemption]

FOLLOWING INCOMES SHALL NOT BE INCLUDED IN THE TOTAL INCOME OF THE CHARITABLE/RELIGIOUS TRUST AND INSTITUTION:

- (a) 15% of income of the charitable trust/religious trust and institution **[i.e Adhoc deduction.]**
- (b) **Corpus donation** , means an income in the form of voluntary contribution with a specific direction.
- (c) Specified **application** of part of such income **in India**.
- (d) Income which is carry forwarded to the **next year** due to non-utilisation in current year.
- (e) Income which is carry forwarded for **upto 5 years [with a grace of 1 year]** for a specified purpose by making a statement to Assessing officer on or before the due date of filing the return of income u/s 139(1).
- (f) Amount not received in current year and carried **forwarded to the year of receipt [with a grace of 1 year]**.

APPLIED[APPLICATION OF INCOME] FOR RELIGIOUS / CHARITABLE PURPOSES IN INDIA :

The word “applied” is wider in import than the word “expenditure”. The following amounts are to be treated as application of income:

- (a) **Application of the amount can be for revenue or capital purpose:** The sums spent on the construction of building owned by a religious trust which were let out and income wherefrom was used for religious purposes can be said to be application of the income for religious/ charitable purposes.

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- (b) Expenditure on purchasing capital asset:** for religious or charitable purposes treated as amount applied as application of income.
- (c) Amount of donation to charitable/ religious trusts or institutions registered under section 12AA and institution referred to in section 10(23C):** Treated as application of income. Even if such donations are sanctioned and debited in accounts and shown as liabilities to the donees it will amount to application of income and such donation not a corpus in nature. **But** donation made to the trust or institution not registered under section 12AA or under section 10(23C) will not amount to application of income.
- (d)** It is not necessary that the money should be actually spent. If a liability for an expenditure has been incurred, the expenditure would amount to application of income. [**i.e Accrual basis followed**].
- (e) Repayment of loan taken for consideration of building** to be used for charitable / religious purposes amounts to application of income. **Provided** that the such trust cannot claim the actual cost of such building as application of income referred to clause (a).
- (f) If a trust treats expenditure on acquisition of assets as application of income for a charitable/ religious purpose u/s 11(1)(a), then trust cannot claim depreciation on the value of such assets.**
- (g) Repayment of loan** taken to fulfill the objects of the trust amounts to application of income. [provided that the expenditure incurred for which loans were taken was not treated as application of income].
- (h) Interest bearing loans advanced** by an educational trust to students for higher studies amount to application of income for charitable purposes in the year of grant of such loans, if the object of trust is advancement of education and granting of scholarships. As and when the loans is returned to the trusts, it will be treated as income of that year.

SECTION 11(1A)- CAPITAL GAINS DEEMED TO BE APPLIED FOR CHARITABLE / RELIGIOUS PURPOSES:

For the purposes of sub-section (1),-

Where a capital asset, being property held under trust wholly for charitable or religious purposes, is transferred and the whole or any part of the net consideration is utilized for acquiring another capital assets to be so held, then, the capital gain arising from the transfer shall be deemed to have been applied to charitable or religious purposes to the extent specified hereunder, namely:-

- (a) Where the whole of the net consideration is utilized in acquiring the new capital asset, the whole of such capital gain;**
- (b) Where only a part of the net consideration is utilized for acquiring the new capital asset, so much of such capital gain as is equal to the amount , if any, by which the amount so utilized exceeds the cost of the transferred asset;**

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ILLUSTRATION: A trust holds a capital asset, income of which is fully utilized for charitable purposes. The capital asset is transferred on March 1, 2020 and the capital gain is calculated as under:

Sale proceeds	Rs. 9,80,000
Less: cost[i.e cost of acquisition and cost of improvement]	Rs.6,00,000
Less : expenses on transfer	Rs.20,000
Capital gain as per section 45 without giving any exemption	Rs. 3,60,000

In this case, net sale consideration is Rs. 9,60,000 (i.e. Rs.9,80,000 - Rs.20,000). Suppose, the trust acquires another capital asset for Rs.9,60,000 (or more), then the entire capital gain of Rs.3,60,000 will be exempt from tax. If, however, the amount invested is less than Rs.9,60,000 then the exemption will be lower than Rs. 3,60,000.

The amount of exemption shall be determined as follows:

	Amount of investment In the new capital asset.	Cost of the old asset which is transferred.	Amount exempt as the amount is applied for charitable purposes.
	[A]	[B]	[A-B]
CASE 1	RS.9,60,000	RS.6,00,000	RS.3,60,000
CASE 2	RS.9,00,000	RS.6,00,000	RS.3,00,000
CASE 3	RS.7,00,000	RS.6,00,000	RS.1,00,000
CASE 4	RS.6,00,000	RS.6,00,000	NIL
CASE 5	RS.5,00,000	RS.6,00,000	NIL

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[SECTION 11(1B)] –CONSEQUENCES IF INCOME NOT APPLIED FOR SPECIFIC PURPOSES:

Where any income in respect of which an option is exercised under clause (2) of the explanation to sub-section (1) is not applied to charitable or religious purposes **in India** during the period referred to in sub-clause (a) or, as the case may be, sub- clause (b) , of the said clause, then, **such income shall be deemed to be the income** of the person in receipt thereof-

- (a) In the case referred to in sub-section (i) of the said clause, of the previous year immediately following the previous year in which the income was received; **{ i.e income which is carry forwarded in the year of receipt with a grace of 1 year}.**
- (b) In the case referred to in sub-clause (ii) of the said clause, of the previous year immediately following the previous year in which the income was derived. **{ i.e income which is carried forwarded for the next year}.**

[SECTION 11(2) EXEMPTION GRANTED IF INCOME ACCUMULATED FOR SPECIFIC PURPOSE:

A charitable / religious trust and institution can carry forwarded their 85% of income for a specific purpose **upto 5 YEARS** with a grace of 1 year , provided the following conditions are complied with, namely:

- (a) Such person furnishes a statement in the prescribed form and in the prescribed manner to the Assessing officer , stating the purpose for which the income is being accumulated or set apart and the period for which the income is to be accumulated or set apart, which shall in no case exceed five years.
- (b) The money so accumulated or set apart is invested or deposited in the forms or modes specified in sub-section(5).
- (c) The statement referred to in clause (a) is furnished on or before the due date specified under section 139 (1) for furnishing the return of income for the previous year.

Provided that in computing the period of five years referrd to in clause (a), the period during which the income could not be applied for the purpose for which it is so accumulated or set apart, due to an order or injunction of any court, shall be excluded. **{ i.e proceeding period against any trust/ institution shall be ignored in determining the 5years period for specific purpose}.**

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[SECTION 11(3) EXEMPTION WITHDRAWN IF SPECIFIC CONDITIONS NOT SATISFIED:

Any income referred to in section 11(2) which-

- (a) Is applied to purpose other than charitable or religious purposes as aforesaid or ceases to be accumulated or set apart for application thereto, or
- (b) Ceases to remain invested or deposited in any of the forms or modes specified in section 11(5), or
- (c) Is not utilized for the purposes for which it is so accumulated or set apart during the period referred to in clause (a) of that sub-section or in the year immediately following the expiry thereof,
- (d) Is donated to any trust or institution registered u/s 12AA or to any institution referred to in section 10(23C).

Shall be deemed to be the income of such person:

- (a) In clause (a), of the previous year in which it is applied to purposes other than charitable or religious purposes, or, of the previous year in which it ceases to be accumulated or set apart for application to charitable or religious purpose.
- (b) In clause (b) , of the previous year in which it ceases to remain invested or deposited as per section 11 (5)
- (c) In clause (c), of the previous year immediately following the expiry of the period for which was so accumulated or set apart.
- (d) In clause (d), of the previous year in which the amount is donated to the institution/ trust.

IMPORTANT NOTE: Out of 15% of income of the trust/ institution [i.e adhoc deduction] , can be invested/incurred anywhere by the such trust/ institution . There are no guidelines about such amount, it can be freely invested anywhere.

[SECTION 13(9) DENIAL OF EXEMPTION IF RETURN OF INCOME IS NOT FURNISHED WITHIN DUE DATE OF FILING OF RETURN:

Nothing contained in section 11(2) shall operate so as to exclude any income from the total income of the previous year of a person in receipt thereof, if:-

- (a) The statement referred to in clause (a) of the said sub section in respect of such income is not furnished on or before the due date specified under section 139(1) for furnishing the return of income for the previous year; or

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(b) The return of income for the previous year is not furnished by such person on or before the due date specified u/s 139(1) for furnishing return of income for the said previous year.

[SECTION 11(4) PROPERTY HELD UNDER TRUST INCLUDES BUSINESS UNDERTAKING:

For the purpose of this section “property held under trust” includes a business undertaking so held, and where a claim is made that the income of any such undertaking shall not be included in the total income of the persons in respect thereof, the Assessing Officer shall have power to determine the income of such undertaking in accordance with the provisions of this act relating to assessment; and where any income so determined is in excess of the income shown in the accounts of the undertaking, such excess shall be deemed to be applied to purposes other than charitable or religious purposes. { means a trust can have a business property but have to maintain their separate books of Accounts , and if declared income is less than the actual income then the excess part deemed to be treated as applied in an activity other than charity purpose.}

[SECTION 11(4A) TREATMENT OF BUSINESS INCOME OF TRUSTS:

Sub-section (1), (2), (3) shall not apply in relation to any income of a trust or an institution, being profits and gains of business, unless the business is incidental to the attainment of the objectives of the trust or, as the case may be, institution and **separate books of accounts** are maintained by such trusts or institution in respect of such income.

[SECTION 11(5) MODES OF INVESTMENT OF TRUST MONEY:

The forms and modes of investing or depositing the money referred to in clause (b) of sub-section (2) shall be the following , inter-alia:

- (a) Investment in government savings certificates;
- (b) Deposit in any account with the post office savings bank;
- (c) Deposit in any account with a scheduled bank or a co-operative society engaged in carrying on the business of banking;
- (d) Investment in units of the unit trust of India ;
- (e) Investment in any security for money created and issued by the central government or a state government;

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- (f) Investment in debentures of any company or corporation both the principal whereof and the interest whereon are fully and unconditionally guaranteed by the central government or a state government;
- (g) Deposits with or investment in any bonds issued by a specified public company;
- (h) Investment in gold sovereign bonds issued by RBI under sovereign gold bond scheme, 2015;
- (i) Investment in immovable property;
- (j) **Investment :**
 - (a) In units issued under any scheme of mutual fund referred to in section 10(23D);
 - (b) By way of acquiring shares of a depository as defined in the depositories act, 1996.
- (k) Investment in shares of, or deposit in any public- sector company.

Provided that where an investment or deposit in any public- sector company has been made and such public-sector company ceases to be a public-sector company then:-

- (A) Such investment made in the shares of such company shall be deemed to be an investment made under this clause for a period of 3 years from the date on which such public- sector company ceases to be a public-sector company;
- (B) Such other investment or deposit shall be deemed to be an investment or deposit made under this clause for the period up to the date on which such investments or deposits becomes repayable by such company.

[SECTION 11(6) DEPRICIATION SHALL NOT BE ALLOWED IF PURCHASE OF ASSET WAS ALREADY CLAIMED AS APPLICATION OF INCOME:

In this section where any income is required to be applied or accumulated or set apart for application, then, for such purposes, the income shall be determined without any deduction or allowance by way of depreciation or otherwise in respect of any asset, if,

Acquisition of which has been claimed as an application of income under this section in the same or any other previous year.

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[SECTION 11(7) EXEMPTION UNDER SECTION 10 NOT AVAILABLE EXCEPT UNDER SECTION 10(1) AND 10(23C):

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

KEY NOTES:

1. Section 10(1) exempts agricultural income and trust can claim exemption of it along with exemption under section 11 & 12.
2. Trust cannot claim any other exemption of section 10 while computing exemption under section 11 & 12.
3. Exemption under section 10(23C) is similar to exemption under section 11 & 12 and it is available to certain big trust who are approved by Central Government.

[SECTION 12] INCOME OF TRUSTS OR INSTITUTIONS FROM CONTRIBUTIONS:

- (1) Any voluntary contributions received by a trust / institution (except corpus donation) shall for the purposes of section 11 be deemed to be income derived from property held under such trust/ institution created wholly for charitable or religious purposes and the provisions of that section and section 13 shall apply accordingly.
- (2) The **value** of any services, being medical or educational services, made available by any charitable or religious trust running **a hospital or medical institution or an educational institution**, to any person referred to in section 13(3) [i.e specified persons] , shall be deemed to be income of such trust/ institution derived from property held under trust wholly for charitable or religious purposes during the previous year in which such services are so provided and shall be chargeable to income-tax.

NOTE: The word “value” shall be the value of any benefit or facility granted or provided free of cost or at a concessional rate to any person referred to in section 13(3) [i.e specified persons).

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[SECTION 12A] CONDITIONS FOR AVALING THE EXEMPTIONS UNDER SECTION 11 & 12:

- (1) The person in receipt of the income has made an application for registration of the trust or institution in the prescribed form and manner to the commissioner and such trust/ institution is registered u/s 12AA. And the provision of section 11 & 12 shall apply in relation to income of such trust or institutions from the A.Y immediately following the financial year in which such application is made.
- (2) If after granting the registration u/s 12AA , the trust/ institution made changes in its objects , then, within a period of 30 days the trust/ institution have to made an application in the prescribed form and manner to the commissioner , from the date of such modifications.
- (3) Where the total income of the trust or institution computed **without** giving effect to the provision of sections 11 & 12 **exceeds RS. 2,50,000** in any P.Y, then the accounts of the trust/ institution for that year should be audited by a Chartered Accountant and the report of such audit should be furnished along with return of income of the relevant A.Y.
- (4) The return of income of the trusts/ institution must be filed within time period specified under section 139(1).

IMPORTANT NOTE:

Any income of the trust/ institution prior to the its registration date [i.e the date from which the exemption u/s 11 & 12 are allowed] , not be treated as income of the trust/ institution and hence not be liable to income-tax.

Similarly in the case where application for registration was refused or cancelled at any time u/s 12AA , no prior income shall be taxable to income-tax.

[SECTION 12AA] PROCEDURE FOR REGISTRATION:

- (1) The commissioner , on receipt of an application for registration of a trust or institution made under section 12A, shall
 - (a) Call for such documents and information from the trust / institution as he thinks necessary in order to satisfy himself about the genuineness of the activities of the trust / institution and may make further enquiries.
 - (b) After satisfying himself about the objects of the trust or institution and the genuiness of its activities , Pass an order in writing registering the trust or institution. But if he is not satisfied, pass an order in writing refusing to registration of the trust or institution.
 - (c) But No order of refusal shall be passed unless the applicant has been given a reasonable opportunity of being heard.

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- (2) Every order of granting or refusing the registration shall be passed before the expiry of **6 months** from the end of the month in which application was received u/s 12A. If no order is passed within the said 6 months then it will be **deemed** that the trust has been registered.
- (3) Where a trust or an institution has been granted registration under section 12AA and subsequently the commissioner is satisfied that the activities of such trust or institution are not genuine or are not carried out in accordance with the objects of the trust or institution, as the case may be, he shall pass an order in writing cancelling the registration of such trust or institution.

Provided that the registration shall not be cancelled under this sub-section , if the trust or institution proves that there was a reasonable cause for the activities to be carried out in the said manner.

[SECTION 13(1) SECTION 11{I.E EXEMPTION} NOT TO APPLY IN CERTAIN CASES:

OR CASES WHERE TAX WILL BE LEVY AT MAXIMUM MARGINAL RATE { @30%}:

- (a) Income for private religious purposes:** entire income from property held under a trust for private religious purposes which does not used for the benefits of the public is not eligible for exemption under section 11 or 12.
- (b) Income for the benefit of particular religious community:** if the income of the trust /institution created for the benefits of any **particular** religious community or caste , not eligible for exemption u/s 11 or 12.
- (c) Income for the benefits of a specified person or persons:** if any part of income of a trust/ institution used directly or indirectly for the benefits of any specified person , then such trust/ institution not eligible to avail the exemption u/s 11 or 12.
- (d) Funds not invested in section 11(5) securities/ deposits:** entire income of a trust / institution is not eligible for exemption u/s 11 or 12, if its funds are invested/ deposited otherwise than as specified under section 11(5).

[SECTION 13(3) MEANING OF SPECIFIED PERSONS:

For the purposes of section 13 the following are specified persons:

- (a) The author of the trust or the founder of the institution;
- (b) Any person who has made a total contribution (up to the end of the relevant previous year) of an amount exceeding Rs.50,000 (substantial contributor);
- (c) Where such author or founder or substantial contributor is an HUF then, a member of such HUF is a specified person;
- (d) Any trustee of the trust or manager (by whatever name called) of the institution;

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- (e) Any relative **of** such author, founder, substantial contributor, member, trustee or manager; and
- (f) Any concern in which any of the persons referred to above has a substantial interest.

[SECTION 13(2) INCOME FOR THE BENEFITS OF A SPECIFIED PERSON { EXAMPLES }:

The income or the property of the trust or institution shall be deemed to have been used or applied for the benefits of a person referred to in section 13(3) in the following cases:

- (a) Where any part of the income or property of the trust or institution is, or continues to be, lent to any person referred to in section 13(3) for any period during the previous year **without** either adequate security or adequate interest or both.
- (b) Where any land, building or other property of the trust or institution is, or continues to be, made available for the use of any person referred to in section 13(3) for any period during the previous year without charging adequate rent or other compensation.
- (c) Where any amount is paid by way of salary, allowance, or otherwise during the previous year to any person referred to in section 13(3) out of the resources of the trust or institution for services rendered by that person to such trust or institution and the amount so paid is more than what may be reasonably paid for such services.
- (d) Where the services of the trust or institution are made available to any person referred to in section 13(3) during the previous year without adequate remuneration or other compensation.
- (e) Where any share, security or other property is purchased by or on behalf of the trust or institution from any person referred to in section 13(3) during the previous year for more than adequate consideration.
- (f) Where any share, security or other property is sold by or on behalf of the trust or institution to any person referred to in section 13(3) during the previous year for less than adequate consideration.
- (g) Where any income or property of the trust or institution is **diverted** during the previous year in favour of any person referred to in section 13(3). Where, however, the aggregate of income or the value of the property so diverted **does not exceed** Rs.1,000, then this provision is not applicable.
- (h) Where any funds of the trust or institution are, or continue to remain invested for any period during the previous year in **any company** in which any person referred to in section 13(3) has a substantial interest.

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[SECTION 13(6) DENIAL OF EXEMPTION UNDER SECTION 11:]

In the case of a charitable or religious trust running an **educational institution or a medical institution or a hospital**, the exemption under section 11 or section 12 shall not be denied in relation to any income , other than the income referred to in section 12(2) { income related to education, medical, hospital}, by reason only that such trust has provided educational or medical facilities **to persons** referred to in section 13(3) [specified person].

[SECTION 2(15) CHARITABLE PURPOSE DEFINED{ WHAT IS CHARITY ?}:

“ Charitable purpose” include relief of the poor , education, yoga, medical relief, preservation of environment (including watersheds , forests and wildlife) and preservation of **monuments** or place or objects of artistic or historic interest, and the advancement of any other object of general public utility.

Provided that the advancement of any other object of general public utility shall not be a charitable purpose, if it involves the carrying on of any activity in the nature of **trade, commerce or business**, for a cess or fee or any other consideration , irrespective of the nature of use or application, or retention, of the income from such activity , unless:-

- (a) Such activity is undertaken in the course of actual carrying out of such advancement of any other **object of general public utility** ; and
- (b) The aggregate receipts from such activity or activities during the previous year, **do not exceed 20%** of the total receipts, of the trust or institution undertaking such activity or activities , of that previous year.

So charitable purpose includes:

- Relief of poor.
- Education .
- Yoga .
- Medical relief.
- Preservation of environment (including watersheds, forests and wildlife).
- Preservation of monuments or places or objects of artistic or historic interest; and
- Advancement of any other object of general public utility.

If a trust is charging on commercial basis for the above said activities, for example, charging fees from school/ colleges and charging fees from patients on commercial basis, then the trust is a charitable trust and the receipt from such activities , even on commercial basis, is eligible for exemption u/s 11 & 12.

CHAPTER 2: TAXATION OF CHARITABLE / RELIGIOUS TRUSTS AND INSTITUTIONS.

“ ANONYMOUS DONATIONS ”

[SECTION 13(7) SECTION 11 OR 12 NOT TO APPLY IN CASE OF ANONYMOUS DONATION:]

Nothing contained in section 11 or section 12 shall operate so as to exclude from the total income of the previous year of the person in receipt thereof, any anonymous donation referred to in section 115BBC on which tax is payable in accordance with the provision of that section [i.e as per section 115 BBC].

[SECTION 115BBC] ANONYMOUS DONATIONS TO BE TAXED IN CERTAIN CASES:]

- (1) A **religious** trust / institutions can freely take the “ **ANONYMOUS DONATION** ” without any monetary limit.
- (2) But where the total income of any university or other educational institution or any hospital or other institution referred to in section 10(23C) or any trust or institution referred to in section 11, **includes any income by way of any anonymous donation**, the income tax payable shall be aggregate of:
 - (a) The amount of income-tax calculated at the rate of 30% on the anonymous donation **received** in excess of the higher of the following amounts, namely:
 - 5% of the total donations received by the assessee; or
 - Rs. 1,00,000.

And remaining anonymous donations will be taxable @30% , which means higher of above two will be taxable with normal donation / income.

- (3) The provision of sub-section (1) shall not apply to any anonymous donation received by:
 - (a) Any trust or institution created or established wholly for religious purposes;
 - (b) Any trust or institution created or established wholly for religious and charitable purposes other than any anonymous donation made with a specific direction [i.e **Corpus donation**].

For the purpose of this section , “ **anonymous donation** ” means any voluntary contribution, where a person receiving such contribution does not maintain a record of the identity indicating the name and address of the person making such contribution and such other particulars as may be prescribed.

CHAPTER 2: TAXATION OF CHARITABLE / RELIGIOUS TRUSTS AND INSTITUTIONS.

Registration of Trust [Sec.12A & 12AB]

The person in receipt of the income has made an application in the prescribed form and manner to the Principal Commissioner or Commissioner, for registration of the trust or institution u/s 12AB:

S.No.	Case	Time limit
i	Where the trust or institution is already registered	Within 3 months from the 1st day of April, 2021
ii	Where the trust or institution is registered u/s 12AB and the period of the said registration is due to expire	At least 6 months prior to expiry of the said period
iii	Where the trust or institution has been provisionally registered	At least 6 months prior to expiry of period of the provisional registration or within 6 months of commencement of its activities, whichever is earlier
iv	Where registration of the trust or institution has become inoperative due to sec. 11(7)	At least 6 months prior to the commencement of the assessment year from which the said registration is sought to be made operative
v	Where the trust or institution has adopted or undertaken modifications of the objects which do not conform to the conditions of registration	Within a period of 30 days from the date of the said adoption or modification
vi	In any other case	At least 1 month prior to the commencement of the previous year relevant to the assessment year from which the said registration is sought

Taxpoint

- ♦ Where registration has been granted to the trust or institution, then, the provisions of sec. 11 and 12 shall apply in respect of any income derived from property held under trust of any assessment year preceding the aforesaid assessment year, for which assessment proceedings are pending before the Assessing Officer as on the date of such registration and the objects and activities of such trust or institution remain the same for such preceding assessment year.

CHAPTER 2: TAXATION OF CHARITABLE / RELIGIOUS TRUSTS AND INSTITUTIONS.

- ♦ No action u/s 147 shall be taken by the Assessing Officer in case of such trust or institution for any assessment year preceding the aforesaid assessment year only for non-registration of such trust or institution for the said assessment year.
- ♦ However, aforesaid benefits are not available in case of any trust or institution which was refused registration or the registration granted to it was cancelled at any time

Procedure for Registration [Sec.12AB]

On receipt of an application u/s 12A, the Principal Commissioner or Commissioner shall:

In case of existing trust covered in S. No. i of the above table	Pass an order within 3 months from the end of the month in which the application was received, in writing registering the trust or institution for a period of 5 years and send a copy of such order to the trust or institution.
Cases covered in S. No. ii to v of the above table	call for such documents or information from the trust or institution or make such inquiries as he thinks necessary in order to satisfy himself about: the genuineness of activities of the trust or institution; and the compliance of such requirements of any other law for the time being in force by the trust or institution as are material for the purpose of achieving its objects; after satisfying himself about the objects of the trust or institution and the genuineness of its activities and compliance of the requirements: pass an order, within 6 months from the end of the month in which the application was received, in writing registering the trust or institution for a period of 5 years; or if he is not so satisfied, pass an order in writing rejecting such application and also cancelling its registration after affording a reasonable

CHAPTER 2: TAXATION OF CHARITABLE / RELIGIOUS TRUSTS AND INSTITUTIONS.

	<p>opportunity of being heard;</p> <p>d send a copy of such order to the trust or institution.</p>
Cases covered in S. No. vi of the above table	<p>Pass an order, within 1 month from the end of the month in which the application was received, in writing provisionally registering the trust or institution for a period of 3 years from the assessment year from which the registration is sought, and send a copy of such order to the trust or institution.</p>

CHAPTER 2:TAXATION OF CHARITABLE / RELIGIOUS TRUSTS AND INSTITUTIONS.

EXAMPLE(1):

(AMOUNT IN RS)

PARTICULARS:	CASE (1):	CASE (2):	CASE (3):	CASE (4):
ANONYMOUS DONATION	6,00,000	2,50,000	10,00,000	30,000
OTHER DONATION	3,00,000	60,00,000	70,00,000	7,50,000
TOTAL DONATION	9,00,000	62,50,000	80,00,000	7,80,000

OTHER INCOMES FROM PROPERTY HELD UNDER TRUST	10,00,000	40,00,000	50,00,000	8,50,000
APPLICATION OF INCOME INCLUDING 15% ADHOC DEDUCTION.	5,00,000	29,50,000	35,00,000	7,30,000

EXAMPLE (2):

[AMOUNT IN RS.]

- GROSS INCOME FROM PROPERTY HELD UNDER TRUST. 11,00,000.
- EXPENSES INCURRED IN EARNING THE ABOVE INCOMES. 3,00,000.
- DONATIONS RECEIVED WHERE NAMES, ADDRESS AND PAN OF DONORS ARE GIVEN. 4,00,000.
- DONATIONS RECEIVED WHERE NAMES, ADDRESS AND PAN OF DONORS ARE NOT GIVEN. 5,50,000.
- OPTION EXERCISED UNDER SUBCLAUSE (ii) OF CLAUSE 2 OF EXPLANATION TO SECTION 11(1). 2,50,000.
- AMOUNT SET APART FOR SPECIFIED PURPOSES U/S 11(2). 4,50,000.
- CORPUS DONATIONS RECEIVED WHERE NAMES, ADDRESS AND PAN OF DONERS ARE GIVEN. 1,50,000.
- CORPUS DONATIONS RECEIVED WHERE NAMES, ADDRESS AND PAN OF DONERS NOT ARE GIVEN. 2,25,000.

CHAPTER 3: DOUBLE TAXATION AVOIDANCE AGREEMENT. [DTAA]

INTRODUCTION:

Generally, income is taxable on two basis **viz.** i) **Source** of income basis and ii) **Residential Status Basis**, which **results into** double taxation of same income of the person. Firstly, such income is taxed in the country in which such income is generated and **again**, the same income may be taxed on the basis of residential status of the person in another country. For instance, Mr. X, an ordinarily resident in India, earned bank interest of RS.2,00,000 on his money deposited into a bank located in US. In that case, such income is taxable in US on **Source of income basis** and **again** in India as he is an ordinarily resident India. **In times** when economies are going global and borders fading, double taxation is still one of the major obstacles to the development of inter-country economic relations. In order to **prevent** this hardship or to avoid double taxation, **relief** is provided to the tax-payer.

SUCH RELIEF IS PROVIDED BY TWO WAYS:

1. **BILATERAL RELIEF. [SECTION 90/90A]**
2. **UNILATERAL RELIEF. [SECTION 91]**

BILATERAL RELIEF:

In this, government of two countries enters into an agreement (known as 'treaties') to provide relief against double taxation of same income. The relief is granted on the basis of terms of such agreement. Generally, such agreement provides relief through following **methods**:

1. **EXEMPTION METHOD:** In this method, one country provides exemption to such type of income. Generally, residence country gave **up its** right **and** the country of source is then given exclusive right **to tax** such incomes.
2. **TAX CREDIT METHOD:** In this method resident remains liable in the country of residence on its global income, however as far the quantum of tax liabilities is concerned **as credit or deduction** for tax paid in the source country is given **by** the residence country against its domestic tax as if the foreign tax were **paid** to the country of residence **itself**.

CHAPTER 3: DOUBLE TAXATION AVOIDANCE AGREEMENT. [DTAA]

UNILATERAL RELIEF:

The aforesaid method is depending on bilateral activity of both the countries. **However**, no country will have such an agreement with every country in the world. In order to avoid double taxation in such cases, country of residence itself may provide relief **on unilateral basis**.

IN INDIA, RELIEF FOR AVOIDANCE OF DOUBLE TAXATION IS PROVIDED IN BOTH WAYS. [I.E BY BILATERAL AND BY UNILATERAL ALSO].

[SECTION 90] AGREEMENT WITH FOREIGN COUNTRIES (BILATERAL RELIEF):

The Central Government may enter into an agreement with the Government **of any** country outside India or specified territory outside India:

- (a) For granting of relief in respect of income on which have been paid **both** income-tax under this Act and income-tax in that country or specified territory, as the case may be, or
- (b) for the **avoidance** of double taxation of income under this Act and under the corresponding law in force in that country or specified territory, as the case may be, or
- (c) for exchange of information for the **prevention** of evasion or avoidance of income-tax chargeable under this Act or under the corresponding law in force in that country or specified territory, as the case may be, or investigation of cases of such evasion or avoidance, or
- (d) **for recovery** of income-tax under this Act and under the corresponding law in force in that country or specified territory, as the case may be,

AND MAY MAKE SUCH PROVISIONS AS MAY BE NECESSARY FOR IMPLEMENTING THE AGREEMENT.

NOTE TO SECTION 90:

- ✓ Where the Central Government has entered into an agreement with the Government of any country or specified territory outside India for granting relief of tax or avoidance of double taxation, then, in relation to the assessee to whom such agreement applies, the provisions of this Act shall apply to the extent they are **more beneficial** to that assessee.
- ✓ An assessee, not being a resident, to whom DTA applies, shall not be entitled to claim any relief under such agreement **unless** a certificate of his being a resident in any country outside India or specified territory outside India, as the case may be, **is obtained** by him **from** the Government of that **country** or

CHAPTER 3: DOUBLE TAXATION AVOIDANCE AGREEMENT. [DTAA]

specified territory. Further, the assessee shall also provide such other documents and information, as may be prescribed.

- ✓ Where any term used in an agreement entered into u/s 90 is defined under the said agreement, the said term shall have the same meaning as assigned **to it in** the agreement; and where the term is not defined in the said agreement, but defined in the Act, it shall have the **same** meaning as assigned to it in the Act and explanation, if any, given to it by the Central Government.
- ✓ Further, any term used but not defined in the Act or in the agreement shall, unless the context otherwise requires, and is not inconsistent with the provisions of this Act or the agreement, have the same meaning as assigned to it in the notification **issued** by the Central Government in the Official Gazette in this behalf.
- ✓ Further, where any term is used in any agreement and not defined under the said agreement or the Act, but is assigned a meaning to it **in the notification** issued, then, the meaning assigned to such term shall be deemed to have effect from the date on which the said agreement came into force.
- ✓ The charge of tax in respect of a foreign company at a rate higher than the rate at which a domestic company is chargeable, shall **not be regarded** as less favourable charge or levy of tax in respect of such foreign company.
- ✓ “Specified territory” means any area outside India which may be notified as such by the Central Government.
- ✓ If no tax liability is imposed under this Act, the question of relief does not arise.
- ✓ Relief cannot be granted unless the income which has been taxed in one of the contracting countries has also suffered tax in the other contracting country. **Proof** has to be provided of the income having **suffered double taxation**.
- ✓ Sections 4 and 5 of the Income-tax Act provide for taxation of global income of an assessee but this is subject to the provisions of an agreement entered into between the Central Government and the Government of a foreign country for avoidance of double taxation. In case of any conflict between the provisions of the agreement and the Act, the provisions of the agreement would prevail over the Act in view of the provisions of sec. 90(2). **If any matter or income is not** covered by the agreement, the Income-tax Act shall be applicable.

CHAPTER 3: DOUBLE TAXATION AVOIDANCE AGREEMENT. [DTAA]

- ✓ In case of a remittance to a country with which a Double Taxation Avoidance Agreement is in force, the tax should be deducted at the rate provided in the Finance Act of the relevant year or at the rate provided in the Double Taxation Avoidance Agreement, whichever is **more beneficial** to the assessee.

[PLEASE DO ILLUSTRATION 1 & 2 OF STUDY MATERIAL TO UNDERSTAND THE BILATERAL RELIEF].

[SECTION 90A] ADOPTION BY CENTRAL GOVERNMENT OF AGREEMENT BETWEEN SPECIFIED ASSOCIATIONS FOR DOUBLE TAXATION RELIEF:

Any specified association in India **may** enter into an agreement **with any specified association** in the specified territory outside India **and** the Central Government may, by notification in the Official Gazette, **make** such provisions as may be necessary for adopting and implementing such agreement—

- a) for granting of relief in respect of—
 - (i) income on which have been paid **both** income-tax under this Act and income-tax in any specified territory outside India; or
 - (ii) income-tax chargeable under this Act and under the corresponding law in force in that specified territory outside India **to promote** mutual economic relations, trade and investment, or
- b) for the **avoidance** of double taxation of income under this Act and under the corresponding law in force in that specified territory outside India, or
- c) for **exchange** of information for the prevention of evasion or avoidance of income-tax chargeable under this Act or under the corresponding law in force in that specified territory outside India, or investigation of cases of such evasion or avoidance, or
- d) for **recovery** of income-tax under this Act and under the corresponding law in force in that specified territory outside India.

CHAPTER 3: DOUBLE TAXATION AVOIDANCE AGREEMENT. [DTAA]

NOTE TO SECTION 90A:

- ✓ Specified association **means** any institution, association or body, whether incorporated or not, functioning under any law for the time being in force in India or the laws of the specified territory outside India and which may be **notified** as such by the Central Government for the purposes of this section.
- ✓ An assessee, not being a resident, to whom DTA applies, shall not be entitled to claim any relief under such agreement **unless** a certificate of his being a resident in any country outside India or specified territory outside India, as the case may be, is obtained by him from the Government of that country or specified territory. Further, the assessee shall also provide such other documents and information, as **may be prescribed**.
- ✓ Specified territory means any area outside India which may be **notified** as such by the Central Government for the purposes of this section.
- ✓ Where any term used in an agreement entered into is defined under the said agreement, the said term shall have the **same** meaning as assigned to it in the agreement; and where the term is not defined in the said agreement, but defined in the Act, it shall have the **same** meaning as assigned to it in the Act and explanation, if any, given to it by the Central Government.
- ✓ Where any term is used in any agreement and not defined under the said agreement or the Act, but is assigned a meaning to it in the notification issued, then, the **meaning assigned** to such term shall be deemed to have effect from the date on which the said agreement came into force.
- ✓ Where a specified association in India has entered into an agreement with a specified association of any specified territory outside India and such agreement has been notified, for granting relief of tax, or as the case may be, avoidance of double taxation, then, in relation to the assessee to whom such agreement applies, the provisions of this Act shall apply to the extent they are **more beneficial** to that assessee. However, the provisions of Chapter X-A of the Act (i.e., GAAR GENERAL ANTI-AVOIDANCE RULE -FOR TAX) shall apply to the assessee **even** if such provisions are **not** beneficial to him.

CHAPTER 3: DOUBLE TAXATION AVOIDANCE AGREEMENT. [DTAA]

[SECTION 91]-COUNTRIES WITH WHICH NO AGREEMENT EXISTS (UNILATERAL RELIEF):

IF ANY PERSON WHO IS RESIDENT IN INDIA IN ANY PREVIOUS YEAR PROVES THAT:

- (a)** The income has accrued or arose during the previous year **outside India** (and which is **not** deemed to accrue or arise in India),
- (b)** He has paid in **any country** income-tax on such income, by way of deduction or otherwise, under the law in force in **that country**.
- (c)** India does **not** have any agreement u/s 90 [bilateral relief] for the relief or avoidance of double taxation with that country.

THEN HE SHALL BE ENTITLED TO THE DEDUCTION FROM THE INDIAN INCOME-TAX PAYABLE BY HIM:

- (i)** of a sum calculated on such doubly taxed income at the average of Indian rate of tax or
- (ii)** of a sum calculated on such doubly taxed income at the average rate of tax of the said country,

- WHICHEVER IS THE LOWER, OR AT THE INDIAN RATE OF TAX IF BOTH THE RATES ARE EQUAL.

NOTES:

- a) The expression 'such doubly taxed income' really purports to indicate that it is only that portion of the income on which tax has been imposed and been paid by the assessee that is **eligible** for the double tax relief.
- b) Relief u/s 91 is to be calculated on income **country-wise** and not on basis of aggregation or amalgamation of income of all foreign countries.
- c) **No benefit** is available on income which is deemed to accrue or arise **in India**, even though such income is doubly taxed.

[PLEASE DO ILLUSTRATION 3,4 & 5 OF STUDY MATERIAL TO UNDERSTAND THE UNILATERAL RELIEF].

CHAPTER 3: MODULE QUESTIONS OF DTAA.

ILLUSTRATION 1

Mr. Ramesh, a resident Indian, has derived the following incomes for the previous year relevant to the A.Y. 2020-21:

a.	Income from profession in India	RS. 2,44,000
b.	Income from profession in country A (Tax paid in foreign country @ 5%)	RS.4,50,000

Compute Indian tax liability of the assessee assuming that as per treaty between India and Country A, RS.4,50,000 is taxable in India. However foreign tax can be set off against Indian tax liability.

Solution:

COMPUTATION OF TOTAL INCOME AND TAX LIABILITY OF MR. RAMESH FOR THE A.Y. 2020-21

Particulars	Amount in (RS)
Income from profession in India	2,44,000
Income from profession in Country A	4,50,000
Gross Total Income	6,94,000
Less: Deduction u/ch. VIA	Nil
Total income	6,94,000
Tax on above	51,300
Add: Health & Education cess	2,052
Tax and cess payable	53,352
Less: Relief u/s 90 [` 4,50,000 x 5%]	22,500
Tax payable in India (Rounded off)	30,850

CHAPTER 3: MODULE QUESTIONS OF DTAA.

ILLUSTRATION 2

Shri Anuj, an ordinarily resident in India, provides following details of his income for the previous year relevant to the A.Y. 2020-21:

- Income from India RS.3,40,000
- Income from Country Z RS. 2,00,000
- Investment in PPF RS. 10,000

Further, it is to be noted that:

- India has avoidance of double taxation agreement with Country Z. According to said agreement, income is taxable in the country in which it is earned and not in other country. However, in the other country such income can be included for the purpose of computation of tax rate.
- Foreign income has been taxed in Country Z @ 20%.

COMPUTE INDIAN TAX PAYABLE?

Solution:

COMPUTATION OF TOTAL INCOME AND TAX LIABILITY OF SHRI ANUJ FOR THE A.Y. 2020-21:

Particulars	Amount in (RS).
Income from India	3,40,000
Income from Country Z	2,00,000
Gross Total Income	5,40,000
Less: Deduction u/s 80C [Investment in PPF]	10,000
Total income	5,30,000
Tax on above	18,500
Add: Health & Education cess	740
Tax and cess payable	19,240
Less: Relief u/s 90 [` 2,00,000 x 3.63%] [W.N]	7,260
Tax payable in India (Rounded off)	11,980

WORKING NOTE:

Average rate of Indian tax = RS.19,240 / RS. 5,30,000 x 100 = 3.63%

CHAPTER 3: MODULE QUESTIONS OF DTAA.

ILLUSTRATION 3

Mr. Saha, a resident Indian, has derived the following incomes for the previous year relevant to the A.Y. 2020-21:

a.	Income from profession	RS.3,74,000
b.	Royalty on books from foreign country Y (RS.3,00,000 is eligible for deduction u/s 80QQB) (Tax paid in foreign country @ 20%)	RS.5,00,000

Compute Indian tax liability of the assessee assuming that India does not have any agreement with country Y?

Solution:

COMPUTATION OF TOTAL INCOME AND TAX LIABILITY OF MR. SAHA FOR THE A.Y. 2020-21.

Particulars	Amount in (RS).
Income from profession	3,74,000
Royalty earned in country Y	5,00,000
Gross Total Income	8,74,000
Less: Deduction u/s 80QQB	3,00,000
Total income	5,74,000
Tax on above	27,300
Add: Health & Education cess	1,092
Tax and cess payable	28,392
Average rate of tax [RS.28,392 / RS.5,74,000 x 100]	4.95%
Rate of tax in country Y	20%
Relief u/s 91 [4.95% of RS.2,00,000]	9,900
Tax payable (Rounded off u/s 288B)	18,490

WORKING NOTE:

Indian average tax rate: 04.95% Foreign average tax rate: 20.00%

Relief u/s 91 is available at lower of aforesaid rate. i.e., 4.95%.

CHAPTER 3: MODULE QUESTIONS OF DTAA.

Illustration 4

Arvind, a textile merchant and resident Indian is doing business in India and abroad. During the previous year 2019- 20, he disclosed the following information:

PARTICULARS.	AMOUNT IN (RS).
Income from business in India	27,00,000
Income from business in Country- A with which- (see below)	
(india does not have agreement for avoidance of double taxation)	15,00,000
Income-tax levied by government in Country-A	5,00,000
Loss from business in Country-B with which also (see below)	
(India does not have agreement for avoidance of double taxation)	(4,00,000)
Contribution to public provident fund	1,50,000
Payment of life insurance premium on the life of his Father and mother	20,000

COMPUTE THE TAX LIABILITY OF ARVIND FOR THE ASSESSMENT YEAR 2020-21 ?

Solution:

COMPUTATION OF TOTAL INCOME AND TAX LIABILITY FOR THE A.Y. 2020-21:

Particulars	Amount in (RS).
Income from business in India	27,00,000
Income from business in Country A	15,00,000
Income from business in Country B	(-) 4,00,000
Gross Total Income	38,00,000
Less: Deduction u/s 80C	1,50,000
Total income	36,50,000
Tax on above	9,07,500
Add: Health & Education cess	36,300
Tax and cess payable	9,43,800
Average rate of tax [RS.9,43,800 / RS.36,50,000 x 100]	25.86%
Rate of tax in country A	33.33%
Relief u/s 91 [25.86% of RS.15,00,000]	3,87,900
Tax payable (Rounded off)	5,55,900

CHAPTER 3: MODULE QUESTIONS OF DTAA.

WORKING NOTE:

Indian average tax rate: 25.86% Foreign average tax rate: 33.33%

Relief u/s 91 is available at lower of aforesaid rate. i.e., 25.86%

ILLUSTRATION 5

Amar, an individual, resident of India, receives the following payments after TDS during the previous year 2019-20:

(i) Professional fees on 17.08.2019 RS.2,40,000

(ii) Professional fees on 04.03.2020 RS.1,60,000

Both the above services were rendered in country X on which TDS of RS.50,000 and RS.30,000 respectively has been deducted. He had incurred an expenditure of RS.2,40,000 for earning both these receipts / income. His income from other sources in India is RS.5,00,000 and he has made payment of ` 70,000 towards LIC.

Compute the tax liability of Amar and also the relief u/s 91, if any, for A.Y.2020-21?

Solution:

COMPUTATION OF TOTAL INCOME AND TAX LIABILITY OF MR. AMAR FOR THE A.Y. 2020-21:

Particulars	Amount
Income from profession from foreign	4,80,000
Less: Expenses	2,40,000
Income from profession in India	5,00,000
Gross Total Income	7,40,000
Less: Deduction u/s 80C	70,000
Total income	6,70,000
Tax on above	46,500
Add: Health & Education cess	1,860
Tax and cess payable	48,360
Average rate of tax [RS.48,360 / RS.6,70,000 x 100]	7.22%
Rate of tax in Country X	16.67%
Relief u/s 91 [7.22% of RS.2,40,000]	17,328
Tax payable (Rounded off)	31,030

EXPLANATION:

RELIEF U/S 91 IS AVAILABLE AT LOWER RATE. I.E., 7.22%

CHAPTER 4: TRANSFER PRICING.

INTRODUCTION:

The increasing participation of **multinational groups** in economic activities in the country has given rise to new and complex issues emerging from transactions entered into between two or more enterprises **belonging** to the same multinational group. The profits derived by such enterprises carrying on business in India can be controlled by the multinational group, **by manipulating** the prices charged and paid in such intra-group transactions, thereby, leading to erosion of tax revenues.

In other words, the course of business between a resident person and an associated non-resident or not ordinarily resident person, is so arranged **that the resident** makes either no profit or less **than the ordinary profit** in that business. Such an arrangement would deprive that Indian revenue of the tax which would otherwise be payable by the resident.

With a view to provide a statutory framework which can lead to computation of reasonable, fair and equitable profits and tax in India, in case of such multinational enterprise, new set of special provisions relating to avoidance of tax have been introduced under chapter X in the Income tax Act. These provisions relate to computation of income from international transaction having regard to **Arm's length price**, meaning of **associated enterprises**, meaning of **international transaction**, determination of arm's length price, keeping and maintaining of information and documents by persons entering into international transaction, furnishing of a report from an accountant by persons entering into such transactions.

CHAPTER 4: TRANSFER PRICING.

[SECTION 92]-COMPUTATION OF INCOME FROM INTERNATIONAL TRANSACTION HAVING REGARD TO ARM'S LENGTH PRICE:

- (1) Any income arising from an international transaction shall be computed having regard to the **Arm's length price**.
- (2) For removal of doubts, it is hereby clarified that the allowance for any expenses or interest arising from an international transaction / specified domestic transaction shall also be determined having regard to **Arm's length price**.
- (3) Where in an international transaction, two or more associated enterprises enter into a mutual agreement or arrangement for the allocation or apportionment of any cost or expense incurred in connection with a benefit, service, or facility provided to any one or more of such enterprises then the such cost or expense shall be determined having regard to **Arm's length price**.
- (4) The provision of this section shall not apply in case where the determination of expense or interest as per arm's length price will lead to reduction in income of the enterprises or increasing in lossess of the enterprises.

[SECTION 92F(ii)]-ARM'S LENGTH PRICE:

Arm's length price means:

- (i) A price which is applied or proposed to be applied in a transaction.
- (ii) Between persons other than associated enterprises (i.e., unrelated person, resident or non-resident),
- (iii) in uncontrolled conditions.

NOTE: There may be more than one arm's length price.

CHAPTER 4: TRANSFER PRICING.

[SECTION 92F(iii)]-MEANING OF AN ENTERPRISES:

Enterprise means a person (including a permanent establishment of such person) who is, or has been, or is proposed to be, engaged:

- ✓ in any activity, relating to the production, storage, supply, distribution, acquisition or control of:
 - (a) articles or goods; or
 - (b) know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature; or
 - (c) 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
 - ✓ in the provision of services of any kind; or
 - ✓ in carrying out any work in pursuance of a contract; or
 - ✓ in investment, or providing loan; or
 - ✓ in the business of acquiring, holding, underwriting or dealing with shares, debentures or other securities of any other body corporate,
-
- ✓ Whether such activity or business is carried on, directly or through one or more of its units or divisions or subsidiaries; or
 - ✓ Whether such unit or division or subsidiary is located at the same place where the enterprise is located or at a different place or places.

[SECTION 92B]-MEANING OF AN INTERNATIONAL TRANSACTION:

International transaction means a transaction between two or more associated enterprises, either or both of whom are non-residents, in the nature of :

- (i) Purchase, sale or lease of tangible or intangible property, or
- (ii) Provision of services, or
- (iii) lending or borrowing money, or
- (iv) Any other transaction having a bearing on the profits, income, losses or assets of such enterprises;
 &

Shall include a mutual agreement or arrangement between two or more associated enterprises,

- (a) For the allocation or apportionment of, or

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- (b) Any contribution to, any cost or expense incurred or to be incurred in connection with a benefit, service or facility provided or to be provided to any one or more of such enterprises.

A transaction entered into by an enterprise with a person other than an associated enterprise shall, be deemed to be an international transaction entered into between two associated enterprises,

- (i) if there **exists a prior** agreement in relation to the relevant transaction between such other person and the associated enterprise; or
- (ii) the **terms** of the relevant transaction are **determined** in substance between such other person and the associated enterprise.

Where the enterprise or the associated enterprise or both of them are non-residents irrespective of whether such other person is a non-resident or not.

FOR EXAMPLE:

ITC LTD., an Indian company, and FORD MOTORS, a foreign company, are associated enterprise. MICROSOFT, a foreign company, (not an associated enterprise of ITC LTD) and FORD MOTORS enters into an agreement for determining the terms of transactions between ITC LTD. and MICROSOFT. The transaction as may be entered between ITC LTD. and MICROSOFT., which is governed by such an agreement existing between FORD MOTORS and MICROSOFT, shall be deemed to be a transaction between two associated enterprises.

NOTE:

- ✓ Non-resident means a person who is not a 'resident' including a person who is not ordinarily resident.
- ✓ Transaction includes an arrangement, understanding or action in concert,—
 - (a) Whether or not such arrangement, understanding or action is formal or in writing; or
 - (b) Whether or not such arrangement, understanding or action is intended to be enforceable by legal proceeding.
- ✓ For a transaction to be an international transaction, it should satisfy the following two conditions cumulatively:
 - (a) It must be a transaction **between** two associated enterprises; and
 - (b) **At least [min.]** one of the two enterprises must be a non-resident.

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DEEMED INTERNATIONAL TRANSACTION:

INTERNATIONAL TRANSACTION SHALL INCLUDE:

- (a) The purchase, sale, transfer, lease or use of tangible property including building, transportation vehicle, machinery, equipment, tools, plant, furniture, commodity or any other article, product or thing;
- (b) The purchase, sale, transfer, lease or use of intangible property , including the transfer of ownership or the provision of use of rights regarding land use, copyrights, patents, trademarks, licences, franchises, customer list, marketing channel, brand, commercial secret, know-how, industrial property right, exterior design or practical and new design or any other business or commercial rights of similar nature;
- (c) Capital financing, including any type of long-term or short-term borrowing, lending or guarantee, purchase or sale of marketable securities or any type of advance, payments or deferred payment or receivable or any other debt arising during the course of business;
- (d) Provision of services, including provision of market research, market development, marketing management, administration, technical service, repairs, design, consultation, agency, scientific research, legal or accounting service;
- (e) A transaction of business restructuring or reorganisation, entered into by an enterprise with an associated enterprise, irrespective of the fact that it has bearing on the profit, income, losses or assets of such enterprises at the time of the transaction or at any future date;

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[SECTION 92BA]-MEANING OF SPECIFIED DOMESTIC TRANSACTION:

“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 sec. 80A;
- (ii) Any transfer of goods or services referred to in sec. 80-IA(8);
- (iii) Any business transacted between the assessee and other person as referred to in sec. 80-IA(10);
- (iv) Any transaction, referred to in any other section under Chapter VI-A or sec. 10AA, to which provisions of sec. 80-IA(8) or (10) are applicable; or
- (v) Any business transacted between the persons referred to in sec. 115BAB(4);
- (vi) 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 RS.20 CRORE.

EXAMPLE:

Sultan Ltd. took services of one of its group company, an associated enterprise enjoying tax holiday. The transaction is a specified domestic transaction. Sultan Ltd. paid RS.48,40,00,000 for the said service to the group company.

The arms length price of such service is RS.37,00,00,000. The arms length price, i.e., the fair value of the service is RS.37,00,00,000 but by paying higher charges, Sultan Ltd. claimed a higher deduction and reduced its profit by RS.11,40,00,000. In this case the provisions of sec. 92 will be applicable and the income of Sultan Ltd. will be recomputed by taking into account the arms length price of the specified domestic transaction.

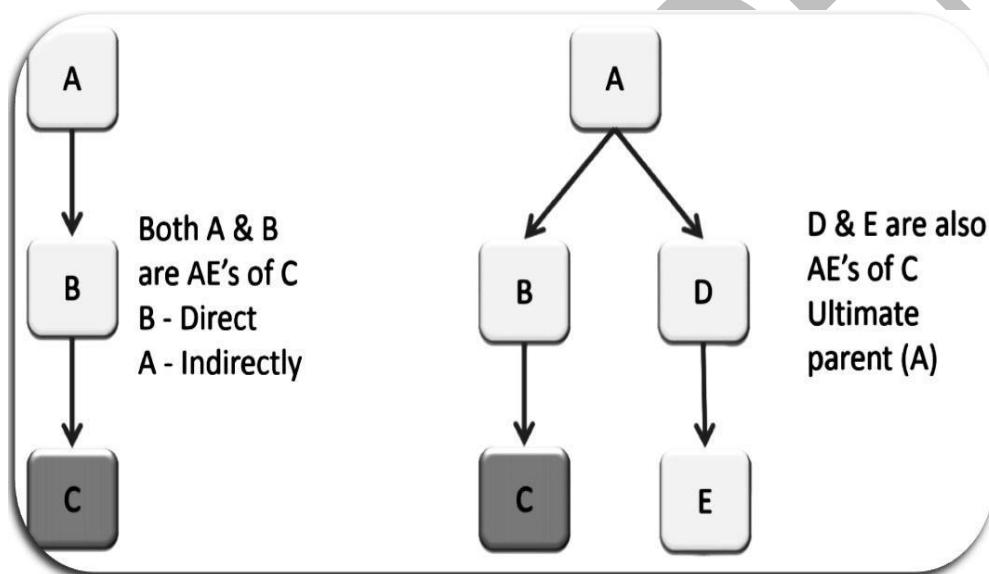
In other words, the taxable income of Sultan Ltd. will have to be computed by allowing deduction of only RS.37,00,00,000 on account of service charges instead of the actually paid amount of RS.48,40,00,000. If in the above example, the transaction is not a specified domestic transaction, then the provisions of sec. 92 will not apply.

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[SECTION 92A]-MEANING OF ASSOCIATED ENTERPRISES:

ASSOCIATED ENTERPRISE, IN RELATION TO ANOTHER ENTERPRISE, MEANS AN ENTERPRISE:

- (a) Which participates, directly or indirectly, or through one or more intermediaries, in the management or control or capital **of the other enterprise**; or
- (b) 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 participate, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise.



THE ABOVE DIAGRAM IS TAKEN FROM STUDY MATERIAL.

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[SECTION 92A(2)- DEEMED ASSOCIATES ENTERPRISES:

For the above purpose, two enterprises shall be deemed to be associated enterprises if, at any time during the previous year fulfill any of the following conditions (if one of following conditions are not satisfied, then mere participation in management or control or capital of the other enterprise, etc. shall not make them associate):

- (a) one enterprise holds (directly or indirectly) shares carrying not less than 26% of the voting power (i.e., equity shares in case of company) in the other enterprise; or
- (b) any person or enterprise holds (directly or indirectly) shares carrying not less than 26% of the voting power in each of such enterprises; or
- (c) the manufacture or processing of goods or articles or business carried out by one enterprise is wholly (not partially) dependent on the use of know-how, patents, copyrights, trade-marks, 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
- (d) 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; or
- (e) 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
- (f) 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
- (g) 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

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(h) where one enterprise is a firm, association of persons or body of individuals, the other enterprise holds not less than **10%** interest in such firm, association of persons or body of individuals; or

(i) a loan advanced by one enterprise to the other enterprise constitutes not less than **51%** of the **book value** of the total assets of the other enterprise; or

TAXPOINT: REVALUATION OF ASSET SHALL NOT BE IGNORED.

(j) one enterprise guarantees **not less than 10%** of the total borrowings of the other enterprise; or

(k) **more than ½** of the board of directors or members of the governing board, or one (not $\frac{1}{2}$ of total number of executive director) or more executive directors or executive members of the governing board of one enterprise, are **appointed** by the other enterprise; or

TAXPOINT: MERE POWER TO APPOINT DIRECTOR IS NOT SUFFICIENT, SUCH POWER MUST BE EXERCISED.

(l) **more than ½** 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

(m) there exists between the two enterprises, any relationship of mutual interest, as may be prescribed.

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[SECTION 92C]-COMPUTATION OF ARM'S LENGTH PRICE:

- 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**:

TRANSACTION BASED METHODS:

1. Comparable uncontrolled price method; **[CUP METHOD]**.
2. Resale price method;
3. Cost plus method;

PROFIT BASED METHODS:

4. Profit split method;
5. Transactional net margin method;
6. Such other method as may be **prescribed by the Board**.

- The **most** appropriate method shall be applied, for determination of arm's length price, in the manner as may be prescribed.
- **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 3%** 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.
- Where **during** the course of any proceeding for the assessment of income, **the** Assessing Officer is, on the basis of material or information or document in his possession, **of the opinion** that:
- (a) The price charged or paid in an international transaction or specified domestic transaction has not been determined **in accordance** with above provision; or
 - (b) Any information and document relating to an international transaction or specified domestic transaction have **not been kept** and maintained by the assessee in accordance with the provisions contained in sec. 92D(1) [**TIME LIMIT**] and the rules made in this behalf; or
 - (c) The information or data used in computation of the arm's length price is **not reliable** or correct; or
 - (d) The assessee has failed to **furnish**, within the specified time, any information or document which he was required to furnish by a notice issued u/s 92D(3),

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Then, the Assessing Officer **may proceed** to determine the arm's length price (in accordance with above provisions) in relation to the said international transaction or specified domestic transaction, on the basis of such material or information or document **available with him**.

However, an opportunity shall be given by the Assessing Officer by serving a notice calling upon the assessee to show cause, on a date and time to be specified in the notice, **why?** the arm's length price **should not be** so determined **on the basis** of material or information or document in the possession of the Assessing.

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

HOWEVER:

- ✓ No deduction u/s 10AA **[FOR SEZ]** or under Chapter VIA **[DEDUCTIONS]** shall be allowed in respect of the amount of income **by which** the total income of the assessee is **increased** after computation of income by the assessing officer.
- ✓ Where the total income of an associated enterprise is computed by assessing officer on determination of the arm's length price paid to another associated enterprise from which tax has been deducted or was deductible, the income of the other associated enterprise **shall not** be recomputed by reason of such determination of arm's length price in the case of the first mentioned enterprise.

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[SECTION 92CA]-REFERENCE TO TRANSFER PRICING OFFICER [TPO]:

1. Where any person, being the assessee, has entered into an international transaction or specified domestic transaction in any previous year, and the Assessing Officer **considers** it necessary **or** expedient so to do, he may, with the previous approval of the Commissioner, **refer** the computation of the arm's length price **in relation** to the said international transaction or specified domestic transaction u/s 92C **to the Transfer Pricing Officer**.
2. Where a reference is made, the Transfer Pricing Officer shall serve a notice on the assessee **requiring** him to produce or cause to be produced on a date to be **specified therein**, any **evidence** on which the assessee may rely in support of the computation made by him of the arm's length price in relation to such international transaction or specified domestic transaction.
3. On the date specified in the notice or as soon thereafter as may be, after hearing such evidence as the assessee may produce, including any information or documents referred to in sec. 92D and **after considering** such evidence as the Transfer Pricing Officer may require on any specified points and after taking into account **all relevant materials** which he has gathered, the Transfer Pricing Officer shall, by **order in writing**, determine the arm's length price in relation to the international transaction or specified domestic transaction [in accordance with sec. 92C(3)] and send a copy of his order to the Assessing Officer and to the assessee.
4. Where a reference was made, an order may be made at any time before 60 days **Prior** to the date on which the period of **limitation referred to** in sec. 153/153B for making the order of assessment or reassessment or recomputation or fresh assessment, as the case may be, expires. And the said 60 days period may be **extended** by more 60 days in a reasonable circumstances.
5. On receipt of the order, the Assessing Officer **shall** proceed to compute the **total income** of the assessee u/s 92C(4) in **conformity with** the arm's length price as so determined by the Transfer Pricing Officer.
6. With a view to rectifying any mistake apparent from the record, the Transfer Pricing Officer may **amend** any order passed by him and the provisions of section 154 [rectification of order] shall, so far as may be, apply accordingly.
7. Where any amendment is made by the Transfer Pricing Officer, he **shall send a copy** of his order to the Assessing Officer who shall thereafter proceed to amend the order of assessment in conformity with such order of the Transfer Pricing Officer.

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8. Where any other international transaction, **comes to the notice** of the Transfer Pricing Officer during the course of the proceedings before him, the provisions of this Chapter shall apply as if such other international transaction is an international transaction referred to him.
9. Where in respect of an international transaction, the assessee **has not** furnished the report u/s 92E and such transaction comes to the notice of the Transfer Pricing Officer during the course of the proceeding before him, the provisions of this Chapter **shall apply** as if such transaction is an international transaction referred to him.
10. Transfer Pricing Officer **means** a Joint Commissioner or Deputy Commissioner or Assistant Commissioner authorised by the Board to perform all or any of the functions of an Assessing Officer specified in sections 92C and 92D in respect of any person or class of persons.

[SEC. 92CB]-POWER OF BOARD TO MAKE SAFE HARBOUR RULES:

The determination of arm's length price u/s 92C or 92CA shall be subject to safe harbour rules made by the Board. Safe harbour **means** circumstances **in which** the income-tax authorities shall **accept** the transfer price **declared** by the assessee.

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[SECTION 92CC]-ADVANCE PRICING AGREEMENT:

1. The Board, **with** the approval of the Central Government, **may** enter into an advance pricing agreement **with** any person, **determining** the arm's length price or specifying the manner in which arm's length price is to be determined, **in relation** to an international transaction to be entered into by that person.
2. The manner of determination of arm's length price, **may** include the methods referred to in sec. 92C **or any other** method, with such adjustments or variations, as may be necessary or expedient so to do.
3. The arm's length price of any international transaction, in respect of which the advance pricing agreement has been entered into, shall be determined **in accordance** with the advance pricing agreement so entered.
4. The agreement shall be **valid** for such period not exceeding 5 consecutive previous years as may be specified in the agreement. **[VALIDITY].**
5. The advance pricing agreement entered into shall be **binding**:
 - (a) **on the person** in whose case, and in respect of the transaction in relation to which, the agreement has been entered into; and
 - (b) **on the Commissioner**, and the income-tax authorities subordinate **to him**, in respect of the said person and the said transaction.
6. The agreement shall not be binding if there is a **change in law or facts** having bearing on the agreement so entered.
7. The Board may, with the approval of the Central Government, by an order, declare an agreement to be **void ab initio**, if it finds that the agreement has been obtained by the person **by fraud or misrepresentation** of facts.
8. Upon declaring the agreement void ab initio:
 - (a) All the provisions **of the Act** shall apply to the person as if such agreement had never been entered into; and
 - (b) For the purpose of computing any period of limitation under this Act, the period beginning with the date of such agreement and ending on the date of such order shall be **excluded**.

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9. The agreement may, subject to such conditions, procedure and manner as may be prescribed, provide for determining the arm's length price or specify the manner in which arm's length price shall be determined in relation to the international transaction entered into by the person during any period not exceeding **4 previous** years preceding the first of the previous years, and the arm's length price of such international transaction shall be determined in accordance with the said agreement. **[ROLL BACK PROVISION].**
10. Where an application is made by a person for entering into an agreement, the proceeding shall be **deemed** to be pending in the case of the person for the purposes of the Act.
11. The Board **may prescribe** a scheme specifying therein the manner, form, procedure and any other matter generally **in respect** of the advance pricing agreement **enter into**.

IMPORTANT NOTE:

Amount of international transaction entered into or proposed to be undertaken in respect of which agreement is proposed during the proposed period of agreement.	FEES AMOUNT IN (RS)
Amount not exceeding RS.100 crores	10 lacs
Amount not exceeding RS.200 crores	15 lacs
Amount exceeding RS.200 crores	20 lacs

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[SECTION 92 CD]-EFFECT TO ADVANCE PRICING AGREEMENT:

- Where any person has entered into an agreement and prior to the date of entering into the agreement, **any return** of income has been furnished u/s 139 for any assessment year relevant to a previous year to which such agreement applies, such person **shall** furnish, within a period of **3 months** from the end of the month in which the said agreement was entered into, a **modified** return in accordance with and limited to the agreement.
- Save as otherwise provided in this section, all other provisions of this Act shall apply accordingly as if the modified return **is a** return furnished u/s 139.
- If the assessment or reassessment proceedings for an assessment year relevant to a previous year to which the agreement applies have been **completed before** the expiry of period allowed for furnishing of modified return, the Assessing Officer shall, in a case where modified return is filed, **pass an order modifying** the total income of the relevant assessment year determined in such assessment or reassessment, as the case may be having regard to and in accordance with the agreement.
- Where the assessment or reassessment proceedings for an assessment year relevant to the previous year to which the agreement applies are **pending** on the date of filing of modified return, the Assessing Officer shall proceed to **complete** the assessment or reassessment proceedings **in accordance** with the agreement taking into consideration the modified return so furnished.
- The order **of completion of assessment or reassessment** shall be passed within a period of **1 year** from the end of the financial year in which the modified return is furnished. Which can be extended by more 1 year.
- The assessment or reassessment proceedings for an assessment year shall be deemed to have been completed **where:**
 - (a) an assessment or reassessment order has been passed; or
 - (b) no notice has been issued **u/s 143(2) [scrutiny notice]** till the expiry of the limitation period provided under that sub-section.

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[SECTION 92CE]-SECONDARY ADJUSTMENT IN CERTAIN CASES:

"Secondary adjustment" means **an adjustment** in the books of account of the assessee and its associated enterprise **to reflect** that the actual allocation of profits **between** the assessee and its associated enterprise are consistent **with** the transfer price **determined** as a result of primary adjustment, thereby removing the **imbalance** between cash account and actual profit of the assessee.

THE PROVISIONS ARE ENUMERATED [DISCUSSED] HERE-IN-BELOW:

- **Where a primary adjustment to transfer price,:**
 - i. Has been made **suo motu** by the assessee in his return of income;
 - ii. Made **by** the Assessing Officer has been **accepted** by the assessee;
 - iii. Is determined **by** **an** advance pricing **agreement** entered into by the assessee u/s 92CC on or after 01-04- 2017;
 - iv. Is made **as per** the safe harbour rules framed u/s 92CB; or
 - v. Is arising **as a result** of resolution **of an** assessment by way of the mutual agreement procedure under an agreement entered into u/s 90 or 90A **for avoidance** of double taxation,

- The assessee shall make a secondary adjustment.

EXCEPTION TO SECTION 92CE:

- ✓ The amount of primary adjustment made in any previous year does not exceed RS.1 crore; or
- ✓ The primary adjustment is made in respect of an assessment year commencing **on or before** 01-04-2016.
- Where, as a result of primary adjustment to the transfer price, there is an **increase** in the total income or **reduction** in the loss, as the case may be, of the assessee, **the excess money** (or part thereof) which is available with its associated enterprise, if not repatriated to India within the time as may be prescribed, shall be **deemed** to be an advance made by the assessee to such associated enterprise and the **interest** on such advance, shall be **computed** in such manner as may be prescribed.

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NOTE:

- ✓ Excess money means the **difference** between the arm's length price determined in primary adjustment and the price at which the international transaction has actually been undertaken;
- ✓ Primary adjustment to a transfer price, means the determination of transfer price **in accordance** with the arm's length principle **resulting in an increase** in the total income or reduction in the loss, as the case may be, of the assessee;
- ✓ Excess money (or part thereof) **may be repatriated** from any of the associated enterprises of the assessee which is not a resident in India.

EXAMPLE:

An Indian company sells certain products to its Associated Enterprise for INR 100 crores, whereas the Arm's Length Price (ALP) of such transaction is INR 150 crores. The TPO confirms an upward adjustment (Primary adjustment) of INR 50 crores, the difference between the Selling price INR 100 crores and the ALP INR 150 crores, which is taxed in the hands of Indian company.

Subsequently, for the purpose of Secondary adjustment, it would be deemed that the AE owes INR 50 crores to Indian company (the difference between ALP and actual transfer price), which will be deemed to be a Loan or an Advance by Indian company to its AE. As a consequence, **an interest would be imputed** on such Loan or Advance and an Adjustment (Secondary adjustment) would be carried out in the hands of the Indian company.

OPTIONAL SCHEME:

- Where the excess money (or part thereof) has **not been** repatriated within the prescribed time, the assessee **may**, at his option, **pay** additional income-tax @ 18% (plus surcharge @ 12% + cess) on such excess money.
- The tax so paid by the assessee shall be treated as the final payment of tax in respect of such money not repatriated and **no further** credit therefor shall be claimed by the assessee or by any other person in respect of the amount of tax so paid.
- No deduction shall be allowed to the assessee in respect of the amount on which tax has been paid.
- Where the additional income-tax is paid by the assessee, he shall **not be** required to make secondary adjustment **and** [NO NEED TO] compute interest from the date of payment of such tax.

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[SECTION 92D]- MAINTENANCE, KEEPING OF INFORMATION AND DOCUMENT BY PERSONS ENTERING INTO AN INTERNATIONAL TRANSACTION OR SPECIFIED DOMESTIC TRANSACTION:

- Every person,—
 - a. who has entered into an international transaction or specified domestic transaction shall keep and maintain such information and document **in respect thereof** as may be prescribed;
 - b. being a constituent entity of an international group, shall keep and maintain such information and document **in respect of an international group** as may be prescribed.
- The Board may prescribe the period for which the information and document shall be kept and maintained under the said sub-section.
- The Assessing Officer or the Commissioner (Appeals) may, in the course of any proceeding under this Act, require any person referred to in **(a)** to **furnish** any information or document referred therein, **within** a period of 30 days from the date of receipt of a notice issued in this regard. However, such period may, on an application made by such person, be **further extended** for a period not exceeding 30 days.
- The person referred to in **(b)** shall furnish the information and document referred therein to the authority prescribed u/s 286(1), in such manner, on or before such date, as may be prescribed. If such person fails to furnish the information and documents, penalty of RS.5,00,000 shall be levied on that person u/s 271AA.

[SECTION 92E]- REPORT FROM AN ACCOUNTANT TO BE FURNISHED BY PERSONS ENTERING INTO INTERNATIONAL TRANSACTION OR SPECIFIED DOMESTIC TRANSACTION:

Every person who has entered into an international transaction or specified domestic transaction during a previous year shall obtain a **report** from an accountant and furnish such report on or before the specified date [**i.e., 30th November of the relevant assessment year**] in the form 3CEB duly signed and verified in the prescribed manner **by such accountant** and setting forth such particulars as may be prescribed.

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[SECTION 94B]- LIMITATION ON INTEREST DEDUCTION IN CERTAIN CASES:

THIN CAPITALIZATION:

A company is typically **financed or capitalized** through a mixture of debt and equity. The way a company is capitalized often has a significant impact on the **amount of profit** it reports for tax purposes as the tax legislations of countries typically **allow a deduction for** interest paid or payable in arriving at the profit for tax purposes **while** the dividend paid on equity contribution is not deductible. [**NOT ALLOWED TO DEDUCT**]

Therefore, the higher the level of debt in a company, and thus the **amount of interest** it pays, the lower will be its taxable profit. For this reason, debt is often a **more tax efficient** [IN BENEFIT IN TAX] method of finance than equity. Multinational groups are often able to structure their financing arrangements to maximize these benefits. For this reason, country's tax administrations often introduce rules that **place a limit** on the amount **of interest** that can be deducted in computing a company's profit for tax purposes. Such rules are designed to counter cross-border shifting of profit through excessive interest payments, and thus aim to **protect** a country's tax base.

In view of the above, sec. 94B was inserted in line with the recommendations of OECD BEPS Action Plan 4, to provide that interest expenses claimed by an entity to its associated enterprises **shall be restricted to 30%** of its earnings before interest, taxes, depreciation and amortization (**EBITDA**) or interest **paid or payable** to associated enterprise **whichever is less**.

APPLICABLE TO: Indian company, or a permanent establishment of a foreign company in India, **being the borrower.**

And Permanent establishment **includes** a fixed place of business through which the business of the enterprise is wholly or partly carried on.

CONDITIONS:

- a) The borrower has debt **issued by** a non-resident, being an associated enterprise of such borrower.
- b) He incurs any expenditure by way of interest or of similar nature **exceeding** RS.1 crore;
- c) Such expenditure is **deductible** in computing income chargeable under the head "Profits and gains of business or profession".

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EFFECT:

If all the aforesaid conditions are satisfied then, excess interest shall not be deductible in computation of income under the said head.

And Excess interest means **lower of the following:**

- a) An amount of total interest paid or payable in excess of 30% of earnings before interest, taxes, depreciation and amortisation (**EBITDA**) of the borrower in the previous year; or
- b) Interest paid or payable to associated enterprises for that previous year.

EXAMPLE:

COMPUTATION OF INTEREST EXPENSES DISALLOWED U/S 94B:

(RS. IN CRORE)

Particulars	Case 1	Case 2	Case 3
EBIDTA of the Indian Borrower	100	100	100
30% of the above [A]	30	30	30
Interest payable to associated enterprise [B]	35	Nil	15
Interest payable to non-associated enterprise [C]	Nil	35	20
Total Interest expense incurred [D = B + C]	35	35	35
Total interest expenses incurred in excess of 30% of EBITDA [E = D – A]	5	5	5
Excess interest [lower of (E) and (B)] being disallowed u/s 94B	5	Nil	5

BECAUSE INTEREST ALLOWED TO A SUM OF LOWER OF FOLLOWING TWO:

- (A) 30% OF EBITDA OR;**
- (B) TOTAL INTEREST EXPENSES PAYABLE TO A.E.**

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PENALTY:

[SEC. 271AA]-FAILURE TO KEEP AND MAINTAIN INFORMATION AND DOCUMENT IN RESPECT OF INTERNATIONAL TRANSACTION OR SPECIFIED DOMESTIC TRANSACTION:

If any person in respect of an international transaction or specified domestic transaction:

- i. fails to keep and maintain any such information and document as required by sec. 92D;
 - ii. fails to report such transaction which he is required to do so; or
 - iii. maintains or furnishes an incorrect information or document,
- the Assessing Officer or Commissioner (Appeals) may direct that such person shall pay, by way of penalty, a sum **equal to 2%** of the value of each international transaction or specified domestic transaction entered into by such person.

[SEC. 271BA]-PENALTY FOR FAILURE TO FURNISH REPORT UNDER SECTION 92E:

If any person fails to furnish a report from an accountant as required by sec. 92E, the Assessing Officer may direct that such person shall pay, by way of penalty, a sum of **RS.1,00,000.**

[SEC. 271G]-PENALTY FOR FAILURE TO FURNISH INFORMATION OR DOCUMENT UNDER SECTION 92D:

If any person who has entered into an international transaction or specified domestic transaction fails to furnish any such information or document as required by sec. 92D(3), the Transfer Pricing Officer or Assessing Officer or the Commissioner (Appeals) may direct that such person shall pay, by way of penalty, a sum equal **to 2%** of the value of the international transaction or specified domestic transaction for each such failure.

[SEC. 273B]-HOWEVER, WHERE ASSESSEE SHOWS REASONABLE CAUSE, THEN NO PENALTY U/S 271AA OR 271BA OR 271G SHALL BE LEVIED.

CHAPTER 4: TRANSFER PRICING.

RAGHAV ACADEMY

CHAPTER 4: TRANSFER PRICING.

COMPUTATION OF ARM'S LENGTH PRICE:

1. COMPARABLE UNCONTROLLED PRICE METHOD [CUP METHOD]:

STEP 1. DETERMINE THE PRICE CHARGED OR PAID FOR THE PROPERTY TRANSFERRED OR SERVICES PROVIDED IN A COMPARABLE UNCONTROLLED TRANSACTION. RS.XXXX

STEP 2. SUCH CHARGED PRICE, IS THEN ADJUSTED TO ACCOUNT FOR THE FUNCTIONAL DIFFERENCES BETWEEN THE TRANSACTION & THE COMPARABLE UNCONTROLLED TRANSACTION, WHICH COULD MATERIALLY AFFECT THE PRICE IN THE OPEN MARKET. RS.XXXX / (RS.XXXX)

STEP 3. SUCH ADJUSTED PRICE IS TO BE TREATED THE ARM'S LENGTH PRICE

RS.XXXX

2. RESALE PRICE METHOD:

STEP 1. TAKE THE PRICE AT WHICH THE PROPERTY OR SERVICES OBTAINED BY THE ENTERPRISE FROM AN ASSOCIATE ENTERPRISE ARE SOLD [RESALE PRICE] TO AN UNRELATED ENTERPRISES. RS.XXXX

STEP 2. SUCH RESALE PRICE IS REDUCED BY NORMAL GROSS PROFIT MARGIN ACCRUING TO THE ENTERPRISE FROM THE PURCHASE AND RESALE OF SIMILAR GOODS IN A COMPARABLE UNCONTROLLED TRANSACTION, IF THERE IS NO COMPARABLE UNCONTROLLED TRANSACTION, THEN TAKE THE GROSS PROFIT OF AN UNRELATED PERSON FROM PURCHASE AND RESALE OF SIMILAR GOODS. (RS.XXXX)

STEP 3. THEN REDUCE THE EXPENSES INCURRED BY THE ENTERPRISE IN CONNECTION WITH PURCHASE OF PROPERTY. (RS.XXXX)

STEP 4. THE PRICE SO ARRIVED AT IN STEP 3, IS ADJUSTED TO ACCOUNT FOR THE FUNCTIONAL DIFFERENCES IN THE INTERNATIONAL TRANSACTION & THE COMPARABLE UNCONTROLLED TRANSACTION WHICH COULD MATERIALLY AFFECT THE GROSS PROFIT MARGIN IN THE OPEN MARKET. RS.XXXX/(RS.XXXX)

STEP 5. THE ADJUSTED PRICE ARRIVED TO BE TREATED AS ARM'S LENGTH PRICE.

RS.XXXX

CHAPTER 4: TRANSFER PRICING.

3. COST PLUS METHOD:

STEP 1. DETERMINE THE DIRECT AND INDIRECT COSTS OF PRODUCTION IN RESPECT OF PROPERTY TRANSFERRED OR SERVICES PROVIDED TO AN ASSOCIATE ENTERPRISE. RS.XXXX

STEP 2. DETERMINE THE NORMAL GROSS PROFIT MARK-UP TO SUCH COSTS WHICH WILL ARISE FROM TRANSFER OF SIMILAR GOODS OR SERVICES TO AN UNRELATED ENTERPRISE OR IN A COMPARABLE UNCONTROLLED TRANSACTION. +RS.XXXX

STEP 3. THE NORMAL GROSS PROFIT MARK-UP DETERMINED IN STEP 2 SHOULD BE ADJUSTED TO ACCOUNT FOR THE FUNCTIONAL DIFFERENCES IF ANY BETWEEN THE INTERNATIONAL TRANSACTION AND COMPARABLE UNCONTROLLED TRANSACTION WHICH COULD MATERIALLY AFFECT SUCH PROFIT MARK-UP IN THE OPEN MARKET. RS.XXXX / (RS.XXXX)

STEP 4. THE SUM SO ARRIVED IS TO BE TREATED AS ARM'S LENGTH PRICE.

RS.XXXX

4. PROFIT SPLIT METHOD:

STEP 1. THE COMBINED NET PROFIT OF THE ASSOCIATED ENTERPRISE ARISING FROM THE INTERNATIONAL TRANSACTION IN WHICH THEY ARE ENGAGED, IS DETERMINED.

STEP 2. THE RELATIVE CONTRIBUTION MADE BY EACH OF THE ASSOCIATE ENTERPRISES TO THE EARNING OF SUCH COMBINED NET PROFITS, IS THEN EVALUATED ON THE BASIS OF THE FUNCTIONS PERFORMED, ASSETS EMPLOYED AND RISKS ASSUMED BY EACH ENTERPRISE.[FAR ANALYSIS].

STEP 3. THE COMBINED NET PROFIT IS THEN SPLIT AMONGST THE ENTERPRISE IN PROPORTION TO THEIR RELATIVE CONTRIBUTIONS, AS EVALUATED UNDER STEP 2.

STEP 4. THE PROFITS THUS APPROPRIATED TO THE ASSESSEE IS TAKEN INTO ACCOUNT TO ARRIVE AT AN ARM'S LENGTH PRICE IN RELATION TO THE INTERNATIONAL TRANSACTION.

CHAPTER 4: TRANSFER PRICING.

5. TRANSACTION NET MARGIN METHOD:

STEP 1. THE NET PROFIT MARGIN REALISED BY THE ENTERPRISE FROM AN INTERNATIONAL TRANSACTION ENTERED INTO WITH AN ASSOCIATED ENTERPRISE IS COMPUTED IN RELATION TO COSTS INCURRED OR SALES EFFECTED OR ASSETS EMPLOYED BY THE ENTERPRISES.

STEP 2. THE NET PROFIT MARGIN REALISED BY THE ENTERPRISE OR BY AN UNRELATED ENTERPRISE FROM A COMPARABLE UNCONTROLLED TRANSACTION IS COMPUTED HAVING REGARD TO THE SAME BASE.

STEP 3. THE NET PROFIT MARGIN IN STEP 2 ARISING IN COMPARABLE UNCONTROLLED TRANSACTION IS ADJUSTED TO TAKE INTO ACCOUNT THE DIFFERENCES , IF ANY, BETWEEN THE INTERNATIONAL TRANSACTION AND THE COMPARABLE UNCONTROLLED TRANSACTIONS, WHICH COULD MATERIALLY AFFECT THE AMOUNT OF NET PROFIT MARGIN IN THE OPEN MARKET.

STEP 4. THE NET PROFIT MARGIN ARRIVED IN STEP 3 ABOVE IS THEN TAKEN INTO ACCOUNT TO ARRIVE AT AN ARM'S LENGTH PRICE IN RELATION TO THE INTERNATIONAL TRANSACTION.

MODULE QUESTIONS OF TRANSFER PRICING.

ILLUSTRATION 1:

Discuss whether adjustment is required in the context of transfer pricing provisions where the transfer price adopted for an international transaction of sale of goods by an Indian company during the financial year 2019-20, is RS.50 lacs whilst the Arm's Length Price determined using the most appropriate method are RS.48 lacs and RS.56 lacs. Assume that the rate of permissible variation prescribed by the Central Government is **2% of the transfer price** for this class of international transaction.

Solution:

The proviso to section 92C(2) 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. The arithmetical mean of the prices = $(RS.48 + RS.56) / 2 = RS.52$ lacs.

The rate of permissible variation prescribed by the Central Government **is 2% i.e. RS.1 lacs (RS.50 lacs x 2%)**. Since the variation between the arm's length price of RS. 52 lacs and the transfer price of RS. 50 lacs is not within the limit of 2% of TP (i.e., RS. 1 lacs), the arm's length price shall be RS. 52 lacs.

The Assessing Officer may compute the total income of the Indian company having regard to the arm's length price of RS. 52 lacs so determined. No deduction shall be allowed under Chapter VI-A or section 10AA in respect of RS. 2 lacs.

lacs, being the amount of income by which the total income of the Indian company is **enhanced** after application of the arm's length price of RS. 52 lacs.

NOTE: IT IS ASSUMED THAT THE ASSESSEE HAS NOT ENTERED INTO AN ADVANCE PRICING AGREEMENT AND HAS ALSO NOT OPTED TO BE SUBJECT TO SAFE HARBOUR RULES

MODULE QUESTIONS OF TRANSFER PRICING.

ILLUSTRATION 2:

Brain Inc. London has 35% equity in Salem Ltd. The company Salem Ltd. is engaged in development of software and maintenance of customers across the globe, which includes Brain Inc.

During the year 2019-20, Salem Ltd. spent 2000 man hours for developing and maintaining a software for Brain Inc. and billed at RS. 1,000 per hour. The cost incurred for executing maintenance work to Brain Inc. for Salem Ltd. Amount to RS. 15,00,000. Similar such work was done for unrelated party Try Ltd. in which the profit was at 50%. Brain Inc. gives technical support to Salem Ltd. which can be valued at 8% of gross profit. There is no such functional relationship with try Ltd.

Salem Ltd. gives credit period of 90 days the cost of which is 3% of the normal billing rate which is not given to other parties.

Compute ALP under cost plus method in the hands of Salem Ltd. and the impact of the same on the total income.

Solution:

(A) Computation of Arms Length Gross Profit Mark-up:

Particulars	%
Normal Gross Profit Mark up	50.00
Less: Adjustment for differences:-	
Technical support from Brain Inc [8% of Normal GP = 8% of 50%]	(4.00)
	46.00
Add: Cost of Credit to Brain Inc 3% of Normal Bill [3% \times GP 50%]	1.50
Arm's Length Gross Profit mark-up	47.50

(B) Computation of Increase in Total Income of Brain Inc:

Particulars	Amount in RS.
Cost of services	15,00,000
Arm's length Billed Value [Cost / [(100	28,57,143

MODULE QUESTIONS OF TRANSFER PRICING.

– Arm's Length mark up)] [RS. 15,00,000 / (100% - 47.50%)] BECAUSE RS.15,00,000 IS COST AMOUNT AND DIVIDE IT BY COST IN %	
Less: Billed amount [2,000 hours x RS. 1,000 per hour]	20,00,000
Therefore, Increase in Total Income	8,57,143

ILLUSTRATION 3:

A Co. Ltd. of Chennai and Sky Inc. of Singapore are associate enterprises. A Co. Ltd. imported 1000 television sets at RS. 16,000 per set without any warranty period. A Co. Ltd. also imports similar TV sets from unrelated party Sign Inc. of Japan. It is imported at RS. 15,000 per set with warranty time of 2 years. The cost of warranty in respect of goods imported from Sky Inc. for a period of 2 years would cost RS. 2,000.

Compute arm's length price and the amount of increase in total income of A Co. Ltd. as per CUP method.

SOLUTION: [ALWAYS COMPARE THE ACTUAL PRICE CHARGED.]

(A) Computation of Arms Length Price:

Particulars	Amount in RS.
Cost of TV Set acquired from Sign Inc	15,000
Less: Cost of Warranty	2,000
Arm's Length Gross Profit mark-up	13,000

(B) Computation of Increase in Total Income:

Particulars	Amount in RS.
Cost of TV Set acquired from Sky Inc [RS. 16,000 * 1,000]	1,60,00,000
Less: Arm's length Value [RS. 13,000 * 1,000]	1,30,00,000
Therefore, Increase in Total Income (OR RS.3000*1000)	30,00,000

MODULE QUESTIONS OF TRANSFER PRICING.

ILLUSTRATION 4:

J Inc. of Korea and CD Ltd, an Indian Company are associated enterprises. CD Ltd manufactures Cell Phones and sells them to J.K.& F Inc., a Company based at Nepal. During the year CD Ltd. supplied 2,50,000 Cellular Phones to J Inc. Korea at a price of RS. 3,000 per unit and 35,000 units to JK & F Inc. at a price of RS. 5,800 per unit. The transactions of CD Ltd with JK & F Inc. are comparable subject to the following considerations: Sales to J Inc. are on FOB basis, sales to JK & F Inc. are CIF basis. The freight and insurance paid by J Inc. for each unit @ RS. 700. Sales to JK & F Inc. are under a free warranty for Two Years whereas sales to J Inc. are without any such warranty. The estimated cost of executing such warranty is RS. 500. Since J Inc.'s order was huge in volume, quantity discount of RS. 200 per unit was offered to it.

Compute the Arm's Length Price and the subsequent amount of increase in the Total Income of CD Ltd, if any.

Solution:

Computation of Arm's Length Price of Products sold to J Inc. Korea by CD Ltd:

Particulars	RS.	RS.
Price per Unit in a Comparable Uncontrolled Transaction		5,800
Less: Adjustment for Differences -		
(a) Freight and Insurance Charges	700	
(b) Estimated Warranty Costs	500	
(c) Discount for Voluminous Purchase	200	(1,400)
Arms's Length Price for Cellular Phone sold to J Inc. Korea		4,400

Computation of Increase in Total Income of CD Ltd:

Particulars	RS.
Arm's Length Price per Unit	4,400
Less: Price at which actually sold to J Inc. Korea	(3,000)
Increase in Price per Unit	1,400
No. of Units sold to J Inc. Korea	2,50,000
Increase in Total Income of CD Ltd (2,50,000 x RS. 1,400)	RS. 35 Crores

MODULE QUESTIONS OF TRANSFER PRICING.

ILLUSTRATION 5:

Comparable sales of same product

DSM, a manufacturer, sells the same product to both controlled and uncontrolled distributor. The circumstances surrounding the controlled and uncontrolled transactions are substantially the same, except that the controlled sales price is a **delivered price** to the buyer and the uncontrolled sales are made F.O.B. DSM's factory.

Differences in the contractual terms of transportation and insurance generally have a definite and reasonably ascertainable effect on price, and adjustments are made to the results of the uncontrolled transaction to account for such differences.

In this case the transactions are comparable and internal CUP can be applied by comparing the prices of both, the controlled and uncontrolled transactions, after subtracting the costs of transportation and insurance of the controlled transaction.

ILLUSTRATION 6:

Effect of geographic differences

FM, a foreign specialty radio manufacturer, also exports its radios to a controlled U.S. distributor, AM, which serves the United States. FM also exports its radios to uncontrolled distributors to serve in South America. The product in the controlled and uncontrolled transactions is the same, and all other circumstances surrounding the controlled and uncontrolled transactions are substantially the same, **other than** the geographic differences. The geographic differences e.g. differences in purchasing power, levels of economic development, etc, in two different geographies, are likely to have a material effect on price, for which accurate adjustments cannot be made and hence the transactions **are not comparable**. Thus, CUP method **cannot** be applied.

ILLUSTRATION 7:

External Commercial Borrowing

Pharma Ltd, an Indian company has borrowed funds from its parent company at LIBOR plus 150 basis points. The LIBOR prevalent at the time of borrowing is 4% for US\$, thus its cost of borrowings is 5.50%. The borrowings allowed under the External Commercial Borrowings guidelines issued under FEMA, for example, say is LIBOR plus 250 basis points, then it can be said that Pharma's borrowing at 5.50% is less than 6.50% and thus at arm's length.

In this connection, one may rely on Rule 10B (2) (d) which specifies that the comparability of an international transaction with an uncontrolled transaction shall be judged with reference to the laws and government **orders in force**.

MODULE QUESTIONS OF TRANSFER PRICING.

ILLUSTRATION 8:

Megabyte Inc. of France and R Ltd. of India are associated enterprises. R Ltd. imports 3,000 compressors for Air Conditioners from Megabyte Inc. at RS. 7,500 per unit and these are sold to Pleasure Cooling Solutions Ltd at a price of RS. 11,000 per unit. R Ltd. had also imported similar products from Cold Inc. Poland and sold outside at a Gross Profit of 20% on Sales. Megabyte Inc. offered a quantity discount of RS. 1,500 per unit. Cold Inc. could offer only RS. 500 per unit as Quantity Discount. The freight and customs duty paid for imports from Cold Inc. Poland had cost R Ltd. RS. 1,200 per piece. In respect of purchase from Cold Inc., R Ltd. had to pay RS. 200 only as freight charges.

Determine the Arm's Length Price and the amount of increase in Total Income of R Ltd.

SOLUTION:

Computation of Arm's Length Price: [WOW]

Particulars	Amount
Resale Price of Goods Purchased from Megabyte Inc.	11,000
Less: Adjustment for Differences –	
a) Normal Gross Profit Margin at 20% of Sale Price [20% x RS. 11,000]	2,200
b) Incremental Quantity Discount by Megabyte Inc. [RS. 1,500 – RS. 500]	1,000
c) Difference in Purchase related expenses [RS. 1,200 – RS. 200]	1,000
Arms Length Price	6,800

Computation of Increase in Total Income of R Ltd:

Particulars	Amount
Price at which actually bought from Megabyte Inc. of France	7,500
Less: Arms Length Price per unit under Resale Price Method	6,800
Decrease in Purchase Price per unit	700
No. of units purchased from Megabyte Inc.	3,000 units
Increase in Total Income (3,000 units x RS. 700)	RS. 21,00,000

Illustration 9:

NBR Medical Equipments Inc. (NBR) of Canada has received an order from a leading UK based Hospital for development of a hi-tech medical equipment which will integrate the best of software and latest medical examination tool to meet varied requirements. The order was for 3,00,000 Euros. To execute the order, NBR joined hands with its subsidiary Precision Components Inc. (PCI) of USA and Bioinformatics India Ltd (BIL), an Indian Company. PCI holds 30% of BIL. NBR paid to PCI and BIL Euro 90,000 and Euro 1,00,000 respectively and kept the balance for itself. In the entire transaction, a profit of Euro 1,00,000 is earned. Bioinformatics India

MODULE QUESTIONS OF TRANSFER PRICING.

Ltd incurred a Total Cost of Euro 80,000 in execution of its work in the above contract. The relative contribution of NBR, PCI and BIL may be taken at 30%, 30% and 40% respectively.

Compute the Arm's Length Price and the incremental Total Income of Bioinformatics India Ltd, if any due to adopting Arms Length Price determined here under.

PARTICULARS	AMOUNT IN RS.
A) Share of each of the Associates in the Value of the Order:	3,00,000
Share of BIL [Given]	1,00,000
Share of PCI [Given]	90,000
Therefore, Share of NBR [Amount Retained = 3,00,000 – 1,00,000 - 90,000]	1,10,000
B) Share of each of the Associates in the Profit of the Order:	
Combined Total Profits	1,00,000
Share of BIL [Contribution of 40% x Total Profit € 1,00,000]	40,000
Share of PCI [Contribution of 30% x Total Profit € 1,00,000]	30,000
Share of NBR [Contribution of 30% x Total Profit € 1,00,000]	30,000
C) Computation of Incremental Total Income of BIL:	
Total Cost to BIL Ltd	80,000
Add: Share in the Profit to BIL (from B above)	40,000
Revenue of BIL on the basis of Arm's Length Price	1,20,000
Less: Revenue Actually received by BIL	1,00,000
Increase in Total Income of BIL [1,20,000-1,00,000]	20,000

ILLUSTRATION 10:

Indco, an Indian company, has developed and manufactures a robot to be used for multiple industrial applications. The robot is considered to be an innovative technological advance. Chco, a Chinese subsidiary of Indco, has developed and manufactures a software programme which incorporates the new programme in the robot and makes it more effective. The success of the robot is attributable to both companies for the design of the robot and the software programme.

Indco manufactures and supplies Chco with the robot for installing of the new software programme for assembly and manufacture of the robot. Chco manufactures the robot and sells to an arm's length distributor. In light of the innovative nature of the robot and software, the group was unable to find comparables with similar intangible assets. Because they were unable to establish a reliable degree of comparability, the group was unable to apply the traditional transaction methods or the TNMM.

However, reliable data are available on robot and software manufacturers without innovative intangible property, and they earn a return of 10% on their manufacturing costs.

MODULE QUESTIONS OF TRANSFER PRICING.

THE TOTAL PROFITS ATTRIBUTABLE TO MANUFACTURE OF ROBOTS ARE CALCULATED AS FOLLOWS:

Particulars	Amount
Sales to the arm's length distributor (A)	1,000
Less:	
Indco's manufacturing costs	200
Chco's manufacturing costs	300
Total manufacturing costs for the group (B)	500
Gross Margin (A-B)	500
Less:	
Indco's development costs	100
Chco's development costs	50
Indco's operating costs	50
Chco's operating costs	100
Net profit (500-100-50-50-100)	200
Indco's return to manufacturing ($200 \times 10\%$)	20
Chco's return to manufacturing ($300 \times 10\%$)	30
Residual profit attributable to development	150

The split of the residual profit has been considered on the basis of the development cost considering the significance of technology in the manufacturing process.

Based on proportionate development costs

Particulars	Amount
Indco's share of residual profit [$100/(100+50)$] x 150	100
Chco's share of residual profit [$50/(100+50)$] x 150	50

Indco's transfer price is calculated as follows:

Particulars	Amount
Manufacturing costs	200
Development costs	100
Operating costs	50
Routine 10% return on manufacturing costs	20
Share of residual profit	100
Transfer price	470

MODULE QUESTIONS OF TRANSFER PRICING.

ILLUSTRATION 11:

Fox Solutions Inc. a US Company, sells Laser Printer Cartridge Drums to its Indian Subsidiary Quality Printing Ltd at \$ 20 per drum. Doc Solutions Inc. has other takers in India for its Cartridge Drums, for whom the price is \$ 30 per drum.

During the year, Fox Solutions had supplied 12,000 Cartridge Drums to Quality Printing Ltd.

Determine the Arm's Length Price and taxable income of Quality Printing Ltd if its income after considering the above is RS. 45,00,000. Compliance with TDS provisions may be assumed and Rate per USD is RS. 45.

Also determine income of Doc Solutions Inc.

SOLUTION: Computation of Total Income of Quality Printing Ltd.

Particulars	Amount	Amount
Total Income before adjusting for differences due to Arm's Length Price	1,08,00,000	
Add: Difference on Account of adopting Arm's Length Price [12,000 x \$20 x RS. 45]	1,62,00,000	
Less: Amount under Arm's Length Price [12,000 x \$ 30 x RS. 45]	(54,00,000)	45,00,000
Incremental Cost on adopting ALP u/s 92(3), Taxable Income cannot be reduced on applying ALP. Therefore, difference on account of ALP is ignored.		
Total Income of Quality Printing Ltd.	45,00,000	

Computation of Total Income of Fox Solutions Inc.

The provisions relating to taxing income of Fox Solutions Inc., on applying Arm's Length Price for transactions entered into by a Foreign Company is given in Circular 23 dated 23.7.1969, which is as follows:

i	Transactions Not Taxable in India: Transactions will not be subject tax in India if transactions are on principal-to principal basis and are entered into at ALP, and the subsidiary also carries on business on its own.
ii	Transactions Taxable in India if the Indian Subsidiary does not carry on any business on its own. The following are the other considerations in this regard:

MODULE QUESTIONS OF TRANSFER PRICING.

- a. Adopting ALP does not affect the computation of taxable income of Fox Solutions Inc. if tax has been deducted at source or if tax is deductible.
- b. Where ALP is adopted for taxing income of the Parent Company, income of the recipient Company (i.e. Quality Printing Ltd) will not be recomputed

ILLUSTRATION 12:

Khazana Ltd is an Indian Company engaged in the business of developing and manufacturing Industrial components. Its Canadian Subsidiary Techpro Inc. supplies technical information and offers technical support to Khazana for manufacturing goods, for a consideration of Euro 1,00,000 per year. Income of Khazana Ltd is RS. 90 Lakhs. Determine the Taxable Income of Khazana Ltd if Techpro charges Euro 1,30,000 per year to other entities in India. What will be the answer if Techpro charges Euro 60,000 per year to other entities. (Rate per Euro may be taken at RS. 50.)

SOLUTION:

Computation of Total Income of Khazana Ltd

Particulars	Amount	Amount
When price charged for Comparable Uncontrolled Transaction	€ 1,00,000	€ 50,000
Price actually paid by Khazana Ltd [$€1,00,000 \times \text{RS. 50}$]	50,00,000	50,00,000
Less: Price charged in Rupees (under ALP)		
[$€1,30,000 \times \text{RS. 50}$]	65,00,000	
[$€60,000 \times \text{RS. 50}$]	30,00,000	
Incremental Profit on adopting ALP (A)	(15,00,000)	20,00,000
Total Income before adjusting for differences due to Arm's Length Price	90,00,000	90,00,000
Add: Difference on account of adopting Arms Length Price [if (A) is positive]	NIL	20,00,000
Total Income of Khazana Ltd.	90,00,000	1,10,00,000

Note: u/s 92(3), Taxable Income cannot be reduced on applying ALP. Therefore, difference on account of ALP which reduces the Taxable Income is ignored.

MODULE QUESTIONS OF TRANSFER PRICING.

ILLUSTRATION 13:

Videsh Ltd., a US company has a subsidiary, Hind Ltd. in India. Videsh Ltd. sells mobile phones to Hind Ltd. for resale in India. Videsh Ltd. also sells mobile phones to Bharat Ltd. another mobile phone reseller. It sold 48,000 mobile phones to Hind Ltd. at RS. 12,000 per unit. The price fixed for Bharat Ltd. is RS. 11,000 per unit. The warranty in case of sale of mobile phones by Hind Ltd. is handled by itself, whereas, for sale of mobile phones by Bharat Ltd., Videsh Ltd. is responsible for warranty for 6 months. Both Videsh Ltd. and Hind Ltd. extended warranty at a standard rate of RS. 500 per annum.

On the above facts, how is the assessment of Hind Ltd. going to be affected?

Solution:

Computation of Arms Length Price:

Particulars	Amount
Cost of Mobile Phone sold to Bharat Ltd.	11,000
Less: Cost of Warranty	250
Arm's Length Price	10,750

Computation of Increase in Total Income

Particulars	Amount (in lacs)
Cost of mobile phone acquired from Videsh Ltd. [RS. 12,000 * 48,000]	5,760
Less: Arm's length Value [RS. 10,750 x 48,000]	5,160
Therefore, Increase in Total Income	600

MODULE QUESTIONS OF TRANSFER PRICING.

ILLUSTRATION 14:

ABC India Limited ('the Company') is engaged in the business of import and sales of computers, laptops & printers. The company is a 100% subsidiary ABC Inc., USA. The company purchases laptops from ABC Inc., USA at negotiated rates and sells to independent customers in India under its own terms and conditions. The company also trades in computers and printers which it procures from independent vendors in USA and sell to its own customers in India under its own terms and condition.

Below is the profit and loss account of the company.

Particulars	Rs.	Particulars	Rs.
Opening stock		Sales	
- Computers	500	- Computers	8,000
- Printers	200	- Printers	2,000
- Laptops	800	- Laptops	11,000
Purchases (Imports)		Closing Stock	
- Computers	5,000	- Computers	800
- Printers	1,300	- Printers	250
- Laptops	6,000	- Laptops	1,200
	23,250		23,250
		Gross profit c/f	9,450
Salary	2,000		
Rent	1,000		
Freight outward	250		
Travel and conveyance	300		
PBITD	5900		
	9450		9450

Other relevant information:

1. Credit period of 2 months is allowed for customers of computers and printers and hence 2% extra margin towards interest cost is factored in sale price.
2. Purchase of materials accounted at landed costs. It is estimated that around 20% of the purchase cost reported in P&L is towards customs duty and clearing charges.
3. Delivery of computers and printers made at company's cost. For laptop, the customers collect the goods for company premises.
4. For laptop purchases, the company has incurred ocean freight (around Rs.300) whereas for computer and printers the terms of import are CIF, Chennai.

MODULE QUESTIONS OF TRANSFER PRICING.

QUESTIONS TO BE ANSWERED ARE AS FOLLOWS:

Question and Solution:

1. Identify the Associated Enterprise in the scenario?

Ans: ABC Inc., USA by virtue of ownership criteria.

2. Identify the International transaction?

Ans: Purchase of the laptop during the year of Rs.4,800 (Rs.6,000 less 20%).

3. Which is the comparable uncontrolled transaction here?

Ans: Sale of computers and printers (since they are similar product to laptops), procured from, as well as sold to independent parties.

4. What is the normal gross profit margin on the comparable transactions?

Ans:

Gross profit as per trading account [8,000 + 2,000 + 800 + 250 – 500 – 200 – 5,000 – 1,300]	4,050
Less: Interest elements factored in sale price [2% of [8,000 + 2,000]]	200
Less: Fright outward costs	250
Normal gross profit	3,600
Normal gross profit percentage [3,600 / 10,000 x 100]	36%

At this stage, the difference in the terms of sales transactions of computers and printers vis-a-vis the sale transactions of laptops are considered. The difference in terms of purchase will be adjusted in subsequent stage.

5. What is the price of laptop being purchased from the AE, is resold to unrelated enterprise?

Ans: RS.11,000.

6. What is the resultant cost of sales after deducting 'Normal Gross Profit Margin' ?

Ans: RS. 7,040 (i.e. RS. 11,000 less 36% Normal Gross Profit Margin)

7. What are the expenses incurred in connection with purchase?

MODULE QUESTIONS OF TRANSFER PRICING.

Ans: RS. 1,200 (since it is mentioned that around 20% of the purchase cost reported in P&L is toward freight, customs duty and clearance charges)

8. What are the functional difference, including accounting practices, between the international transaction and the comparable uncontrolled transaction, which could materially affect the amount of gross profit margin?

Ans: RS. 300 on account of ocean freight

9. What is the cost of sale after adjustment made as per 7 & 8 above?

Ans: RS. 5,540 (i.e. RS. 7,040 less RS. 1,200 less RS. 300)

10. How is the arm's length purchase price determined?

Ans:

Price as arrived at 9 above	RS. 5,540
Add: Amount in closing stock (80% of RS. 1200)	RS. 960
Less: Amount in opening stock (80% of RS. 800)	RS. 6,500
Arm's length price of purchase	RS. 640
	RS.5,860

11. Is the purchase price at arm's length?

Ans: Yes. Since the purchase price is RS. 4,800 is less than arm's length price determined at RS. 5,860.

ILLUSTRATION 15:

Compute arm's length price from following information

Particulars	Related Party	Unrelated Party
Price paid (inclusive of taxes)	INR 25,000	INR 23,500
Delivery terms	CIF	FOB
Quantity	100 pcs	110 pcs
Availability of Input Tax Credit	No	Yes
Quantity	100 pcs	110 pcs
Freight cost	-	INR 1,200
Insurance cost	-	INR 700
Input Tax Credit	-	INR 2,000

MODULE QUESTIONS OF TRANSFER PRICING.

Solution: Computation of ALP:

Particulars	Amount
Price paid to unrelated party (inclusive of taxes)	INR 23,500
Adjustments of differences -	
Delivery terms – Freight cost	INR 1,200
Delivery terms – Insurance cost	INR 700
Quantity	-
Input tax credit available	(INR 2000)
Arm's Length Price	INR 23,400

ILLUSTRATION 16:

Compute arm's length price from following information.

Particulars	Related Party	Unrelated Party
Price paid (inclusive of taxes)	INR 25,000	INR 23,500
Delivery terms	CIF	FOB
Quantity	100 pcs	110 pcs
Availability of Input Tax Credit	No	Yes
Quantity	100 pcs	110 pcs
Freight cost	-	INR 1,200
Insurance cost	-	INR 700
Input Tax Credit	-	INR 2,000
Credit period	90 days	Upon dispatch
Interest rate on working capital	12% p.a.	-

Solution:

Computation of ALP:

Particulars	Amount
Price paid (inclusive of taxes)	INR 23,500
Adjustments of differences	
Delivery terms – Freight cost	INR 1,200
Delivery terms – Insurance cost	INR 700
Input Tax Credit available	(INR 2000)
Credit period (Interest on INR 23,500 for 3 months @ 12% p.a.)	INR 705
Arm's length price	INR 24,105

MODULE QUESTIONS OF TRANSFER PRICING.

ILLUSTRATION 17:

Compute ALP through following information:

- A Ltd. is a distributor of IT products.
- A Ltd. purchases these products from its related party, P Ltd.
- A Ltd. also trades in laptops manufactured by X Ltd.
- P Ltd as well as X Ltd would supply the warranty replacements free of cost to A Ltd.
- Other details are as under:

Particulars	P Ltd (AE)	X Ltd
Purchase price of A Ltd.	INR 15,000	INR 22,000
Sale price of A Ltd	INR 18,000	INR 26,000
Other expenses incurred by A Ltd	INR 500	INR 700

Solution:

Computation of gross profit margin on unrelated transaction:

Particulars	Amount (INR)
Sale price of laptop in India	26,000
Expenses incurred by A Ltd	700
Net Sale proceeds of laptop in India [A]	25,300
Purchase price [B]	22,000
Gross profit [A - B]	3,300
GP on sale (%)	12.69%

Computation of arm's length price:

Particulars	Amount
Sales price of desktop in India	18,000
Less: Expenses incurred by A Ltd	500
Less: Arm's length resale margin @ 12.69 % of sale	2,284
Arm's length purchase price	15,216
Purchase price paid to AE	15,000

Thus, no adjustment is required.

MODULE QUESTIONS OF TRANSFER PRICING.

ILLUSTRATION 18:

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 RS. 4,000 in sending the machine to C. From the above data, determine arm's length price.

Solution:

Computation of Arm's Length Price:

Particulars	Details	Amount
Sales price to B		4, 00,000
Less: Gross Margin	$4,00,000 \times 30\%$	1, 20,000
Balance		2, 80,000
Less: Expenses incurred by B		4,000
Arm's length price		2,76,000

PRACTICE QUESTIONS OF TRANSFER PRICING.

Question and Solution:

1. Identify the Associated Enterprise in the scenario?

Ans: ABC Inc., USA by virtue of ownership criteria.

2. Identify the International transaction?

Ans: Purchase of the laptop during the year of Rs.4,800 (Rs.6,000 less 20%).

3. Which is the comparable uncontrolled transaction here?

Ans: Sale of computers and printers (since they are similar product to laptops), procured from, as well as sold to independent parties.

4. What is the normal gross profit margin on the comparable transactions?

Ans:

Gross profit as per trading account [8,000 + 2,000 + 800 + 250 – 500 – 200 – 5,000 – 1,300]	4,050
Less: Interest elements factored in sale price [2% of [8,000 + 2,000]]	200
Less: Fright outward costs	250
Normal gross profit	3,600
Normal gross profit percentage [3,600 / 10,000 x 100]	36%

At this stage, the difference in the terms of sales transactions of computers and printers vis-a-vis the sale transactions of laptops are considered. The difference in terms of purchase will be adjusted in subsequent stage.

5. What is the price of laptop being purchased from the AE, is resold to unrelated enterprise?

Ans: RS.11,000.

PRACTICE QUESTIONS OF TRANSFER PRICING.

6. What is the resultant cost of sales after deducting 'Normal Gross Profit Margin' ?

Ans: RS. 7,040 (i.e. RS. 11,000 less 36% Normal Gross Profit Margin)

7. What are the expenses incurred in connection with purchase?

Ans: RS. 1,200 (since it is mentioned that around 20% of the purchase cost reported in P&L is toward freight, customs duty and clearance charges)

8. What are the functional difference, including accounting practices, between the international transaction and the comparable uncontrolled transaction, which could materially affect the amount of gross profit margin?

Ans: RS. 300 on account of ocean freight

9. What is the cost of sale after adjustment made as per 7 & 8 above?

Ans: RS. 5,540 (i.e. RS. 7,040 less RS. 1,200 less RS. 300)

10. How is the arm's length purchase price determined?

Ans:

Price as arrived at 9 above	RS. 5,540
Add: Amount in closing stock (80% of RS. 1200)	RS. 960
Less: Amount in opening stock (80% of RS. 800)	RS. 6,500
Arm's length price of purchase	RS. 640
	RS.5,860

11. Is the purchase price at arm's length?

Ans: Yes. Since the purchase price is RS. 4,800 is less than arm's length price determined at RS. 5,860.

PRACTICE QUESTIONS OF TRANSFER PRICING.

ILLUSTRATION 12:

Compute arm's length price from following information

Particulars	Related Party	Unrelated Party
Price paid (inclusive of taxes)	INR 25,000	INR 23,500
Delivery terms	CIF	FOB
Quantity	100 pcs	110 pcs
Availability of Input Tax Credit	No	Yes
Quantity	100 pcs	110 pcs
Freight cost	-	INR 1,200
Insurance cost	-	INR 700
Input Tax Credit	-	INR 2,000

Solution:

Computation of ALP:

Particulars	Amount
Price paid to unrelated party (inclusive of taxes)	INR 23,500
Adjustments of differences -	
Delivery terms – Freight cost	INR 1,200
Delivery terms – Insurance cost	INR 700
Quantity	-
Input tax credit available	(INR 2000)
Arm's Length Price	INR 23,400

PRACTICE QUESTIONS OF TRANSFER PRICING.

ILLUSTRATION 13:

Compute arm's length price from following information.

Particulars	Related Party	Unrelated Party
Price paid (inclusive of taxes)	INR 25,000	INR 23,500
Delivery terms	CIF	FOB
Quantity	100 pcs	110 pcs
Availability of Input Tax Credit	No	Yes
Quantity	100 pcs	110 pcs
Freight cost	-	INR 1,200
Insurance cost	-	INR 700
Input Tax Credit	-	INR 2,000
Credit period	90 days	Upon dispatch
Interest rate on working capital	12% p.a.	-

Solution:

Computation of ALP:

Particulars	Amount
Price paid (inclusive of taxes)	INR 23,500
Adjustments of differences	
Delivery terms – Freight cost	INR 1,200
Delivery terms – Insurance cost	INR 700
Input Tax Credit available	(INR 2000)
Credit period (Interest on INR 23,500 for 3 months @ 12% p.a.)	INR 705
Arm's length price	INR 24,105

PRACTICE QUESTIONS OF TRANSFER PRICING.

ILLUSTRATION 14:

Compute ALP through following information:

- A Ltd. is a distributor of IT products.
- A Ltd. purchases these products from its related party, P Ltd.
- A Ltd. also trades in laptops manufactured by X Ltd.
- P Ltd as well as X Ltd would supply the warranty replacements free of cost to A Ltd.
- Other details are as under:

Particulars	P Ltd (AE)	X Ltd
Purchase price of A Ltd.	INR 15,000	INR 22,000
Sale price of A Ltd	INR 18,000	INR 26,000
Other expenses incurred by A Ltd	INR 500	INR 700

Solution:

Computation of gross profit margin on unrelated transaction:

Particulars	Amount (INR)
Sale price of laptop in India	26,000
Expenses incurred by A Ltd	700
Net Sale proceeds of laptop in India [A]	25,300
Purchase price [B]	22,000
Gross profit [A - B]	3,300
GP on sale (%)	12.69%

Computation of arm's length price:

Particulars	Amount
Sales price of desktop in India	18,000
Less: Expenses incurred by A Ltd	500
Less: Arm's length resale margin @ 12.69 % of sale	2,284
Arm's length purchase price	15,216
Purchase price paid to AE	15,000

Thus, no adjustment is required.

PRACTICE QUESTIONS OF TRANSFER PRICING.

ILLUSTRATION 15:

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 RS. 4,000 in sending the machine to C. From the above data, determine arm's length price.

Solution:

Computation of Arm's Length Price:

Particulars	Details	Amount
Sales price to B		4, 00,000
Less: Gross Margin	$4,00,000 \times 30\%$	1, 20,000
Balance		2, 80,000
Less: Expenses incurred by B		4,000
Arm's length price		2,76,000

STUDY NOTE 5: INTEREST.

INTRODUCTION:

INTERESTS PAYABLE BY THE ASSESSEE:

1. For failure to deduct and pay tax at source [Sec. 201(1A)]
2. For failure to collect and pay tax at source [Sec. 206C(7)]
3. For default in furnishing return of income [Sec. 234A]
4. For default in paying advance tax [Sec. 234B]
5. For deferment of advance tax [Sec. 234C]
6. For **excess refund** granted to the assessee [Sec. 234D]
7. For failure to pay tax **according to** demand notice [Sec. 220(2)]

INTEREST RECEIVABLE BY THE ASSESSEE:

Interest receivable by the assessee **on** refund [Sec.244A]

IMPORTANT NOTES REGARDING CALCULATION OF INTEREST:

Following points are to be noted regarding calculation of interest, whether such interest is receivable from or payable to the Central Government (Rule 119A):

1. Rounding off the amount on which interest is to be calculated:

Amount on which such interest is calculated will be rounded off to the multiple of 100 by ignoring any fraction of 100. E.g., amount on which interest is to be calculated is RS. 240 or RS. 290, then it is to be rounded off to RS. 200 by ignoring fraction of RS. 40 or RS. 90. **[THEY DO DOWNWARD].**

2. Rounding off the period for which interest is to be calculated:

- When interest is calculated on monthly basis, any fraction of the month shall be taken **as full month**. E.g., Interest is to be calculated from 1st August to 5th December, then interest shall be calculated for 5 months.
- When interest is calculated on annual basis, any fraction of the month shall be **ignored**.

STUDY NOTE 5: INTEREST.

[SECTION 201(1A)]-INTEREST FOR FAILURE TO DEDUCT AND PAY TAX AT SOURCE:

Condition: Where a person, responsible for deducting tax at source, fails to -

(a) deduct tax at source; or

(b) deposit such tax **after** deducting the same.

Amount on which interest is to be charged: On the amount **of such tax**.

Rate of Interest:

Period	Rate of Interest
From the date on which such tax was deductible to the date on which such tax is deducted	Simple interest @ 1% per month or part thereof
From the date on which such tax was deducted to the date on which such tax is actually paid	Simple interest @1.50% per month or part thereof

Period: From the date on which such tax was deductible to the date on which such tax is actually paid.

Note: In case any person fails to deduct such tax on the sum paid or payable but is not deemed to be an assessee in default (as per first proviso to sec. 201(1)), the interest shall be payable from the date on which such tax was deductible **to the date of furnishing of return of income by such payee**

[Sec. 206C(7)]-INTEREST FOR FAILURE TO 'COLLECT' AND PAY TAX AT SOURCE [TCS] :

Condition: Where a person, responsible for **collecting** tax at source [TCS], fails to -

(a) collect tax at source; or

(b) deposit such tax after collecting the same.

Amount on which interest is to be charged: On the amount **of such tax**.

Rate of Interest: Simple interest @ 1% per month or part thereof.

Period: From the date on which such tax was **collectible** to the date on which such tax is actually paid.

STUDY NOTE 5: INTEREST.

Note: Any person (other than seller of bullion or jewellery), responsible for collecting tax, fails to collect such tax on the amount received or receivable from a buyer or licensee or lessee but is not deemed to be an **assessee in default** (as per First proviso of sec. 206C(6A)], the interest shall be payable from the date on which such tax was collectible **to the date** of furnishing of return of income by such buyer or licensee or lessee.

[SECTION 234A]- INTEREST FOR DEFAULT IN FURNISHING RETURN OF INCOME:

Condition: Where a person, who is required to furnish return of income -

- (a) **fails** to furnish a return; or
- (b) furnishes it **after** the due date specified u/s 139(1).

Amount on which interest is to be charged: On the amount of tax determined u/s 143(1) or on regular assessment **as reduced** by advance tax paid and tax deducted or collected at source, if any.

In other words, interest is to be calculated on the following amount:

Particulars	Amount	Amount
Tax determined u/s 143(1) or on Regular assessment*		XXXX
Less: Advance Tax paid	XXXX	
Relief u/s 89 or 90 or 90A or 91	XXXX	
Credit allowed u/s 115JAA / 115JD (MAT or AMT Credit)	XXXX	
Tax deducted/collected at source	XXXX	XXXX
Amount for interest calculation		XXXX

* Regular Assessment means assessment u/s 143(3)/144/147 (first time)/153A(first time).

Rate of Interest: Simple interest @ 1% per month or part thereof.

Period: For every month or part of a month commencing from the day immediately following the due date for furnishing return for the relevant assessment year and **ending on** -

• Where the return is furnished after due date	: Date of furnishing return
• Where the return is not furnished at all	: Date of completion of assessment u/s 144

STUDY NOTE 5: INTEREST.

Notes:

1. For the purpose of self-assessment u/s 140A, interest shall be calculated on tax liability as declared in the return **by the assessee**.
2. As interest liability u/s 234A is different, in case of assessment by assessee himself (i.e. self-assessment) and assessment made by income tax authority (i.e. assessment u/s 143(1) or regular assessment), therefore, interest paid u/s 234A at the time of self-assessment shall be **reduced** from final interest liability u/s 234A.
3. The liability u/s 234A, 234B & 234C is automatic and the question of granting opportunity of being heard **does not arise**.
4. Demand notice for interest u/s 234A, 234B & 234C shall not be issued **unless** assessment order contains such levy.
5. **Reassessment:** Where -
 - (a) a return of income is required to be furnished due to notice u/s 148 or 153A (second and subsequent time); &
 - (b) assessee fails to furnish such return within time allowed under that section or fails to furnish return of income at all,

- THEN, ASSESSEE SHALL BE LIABLE TO PAY SIMPLE INTEREST @ 1% FOR EVERY MONTH OR PART THEREOF.

Amount on which interest is to be charged: On the amount by which tax on total income as per sec.147[INCOME ESCAPING], exceeds the tax on the total income determined on the basis of earlier assessment

Period: Commencing on the day immediately following the expiry of the time allowed under that notice and ending on –

• Where the return is furnished after the expiry of time allowed	: Date of furnishing return
• Where the return is not furnished at all	: Date of completion of reassessment u/s 147 or 153A

Adjustment in interest: Where tax payable is reduced or increased by an order u/s 154, 155, 245D, 250, 254, 260, 262, 263 & 264, the amount of interest shall be reduced or increased **accordingly**.

STUDY NOTE 5: INTEREST.

ILLUSTRATION 1. Calculate interest u/s 234A in the following cases –

Name of the assessee	A	A Ltd.	B
Due date of furnishing return	31st July	30th September	31st July
Date of filing return	4th December	30th January	Not filed
Date of completion of assessment	1st March	15th April	15th February
Income as per return	RS. 5,80,000	RS. 5,00,000	--
Assessed Income	RS. 6,10,000	RS. 5,50,000	RS. 12,00,000
Advance tax paid	RS. 10,000	RS. 25,000	RS. 80,000
Tax deducted at source	RS. 10,000	RS. 15,000	RS. 80,000
Tax paid along with return	RS. 6,000	RS. 1,50,000	--

Also state interest payable u/s 234A for the purpose of sec.140A [LIABILITY AS PER SELF DECLARATION].

Ignore interest under any other section.

SOLUTION: Computation of interest u/s 234A:

Particulars	Code	A	A Ltd.	B
Period of default	A#	5 months	4 months	7 months
(Aug. to Dec.)	(Oct. to Jan.)	(Aug. to Feb.)		
Assessed Income	B	6,10,000	5,50,000	12,00,000
Tax rate	C	Slab-rate	30%	Slab rate
Tax liability before surcharge	D = B*C	18000	1,65,000	1,72,500
Rate of Surcharge	E	Nil	Nil	Nil
Surcharge	F = D*E	Nil	Nil	Nil
Tax and surcharge payable	G = D+F	18000	1,65,000	1,72,500
Health & Education cess	H = G*4%	720	6,600	6,900
Tax liability on assessed income	I = G+H	18720	1,71,600	1,79,400
Less: Advance tax paid & tax deducted at source	J	20,000	40,000	1,60,000
Surplus/Shortfall	K = I-J	+15,880	1,31,600	19,400
Rounded off	L	15800	1,31,600	19,400
Interest (1% * A * L)		NIL	5,264	1,358
Note: Tax paid along with				

STUDY NOTE 5: INTEREST.

return shall not be reduced while computing interest u/s 234A				
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COMPUTATION OF INTEREST U/S 234A FOR THE PURPOSE OF SEC.140A[FOR SELF ASSESSMENT]:

Name of the assessee	Code	A	A Ltd.
Period of default	A#	5 months (Aug. to Dec.)	4 months (Oct. to Jan.)
Returned Income[DECLARED]	B	5,80,000	5,00,000
Tax rate	C	Slab-rate	30%
Tax liability before surcharge	D = B * C	16,500	1,50,000
Rate of Surcharge	E	Nil	Nil
Surcharge	F = D * E	Nil	Nil
Tax & surcharge on above	G=D+F	16500	1,50,000
Health & Education cess	H=G*4%	660	6,000
Tax liability on assessed income	I=G+H	17160	1,56,000
Less: Advance tax paid & tax deducted at source	J	20,000	40,000
Surplus/Shortfall	K=I-J	+9,640	1,16,000
Rounded off	L	9,600	1,16,000
Interest (1% * A * L)		NIL	4,640

It is to be noted that when interest is calculated on monthly basis, any fraction of the month shall be taken as full month.

Note: In case of B, return has not been filed, hence interest payable u/s 234A at the time of self-assessment cannot be computed.

STUDY NOTE 5: INTEREST.

[SECTION 234B]- INTEREST FOR DEAULT IN PAYING ADVANCE TAX:

Condition: Where a person, who is required to pay advance tax, fails to pay -

- (a) advance tax **at all**; or
- (b) **90%** of assessed tax as advance tax.

Amount on which interest is to be charged –

Particulars	Interest
Where no tax is paid u/s 140A	Assessed tax – Advance tax paid
Where tax is paid u/s 140A:	
Period upto the date on which tax as per self-assessment is paid	Assessed tax – Advance tax paid
Period after the date on which the tax as per self assessment is paid	Assessed Tax – Advance tax paid minus Tax paid on Self Assessment.

POINT TO BE NOTED:

Assessed tax means tax determined u/s 143(1) or Regular assessment **as reduced by:**

- Tax deducted or collected at source;
- Relief allowed u/s 89 or 90 or 90A or 91;
- Credit allowed u/s 115JAA or 115JD (MAT or AMT Credit).

Where amount paid under self-assessment falls short of tax and interest calculated as per self-assessment, then amount paid shall be first adjusted **towards interest** and balance, **if any**, shall be adjusted **towards tax payable**.

Rate of interest: Simple interest @ 1% per month or part thereof.

Period: For every month or part of a month commencing from 1st day of April of the relevant assessment year and ending on the date of determination of tax u/s 143(1) or on regular assessment.

NOTES:

1. For the purpose of self-assessment u/s 140A **[SELF-ASSESSMENT]**, interest shall be calculated on tax as per income shown in the **return**.
2. As interest liability u/s 234B is different in case of assessment by assessee himself (i.e. self- assessment) **and**

STUDY NOTE 5: INTEREST.

assessment made by income tax authority (i.e. assessment u/s 143(1), regular assessment), therefore interest paid u/s 234B at the time of self-assessment shall be **reduced** from final interest liability u/s 234A.

3. Reassessment: Where as a result of an order of reassessment or recomputation u/s 147 or 153A, the amount on which interest is payable is **increased**, the assessee shall be liable to pay simple interest @ 1% for every month or part thereof.

Amount on which interest is to be charged: Such interest shall be payable on the amount by which tax on total income **exceeds** the tax on total income determined on the basis of earlier assessment.

Period –

Commencing on	: 1st day of the relevant assessment year
Ending on	: Date of the reassessment or recomputation u/s 147 or 153A.

Adjustment in interest: Where tax payable is reduced or increased by an order u/s 154, 155, 245D, 250, 254, 260, 262, 263 & 264, the amount of interest shall be reduced or increased **accordingly**.

ILLUSTRATION 2.

A firm furnished its return of income on 30th June, 2020 showing income of RS. 1,00,000. The return shows other particulars as follows –

Advance tax	RS. 20,000
TDS	RS. 1,000

The AO passed the assessment order enhancing income by RS. 5,000 on 29-3-2021. **Compute interest u/s 234B.**

Solution:

Computation of interest u/s 234B

Particulars	Amount
Assessed Income	1,05,000
Tax liability before surcharge [RS. 1,05,000 * 30%]	31,500

STUDY NOTE 5: INTEREST.

Add: Health & Education cess @ 4%	1,260
Tax and cess payable	32,760
Less: Tax deducted at source	1,000
Assessed tax	31,760
90% of above	28,584
Advance tax paid	20,000
Since advance tax paid by the firm is less than 90% of assessed tax, sec. 234B is applicable	
Shortfall (Assessed tax less Advance tax paid)	11,760
Rounded off	11,700
Period of default [From April 2020 to March 2021]	12 months
Interest u/s 234B (1% x RS. 11,700 x 12)	1,404

NOTE: INTEREST FOR 12 MONTHS IS CHARGED BECAUSE A.O INCREASED THE INCOME ON 29-03-2021

AND INTEREST 234B STARTS AFTER 31ST MARCH OF P.Y.

ILLUSTRATION 3:

How shall your answer differ if the assessee pays RS. 10,200 as self-assessment tax along with return. Ignore interest u/s 234C.

Solution:

Computation of interest u/s 234B:

PARTICULARS	AS PER.	
	Assessed income	Returned income
Income	1,05,000	1,00,000
Tax on above (including cess)	32,760	31,200
Less: TDS and Advance tax	21,000	21,000
Shortfall for the period April' 2020 to June' 2020	11,760	10,200
Rounded off (a)	11,700	10,200
Period of default (b) [From	3 months	3 months

STUDY NOTE 5: INTEREST.

April' 2020 to June' 2020]		
Interest u/s 234B (1% x a x b)	351	306
Shortfall for the period July' 2020 to March' 2021 (RS. 11,700 – RS. 9,894 as paid u/s 140A) [Note]	1,806	
Rounded off (c)	1,800	
Period of default (d) [From July' 2020 to March' 2021]	9 months	
Interest u/s 234B (1% x c x d)	162	

NOTE:

Since, shortfall till June 2020 is RS. 11,760 and thereafter assessee has paid RS. 9,894 [i.e. RS. 10,200 (amount paid u/s 140A) – RS. 306 (interest u/s 234B for the purpose of sec.140A)], hence interest shall be calculated on the following –

For the period April' 20 to June' 20	- On RS. 11,760
For the period July' 20 to March' 21	- On RS. 1,806

Statement showing interest payable u/s 234B:

Particulars	Amount
For the period April to June	351
For the period July to March	162
513	
Less: Interest paid on self-assessment	306
Interest payable	207

STUDY NOTE 5: INTEREST.

[SECTION 234C]-FOR DEFERMENT OF ADVANCE TAX:

Condition: Payment of advance tax is to be made as per the schedule (mentioned in the chapter “**Advance Tax**”). In case assessee fails to pay the amount or pays lesser amount as required by the schedule, then assessee will have to pay interest u/s 234C for such deferment.

Amount on which interest is payable:

Specified % of tax on the total income declared in the return filed by the assessee	XXXX
<i>Less: Tax deducted/collected at source</i>	XXXX
<i>Less: Amount of advance tax paid on or before the due date of payment as per the advance tax payment schedule.</i>	XXXX
<i>Less: Relief allowed u/s 89 or 90 or 90A or 91</i>	XXXX
<i>Less: Credit allowed u/s 115JAA or 115JD (MAT or AMT Credit)</i>	XXXX
Amount on which interest shall be calculated	XXXX

Specified % of tax for calculation of interest under this section

Assessee	Due date of installment (of previous year)	Minimum amount payable
An eligible assessee in respect of an eligible business referred to in sec. 44AD or 44ADA:	On or before March 15 of P.Y.	100% of advance tax liability, as reduced by the amount or amounts, if any, paid in earlier installment or installments.
For Other Assessee:	On or before June 15 of P.Y.	Upto 15% of advance tax liability
	On or before September 15 of P.Y.	Upto 45% of advance tax liability, As reduced by the amount, if any, Paid in the earlier installment.
	On or before December 15 of P.Y.	Upto 75% of advance tax liability, As reduced by the amount or amounts, if any, Paid in the earlier installment or installments.
	On or before March 15 of P.Y.	100% of advance tax liability, as reduced by the amount or amounts, if any, paid in earlier installment or installments.

STUDY NOTE 5: INTEREST.

Notes:

1. Where an assessee has paid **12% or more** of tax as advance tax on or before June 15, then **no** interest u/s 234C is payable.
2. Where an assessee has paid **36% or more** of tax as advance tax on or before September 15, then **no** interest u/s 234C is payable.

Rate of interest: Simple interest @ 1% per month or part thereof.

Period: 3 MONTHS. [**FOR DEFAULT IN AN INSTALLMENTS EXCEPT LAST INSTALLMENTS FOR IT MONTH IS ONE.]**

Other Points

No interest will be levied in respect of **any shortfall** in the payment of advance tax due on the returned income, **if**–

(a) The shortfall is on account of under-estimation or failure to estimate **the amount of**:

- (i)** capital gains; or
- (ii)** income of the nature referred to in section 2(24)(ix) [i.e. lottery, cross-word, etc.];
- (iii)** income under the head “Profits and gains of business or profession” in cases where the income accrues or arises under the said head **for the first time**; or
- (iv)** income of the nature referred to in sec. 115BBDA (i.e., dividend in excess of specified limit).

(b) The assessee has paid the whole of the amount of tax payable in respect of such income as part of the remaining installment(s) of advance tax which were due or where no installment is due, by March 31 of the previous year.

STUDY NOTE 5: INTEREST.

ILLUSTRATION 4:

A firm made the following payments of advance tax during the financial year 2019-20:

RS. IN LAKHS.	
September 15, 2019	7.00
December 15, 2019	7.75
March 15, 2020	10.75
	25.50

The return of income is filed on 31-7-2020 showing –

Business income RS. 80 lakh

Long term capital gain taxable @ 20% (as on 1-12-2019) RS. 10 lakh

Compute interest payable u/s 234C.

Solution:

Computation of tax liability for A.Y. 2020-21 RS. in lakh:

Particulars	Business income	Long term capital gain
Income	80.00	10.00
Tax rate	30%	20%
Tax liability before cess	24.00	2.00
Add: Health & Education cess	0.96	0.08
Tax liability including cess	24.96	2.08

STUDY NOTE 5: INTEREST.

Computation of interest payable u/s 234C:

Particulars	Installment of Advance tax	15/6/2019	15/9/2019	15/12/2019	15/03/2020
Rate of Advance tax	15%		45%	75%	100%
Amount payable					
(RS. 24,96,000 x 15%)					
(RS. 24,96,000 x 45%)		11,23,200			
[(RS. 24,96,000 + RS. 2,08,000) x 75%]				20,28,000	
[(RS. 24,96,000 + RS. 2,08,000) x 100%]					27,04,000
Less: Amount paid till date	Nil	7,00,000		14,75,000	25,50,000
Shortfall	3,74,400	4,23,200		5,53,000	1,54,000
Rounded off (a)	3,74,400	4,23,200		5,53,000	1,54,000
Period of default (b)	3 months	3 months		3 months	1 month
Interest (1% x a x b)	RS. 11,232	RS. 12,696		RS. 16,590	RS. 1,540

Total interest payable u/s 234C	RS. 42,058
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Illustration 5 .

A Ltd. made the following payments of advance tax during the financial year 2019-20: **RS. IN LAKHS.**

June 15, 2019	3.70	September 15, 2019	3.50
December 15, 2019	10.25	March 18, 2020	8.80

The return of income is filed on 31-7-2020 showing -

Business income RS. 80 lakh

STUDY NOTE 5: INTEREST.

Long term capital gain taxable @ 20% (as on 1-12-2019) RS. 10 lakh

Compute interest payable u/s 234C.

Solution:

Computation of tax liability for A.Y. 2020-21 (RS. in lakh)

Particulars	Business income	Long term capital gain
Income	80.00	10.00
Tax rate	30%	20%
Tax liability before surcharge	24.00	2.00
<i>Add:</i> Surcharge	Nil	Nil
Tax liability after surcharge	24.00	2.00
<i>Add:</i> Education cess	0.96	0.08
Tax liability after surcharge and cess	24.96	2.08

Computation of interest payable u/s 234C

Particulars	Installment of Advance tax			
	15/6/2019	15/9/2019	15/12/2019	15/03/2020
Rate of Advance tax	15%	45%	75%	100%
Amount payable				
(RS. 24,96,000 x 15%)	3,74,400			
(RS. 24,96,000 x 45%)		11,23,200		
[(RS. 24,96,000 + RS. 2,08,000) x 75%]			20,28,000	
[(RS. 24,96,000 + RS. 2,08,000) x 100%]				27,04,000
<i>Less:</i> Amount paid till date	3,70,000	7,20,000	17,45,000	17,45,000
Shortfall	Nil	4,03,200	2,83,000	9,59,000
Rounded off (a)	Nil	4,03,200	2,83,000	9,59,000
Period of default (b)	--	3 months	3 months	1 month
Interest (1% x a x b)	--	RS. 12,096	RS. 8,490	RS. 9,590

Total interest payable u/s 234C	RS. 30,176
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Since assessee has paid at least 12% of tax (i.e. RS. 2,99,520) on or before 15th June, 2019, hence no interest u/s 234C

STUDY NOTE 5: INTEREST.

shall be levied.

1. Since assessee fails to pay 36% of tax (i.e. RS. 8,98,560) on or before 15th September, 2019, hence interest u/s

234C shall be levied. It is to be noted that interest shall be payable considering 45% of tax.

2. As payment has not been made within due date, hence advance tax paid on 18-03-2020 has not been considered.

[SECTION 234D]- INTEREST FOR EXCESS REFUND GRANTED TO THE ASSESSEE:

Condition: Where any refund is granted to the assessee u/s 143(1) and –

(a) no refund is due **[BUT GIVEN]** on regular assessment; or

(b) the amount refunded **exceeds** the amount refundable on regular assessment;

Rate of interest: Simple interest @ $\frac{1}{2}\%$ for every month or part of the month.

Amount on which interest is to be charged: On the whole or excess amount refunded.

Period: From the date of grant of refund **to the date** of such regular assessment.

Adjustment in interest: Where amount of refund is reduced or increased by an order u/s 154, 155, 245D, 250, 254, 260, 262, 263 & 264, the amount of interest shall be reduced or increased **accordingly**.

[SECTION 234E]- FEE FOR DEFAULTS IN FURNISHING STATEMENTS [RETURN]:

Condition: Where a person fails to deliver a quarterly **TDS / TCS** return within the prescribed time.

Amount of Fee: RS. 200 for every day during which the failure continues subject to maximum of amount of TDS / TCS.

NOTE:

- ✓ The fee shall be paid **before** delivering a statement.[RETURN]
- ✓ The fee is **in addition** to other consequences of non-delivering such return.

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[SECTION 234F]- FEE FOR DEFAULT IN FURNISHING RETURN OF INCOME:

Where a person required to furnish a return of income u/s 139(1), fails to do so within the due date, he shall pay fee of:

Case	Fee
Total income does not exceed RS. 5 lakh	RS. 1,000
Total income exceeds RS. 5 laks	
- If the return is furnished on or before 31st December of the assessment year	RS. 5,000
- In any other case	RS. 10,000

[SECTION 220(2)]- INTEREST FOR FAILURE TO PAY TAX ACCORDING TO DEMAND NOTICE:

Any amount specified as payable in a notice of demand u/s 156 [**NOTICE OF DEMAND**] should be paid within 30 days (or lesser period as specified by the Assessing Officer with prior approval of Joint Commissioner) of the service of the notice.

Condition: Any person fails to pay such amount within such time.

Rate of interest: Simple interest @ 1% for every month or part thereof.

Amount on which interest is to be charged: On the amount **specified** in the notice of demand.

Period: Interest shall be charged for a period commencing from **the day** immediately after the expiry of 30 days (or specified period) and ending on the day on which such amount **is paid**.

NOTE:

1. Where the Assessing Office has any reason to believe that it will be detrimental to revenue if the full period of 30 days is allowed, then he may with the previous approval of the Joint Commissioner direct that the sum specified in the notice of demand shall be paid within such time as may be specified by him in the notice [**i.e demanding more time**]. In such case interest shall be calculated for a period commencing from the period specified in the notice.

STUDY NOTE 5: INTEREST.

2. Where interest is charged u/s 201(1A) on the amount of tax specified in the intimation issued u/s 200A(1) for any period, then, no interest shall be charged **under this section** on the same amount for the same period. Similarly, where interest is charged u/s 206C(7) on the amount of tax specified in the intimation issued u/s 206CB(1) for any period, then, no interest shall be charged **under this section** on the same amount for the same period.

3. **Adjustment in interest:** Where amount of refund is reduced or increased by an order u/s 154, 155, 250, 254, 260, 262, 264 & 245D, the amount of interest shall be reduced or increased **accordingly.**

4. Where any notice of demand has been served upon an assessee and any appeal or other proceeding, as the case may be, is filed or initiated in respect of the amount specified in the said notice of demand, then, such demand shall be deemed to be valid **till the disposal** of the appeal by the last appellate authority or disposal of the proceedings, as the case may be.

WAIVER OR REDUCTION OF INTEREST u/s 234A, 234B & 234C:

1. The Chief Commissioners and the Directors-General (Investigation) is empowered **to reduce or waive** penal interest u/s 234A, 234B and 234C in the following circumstances -

(a) Where, in the course of **search and seizure** operation, books of account have been taken over by the Department and were **not available to** the taxpayers **to** prepare his return of income.

(b) Where, in the course of search and seizure operation, **cash** had been **seized**, which was **not** permitted to be **adjusted against** arrears of tax or payment of advance tax installments falling due after the date of the search.

(c) Any income other than **capital gains** [covered after receives] which was received or accrued after the date of first or subsequent installment of advance tax, which was neither anticipated nor contemplated by the taxpayer and on which advance tax was paid by the taxpayer **after** the receipt of such income.

(d) Where, as a result of any **retrospective** amendment of law or the decisions of the Supreme Court after the end of the relevant previous year, certain receipts, which were earlier treated as exempted income, **now become taxable.**

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(e) Where return of income is filed voluntarily without detection by the Income tax Department and **due to** circumstances **[technical error]** beyond control of the taxpayer such return of income **was not filed** within the stipulated time-limit or advance tax was not paid at the relevant time.

2. The Chief Commissioner of Income Tax/Director-General are empowered **to waive or reduce** interest u/s 234A, 234B and 234C on income which accrues or arises for any previous year due to the operation of any **order** of a Court, statutory authority or of the Government (other than an order of assessment, appeal reference or revision passed under the provisions of the Income tax Act) passed after the close of the said previous year. **[on any order from above authority]**.

NOTES:

- (a) **Board can** grant relief u/s 234A, 234B or 234C
- (b) Settlement Commission does **not have** the power to waive or reduce interest u/s 234A or 234B or 234C
- (c) Waiver of interest can be considered only **if the** return of income is filed voluntarily without detection by the Assessing Officer.

STUDY NOTE 5: INTEREST.

INTEREST PAYABLE TO THE ASSESSEE:

[SECTION 244A]-INTEREST ON REFUND:

An assessee who is entitled to get refund shall also be entitled to interest on such refund. Provision relating to interest is enumerated below –

Rate of interest: Simple interest @ ½% per month or part thereof.

Period for calculation of interest:

Case	Period
1. Refund is out of TDS or TCS or Advance tax (Note 1)	
- Where return of income is furnished within due date	From first day of relevant assessment year to the date on which such refund is granted.
- Where return is after due date	From the date of furnishing return to the date on which such refund is granted.
2. Refund is out of self-assessment tax (Note 1)	From the date of furnishing return or payment of tax, whichever is later to the date on which such refund is granted.
3. Refund due to any other reason	From date of payment of such tax to the date on which such refund is granted.
4. Refund due to excess payment of TDS by deductor	From the date on which claim for refund is made (however, where refund arise on account of giving effect to an order u/s 250 or 254 or 260 or 262, from date of payment of tax) to the date on which refund is granted.

Notes

1. Interest on refund due to TDS or TCS: In case (1) and (2), no interest on refund shall be allowed if the amount of refund is **less than 10%** of the tax determined u/s 143(1) or on regular assessment.

2. Interest on Refund arising out of giving effect to an order: In a case where a refund arises as a result of giving effect to an order u/s 250 or 254 or 260 or 262 or 263 or 264, wholly or partly, otherwise than by making a fresh assessment or reassessment, the assessee shall be entitled to receive, in addition to the interest payable (as aforesaid), **an additional interest** on such amount of refund calculated at the rate of 3% p.a., for the period beginning from the date following the date of expiry of the time allowed u/s 153(5) [i.e., 3

STUDY NOTE 5: INTEREST.

months from the end of the month in which appellate order is received by the CIT) to the date on which the **refund is granted**.

3. Taxability of refund and interest on refund: It is to be noted that refund of tax itself is **not taxable**.

However, interest received on **delayed** refund [**further refund late i.e interest on such refund**] is taxable under the head "Income from other sources".

4. Adjustment in interest: Where tax payable is reduced or enhanced by an order u/s 143(3), 144, 147, 154, 155, 250, 254, 260, 262, 263, 264 & 245D(4), the amount of interest shall be reduced or enhanced accordingly.

5. Delay in refund due to reason attributable to the assessee: Where the refund is delayed for the **reason** attributable to the assessee (or deductor), the period of delay so attributable to him shall be **excluded** from the period for which interest is payable. Further, where any question arises as to the period to be excluded, it shall be **decided** by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner whose decision shall **be final**.

STUDY NOTE 5: INTEREST.

RAGHAV ACADEMY

STUDY NOTE-6 SURVEY, SEARCH AND SEIZURE.

[SECTION 131]-POWER REGARDING DISCOVERY , PRODUCTION OF EVIDENCE, ETC:

POWER OF INCOME TAX AUTHORITY WHILE TRYING A SUIT:

The income-tax authority [being Assessing Officer, Deputy Commissioner (Appeals), Joint Commissioner, Commissioner (Appeal), Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner and the Dispute Resolution Panel] **have** the same powers as are vested in a court under the Code of Civil Procedure, 1908, when trying a suit **in respect** of the following matters —

- (a) Discovery and inspection;
- (b) Enforcing the attendance of any person, **including** any officer of a banking company and examining him on oath;
- (c) Compelling the production of books of account and other documents; and
- (d) Issuing commissions.

[SECTION 131(1A)]- POWER BEFORE INITIATING SEARCH AND SEIZURE U/S 132:

The income-tax authority [being Principal Director-General or Director-General or Principal Director or Director or Joint-Director or Assistant Director or Deputy Director or any **authorized** officer referred u/s 132(1)] before taking any action u/s 132, **can exercise** above power if he has **reason to suspect** that any income has been **concealed** (or is likely to be concealed), by any person (or class of persons), within his **jurisdiction** and for the purposes of making any enquiry or investigation relating thereto, it shall be competent for him to exercise above powers.

NOTE:

1. Above action can be taken **even** though no proceedings with respect to such person is pending before any income-tax authority.
2. In case inquiry or investigation is related to an agreement referred to in sec. 90 or 90A, such power can be exercised by **any notified** income-tax authority (not below the rank of Assistant Commissioner).

STUDY NOTE-6 SURVEY, SEARCH AND SEIZURE.

[SECTION 131(3)]- POWER TO IMPOUND [SEIZE] OR RETAIN BOOKS:

Any income tax authority [referred in sec. 131(1) or (1A) or (2)] may impound **[SEIZE]** and retain **in its** custody **any** books of account or other documents produced **before** it in any proceedings under this Act. However, an Assessing Officer or an Assistant Director or Deputy Director **shall not** –

- (a) Impound any books of account or other documents **without recording** his reasons for doing so; or
- (b) Retain in his custody any such books or documents for a period **exceeding 15 days** (exclusive of holidays) **without** obtaining (prior) approval of the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General or Principal Commissioner or Commissioner or Principal Director or Director.

[SECTION 132]- SEARCH AND SEIZURE:

WHO CAN AUTHORIZE (I.E., ISSUE SEARCH WARRANTS) PROCEEDINGS U/S 132:

Sec.132 **empowers** the Principal Director General or Director General or Principal Director or Director or the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner **to authorize** proceedings under this section.

NOTE:

Proceeding **means** any proceeding in respect of any year, which **may be** pending on the date on which a search is authorised under this section or which may have been completed on or before such date and includes **also** all proceedings which may be commenced **after** such date in respect of any year.

CIRCUMSTANCES WHEN SEARCH CAN BE CONDUCTED:

Any authority (mentioned above) **can direct** proceedings u/s 132 against the following person where he has **reason to believe** (in consequence of information in his possession, which is something more than mere **rumor or gossip**) that:

STUDY NOTE-6 SURVEY, SEARCH AND SEIZURE.

PERSON	CIRCUMSTANCES
Any person to whom a summons u/s 131(1) or a notice u/s 142(1) was issued to produce any books of account or other documents.	Such person has omitted or failed to do so, then search will conduct.
Any person to whom a summons or notice as aforesaid has been or might be issued.	Such person will fail to do so, then search will conduct.
Any person is in possession of any money, bullion, jewellery or other valuable article or thing.	Such money, bullion, jewellery or other valuable article or thing represents either wholly or partly undisclosed income or undisclosed property.

NOTE: The reason to believe, as recorded by the income-tax authority, shall not be disclosed to **any** person or any authority or the Appellate Tribunal.

WHO CAN CONDUCT SEARCH:

Income tax authority, having power to initiate search u/s 132, can authorise its subordinate(s) (not below the rank of Income tax officer) to **conduct** search. Following subordinates **can be** authorised –

Authorized Officer who can conduct search	Authorized from
Additional Director or Additional Commissioner or Joint Director, Joint Commissioner, Assistant Director, Deputy Director, Assistant Commissioner, Deputy Commissioner or Income tax officer.	Principal Director General or Director General or Principal Director or Director or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner
Assistant Director, Deputy Director, Assistant Commissioner, Deputy Commissioner or Income tax officer	Additional Director or Additional Commissioner or Joint Director or Joint Commissioner (on the basis of authorization from above authority and being empowered by the Board)

STUDY NOTE-6 SURVEY, SEARCH AND SEIZURE.

POWER OF AUTHORIZED OFFICER:

While conducting search, authorized officer has following powers –

- a. Enter and search any building, etc.:** Enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such books of account, other documents, money, bullion, jewellery or other valuable article or thing are kept.
- b. Break open the lock of any door, etc.:** Break open the lock of any door, box, locker, safe, almirah or other receptacle, where the keys thereof are not available.
- c. Search person:** Search any person who -
 - has got out of; or
 - is about to get into; or
 - is in,the building, place, vessel, vehicle or aircraft if the authorised officer has reason to suspect that such person has secreted about his person any books of account, other documents, money, bullion, jewellery or other valuable article or thing.
- d. Require any person to facilitate the authorised officer:** Require any person who is found to be in possession or control of any books of account or other documents **maintained** in the form of electronic record, to afford the authorised officer the necessary facility to inspect such books of account or other documents.
- e. Seizure:** Seize any such books of account, other documents, money, bullion, jewellery or other valuable article or thing found **as a result of such** search.
- f. Place marks of identification:** Place marks of identification on any books of account or other documents or make extracts or copies therefrom.
- g. Make inventory:** Make a note or an inventory of any such money, bullion, jewellery or other valuable article or thing.

STUDY NOTE-6 SURVEY, SEARCH AND SEIZURE.

h. Examine on oath: Examine on oath **any person** who is found to be in possession or control of any books of account, documents, money, bullion, jewellery or other valuable article or thing.

Any statement **made by** such person during **such** examination may thereafter be used **as** evidence in any proceeding. The examination of any person may be not only in respect of any books of account, other documents or assets found as a result of the search, but also in respect of all **matters relevant** for the purposes of any investigation connected with any proceeding under Act.

FIVE IMPORTANT POINTS:

1. NO SEIZURE OF STOCK IN TRADE:

Bullion, jewellery or other valuable article or thing, being stock-in-trade of the business, shall not be seized but the authorized officer shall make a note or inventory of such stock-in-trade.

2. EXTENTION OF JURISDICTIONAL AREA:

- Where **any** building, place, vessel, vehicle or aircraft is **within** the area of jurisdiction of any Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, but such authority has **no** jurisdiction **over** such person; and
- Such authority has reason to believe that any delay in getting the authorisation from the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner having jurisdiction over such person may be prejudicial to the **interests of the revenue**,
- then it shall be competent for him to exercise the above powers.

HANDING OVER OF SEIZED ASSETS TO THE ASSESSING OFFICER HAVING JURISDICTION:

Any asset or document so seized shall be handed over to the Assessing Officer having jurisdiction over such person **within** a period of 60 days from the date on which the last of the authorizations for search was executed. Thereafter, such Assessing Officer exercises all **other** powers.

STUDY NOTE-6 SURVEY, SEARCH AND SEIZURE.

3. [SECTION 132(1A)]-EXTENSION OF AUTHORISATION:

- Where a search for any books of account, other document, money, bullion, jewellery or other valuable article or thing is authorized; and
- Other Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner in consequence of information in his possession, has **reason to suspect** that such document or asset is **kept** in any **other** building, place, vessel, vehicle or air craft **not** mentioned in the authorization,
 - then such other Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner **can authorize** the officer to search **such other** building, place, vessel, vehicle or air craft.

NOTE : The reason to suspect, as recorded by the income-tax authority, shall **not** be disclosed to any person or any authority or the Appellate Tribunal.

4. DEEMED OR CONSTRUCTIVE SEIZURE [SECOND PROVISO TO SEC. 132(1)] :

Conditions:

Where it is not possible or practicable to take physical possession of any valuable article or thing and remove it **to a safe** place due to reason of its –

- volume, weight or other physical characteristics; or
- being of a dangerous nature.

AND THEN CONTINUE THE SEIZURE.

Procedure: The authorised officer may serve an order on –

- the owner; or
- the person who **is in** immediate possession or control of any valuable article or things,

- **that** he shall not remove, part with or otherwise deal with such article or thing **without** the prior **permission** of such authorised officer.

STUDY NOTE-6 SURVEY, SEARCH AND SEIZURE.

Effect:

Such action of the authorised officer shall be deemed to be seizure of such article or thing.

NOTES:

- a) No such order can be passed for any article or thing, **being** stock-in-trade.
- b) Though such order can also be passed for reasons other than those mentioned above, but in that case, the order shall **not** be deemed to **be seizure** of such article or things and it shall not be in force for a period **exceeding** 60 days from the date of the order.

5. PROVISIONAL ATTACHMENTS:

- Where
 - a. during the course of the search or seizure; or
 - b. within a period of 60 days from the date on which the last of the authorisations for search was executed, the authorised officer **may attach provisionally** any property belonging to the assessee.
- Such attachment shall be subject to following **conditions**:
 - a) The authorised officer is satisfied that for the purpose of protecting the interest of revenue, it is necessary **to do so**.
 - b) The reasons for such provisional attachment should be recorded **in writing**
 - c) **Previous** approval (in writing) of the Principal Director General or Director General or the Principal Director or Director **has taken**.
- Every provisional attachment shall cease to have effect after the expiry of 6 months [If authority wants to dispose them] from the date of such order.
- The authorised officer may make a reference to a **Valuation Officer**, who shall estimate the fair market value of the property in the manner provided under that section and submit a report of the estimate to the **said** officer within a period of 60 days from the date of receipt of such reference.

STUDY NOTE-6 SURVEY, SEARCH AND SEIZURE.

[SECTION 292CC]- AUTHORISATION AND ASSESSMENT IN CASE OF SEARCH OR REQUISITION:

- It shall not be necessary to issue an authorisation u/s 132 [SEARCH & SEIZURE] or make a requisition u/s 132A separately in the name of **each** person.
- Where an authorisation u/s 132 has been issued or requisition u/s 132A has been made mentioning therein the name of more than one person, the mention of such names of more than one person on such authorisation or requisition shall not be deemed to **construe** that it was issued in the name of an association of persons or body of individuals consisting of such persons.
- Though authorisation u/s 132 or requisition u/s 132A has been made mentioning therein the name of more than one person, the assessment or reassessment shall be made **separately** in the name of each of the persons mentioned in such authorisation or requisition.

[SECTION 132(8)]-TIME LIMIT FOR RETENTION:

The books of account or other documents seized or deemed seized shall not be retained [with himself] by the authorised officer **for a period** exceeding 30 days from the date of the order of assessment u/s 153A.

Exception

It can be retained for more than 30 days on fulfillment of the following conditions -

1. The reasons for retaining the same are recorded **in writing**; and
2. The (prior) approval of the Principal Chief Commissioner or Chief Commissioner, Principal Commissioner or Commissioner, Principal Director General or Director General or Principal Director or Director for such retention **is obtained**.

NOTE:

- ✓ **MAXIMUM RETENTION:** The aforesaid authorities shall **not authorise** the retention of the books of account and other documents for a period exceeding 30 days **after all** the proceedings **in respect of** the years **for which** the books of account or other documents are relevant, **are completed**.
- ✓ **POWER OF THE BOARD TO PASS AN ORDER [SEC. 132(10)] :**

STUDY NOTE-6 SURVEY, SEARCH AND SEIZURE.

- (a) Where a person is legally entitled [return back] to the books of account or other documents seized;
 - (b) Such person objects for any reason **to the approval** given by the authorities; and
 - (c) Such person makes an application to the Board stating therein the reasons for such objection and requesting for the **return** of the books of account or other documents.
- **then the Board may, after giving the applicant an opportunity of being heard, pass such orders as it thinks fit.**

PRESUMPTION IN CASE OF SEARCH [SEC. 132(4A)]:

Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are, or is found in the possession or control of any person in the course of search, it may be presumed that –

- Such books of account, other documents, money, bullion, jewellery or other valuable article or thing **belongs** to such person;
- The contents of such books of account and other documents **are true**;
- The signature and every other part of such books of account and other documents which purport **[proves]** to be in the **handwriting** of any particular person, are in that person's handwriting; and
- In the case of a document stamped, executed or attested, it was duly stamped and executed or attested **by the person by** whom it purports to have been **so executed or attested**.

OTHER PROVISIONS:

1. Help from Government officers [Sec. 132(2)]: It shall be the duty of every police officer or of any officer of the Central Government or of both officer **to assist** authorised officer to invoke his power.

2. Right to make copies or take extract [Sec. 132(9)]: The person from whose custody books of account or other documents **are seized** may make copies thereof or take extracts **therefrom**. Such right can be exercised in the **presence** of the authorized officer or any other person empowered by him in this behalf, at such place and time as the authorized officer **may appoint** in this behalf.

STUDY NOTE-6 SURVEY, SEARCH AND SEIZURE.

3. Power of Board to make rules [Sec 132(14)]: The Board may make rules in relation to any search or seizure providing the procedure **to be followed** by the authorised officer -

- (i) for obtaining ingress (i.e. right to enter) into any building, place, vessel, vehicle or aircraft to be searched where free ingress thereto is not available;
- (ii) for ensuring **safe custody** of any books of account or other documents or assets seized.

4. The provisions of the Code of Criminal Procedure, 1973 relating to searches and seizure **shall apply**, so far as may be, to search and seizure [Sec. 132(13)].

[SECTION 132A]- POWERS TO REQUISITION [DEMAND] BOOKS OF ACCOUNT, ASSETS, ETC:

Circumstances when power u/s 132A can be invoked [APPLICABLE].

Where income-tax authority (being Principal Director General or Director General or Principal Director or Director or the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner) in consequence of information in his possession, has **reason to believe** that –

(a) Any person to whom a summon u/s 131(1) or a notice u/s 142(1) was issued **to produce** any books of account or other documents -

1. Has **omitted** or failed to produce such books of account or other documents; and
2. The said books of account or other documents have been taken into custody by any officer or authority under any **other** law for the time being in force.

(b) Any books of account or other documents **will be useful** for, or relevant to, any proceeding **under this Act** and any person to whom a summon or notice has been issued **will not produce** **such** books of account or other documents **on its** returning by other authority.

(c) Any assets taken into custody by any officer or authority under any other law for the time being in force is **undisclosed** (wholly or partly).

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WHO CAN REQUISITION BOOKS:

Requisitioning Officer who can require books, etc.	Authorized from
Additional Director, Additional Commissioner, Joint Director, Joint Commissioner, Assistant Director, Deputy Director, Assistant Commissioner, Deputy Commissioner or Income tax officer.	Principal Director General or Director General or Principal Director or Director or the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissione

POWER OF REQUISITIONING OFFICER:

The requisitioning officer **can make** a requisition for delivery of books of account, etc., **to** such other authority. Such other authority shall deliver the books of account, other documents or assets to the requisitioning officer **when** such officer or authority is of the opinion that it is no longer necessary to retain the same in his or its custody.

For instance, any books of account **seized** by an officer under Customs Act can be requisitioned by income-tax authority **[when they needed]** to deliver such books of account. On the requisition, other authority delivers books of account, etc. to the requisitioning officer. Such books of account, documents, etc. shall be deemed as seized u/s 132(1).

NOTE:

- ✓ The reason to believe, as recorded by the income-tax authority, shall **not be disclosed** to any person or any authority or the Appellate Tribunal.
- ✓ A bank draft when presented **for clearing** by the customer to the bank cannot be said to have been taken into custody by the bank **to attract** the applicability of section 132A. Resultantly, the warrant of authorization requisitioning the same by the **competent** authority is totally without jurisdiction.

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[SECTION 132B]- APPLICATION OF SEIZED OR REQUISITIONED ASSETS:

The seized assets may be adjusted with:

(a) The amount of any existing liability under -

(i) The Income-tax Act, 1961;

(ii) The Wealth-tax Act, 1957 (now abolished);

But the existing liability **does not** include advance tax payable.

(b) The amount of liability determined **on completion** of the assessment u/s 153A; [search & seizure assessment].

(c) The amount of liability determined on completion of the assessment of the year relevant to the previous year **in which** search is initiated or requisition is made;

(including any penalty levied or interest payable in connection with such assessment); and

(d) The amount in respect of which such person is in default or is deemed to be in default or the amount of liability arising on an application **made before** the Settlement Commission.

[FIRST PROVISO OF SECTION 132B]- RELEASE OF ASSET:

Condition for release of asset:

Where the following conditions **are satisfied**, the amount of any existing liability may be recovered **out of such** asset and the remaining portion of the asset may be **released to** the person from whose custody the assets were seized -

1. The person concerned makes an application **to the** Assessing Officer within 30 days from the end of the month in which the asset **was** seized **for** release of asset;

2. The nature and source of acquisition of such asset is explained to the **satisfaction** of the Assessing Officer; and

3. The Assessing Officer obtains the **prior approval** of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.

TIME LIMIT FOR RELEASE OF ASSET:

Asset or any portion thereof shall be released **within a period of 120 days** from the date on which the last of the authorisations for search u/s 132 or for requisition u/s 132A, as the case may be, was executed.

No seized asset shall be retained by the Department during pendency of **appeal** filed **by** Revenue.

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ORDER OF ASSETS TO BE APPLIED FOR DISCHARGING LIABILITY:

The above liability shall be discharged by applying the seized asset in the **following order** –

- (a) Money;
- (b) Asset **other than** money (as laid down in the Third Schedule).

It is to be noted that the assessee shall be discharged of the liability **to the extent** of the money and asset so applied. However, Assessing Officer shall not be precluded [**STOP**] from the recovery of above liabilities by **any other mode**.[means A.O can do recovery of liability at any cost].

DISCHARGE OF EXCESS MONEY:

After discharging all liabilities if any assets or proceeds thereof left, then it shall be **returned** to the persons from whose custody such assets were seized.

INTEREST PAYABLE TO THE ASSESSEE:

Where the aggregate amount of money (either seized or realized through sale of assets) seized **exceeds** the aggregate of the amount required **to meet** the liabilities, Government shall pay simple interest at the rate of **½% p.m.** The interest shall be payable from the date immediately following the expiry of the period of **120** days (from the date on which the last of the authorisations for search u/s 132 or requisition u/s 132A was executed) to the date of **completion of the assessment u/s 153A**.

[SECTION 133]- POWER TO CALL FOR FORMATION:

The income-tax authority [being Assessing Officer, Deputy Commissioner (Appeals), Joint Commissioner or Commissioner (Appeals)] **may** -

1. Require any firm **to furnish** him with a return of the names and addresses of the partners of the firm and their respective shares;
2. **Require** any Hindu undivided family **to furnish** him with a return of the names and addresses of the manager and the members of the family;
3. **Require any person** whom he has reason to believe to be a trustee, guardian or agent, to furnish him with a

STUDY NOTE-6 SURVEY, SEARCH AND SEIZURE.

return of the names of the persons for or of whom he is a trustee, guardian or agent, and of their addresses;

4. **Require any** assessee to furnish a statement of the names and addresses of all persons **to whom** he has paid in any previous year **rent, interest, commission, royalty or brokerage, or any annuity** (not being any annuity taxable under the head "Salaries") amounting to **more than Rs.1000**, together with particulars of all such payments made;

5. **Require** any dealer, broker or agent or any person concerned in the management of a stock or commodity exchange to furnish a statement of the names and addresses of all persons -
(a) to whom he or the exchange has paid any sum in connection with the **transfer of assets**; or
(b) on whose behalf or from whom he or the exchange has **received** any such sum,
- **together with particulars of all such payments and receipts**;

6. **Require** any person, **including** a banking company or any officer thereof, to furnish information in relation to such points or matters, or to furnish statements of accounts and affairs,
- **which will be useful for, or relevant to, any enquiry or proceeding under this Act.**

NOTE:

- ✓ Where **no** proceeding is pending, the power u/s 133 shall **not be** exercised by any income-tax authority below the rank of Principal Director or Director or Principal Commissioner or Commissioner, other than the Joint Director or Deputy Director or Assistant Director, **without** the prior approval of the Principal Director or Director or the Principal Commissioner or Commissioner.
- ✓ It is to be noted that power referred in point (6) above may **also be** exercised by the Principal Director General or Director-General, the Principal Chief Commissioner or Chief Commissioner, the Principal Director or Director or the Principal Commissioner or Commissioner or the Joint Director or Deputy Director or Assistant Director.

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[SECTION 133A]-POWER OF SURVEY:

WHO CAN SURVEY:

The income-tax authority being Principal Commissioner or Commissioner, a Joint Commissioner, a Principal Director or Director, a Joint Director, an Assistant Director or a Deputy Director or an Assessing Officer or a Tax Recovery Officer or Inspector (in some circumstances) **has right to survey**.

However, **no action** shall be taken by an Assistant Director or a Deputy Director or an Assessing Officer or a Tax Recovery Officer or an Inspector of Income-tax without obtaining the approval of the Joint Director or the Joint Commissioner.

JURISDICTION OF INCOME-TAX AUTHORITY FOR CONDUCTING SURVEY:

An income-tax authority may conduct survey at –

- Any place **within** the limits of the area assigned to him; or
- Any place occupied by any person **in respect** of whom he exercises jurisdiction; or
- Any place in respect of which he **is authorised** for the purposes of this section by such income-tax authority, who is assigned the area within which such place is situated or who exercises jurisdiction in respect of any person **occupying** such place,
- **where a business or profession or an activity for charitable purpose is carried on.**

STUDY NOTE-6 SURVEY, SEARCH AND SEIZURE.

POWER OF INCOME TAX AUTHORITY:

While conducting survey, income tax authority **may exercise** following power –

1. **Enter** in such place of business;
2. **Require** any proprietor, trustee, employee or any other person who may at that time and place be attending or helping in, the carrying on of such business or profession or such activity for charitable purpose -

(a) To afford him the necessary **facility** to inspect such books of account or other documents as he may require and which may be available at such place;

And Inspector is also considered as income-tax authority for this purpose.

(b) To afford him the necessary **facility** to check or verify the cash, stock or other valuable article or thing which may be found therein; and

(c) To **furnish** such information as he may require as to any matter which may be **useful** for, or relevant to, any proceeding under this Act.

3. **Place marks** of identification on the books of account or other documents inspected by him and make extracts or copies therefrom;

And Inspector is also considered as income-tax authority for this purpose.

4. Impound [SEIZE] and retain in his custody **any** books of account or other documents inspected by him;

5. Make an inventory of **any** cash, stock or other valuable article or thing checked or **verified by him**;

6. Record **the statement** of any person, which may be useful for, or relevant to, any proceeding under this Act.

Proceeding **means** any proceeding under this Act in respect of any year which may be pending on the date on which the powers under this section are exercised or which may have been completed on or before such date and includes also all proceedings under this Act which may be commenced after such date in respect of any year.

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NOTE:

- ✓ **Deemed place of business or profession or activity for charitable purpose is carried on:** Where the person carrying on the business or profession or activity for charitable purpose **states** that any of his books of account or other documents or any part of his cash or stock or other valuable article or thing relating to his business or profession or activity for charitable purpose **are kept**, then survey shall also be conducted at that place.
- ✓ In case where survey is for the purpose of **verifying that** tax has been deducted or collected at source as per relevant provisions of the Act, in that case the income-tax authority **cannot** take exercise power mentioned in point 4 and 5 (above).

RESTRICTION ON INCOME-TAX AUTHORITY:

An income-tax authority **shall not** -

- (a) **Impound** any books of account or other documents **without** recording his reasons for doing so; or
- (b) **Retain** in his custody any books of account or other documents for a period **exceeding** 15 days (exclusive of holidays) **without** obtaining the approval of the Principal Chief Commissioner or the Chief Commissioner or the Principal Director General or the Director General or the Principal Commissioner or the Commissioner or the Principal Director or the Director thereof, as the case may be;
- (c) Remove or cause to be removed **any cash**, stock or other valuable article or thing.
- (d) The place of business or profession **cannot** be sealed under survey.

TIME FOR SURVEY:

An income-tax authority may **enter** into –

Place where business or profession is carried on	During the business hours
In case of deemed place of business or profession	Only after sunrise and before sunset

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SURVEY OF CERTAIN EXPENDITURE [SEC. 133A(5)]:

- (a) The income tax authority (including Inspector), **having regard** to the nature and scale of expenditure incurred by an assessee, **in connection** with any function, ceremony or event, is of the opinion that it is necessary or expedient to do so, he may, at any time **after** such function, ceremony or event, require -
- Assessee, who incurred such expenditure; or
 - Any person, who is likely to **possess** information in respect of such expenditure,
- to furnish such information as he may require as to any matter which may be useful for, or relevant to, any proceeding under this Act.**
- (b) He may **record** the statements of the assessee or any other person in this regard and such recorded statement may thereafter be used as evidence in any proceeding under this Act.

[SECTION 133B]-POWER TO COLLECT CERTAIN INFORMATION [DOOR TO DOOR SURVEY]:

The income-tax authority (being Joint Commissioner, Assistant Director, Deputy Director, Assessing Officer, authorised Inspector) may, for the **purpose of collecting** any information, which may be useful for, or relevant to the purposes of this Act:

- (a) Enter into —
- Any building or place within the limits of the **area** assigned to such authority; or
 - Any building or place occupied **by any** person in respect of whom he exercises jurisdiction,
- where a business or profession is carried on.**

- (b) Require any proprietor, employee or any other person who may at that time and place be attending or **helping** in such business or profession **to furnish** such information as may be prescribed

TIME FOR ENTRANCE:

An Income-tax authority may enter into such place only during the **hours** at which such **place is open** for the conduct of business or profession.

RESTRICTION ON INCOME-TAX AUTHORITY:

An income-tax authority shall **not** remove any books of account or other documents, cash, stock or other valuable article or thing **during door to door survey.**

STUDY NOTE-6 SURVEY, SEARCH AND SEIZURE.

[SECTION 133C]- POWER TO CALL FOR INFORMATION BY PRESCRIBED INCOME-TAX AUTHORITY:

- The **prescribed** income-tax authority (being Principal Director General or Director General or Principal Director or Director) may, for the purposes of verification of information in its possession relating to any person, issue a notice to such person **requiring him**, on or before a date to be specified therein, to furnish information or documents verified in the manner **specified** therein, which may be useful for, or relevant to, any inquiry or proceeding under this Act.
- Where any information or document has been received in response to a notice, the income-tax authority **may process** such information or document and make available the outcome of such processing to the Assessing Officer.
- The Board may make a scheme **for centralised** issuance of notice and for processing of information or documents and making available the outcome of the processing **to the** Assessing Officer.

[SECTION 134]- POWER TO INSPECT REGISTERS OF COMPANIES:

The Income tax authority [being Assessing Officer, Deputy Commissioner (Appeals), Joint Commissioner, Commissioner (Appeals) or any other authorized person] **may inspect** and take copies of any register of the members, debenture-holders or mortgagees of any company or of any entry in such register.

[SECTION 135]- POWER OF CERTAIN AUTHORITIES:

The Income tax authorities (being Principal Director General or Director General or Principal Director or Director, the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner and the Joint Commissioner) shall **be competent** to make any enquiry under this Act, and for this purpose shall have all the powers that an Assessing Officer has under this Act in relation to the making of enquiries.

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[SECTION 136]- PROCEEDINGS BEFORE INCOME-TAX AUTHORITIES TO BE JUDICIAL PROCEEDINGS:

Any proceeding under this Act **before** an income-tax authority shall be deemed to be a judicial proceeding within the meaning of sec. 193, 196 and 228 **of the Indian Penal Code, 1860** and every income-tax authority shall be deemed to be a Civil Court for the purposes of sec. 195, but not for the purposes of Chapter XXVI of the Code of Criminal Procedure, 1973.

[SECTION 138]- DISCLOSURE OF INFORMATION IN RESPECT OF ASSESSSEE:

TO THE AUTHORITY OF OTHER LAW:

The Board or any authorized income-tax authority **may furnish** necessary information received or obtained by them to the officer, authority or body **under any law** (hereinafter referred as other authority) for **enabling other authority** to perform his duty. Such other authority shall be the officer, authority or body under any law:

- (a) relating to the **imposition** of any tax, duty or cess, or to dealings in foreign exchange as defined in sec. 2(n) of the Foreign Exchange Management Act, 1999; or
- (b) as the Central Government may, if in its opinion it is necessary so to do **in the public interest**, specify by notification in the Official Gazette.

TO ANY OTHER PERSON:

Where a person makes an application to the authority (being Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner) **for any** information relating to any assessee received or obtained by any income-tax authority in the performance of his functions under this Act, then the such **authority may** (if he is satisfied that it is in the public interest so to do) furnish **such** information. His decision in this behalf shall **be final** and shall not be called in question in any court.

RESTRICTION ON DISCLOSURE OF INFORMATION:

The Central Government may (having regard to the practices and usages customary or any other relevant factors) **direct that no** information or document shall be furnished or produced by a public servant in respect of such matters relating to such class of assessees or except to such authorities as may be specified in the order.

STUDY NOTE-6 SURVEY, SEARCH AND SEIZURE.

[SECTION 153A]- ASSESSMENT IN CASE OF SEARCH OR REQUISITION:

Where a search is initiated u/s 132 or books of account, other documents or any assets are requisitioned u/s 132A, the following **provision** shall be followed:

PROCEDURE

NOTICE:

The Assessing Officer shall **issue notice** to such person requiring him to furnish the return of income:

- a. in respect of **each assessment** year falling **within 6** assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made; **and**
- b. for the relevant assessment **year or years**.

HERE,

- Relevant assessment year shall **mean an assessment** year preceding the assessment year relevant to the previous year in which search is conducted or requisition is made which falls beyond 6 assessment years **but not later** than 10 assessment years from the end of the assessment year relevant to the previous year in which search is conducted or requisition is made.
- No notice for assessment or reassessment shall be issued by the Assessing Officer for the relevant assessment year or years **unless**:
 - (a) The Assessing Officer **has in his** possession books of account or other documents or evidence which reveal that the income, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to **RS. 50 lakh or** more in the relevant assessment year or in aggregate in the relevant assessment years;

Asset shall **include** immovable property being land or building or both, shares and securities, loans and advances, deposits in bank account.

- (b) The income referred above or part thereof **has** escaped assessment for such year or years; and
- (c) The search u/s 132 is initiated or requisition u/s 132A is made **on or after** 01-04-2017.

STUDY NOTE-6 SURVEY, SEARCH AND SEIZURE.

TIME LIMIT FOR FURNISHING SUCH RETURN:

Such return should be furnished in prescribed Form within such time, as may be **specified** in the notice.

ASSESSMENT OF INCOME IN RESPECT OF EACH ASSESSMENT YEAR:

Assessing Officer shall assess or re-assess the total income of **each** of 6 assessment years and for the relevant assessment year or years.

TREATMENT OF PENDING ASSESSMENT:

Where any assessment or reassessment relating to any assessment year(s) falling in the said period is pending on the date of initiation of the search u/s 132 or requisition u/s 132A, the same shall **abate.** [STOPED].

NOTE:

- ✓ If any proceeding **initiated** or any order of assessment or reassessment made has been annulled [CANCELLED] in **appeal** or any other legal proceeding, then, the assessment or reassessment relating to any assessment year which has abated, shall **stand revived** [REOPENED] with effect from the date of receipt of the order of such annulment by the Principal Commissioner or Commissioner.
- ✓ Such revival shall **cease** to have effect, if such order of annulment is set aside.

[SECTION 153C]-ASSESSMENT OF INCOME OF ANY OTHER PERSON:

WHERE THE ASSESSING OFFICER IS SATISFIED THAT –

- any money, bullion, jewellery or other valuable article or thing seized or requisitioned, belongs to; or
- any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to,
 - a person **other than** the person against whom such search or requisition is made **then**,
- The books of account or documents or assets seized or requisitioned shall be handed over to the Assessing Officer **having jurisdiction over** such other person; and
- **Such** Assessing Officer **shall** proceed **against** each such other person and issue notice and assess or reassess income of such other person in accordance with the provisions of sec. 153A.

STUDY NOTE-6 SURVEY, SEARCH AND SEIZURE.

[SECTION 153B]- TIME LIMIT FOR COMPLETION OF ASSESSMENT:

Assessment Year	Time Limit
1. Each assessment year falling within 6 assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made.	Within a period of 21 months from the end of the financial year, in which the last of the authorisations for search u/s 132 or for requisition u/s 132A was executed#.
2. For relevant assessment year or years.	In the case where the last of the authorisations for search u/s 132 or for requisition u/s 132A was executed during the financial year 2018-19: Within a period of 18 months from the end of the financial year, in which the last of the authorisations for search u/s 132 or for requisition u/s 132A was executed.
3. Assessment year relevant to the previous year in which search is conducted u/s 132 or requisition is made u/s 132A	In the case where the last of the authorisations for search u/s 132 or for requisition u/s 132A was executed on or after 01-04-2019: Within a period of 12 months from the end of the financial year, in which the last of the authorisations for search u/s 132 or for requisition u/s 132A was executed
# The authorisation shall be deemed to have been executed—	
In the case of search u/s 132	On the conclusion of search as recorded in the last panchnama drawn in relation to any person in whose case the warrant of authorisation has been issued ;
In the case of requisition u/s 132A	On the actual receipt of the books of account or other documents or assets by the Authorised Officer.

STUDY NOTE-6 SURVEY, SEARCH AND SEIZURE.

NOTE :

- In case of **other person** referred to in section 153C, the period of limitation for making the assessment or reassessment shall be;
 - a. The period as referred above; or
 - b. 18 months, **in the case** where the last of the authorisations for search u/s 132 or for requisition u/s 132A was executed **during F.Y. 2018-19**, from the end of the financial year in which books of account or documents or assets seized or requisitioned are handed over u/s 153C to the Assessing Officer having jurisdiction over such other person,
- **WHICHEVER IS LATER.**
- Wherever reference has been given to **Transfer Pricing Officer** u/s 92CA, time limit in all cases shall be **increased** by 12 months.

COMPUTATION OF LIMITATION PERIOD :

In computing the above period of limitation, following period shall be excluded —

- (a) Time taken in reopening the whole or any part of the proceeding or in giving an opportunity to the assessee to be **re-heard** ;
- (b) Period during which the assessment proceeding **is stayed** by an order or injunction of a court; or
- (c) Period commencing from the date on which the Assessing Officer directs the assessee to get his accounts **audited** u/s 142(2A) [SPECIAL AUDIT] and ending with Period commencing from the date on which the Assessing Officer makes a reference to the Valuation Officer u/s 142A and ending with the date on which the report of the Valuation Officer **is received** by the Assessing Officer; or
- (d) In case, where an application made before the **Income-tax Settlement Commission** u/s 245C is **rejected**, the period commencing from the date on which such application is made and ending with the date on which the rejection order is received by the Principal Commissioner or Commissioner; **or**
- (e) Period commencing from the date on which an application is made before the Authority for **Advance Rulings** u/s 245Q and ending with the date on which the order rejecting the application is received by the Principal Commissioner or Commissioner u/s 254R; **or**
- (f) Period commencing from the date on which an application is made before the Authority for Advance

STUDY NOTE-6 SURVEY, SEARCH AND SEIZURE.

Ruling u/s 245Q and ending with the date on which the advance ruling **pronounced** by it is received by the Principal Commissioner or Commissioner u/s 245R.

(g) Period commencing from the date of annulment of a proceeding or order of assessment or reassessment u/s 153A, till the date of the receipt of the order setting aside the order of such **annulment**, by the Principal Commissioner or Commissioner; or

(h) Period (maximum period of 1 year) commencing from the date on which a reference for exchange of information is made by an authority competent under **an agreement referred** to in sec. 90 / 90A and ending with the date on which the information so requested is last received by the Principal Commissioner or Commissioner;

(i) Period commencing from the date on which a reference for declaration of an arrangement to be **impermissible avoidance arrangement** is received by the Principal Commissioner or Commissioner u/s 144BA(1) and ending on the date on which a direction u/s 144BA (3) or (6) or an order u/s 144BA(5) is received by the Assessing Officer.

Note: If after immediate exclusion of the aforesaid period, the period available to the Assessing Officer for making an order of assessment or reassessment is less than 60 days, then such remaining period shall be **extended to 60 days**.

NOTE:

- ✓ Where the period available to the Transfer Pricing Officer **is extended to 60 days** and the period of limitation available to the Assessing Officer for making an order of assessment (reassessment or recomputation) is less than 60 days, such remaining period shall also be **extended to 60 days**.
- ✓ Where a proceeding before the Settlement Commission abates u/s 245HA, the period of limitation available to the Assessing Officer for making an order of assessment (reassessment or recomputation) shall, after the exclusion of the period u/s 245HA(4), **deemed to have been extended to 1 year**.

STUDY NOTE-6 SURVEY, SEARCH AND SEIZURE.

[SECTION 153D]- PRIOR APPROVAL NECESSARY FOR ASSESSMENT IN CASES OF SEARCH OR REQUISITION:

No order of assessment or reassessment (in case of search or requisition) shall be passed by an Assessing Officer **below** the rank of Joint Commissioner except **with the prior** approval of the Joint Commissioner. However, assessment or reassessment order may be passed by the Assessing Officer with the prior approval of the Principal Commissioner or Commissioner u/s 144BA.

RAGHAV ACADEMY

STUDY NOTE-7 COLLECTION, RECOVERY AND REFUND.

[SECTION 220]- DEMAND NOTICE [Sec. 156] & PROVISIONS RELATING THERETO:

On completion of assessment (or intimation generated after processing of TDS statement), a demand notice [in Form 7] is *served* for additional demand raised in the assessment.

TIME LIMIT FOR PAYMENT OF TAX: The assessee should make the payment of amount demanded **within 30** days of service of notice. Where the Assessing Officer has any reason to believe that it will be detrimental to revenue if the **full period** of 30 days is allowed, then he may **with** the previous approval of the Joint Commissioner. **Direct** that the sum specified in the notice of demand shall be paid within such time as may be specified by him in the notice.

Extension of time limit: On an application made by the assessee before the expiry of due date, the Assessing Officer **may extend** the time for payment or allow payment by installments, **subject** to such conditions as he may think fit to impose in the circumstances of the case.

Interest on delay in payment: If the payment is not made within 30 days (or time allowed in the notice), interest shall be payable **@ 1% for every month** (or part thereof) of the delay [Sec. 220(2)].

Taxpoint: Where interest is charged u/s 201(1A) [**TDS**] on the amount of tax specified in the intimation issued u/s 200A(1) for any period, then, **no** interest shall be charged under this section on the same amount for the same period.

Similarly, where interest is charged u/s 206C(7) [**TCS**] on the amount of tax specified in the intimation issued u/s 206CB(1) for any period, then, no interest shall be charged under this section on the same amount for the same period.

Waiver or reduction of interest [Sec.220(2A)]: The Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner **may reduce or waive** the amount of interest paid or payable by an assessee u/s 220(2), if he satisfied that:

- (a) payment of such amount has caused or would **cause genuine hardship** to the assessee;
- (b) default in the payment of the amount **on which** interest has been paid or was payable under the said subsection was due to circumstances **beyond** the control of the assessee; and
- (c) the assessee **has co-operated** in any inquiry relating to the assessment or any proceeding for the recovery of any amount due from him.

The order accepting or rejecting the application of the assessee, either in full or in part, shall be passed within

STUDY NOTE-7 COLLECTION, RECOVERY AND REFUND.

a period of 12 months from the end of the month in which the application is received. No order rejecting the application, either in full or in part, shall be passed unless the assessee has been given an opportunity of being heard.

Assessee in default [Sec.220(4)]: If the amount is not paid **within the time** (or extended time) at the place and to the person mentioned in the said notice the assessee shall be **deemed** to be in default. Further, if, in a case where payment **by installments is allowed**, the assessee commits default in paying any **one of the** installments within the time, the assessee shall be deemed to be in default as to the whole of the amount then outstanding, and the other installment or installments shall be deemed to have been **due on the same date** as the installment actually in default.

Exception: In the following circumstances, the assessee may **not be** considered as an assessee in default:

(a) Where an assessee has presented an appeal u/s 246A [**appeal to CIT**], the Assessing Officer may, in his discretion and subject to such conditions as he may think fit to impose in the circumstances of the case, treat the assessee **as not being** in default in respect of the amount in dispute in the appeal, even though the time for payment has expired, as long as such appeal remains undisposed of.

(b) Where an assessee has been assessed in respect of income **arising outside** India in a country, the laws of which prohibit or restrict **the remittance** of money **to** India, the Assessing Officer shall **not** treat the assessee **as in default** in respect of that part of the tax which is due in respect of that amount of his income which, by reason of such prohibition or restriction, cannot be brought into India, and shall continue to treat the assessee as not in default in respect of such part of the tax **until** the such prohibition or restriction **is removed**.

For this purpose, income shall be deemed to have been brought into India if it has been utilised or could have been utilised for the purposes of any expenditure actually incurred by the assessee **outside** India [incurred their then treated as income] or if the income, whether capitalised or not, has been **brought into** India in any form.

STUDY NOTE-7 COLLECTION, RECOVERY AND REFUND.

[SECTION 221]- PENALTY PAYABLE WHEN TAX IN DEFAULT:

When an assessee **is in** default or is deemed to be in default **in making** a payment of tax, **he shall**, in addition to the amount of the arrears and the amount of interest payable u/s 220(2), **be liable**, by **way of** penalty, to pay such amount as the Assessing Officer may direct, and in the case of a continuing default, such further amount or amounts as the Assessing Officer may from time to time increased but the total amount of penalty **does not exceed** the amount of tax in arrears.

NOTES :

- (a) The assessee shall be **given** a reasonable opportunity of being heard.
- (b) Where the assessee **proves** to the satisfaction of the Assessing Officer that the default was for good and sufficient reasons, **no** penalty shall be levied under this section.
- (c) An assessee shall **not cease** to be liable to any penalty merely by reason of the fact that before the levy of such penalty he has paid the tax. **[means if tax paid before imposing penalty then it will not waived, it impose accordingly].**
- (d) Where as a result of any final order the amount of tax, with respect to the default in the payment of which the penalty was levied, has been **wholly reduced**, the penalty levied shall **be cancelled** and the amount of penalty paid shall **be refunded**.

STUDY NOTE-7 COLLECTION, RECOVERY AND REFUND.

[SECTION 222]-CERTIFICATE TO TAX RECOVERY OFFICER:

1. When an assessee is in default **or is deemed** to be in default in making a payment of tax, the Tax Recovery Officer may draw up under his signature a statement in the prescribed form (Form 57) **specifying** the amount of arrears due from the assessee (such statement being hereafter referred to as "certificate") and shall proceed to recover **from** such assessee the amount specified in the certificate by **one or more** of the modes mentioned below :
 - (a) attachment and sale of the assessee's **movable property**;
 - (b) attachment and sale of the assessee's **immovable property**;
 - (c) **arrest** of the assessee and his detention in prison [i.e **improsement**];
 - (d) appointing a receiver **for the management** of the assessee's movable and immovable properties.
2. The assessee's movable or immovable property **shall include** any property which has been transferred, directly or indirectly **after 31-5-1973**, by the assessee **to his** spouse or minor child or son's wife or son's minor child, **otherwise than for** adequate consideration, **and** which is held by, or stands in the name of, any **of the** persons aforesaid.

If the movable or immovable property was transferred to his minor child or his son's minor child, it shall, even after the date of **attainment of majority** by such minor child or son's minor child, as the case may be, continue to be **included** in the assessee's movable or immovable property for recovering any arrears due from the assessee.
3. **No step** in execution of a certificate shall be taken **until** the period of 15 days has **elapsed** since the date of the service of the notice. However, if the Tax Recovery Officer is satisfied that the defaulter is **likely to** conceal, remove or dispose of his property, he may **at any time direct**, for reasons to be recorded in writing, an **attachment of such** property.

Further, if the defaulter whose property has been so attached furnishes security to the satisfaction of the Tax Recovery Officer, such attachment **shall be cancelled** from the date on which such security is accepted by the Tax Recovery Officer.

STUDY NOTE-7 COLLECTION, RECOVERY AND REFUND.

4. Arrear amount includes:
 - (a) interest **upon** the amount of tax or penalty or other sum to which the certificate relates as is payable in accordance with sec. 220(2); and
 - (b) all charges incurred in **respect of**:
 - (i) the service of notice and of warrants **and other** processes; &
 - (ii) all other proceedings **taken** for realising the arrears.
5. The proceeds shall be disposed of in the following **manner**:
 - (a) they shall **first be** adjusted towards the amount due under the certificate in execution of which the assets were realised and the costs incurred in the course of such execution;
 - (b) if there remains a balance, the same shall be **utilised for** satisfaction of any other amount recoverable from the assessee under this Act which may be due on the date on which the assets were **realised**; &
 - (c) the balance, if any, remaining after above adjustments shall be **paid to the defaulter [refund]**.
6. The order of Tax Recovery Officer relating to the execution or discharge etc. **shall** be final.
7. However, a suit may be brought **in a civil court** upon the ground of fraud.
8. If at any time after the certificate is drawn up by the Tax Recovery Officer the defaulter **dies**, the proceedings (except arrest and detention) may be continued **against** the legal representative of the defaulter.
An appeal from any original order **passed** by the Tax Recovery Officer shall in favour to the Chief Commissioner or Commissioner. Such appeal must be presented **within 30** days from the date of the order appealed against.
Pending the decision of any appeal, execution of the certificate **may be** stayed if the appellate authority so directs, but not otherwise.

STUDY NOTE-7 COLLECTION, RECOVERY AND REFUND.

[SECTION 223]- TAX RECOVERY OFFICER BY WHOM RECOVERY IS TO BE EFFECTED:

1. The Tax Recovery Officer **competent** to take action u/s 222 **shall be**:
 - (a) the Tax Recovery Officer **within whose** jurisdiction the assessee carries on his business or profession or within whose jurisdiction the principal place of his business or profession is situate; or
 - (b) the Tax Recovery Officer within whose jurisdiction the assessee **resides** or any movable or immovable property of the assessee is situate,

Then the jurisdiction for this purpose being the jurisdiction assigned to the Tax Recovery Officer under the orders or directions issued by the Board, or by the Chief Commissioner or Commissioner who is **authorised** in this behalf by the Board.

2. Where an assessee **has property** within the jurisdiction of **more than one** Tax Recovery Officer and the Tax Recovery Officer **by** whom the certificate **is** drawn up:
 - (a) **is not able** to recover the entire amount by sale of the property, movable or immovable **within** his jurisdiction; or
 - (b) is of the opinion that, for the purpose of **securing** the recovery of the whole or any part of the amount, it is necessary so to do,

Then he may **send** the certificate or a copy of the certificate certified in the prescribed manner and specifying the amount to be recovered to a Tax Recovery Officer **within** whose jurisdiction the assessee **resides or has property** and, thereupon, that Tax Recovery Officer **shall also** proceed to recover the amount as if the certificate or copy thereof had been drawn up by him.

[Section 224]- VALIDITY OF CERTIFICATE AND CANCELLATION OR AMENDMENT THEREOF:

It shall **not be open** to the assessee to dispute the correctness of any certificate drawn **up by the** Tax Recovery Officer on any ground whatsoever, but it shall be lawful for the Tax Recovery Officer to cancel the certificate if, for any reason, he thinks it necessary so to do, or **to correct any** clerical or arithmetical mistake therein.

STUDY NOTE-7 COLLECTION, RECOVERY AND REFUND.

[SECTION 225]-STAY OF PROCEEDINGS:

1. It shall be lawful for the Tax Recovery Officer to **grant time** for the payment of any tax and **when he does so**, he shall stay the proceedings for the recovery of such tax **until** the expiry of the time so granted.
2. Where the order giving rise to a demand of tax for which a **certificate** has been drawn up **is modified** in appeal or other proceeding under this Act, and, as a consequence thereof, the demand **is reduced** but the order is the subject-matter of further proceeding under this Act, the Tax Recovery Officer shall **stay** the recovery of such part of the amount specified in the certificate as **related** to the said reduction for the period for which the appeal or other proceeding remains pending.
3. **When** the order which was the subject-matter of such appeal or other proceeding has become final and conclusive, TRO **shall amend** the certificate or cancel it.

[SECTION 226]-OTHER MODES OF RECOVERY:

1. Whether or not certificate has been drawn up u/s 222, the Assessing Officer may recover the tax by any **one or more of the modes** provided in this section.
2. **Attachment of salary:** If any assessee **is in receipt** of any income chargeable under the head "Salaries", the Assessing Officer or Tax Recovery Officer **may require any** person paying the same (i.e., the employer) to deduct from any payment subsequent to the date **of such requisition**, any arrears of tax due from such assessee. The employer **shall comply** with any such requisition and shall pay the sum so deducted to the credit of the Central Government or as the Board directs.
3. **Garnishee order:** The Assessing Officer or Tax Recovery Officer may by notice in writing require, any person **from whom** money is due **or any person** holds or may subsequently hold money for or **on account of the assessee**, to pay to the Assessing Officer or Tax Recovery Officer **so much** of the money (subject to maximum of amount payable to assessee) **as is sufficient** to pay the amount due by the assessee.

STUDY NOTE-7 COLLECTION, RECOVERY AND REFUND.

If the person to whom a notice is sent **fails to** make payment in pursuance thereof to the Assessing Officer or Tax Recovery Officer, he shall be **deemed** to be an assessee in default in respect of the amount specified in the notice and further **proceedings** may be taken against him for the realisation of the amount **as if** it were an arrear of tax due from him.

Any person discharging any liability to the assessee after receipt of a notice shall be **personally liable** to the Assessing Officer or Tax Recovery Officer **to the extent** of his own liability to the assessee so discharged **or to** the extent of the assessee's liability for any sum due under this Act, **whichever is less**.

A copy of the notice shall be forwarded to the assessee **at his last** address known to the Assessing Officer or Tax Recovery Officer.

Where a person to whom a notice is sent **objects** to it by a statement on oath that the sum demanded or any part thereof is not due to the assessee or that he does not hold any money for or on account of the assessee, **then, nothing** shall be deemed to require **such** person to pay any such sum or part thereof.

But if it is discovered that such statement **was false** in any material particular, such person shall be personally **liable** to the Assessing Officer or Tax Recovery Officer to the extent of his own liability to the assessee on the date of the notice, or to the extent of the assessee's liability for any sum due under this Act, **whichever is less**.

4. The Assessing Officer or Tax Recovery Officer **may apply to** the court in whose custody there is money belonging to the assessee for payment to him of the entire amount of such money, or, if it is more than the tax due, an amount sufficient to discharge the tax.
5. The Assessing Officer or Tax Recovery Officer **may, if authorised** by the Chief Commissioner or Commissioner by general or special order, **recover** any arrears of tax due from an assessee by **distraint and sale** of his movable property.
6. The recovery of tax in any area has been entrusted to a State Government, the State Government **may recovers** any arrears of tax in the same manner as the municipal tax or local rate is recovered.
[SECTION 227].

STUDY NOTE-7 COLLECTION, RECOVERY AND REFUND.

[SECTION 228A]- RECOVERY OF TAX IN PURSUANCE OF AGREEMENTS WITH FOREIGN COUNTRIES:

1. Where an agreement is entered into **by the** Central Government with the Government **of any country** outside India for recovery of income-tax under this Act and the corresponding law in force in that country and the Government of that country or any authority under that Government which is **specified** in this behalf in such agreement **sends to the Board** a certificate for the recovery of any tax due under such corresponding law **from a resident or a person having any property in India**, the Board may forward such certificate to any Tax Recovery Officer having jurisdiction over the resident or within whose jurisdiction such property is situated and thereupon such Tax Recovery Officer **shall**:
 - (a) **proceed** to recover the amount specified in the certificate in the manner in which he would proceed to recover the amount specified in a certificate drawn up by him u/s 222; and
 - (b) **remit** any sum so recovered by him **to the Board** after deducting his expenses in connection with the recovery proceedings.
2. Where an assessee is in default **or is deemed** to be in default in making a payment of tax, the Tax Recovery Officer may, if the assessee is a resident of a country (being a country with which the Central Government has entered into an agreement for the recovery of income-tax under this Act and the corresponding law in force in that country) or has any property **in that country**, forward to the Board a certificate drawn up by him u/s 222 and the **Board may take** such action thereon as it may deem appropriate having regard to the terms of the agreement with such country.

[SECTION 230]-TAX CLEARANCE CERTIFICATE:

PERSON NOT DOMICILE [RESIDENT] IN INDIA:

1. No person,—
 - (a) who is **not** domiciled [RESIDENT] in India;
 - (b) who has come to India **in connection** with business, profession or employment; and
 - (c) who has income derived from any source **in India**,

shall leave the territory of India by land, sea or air **unless** he furnishes to the prescribed authority:

- (i) an undertaking in the prescribed form [Form 30A] **from his employer**; or

STUDY NOTE-7 COLLECTION, RECOVERY AND REFUND.

(ii) through whom such person is in receipt of the income, **to the effect** that tax payable by such person who is not domiciled in India shall be **paid by the employer** or the payer, and the prescribed authority shall, on receipt of the undertaking, immediately give to such person a **no objection certificate** [Form 30B], for leaving India.

2. The aforesaid provision is not applicable to a person **who is not domiciled in India but visits** India as a **foreign tourist** or for any other purpose **not connected** with business, profession or employment.

PERSON DOMICILE IN INDIA:

1. Every person, who is domiciled in India **at the time** of his departure from India, shall furnish, in the prescribed form [Form 30C] to the income-tax authority or such other prescribed authority:
 - (a) the **permanent account number** allotted to him u/s 139A

However, where permanent account number has not been allotted to him, or his total income is not chargeable to income-tax or he is not required to obtain a permanent account number under this Act, such person shall furnish a **certificate in the prescribed form**.

- (b) the **purpose** of his visit outside India;
(c) the **estimated period** of his stay outside India:

2. No person:
 - (i) who is domiciled **[RESIDENT]** in India at the time of his departure; and
 - (ii) in respect of whom **circumstances** exist which, in the opinion of an income-tax authority **render it** necessary for such person to obtain a certificate under this section, **shall leave** the territory of India by land, sea or air unless he obtains a certificate from the income-tax authority **stating** that he has no liabilities under direct tax, or that satisfactory arrangements have been made for the payment of all or any of such taxes which are or may become payable by that person.

No such order shall be made **unless** such income tax authority records the reasons therefor and obtains the prior approval of the Principal Chief Commissioner or Chief Commissioner of Income-tax.

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LIABILITY OF THE CARRIER:

1. If the **owner or charterer** of any ship or aircraft carrying persons from **any place in** the territory of India to any place outside India allows any of the aforesaid person to travel by such ship or aircraft **without** first satisfying himself **that** such person is in possession of a certificate **as required**, he shall be personally liable to pay the whole or any part of the amount of tax, if any, payable **by such** person as the Assessing Officer may, determine.
2. In respect of any sum payable by the owner or charterer of any ship or aircraft, the owner or charterer, as the case may be, shall be **deemed to be an assessee in default** for such sum, and such sum shall be recoverable from him as if it were an arrear of tax.
Owner and charterer include any representative, agent or employee **empowered** by the owner or charterer to allow persons to travel by the ship or aircraft.

[SECTION 232]- RECOVERY BY SUIT OR UNDER OTHER LAW NOT AFFECTED:

The several modes of recovery specified in this Chapter **shall not affect** in any way:

- (a) any **other law** for the time being in force relating to the recovery of debts due to Government; or
- (b) the right of the Government to institute a suit for the recovery of the arrears due from the assessee; and it shall be **lawful** for the Assessing Officer or the Government, as the case may be, to have support **to any** such law or suit, notwithstanding that the tax due is being recovered from the assessee by any mode specified in this Chapter.

STUDY NOTE-7 COLLECTION, RECOVERY AND REFUND.

[SECTION 281B]- PROVISIONAL ATTACHMENT TO PROTECT REVENUE IN CERTAIN CASES:

1. Where, **during the pendency** of any proceeding for the assessment or reassessment, the Assessing Officer is of the opinion that for the purpose of **protecting** the interests of the revenue it is necessary so to do, he may, with the **previous** approval of the Chief Commissioner, Commissioner, Director General or Director, by order in writing, attach provisionally any property belonging to the assessee.
2. Every such provisional attachment shall **cease** [REMOVE] to have effect **after** the expiry of a period of 6 months from the date of such order.

However, Principal Chief Commissioner or Chief Commissioner, Principal Commissioner or Commissioner, Principal Director General or Director General or Principal Director or Director may, for **reasons** to be recorded in writing, **extend** the aforesaid period by such further period or periods as he thinks fit, so, **however**, that the total period of extension shall **not** in any case **exceed** 2 years or 60 days after the date of order of assessment or reassessment, whichever is later.

3. Where the assessee **furnishes a guarantee** from a scheduled bank for an amount not less than the fair market value of the property provisionally attached, the Assessing Officer shall, by an order in writing, **revoke such attachment**. However, where the Assessing Officer is satisfied that a guarantee from a scheduled bank for **an amount lower** than the fair market value of the property **is sufficient** to protect the interests of the revenue, he **may accept** such guarantee and revoke the attachment.
4. The Assessing Officer may, for the purposes of determining the value of the property provisionally attached, make a **reference to the** Valuation Officer referred to in sec. 142A, who shall estimate the fair market value of the property in the manner provided under that section and submit a report of the estimate to the Assessing Officer **within a period of 30 days** from the date of receipt of such reference.
5. An order revoking the provisional attachment **shall be made**:
 - within 45 days from the date of receipt of the guarantee, **where a reference** to the Valuation Officer has been made; or
 - within 15 days from the date of receipt of guarantee **in any other case**.
6. Where a notice of demand specifying a sum payable is served upon the assessee **and the assessee fails** to pay that sum within the time specified in the notice of demand, the Assessing Officer may invoke [CHOOSE] the guarantee furnished, wholly or in part, **to recover the amount**.

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7. The Assessing Officer shall, in the interests of the revenue, invoke the bank guarantee, if the assessee **fails to renew** the guarantee, or fails to furnish a new guarantee from a scheduled bank for an equal amount, **15 days before** the expiry of the guarantee.
8. The amount **realised** by invoking the guarantee shall be adjusted **against the existing** demand which is payable by the assessee and the balance amount, **if any**, shall be deposited in the Personal Deposit Account of the Principal Commissioner or Commissioner **in the branch of the Reserve Bank of India** or the State Bank of India or of its subsidiaries or any bank as may be appointed by the Reserve Bank of India as its agent at the place where the office of the Principal Commissioner or Commissioner is **situate**.
9. Where the Assessing Officer **is satisfied** that the guarantee is not required **anymore** to protect the interests of the revenue, he shall **release** that guarantee forthwith.

[SECTION 281]-CERTAIN TRANSFERS TO BE VOID:

1. Where, during the pendency of any proceeding under this Act or after the completion thereof, **but before the** service of notice by TRO, any assessee creates a charge on or parts with the possession (by way of sale, mortgage, gift, exchange or any other mode of transfer whatsoever) of, **any of his assets** in favour of any other person, such charge or transfer **shall be void** as against any claim in respect of any tax or any other sum payable by the assessee as a result of the completion of the said proceeding or otherwise.
2. **Assets means** land, building, machinery, plant, shares, securities and fixed deposits in banks, to the extent to which any of the assets aforesaid does not form part of the stock-in-trade of the business of the assessee.
3. However, such charge or transfer shall **not be void** if it is made:
 - (i) for adequate consideration **and** without notice of the pendency of such proceeding or without notice of such tax or other sum payable by the assessee; or
 - (ii) with the **previous** permission of the Assessing Officer.
4. This section applies to cases where the amount of tax or other sum payable or likely to be payable **exceeds RS.5,000** and the assets charged or transferred **exceed RS.10,000 in value**.

STUDY NOTE-7 COLLECTION, RECOVERY AND REFUND.

[SECTION 282]- SERVICE OF NOTICE GENERALLY:

The service of a notice or summon or requisition or order or any other communication under this Act (hereafter in this section referred to as “communication”) may be **made by delivering or transmitting** a copy thereof, to the person therein named:

- (a) **by post** or by such courier services as may be approved by the Board; or
- (b) in such manner as **provided** under the Code of Civil Procedure, 1908 for the purposes of service of summons; or
- (c) **by e-mail**; or
- (d) by any other means of transmission of documents as provided by rules **made by the Board** in this behalf.

[SECTION 282A]- AUTHENTICATION OF NOTICES AND OTHER DOCUMENTS:

- Where the Act requires a notice or other document **to be issued** by any income-tax authority, such notice or other document **shall be signed** and issued in paper form or communicated **in electronic** form by that authority in accordance with such procedure as may be prescribed.
- Every notice or other document to be issued, served or given for the purposes of this Act by any income-tax authority, **shall be deemed** to be authenticated if the name and office of a designated income-tax authority is printed, stamped or otherwise **written** thereon.

[SECTION 292B]- RETURN OF INCOME, etc., NOT TO BE INVALID ON CERTAIN GROUNDS:

No return of income, assessment, notice, summons or other proceeding, furnished or made or issued or taken or purported to **have been furnished** or made or issued or taken in pursuance of any of the provisions of this Act **shall be invalid** merely by reason of **any mistake**, defect or omission in such return of income, assessment, notice, summons or other proceeding if such return of income, assessment, notice, summons or other proceeding is in substance and effect in conformity with or according to the **intent** and purpose of this Act.

STUDY NOTE-7 COLLECTION, RECOVERY AND REFUND.

[SECTION 292BB]- NOTICE DEEMED TO BE VALID IN CERTAIN CIRCUMSTANCES:

Where an assessee has appeared in any proceeding or co-operated in any inquiry relating to an assessment or reassessment, it **shall be deemed** that any notice, which is required to be served upon him, has been duly **served** upon him **in time** in accordance with the provisions of this Act and such assessee shall be precluded [STOPED] from **taking** any objection in any proceeding or inquiry under this Act **that the notice was**—

- (a) **not** served upon him; or
- (b) **not** served upon him in time; or
- (c) served upon him **in an improper** manner.

However, aforesaid provision is not applicable, where the assessee **has raised** such objection **before the** completion of such assessment or reassessment.

STUDY NOTE-7 COLLECTION, RECOVERY AND REFUND.

RAGHAVA ACADEMY

STUDY NOTE -8 APPEALS, RECTIFICATION, REVISION, SETTLEMENT COMMISSION.

APPEALS:

APPELLATE AUTHORITIES IN INCOME-TAX ACT:

Appeal	Appellate authority	Against which order	Appellant
1st	Commissioner (Appeals)	Against specified order of the Assessing Officer	Assessee only
2nd	Income Tax Appellate Tribunal (ITAT)	Against the order of Commissioner (Appeals)	Assessee or the Commissioner (or Principal Commissioner) of Income tax.
3rd	High Court	Against the order of ITAT (the case must involve substantial question of law)	Assessee or the Commissioner (or Principal Commissioner) of Income tax.
Final	Supreme Court	Against the order of High Court	Assessee or the Commissioner (or Principal Commissioner) of Income tax.

[Sec. 246A to 250]-APPEALS TO COMMISSIONER OF INCOME TAX (APPEALS) [CIT (A)]:

Aggrieved tax payer **can file** appeal before the Commissioner (Appeals) having jurisdiction over the tax payer. **Designation** of the Commissioner (Appeals), with whom appeal is to be filed **is also mentioned** in the notice of demand issued by the Assessing Officer u/s 156.

STUDY NOTE -8 APPEALS, RECTIFICATION, REVISION, SETTLEMENT COMMISSION.

PROVISION REGARDING APPEAL TO THE COMMISSIONER (APPEAL) ARE ENUMERATED BELOW:

Appealable Orders	<p>1. U/s 246A</p> <ul style="list-style-type: none">• Order passed by a Joint Commissioner u/s 115VP(3)(ii);• Order against the assessee, where the assessee denies his liability to be assessed under this Act;• Intimation u/s 143(1) or 143(1B) or 200A(1) or 206CB(1) or Order of assessment u/s 143(3) [Scrutiny assessment] [except an order passed in pursuance of directions of the Dispute Resolution Panel or an order referred to in sec. 144BA(12)] or u/s 144 [Best judgment assessment] in respect of income assessed or tax determined or loss computed or residential status;• Order of assessment, reassessment or recomputation u/s 147 [(except an order passed in pursuance of directions of the Dispute Resolution Panel or an order referred to in sec. 144BA(12)], 150 & 153A [except an order passed in pursuance of directions of the Dispute Resolution Panel or an order referred to in sec. 144BA(12)];• Order u/s 154 (Rectification of Mistake) or u/s 155 (other amendments) having the effect of enhancing the assessment or reducing a refund or an order refusing to allow the claim made by the assessee [except where it is in respect of an order referred to in sec. 144BA(12)]• Order u/s 92CD(3)• Order u/s 163 treating assessee as an agent of a non-resident;• Order u/s 170 relating to assessment on succession;• Order u/s 171 refusing to recognize partition of an HUF;• Order u/s 201 or 206C(6A) for default of provisions of TDS/TCS;• Order u/s 237 relating to refunds;• Order relating to Penalty;• Order imposing penalty under chapter XXI;• An order of penalty imposed under chapter XXI or an order of imposing or enhancing penalty u/s 275(1A)• Any order made by an Assessing Officer other than a Joint Commissioner, as the Board may direct.
	<p>2. U/s 248</p> <p>Where under an agreement or other arrangement –</p> <ul style="list-style-type: none">• the tax deductible u/s 195 on any income (other than interest) is to be borne by the person by whom the income is payable; &• such person having paid such tax to the credit of the Central Government, claims that no

STUDY NOTE -8 APPEALS, RECTIFICATION, REVISION, SETTLEMENT COMMISSION.

	<p>tax was required to be deducted on such income, he may appeal to the Commissioner (Appeals) for a declaration that no tax was deductible on such income</p> <p>Notes:</p> <ul style="list-style-type: none"> a) Even when reassessment proceedings have been initiated u/s 147, an appeal can still be filed against the original assessment order passed u/s 143(3) b) Assessee has the right to appeal against an order of the Assessing Officer which is passed while giving effect to the decision of the appellate authority.
Time limit for filing appeal	Appeal should be filed within 30 days from -
Where the appeal is u/s 248	The date of payment of the tax
Where the appeal relates to any assessment or penalty	The date of service of notice of demand relating to the assessment or penalty
In any other case	The date on which intimation of the order, sought to be appealed against, is served.
	<p>Period to be excluded [Sec.268]</p> <p>While calculating the above time limit, following period shall be excluded -</p> <ul style="list-style-type: none"> a) The day on which order complained of was served; and b) Time required for obtaining a copy of the order, where a copy of the order was not furnished with notice of demand. c) Where an application has been made u/s 270AA (seeking immunity from penalty and prosecution), the period beginning from the date on which the application is made, to the date on which the order rejecting the application is served on the assessee
Delay in filing appeal	The Commissioner (Appeals) may admit belated application on sufficient cause being shown. Note: It is statutory obligation of the appellate authority (where an application for condonation is filed) to consider whether sufficient cause was shown by the appellant
Form of	Form 35 (Mode of filing depends i.e., electronically or in paper form, on mode of filing

STUDY NOTE -8 APPEALS, RECTIFICATION, REVISION, SETTLEMENT COMMISSION.

appeal	return of income of the assessee)
Documents to be submitted	<ul style="list-style-type: none"> • Order against which appeal is made • Statement of facts • Grounds of appeal • Notice of demand (in Original) • Challan
Verification of Form	Form & grounds of appeal must be verified by the person authorised to verify the return of income u/s 140

Payment of tax before filing of appeal	<p>If a return has been filed – Tax as per the return should be paid.</p> <p>If no return has been filed – The assessee should pay an amount equal to the advance tax which was payable by him. However, CIT(A) may, for any good and sufficient reason (recorded in writing), accept the appeal without payment of such advance tax.</p> <p>Power of Assessing Officer: As per sec. 220(6), where an assessee has presented an appeal u/s 246A, Assessing Officer may treat the assessee as not being in default in respect of the amount in dispute in the appeal.</p> <p>It may be applied –</p> <ul style="list-style-type: none"> • at the discretion of the Assessing Officer; • subject to such conditions as Assessing Officer may think fit to impose; • even though the time for payment has expired; • as long as such appeal remains undisposed of. <p>Where assessee has not made an application u/s 220(6) or his application u/s 220(6) has been rejected, he can approach the appellate authority for stay order against collection</p>
Fee	Where assessed income as computed by the Assessing Officer is -
	<ul style="list-style-type: none"> • Up to RS. 1,00,000 – RS. 250
	<ul style="list-style-type: none"> • Exceeds RS. 1,00,000 but does not exceed RS. 2,00,000 – RS. 500
	<ul style="list-style-type: none"> • Exceeds RS. 2,00,000 – RS. 1,000
Where the subject matter of appeal is not covered in above cases	Where the subject matter of appeal is not covered in above cases – RS. 250
Procedure	<p>1. Fixation of Day & Place: The Commissioner (Appeals) shall fix a day and place for the hearing of the appeal, and shall give notice of the same to the appellant and to the Assessing Officer against whose order the appeal is preferred.</p>

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	<p>2. Hearing: The appellant (either in person or by an authorised representative) and the Assessing Officer (either in person or by an authorised representative) shall have the right to be heard at the hearing of the appeal.</p> <p>Taxpoint: Where the assessee does not insist on a personal hearing the appeal may be decided on the basis of written submission made by him. [Letter No. 277/7/84 of November, 1985]</p> <p>3. Adjournment: The Commissioner (Appeals) shall have the power to adjourn the hearing of the appeal from time to time.</p> <p>4. Inquiry: The Commissioner (Appeals) may, before disposing of any appeal, make such further inquiry as he thinks fit, or may direct the Assessing Officer to make further inquiry and report the result of the same to the Commissioner (Appeals).</p> <p>5. Order: Commissioner (Appeals) must dispose of the appeal by passing an order which shall-</p> <ul style="list-style-type: none">• be in writing;• mention the points for determination;• mention the decision thereon; and• mention the reason for the decision.
	<p>6. Communication of Order: The Commissioner (Appeals) shall communicate the order passed by him to the assessee and to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.</p> <p>Note: If during pendency of an appeal, provision of any law has changed with retrospective effect, then such changed law shall be applicable on such appeal too. Law amended retrospectively would be a good law for applicability during the pendency of the appeal.</p>

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New grounds during hearing	The Commissioner (Appeals) may, at the hearing of an appeal, allow the appellant to go into any ground of appeal not specified in the 'grounds of appeal', if he is satisfied that the omission of that ground from the Form of appeal was not wilful or unreasonable.	
Time limit for disposal of appeal	Within one year from the end of financial year in which appeal is filed (if possible).	
Production of additional evidence	<p>Appellate authority has the power to accept additional evidence (after recording reason for its admission in writing) and may make further enquiry at his discretion before disposing of the appeal</p> <p>In the following circumstances additional evidence shall be admitted by the Commissioner (Appeals):</p> <ul style="list-style-type: none"> a) Where the Assessing Officer has refused to admit evidence which ought to have been admitted; or b) Where appellant was prevented by sufficient cause from producing before the Assessing Officer any evidence, which is related to any ground of appeal; or c) Where the appellant was prevented by sufficient cause from producing the evidence, which he was called upon to produce by the Assessing Officer; or d) Where the Assessing Officer has made an order (appealed against) without giving sufficient opportunity to the appellant to produce evidence relevant to any ground of appeal. <p>Taxpoint: Before taking into account the additional evidence filed, Commissioner (Appeals) is to provide reasonable opportunity to the Assessing Officer for examining the additional evidence or the witness as well as to produce evidences to rebut additional evidences filed by the tax payer.</p>	
Powers of Commissioner	1. Against an order of assessment	To confirm, reduce, enhance or annul the assessment

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(Appeals) u/s 251.		
	2. Against an order imposing a penalty	To confirm or cancel such order or vary it so as either to enhance or to reduce the penalty;
	3. Against the order of assessment in respect of which the proceeding before the Settlement Commission abates u/s 245HA	To confirm, reduce, enhance or annul the assessment after taking into consideration all the material and other information produced by the assessee before, or the results of the inquiry held or evidence recorded by, the Settlement Commission, in the course of the proceeding before it and such other material as may be brought on his record
	4. Relating to any other case	To pass such orders as he thinks fit.
Notes:	<p>1. The Commissioner (Appeals) may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before the Commissioner (Appeals) by the appellant.</p> <p>2. Commissioner (Appeals) shall not enhance an assessment or a penalty or reduce the amount of refund unless the appellant has had a reasonable opportunity of showing cause against such enhancement or reduction.</p> <p>3. An assessment order, which is void ab initio cannot become a valid order simply by virtue of the fact that it has been confirmed by an appellate authority.</p>	
Withdrawal of appeal.	Appeal once filed cannot be withdrawn.	

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[Sec. 252 to 255]-APPEALS TO INCOME TAX APPELLATE TRIBUNAL (ITAT):

Appeal against an order of Commissioner (Appeals) lies with the Income Tax Appellate Tribunal (ITAT). Both tax payer and the Assessing Officer **can file appeal** before the Appellate Tribunal. Several Benches of the Appellate Tribunal constituted all over India by the Central Government and it functions under the Ministry of Law. It consists of as many judicial and accountant **members** as the Central Government thinks fit to exercise the powers and discharge the functions conferred on the Appellate Tribunal by this Act.

Qualification of members

Member	Qualification
Judicial	<ul style="list-style-type: none">• He has held a post of Judicial Officer in the territory of India for at least 10 years; or• He has been served as a member of the Indian Legal Service in Grade II post or any higher post for at least 3 years; or• He has been an advocate for at least 10 years.
Accountant	<ul style="list-style-type: none">• He has practiced as a Chartered Accountant for at least 10 years; or• He has practiced as a registered accountant for at least 10 years; or• He has practiced partly as a registered accountant and partly as a Chartered Accountant for at least 10 years; or• He has been a member of the Indian Income-tax Service, Group A and has held the post of the Additional Commissioner of Income tax or any equivalent or higher post for at least 3 years.

President of the ITAT:

- The Central Government shall appoint:
 - a person who is a sitting or retired Judge of a High Court and who has completed not less than 7 years of service as a Judge in a High Court; or
 - one of the Vice-Presidents of the Appellate Tribunal,
- TO BE THE PRESIDENT THEREOF.
- The Central Government may appoint one or more members of the Appellate Tribunal **to be the VicePresident(s).**
- The Vice-President shall exercise such of the powers and perform such of the functions of the President as may be **delegated to him** by the President by a general or special order in writing.

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Appealable Orders and Procedure of Appeal:

Appealable Orders	A. Appeal by assessee <ol style="list-style-type: none"> 1. An order passed by a Commissioner (Appeals) u/s 154, 250, 270A, 271, 271A, 271J or 272A; or 2. An order passed by a Principal Commissioner or Commissioner u/s 12AA [registration of trust], 80G(5)(vi), 263 [revision order], 154, 270A or 271 or 272A; or 3. An order passed by an Assessing Officer u/s 143(3) or 147 or 153A or 153C in pursuance of the directions of the Dispute Resolution Panel or with the approval of the Commissioner (or Principal Commissioner) as referred to in sec. 144BA(12) or an order passed u/s 154 or 155 in respect of such order. 4. An order passed by an Assessing Officer u/s 115VZC(1) 5. An order passed by the prescribed authority u/s 10(23C)(iv) or (v) or (vi) or (via) 6. An order passed by Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General or Principal Director or Director u/s 272A [penalty].
	B. Appeal by the Principal Commissioner or Commissioner The Principal Commissioner or Commissioner may direct the Assessing Officer to appeal against the order passed by the Commissioner (Appeals) u/s 154 or 250 [The Board has directed that the appeal shall be filed by the department only if tax effect exceeds RS. 50,00,000, subject to certain exceptions]
Time limit for filing appeal	Within 60 days. The period shall start from the date on which order sought to be appealed is communicated to the assessee or Commissioner.
Delay in filing appeal	Tribunal may admit belated application on sufficient cause being shown.
Withdrawal of appeal	An assessee cannot withdraw an appeal filed to Tribunal
Form	Form 36
Documents to be submitted and number of copies thereof	<ol style="list-style-type: none"> 1. Memorandum of Appeal 2. Order appealed against (including one certified copy) 3. Order of Assessing Officer 4. Grounds of appeal before first appellate authority 5. Statement of facts filed before first appellate authority 6. In case, appeal against order levying penalty, relevant order

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Fee payable by assessee	Where assessed income as computed by the Assessing Officer is -
• Upto RS. 1,00,000	– RS. 500
• Exceeds RS. 1,00,000 but does not exceed RS. 2,00,000	– RS. 1,500
• Exceeds RS. 2,00,000	– 1% of Assessed income [Max. RS. 10,000]
Stay petition	– RS. 500
Any other case	– RS. 500
Fee payable by CIT	No fees shall be payable in case of appeal by Commissioner
Verification of Form	Form 36 and grounds of appeal should be verified by the person authorized to verify the return of income u/s 140 [Rule 47]
Cross objection	Assessing Officer or the assessee, as the case may be, on receipt of notice that an appeal against the order of the Commissioner (Appeals) has been filed by the other party, may file a memorandum of cross objection with the Tribunal
Time limit for filing of cross objections	Within 30 days of receipt of notice that appeal has been filed by the other party. However, Tribunal may admit belated memorandum of cross objection on sufficient cause being shown.
Form for filing of cross objections	Form 36A
Fee for cross objection	Nil

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Order of tribunal	<p>The Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders as it thinks fit. Tribunal must record its reasons for its decisions. Order should set out all facts and contentions.</p> <p>Communication of order: Tribunal shall send a copy of the order passed by it to the assessee and to the Principal Commissioner or Commissioner.</p> <p>Notes:</p> <ul style="list-style-type: none"> a) Decision of Tribunal on matter involving question of fact is final. However, one can file a writ petition. b) A decision of the tribunal, when passed in appeal, is final not only for the assessee but also for the tribunal itself. c) The assessee cannot seek to reopen and reargue the whole matter. i.e. order of Tribunal cannot be reviewed by Tribunal. d) On a question of fact determined by ITAT, a writ petition can be filed to the High Court challenging the fact finding process adopted by the ITAT. If the High Court is satisfied that the fact finding process was not correct, then it will quash the order passed by the ITAT and direct the ITAT to do the fact finding in the proper manner and/or as per the direction of the High Court. <p>If the writ petition is dismissed by the High Court then the assessee can file a Special Leave Petition to the Apex Court challenging the fact finding process of the ITAT. If the Apex Court is satisfied that the fact finding process was incorrect then the Apex Court quash the order passed by the ITAT and direct the ITAT to do the fact finding in the proper manner and/or as per the direction of the Apex Court.</p>
Rectification of mistake (Miscellaneous Application)	<ul style="list-style-type: none"> • The Tribunal may, at any time within 6 months from the end of the month in which the order was passed, with a view to rectify any mistake apparent from the record, amend any order passed by it. • Mistake may be brought to the notice of the Tribunal by the assessee or the Assessing Officer. • Where assessee applies for any rectification, it shall be accompanied by a fee of RS. 50. • An amendment which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee, shall not be made unless the Appellate Tribunal has given notice to the assessee of its intention to do so and has allowed the assessee a reasonable opportunity of being heard. • It is to be noted that income tax authority [including CIT(A)] can rectify order u/s 154, <p>however in that case:</p> <ol style="list-style-type: none"> a. Assessee is not required to pay any fee; and b. Time limit is 4 years from the end of the financial year in which the order sought

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	to be rectified was passed.
Additional grounds which may be taken in appeal	Tribunal has discretionary power to refuse additional ground to be raised. Tribunal may permit the assessee to urge grounds of appeal not mentioned in the memorandum of appeal.
Additional evidence	The parties to the appeal are not entitled to produce additional evidence of any kind, either oral or documentary before the Tribunal. However, if the Tribunal requires production of any document, examination of any witness or filing of any affidavit to enable it to pass orders, it may allow such document to be produced, witness to be examined, affidavit to be filed and such evidence to be adduced.
Paper Book	The appellant or the respondent, as the case may be, may submit a paper book in duplicate containing documents or statements or other papers referred to in the assessment or appellate order, which it may wish to rely upon. The paper book duly indexed and page numbered is to be filed at least a day before the hearing of the appeal along-with proof of service of copy of the same on the other side at least a week before. The Bench may in appropriate cases condone the delay and admit the paper book. The Tribunal can also, on its own direct preparation of paper book in triplicate by and at the cost of appellant or the respondent as it may consider necessary for disposal of appeal. Each paper in the paper book is to be certified as true copy by the party filing the same. Additional evidence, if any, should not be part of the paper book and it should be filed separately
Time limit for passing order	Appellate Tribunal, where it is possible, may hear and decide such appeal within a period of 4 years from the end of the financial year in which such appeal is filed. However, the Tribunal may pass an order of stay in any proceedings for a period not exceeding 180 from the date of such order and the Tribunal shall dispose of the appeal within the said period of stay specified in that order. Further where such appeal is not so disposed of within the said period of stay as specified in the order of stay, the Tribunal may, on an application made in this behalf by the assessee and on being satisfied that the delay in disposing of the appeal is not attributable to the assessee, extend the period of stay, or pass an order of stay for a further period or periods as it thinks fit; so, however, that the aggregate of the period originally allowed and the period or periods so extended or allowed shall not, in any case, exceed 365 days and the Tribunal shall dispose of the appeal within the period or periods of stay so extended or allowed. Further if such appeal is not so disposed of within the period allowed (original and extended), the order of stay shall stand vacated after the expiry of such period (i.e., 365 days), even if the delay in disposing of the appeal is not attributable to the assessee.
Cost of appeal	Cost of appeal shall be borne by the person as decided by the Tribunal.
Procedure	The powers and functions of the Appellate Tribunal may be exercised and discharged by Benches constituted by the President of the Appellate Tribunal from among the members thereof.

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A Bench shall consist of one judicial member and one accountant member. However, in some case, single member bench may be constituted. The President or any other member of the Appellate Tribunal authorised in this behalf by the Central Government may, sitting singly, dispose of any case which has been allotted to the Bench of which he is a member and which pertains to an assessee whose total income as computed by the Assessing Officer in the case does not exceed RS. 50 lakh. The President may, for the disposal of any particular case, constitute a Special Bench consisting of 3 or more members, one of whom shall necessarily be a judicial member and one an accountant member. If the members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority. But if the members are equally divided, then the case shall be referred by the President of the Appellate Tribunal for hearing on such point by one or more of the other members of the Appellate Tribunal, and such point shall be decided according to the opinion of the majority of the members of the Appellate Tribunal who have heard the case, including those who first heard it.

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[SECTION 260A]-APPEAL TO HIGH COURT:

Who can file appeal	Assessee or the Principal Chief Commissioner / Chief Commissioner / Principal Commissioner / Commissioner, being aggrieved by the order of ITAT. Taxpoint: Only order passed by the ITAT (which involves substantial question of law) can be appealed in the High court. [The Board has directed that the appeal shall be filed by the department only if tax effect exceeds RS.1,00,00,000, subject to certain exceptions]
Appealable order	Any order of the Tribunal, if the High Court is satisfied that the case involves a substantial question of law.
Substantial question of law	<ul style="list-style-type: none"> • The word “substantial” means having substance, essential, real, of sound worth, important or considerable; • The substantial question of law, need not necessarily be a substantial question of law of general importance (i.e. it should be a question of law between the parties); • To be “substantial”, a question of law must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case.
Time limit for filing appeal	120 days from the date on which order of the Tribunal is received by the assessee or Principal Chief Commissioner / Chief Commissioner / Principal Commissioner / Commissioner The High Court may admit an appeal after the expiry of said period, if it is satisfied that there was sufficient cause for not filing the same within that period.
Court Fee	The Court fee shall be as specified in relevant law relating to Court fees for filing an appeal to High Court
Manner of appeal	The appeal shall be in form of a memorandum of appeal, precisely stating the substantial question of law involved in the appeal.
Formulation of question of law	<ul style="list-style-type: none"> • Where the High Court is satisfied that a substantial question of law is involved, it shall formulate the question. • The appeal is to be heard only on the questions formulated. However, the respondents shall, at the hearing of appeal, be allowed to argue that the case does not involve such question.
Hearing of appeal	<ul style="list-style-type: none"> • The appeal is to be heard by a bench of not less than 2 judges of the High Court. Decision will be in accordance with opinion of the majority of judges. • Where judges are equally divided in their opinions, the case on the point on which they differ shall be heard by one or more other judges of the High Court.
Hearing of other substantial question of law	The Court has the power to hear the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.

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Decision	<p>The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the ground on which such decision is founded and may award such cost as it deems fit.</p> <p>The High Court may determine any issue which -</p> <ul style="list-style-type: none">a) has not been determined by the Tribunal; orb) has been wrongly determined by the Tribunal, by reason of a decision on such question of law .
Stay of recovery proceedings	High Court has power to stay proceedings for recovery of demand arising out of the assessment order, pending disposal of appeal.

[SECTION 261]-APPEAL TO SUPREME COURT:

Who can file appeal	Assessee or the Principal Chief Commissioner / Chief Commissioner / Principal Commissioner / Commissioner aggrieved from the judgment of High Court. [The Board has directed that the appeal shall be filed by the department only if tax effect exceeds RS.2,00,00,000, subject to certain exceptions]
Order against which appeal is possible	Any order passed in the High Court, provided that High Court <ul style="list-style-type: none">• is satisfied that the case involves a substantial question of law; and• certifies the case is fit for appeal to the Supreme Court.
If High Court refuses to certify the case	The aggrieved party may make an application to the Supreme Court under Article 136 of the Constitution of India.
Cost of appeal	The costs of the appeal shall be borne by the person as decided by the Supreme Court
Effect of judgment	Where the judgment of the High Court is varied or reversed by the Supreme Court, Tribunal should pass necessary order to dispose the case in conformity with such judgment.

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[SECTION 158A]- SPECIAL PROVISION FOR AVOIDING REPETITIVE APPEALS:

1. Where an assessee claims (a declaration in the Form 8 and verified in the prescribed manner) that:
 - **any question** of law arising in his case for an assessment year which is pending before the Assessing Officer or any appellate authority (such case being hereafter in this section referred to as the relevant case) is identical,
 - **with a question** of law arising in his case for another assessment year which is pending before the High Court or the Supreme Court (such case being hereafter in this section referred to as the other case),
 - **and if the Assessing Officer** or the appellate authority, as the case may be, agrees to apply in the relevant case **the final decision on the question of law [CAME]** in the other case,
 - **he shall not raise [FURTHER] such question of law in the relevant case in appeal before any appellate authority.**
2. The Assessing Officer or the appellate authority, as the case may be, may, **by order in writing**:
 - (i) **admit** the claim of the assessee if he or it is satisfied that the question of law arising in the relevant case is **identical** with the question of law in the other case; **or**
 - (ii) **reject** the claim if he or it is not so satisfied.
3. Such order **shall be final** and shall not be called in question in any proceeding by way of appeal or revision under this Act.
4. Where a claim is admitted:
 - (a) the Assessing Officer or the appellate authority may make an order **disposing** of the relevant case without awaiting the final decision on the question of law in the other case; and
 - (b) the assessee shall **not be entitled** to raise, in relation to the relevant case, such question of law in appeal.
5. When the decision on the question of law in the other case becomes final, it shall be applied to the relevant case and the Assessing Officer or the appellate authority, shall, if necessary, **amend the order** conformably to such decision.

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[SECTION 158AA]- PROCEDURE WHEN IN AN APPEAL BY REVENUE AN IDENTICAL QUESTION OF LAW IS PENDING BEFORE SUPREME COURT:

1. Where the Commissioner or Principal Commissioner is of the opinion that
 - **any question** of law arising in the case of an assessee for any assessment year (such case being herein referred to as relevant case) is **identical with** a question of law arising in his case for another assessment year which is pending before the Supreme Court, against the order of the High Court in favour of the assessee (such case being herein referred to as the other case),
 - **he may**, instead of directing the Assessing Officer to appeal to the Appellate Tribunal, **direct the** Assessing Officer to make an application to the Appellate Tribunal in the prescribed form within 60 days from the date of receipt of the order of the Commissioner (Appeals) **stating** that an appeal on the question of law arising in the relevant case may be filed **when** the decision on the question of law becomes final in the other case.
2. The Commissioner or Principal Commissioner shall direct the Assessing Officer to make an application **only if** an acceptance is received from the assessee to the effect that the question of law in the **other case** is identical to that arising in the relevant case.
3. Where the order of the Commissioner (Appeals) is not **in conformity** with the final decision on the question of law in the other case, the Commissioner or Principal Commissioner may direct the Assessing Officer to appeal to the Appellate Tribunal **against** such order and save as otherwise provided in this section all other provisions of Part B of Chapter XX shall **apply accordingly**.
4. Aforesaid appeal shall be filed **within 60 days** from the date on which the order of the Supreme Court in the other case is communicated to the Commissioner or Principal Commissioner.

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REVISION:

[SECTION 263]- REVISION OF ORDER PREJUDICIAL TO THE REVENUE:

Orders which may be revised	<p>Any order passed by the Assessing Officer, which is - (a) Erroneous; (b) Prejudicial to the interests of the revenue; and (c) Passed by an authority subordinate to the Principal Commissioner or Commissioner.</p> <p>Notes</p> <p>(a) Orders passed by the Assessing Officer includes - (i) An order of assessment made by the Assistant Commissioner on the basis of the directions issued by the Joint Commissioner u/s 144A; (ii) An order made by the Joint Commissioner as an Assessing Officer. (b) Even an intimation u/s 143(1) can be revised</p>
	<p>Taxpoint:</p> <p>- Order made by the Assessing Officer after making proper enquiries and considering relevant details and decisions of Supreme Court cannot be said to be erroneous and prejudicial to the interest of the revenue, hence such order cannot be revised.</p> <p>- An order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Commissioner or Commissioner:</p> <p>(a) the order is passed without making inquiries or verification which should have been made; (b) the order is passed allowing any relief without inquiring into the claim; (c) the order has not been made in accordance with any order, direction or instruction issued by the Board under section 119; or (d) the order has not been passed in accordance with any decision which is prejudicial to the assessee, rendered by the jurisdictional High Court or Supreme Court in the case of the assessee or any other person</p>
Treatment of an order, which is subject matter of	Revision u/s 263 of an order, which is subject matter of appeal, cannot be made. <p>Notes:</p>

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the appeal	<ul style="list-style-type: none"> The Principal Commissioner or Commissioner can revise such order (which has been a subject matter of appeal) which had not been considered and decided in such appeal. <p>E.g., From the perusal of the order u/s 143(3) passed by the Assessing Officer following was observed:</p> <ul style="list-style-type: none"> - Point A: Against the assessee - Point B: In favour of the assessee <p>The assessee being aggrieved with point A in the order passed by the Assessing Officer, preferred an appeal to the Commissioner (Appeals). However, the Commissioner wants to revise the order u/s 263 for point B (subject to other conditions being fulfilled).</p> <p>It is possible as doctrine of partial merger of the order is applicable in case of sec. 263.</p> <p>However, the Commissioner cannot revise the order for point A (as the same is subject matter of an appeal)</p> <ul style="list-style-type: none"> An order cannot be said to have been made subject of an appeal if the appeal has been disposed of by the appellate authority without passing an order
Procedure to be followed	<p>1. Examination of Records: The Principal Commissioner or Commissioner may call for and examine the records of any proceeding under the Act. If he considers that any order passed by the Assessing Officer is prejudicial to the interest of the revenue, he can revise and rectify the assessment.</p> <p>Record shall include all records relating to any proceeding under this Act available at the time of examination by the Principal Commissioner or Commissioner. This means that any material, which was not available at the time of assessment but available at the time of examination by the Principal Commissioner or Commissioner, shall also be considered for order u/s 263.</p> <p>2. Inquiry: He must make or cause to be made such inquiry as he deems necessary.</p> <p>3. Opportunity of being Heard: No revision order shall be passed u/s 263 without giving the assessee an opportunity of being heard.</p> <p>4. Order: Finally, he may pass such revision order as the circumstances of the case justify including an order enhancing, modifying or cancelling the assessment and directing a fresh assessment.</p>
Time limit for passing revision order	<p>2 years from the end of the financial year in which the order sought to be revised was passed.</p> <p>In computing the above period of limitation following period shall be excluded -</p> <ul style="list-style-type: none"> • Time taken in giving an opportunity to the assessee of being re-heard u/s 129; & • Any period during which any proceeding under this section is stayed by an

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	<p>order or injunction of any court.</p> <p>Exception: There is no time limit for passing a revision order to give effect to, or in consequence of, an order of the ITAT, the High Court or the Supreme Court.</p>
Appeal against order u/s 263	A revisional order passed by the Principal Commissioner or Commissioner u/s 263 can be appealed to the Tribunal.
SEC.263 VS. SEC.154	Sec.263 vs. sec.154: Principal Commissioner or Commissioner can exercise the power even in a case where the issue is debatable. Revisional power u/s 263 is not comparable with the power of rectification of mistake u/s 154

[SECTION 264]- REVISION OF ORDER NOT PREJUDICIAL TO REVENUE:

Orders which may be revised	<p>Any order which is -</p> <ul style="list-style-type: none"> • erroneous; • not covered u/s 263 (i.e. not prejudicial to the interest of the revenue); • passed by an authority subordinate to the Principal Commissioner or Commissioner. <p>Taxpoint: No order under this section can be passed which is prejudicial to the assessee.</p> <p>Notes:</p> <ol style="list-style-type: none"> a) Order which is not appealable before the Commissioner (Appeal) can also be referred to the Commissioner for revision. b) For the purposes of this section, the Deputy Commissioner (Appeals) shall be deemed to be an authority subordinate to the Commissioner.
On whose motion is revision possible	Either on own motion of the Principal Commissioner / Commissioner or on an application by the assessee for revision.
Procedure to be followed	<p>1. Examination of Records: Once revision proceedings have been initiated, the Principal Commissioner or Commissioner may call for and examine the record of any proceeding.</p> <p>2. Inquiry: He must also make or cause to be made such inquiry as he deems necessary</p> <p>3. Order: He may pass such revision order as the circumstances of the case justify.</p> <p>However, the order passed should not be prejudicial to the assessee.</p>
Time limit for filing an application	Where revision has been initiated by the assessee, the application must be made within 1 year from the date on which the order in question was communicated to the assessee or the date on which he otherwise came to know of it, whichever is earlier.

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	<p>However, the Principal Commissioner or Commissioner can admit a belated application if the assessee was prevented by sufficient cause from making the application within time.</p> <p>In computing the above period of limitation following time shall be excluded:</p> <ul style="list-style-type: none"> • The day on which the order complained of was served; and • If the assessee had not received the copy of the order, the time required to obtain copy of such order.
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Time limit for passing a revisional order.	<p>Where the Principal Commissioner or Commissioner acts on his own motion</p> <ul style="list-style-type: none"> – Within 1 year from the date of original order
	<p>Where the application is made by the assessee</p> <ul style="list-style-type: none"> – Within 1 Year from the end of the financial year in which such application is made. In computing the above period of limitation following period shall be excluded. • Time taken in giving an opportunity to the assessee of being re-heard u/s 129; & • Any period during which any proceeding under this section is stayed by an order or injunction of any court. [Sec. 264(6)] • However, there is no time limit for passing a revision order for giving effect to, or in consequence of, an order of the ITAT, the High Court or the Supreme Court.
Orders which cannot be revised	<p>(a) Where an order is appealable but no appeal has been made to CIT (Appeals) or to the Tribunal and time within which such appeal can be made, has not expired.</p> <p>Note: Where an appeal lies to the Commissioner (Appeals) or to the Appellate Tribunal and the right of appeal is waived by the assessee, the Principal Commissioner or Commissioner may revise the order even before the expiry of time limit of appeal.</p> <p>(b) Where the order has been made the subject of an appeal to the Commissioner (Appeals) or to the Appellate Tribunal.</p> <p>E.g., the assessee has been aggrieved with point A and point B in the order passed by the Assessing Officer. He preferred an appeal to the Commissioner (Appeals) in respect of point A and seeks to file revision petition u/s 264 in respect of point B. It is not possible, he cannot file revision petition u/s 264 due to doctrine of total (or complete) merger of the order. He has to choose either way of the course.</p> <p>It is to be noted that for the purpose of sec. 264, doctrine of total merger is</p>

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	<p>applicable, on the other hand, for the purpose of sec. 147, 154 and 263, doctrine of partial merger is applicable.</p> <p>Note:</p> <p>The assessment order could not be said to have been made subject matter of appeal, where an appeal was dismissed -</p> <p>(a) on the ground that the same was incompetent; or</p> <p>(b) as barred by limitation; or</p>
Fee	RS.500 where the application for revision is made by the assessee.
Appeal against order u/s 264	A revisional order passed by the Principal Commissioner or Commissioner u/s 264 cannot be appealed to the Tribunal or the High Court. However, a petition under Article 226 is maintainable
Other points	<ul style="list-style-type: none"> The assessee cannot claim the right of revision in respect of an earlier year on the basis of finding of the Tribunal for a subsequent year. An order by the Principal Commissioner or Commissioner declining to interfere shall not be deemed to be an order prejudicial to the assessee.

A COMPARATIVE STUDY OF REVISION U/S 263 & REVISION U/S 264:

Basis	Sec. 263	Sec. 264
Which order can be revised	Order, which is prejudicial to the interest of revenue.	Order, which is prejudicial to the interest of assessee.
Proceedings at the motion of	At the own motion of the Pr. Commissioner or commissioner.	At the own motion of the Pr. Commissioner or commissioner or on the application of the assessee.
Scope	Revision is possible of the issues which have not been considered and decided in an appeal, i.e., doctrine of partial merger is applicable	Revision u/s 264 is not possible on any issue if an appeal has been filed, i.e., doctrine of total merger is applicable
Time limit for application	Assessee does not apply	Within 1 year from the date on which the order in question was communicated to the assessee
Time limit for passing a revisional order	2 years from the end of the financial year in which the order sought to be revised was passed.	<ul style="list-style-type: none"> Where the Pr. Commissioner or commissioner acts on his own motion: within 1 year from the date of original order. Where the application is made by the assessee:

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		within 1 year from the end of the financial year in which such application is made.
Fee	Not applicable	RS.500 where the application for revision is made by the assessee.
Appeal against order	Appeal can be filed to the Tribunal	No appeal can be filed.
Beneficial to	Revenue	Assessee

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SETTLEMENT COMMISSION:

[SECTION 245B]-SETTLEMENT COMMISSION:

Chapter XIXA provides **for settlement** of cases pending before income-tax authority. For this purpose, the Central Government constituted the 'Settlement Commission'. The Commission shall consist of a Chairman and as many Vice-Chairmen and other members as the Central Government thinks fit. It shall function within the Department of the Central Government dealing **with direct taxes**.

The members shall be **appointed** by the Central Government from amongst persons of integrity and outstanding ability, having special knowledge of, and, experience in, problems relating to direct taxes and business accounts.

Where a member **of the Board** is appointed as a member of the Commission, he shall cease **to be a** member of the Board.

[SECTION 245BA]-JURISDICTION AND POWERS OF SETTLEMENT COMMISSION:

1. The jurisdiction, powers and authority of the Settlement Commission may be exercised by Benches **thereof**.
2. A Bench shall be presided **over by the** Chairman or a Vice-Chairman and shall consist of 2 other Members.
3. The Bench for which the Chairman **is the** Presiding Officer shall be the principal Bench and the other Benches shall be known as **additional Benches**.
4. The Chairman may authorise the Vice-Chairman or other Member appointed to one Bench to discharge also the functions **of the** Vice-Chairman or, as the case may be, other Member of another Bench.
5. When one of the persons constituting a Bench (whether such person be the Presiding Officer or other Member of the Bench) is **unable to** discharge his functions **owing to** absence, illness or any other cause or in the event of the occurrence of any vacancy either in the office of the Presiding Officer or in the office of one or the other Members of the Bench, the remaining two persons **may function** as the Bench and if the Presiding Officer of the Bench is not one of the remaining two persons, **the senior among** the remaining persons shall

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act as the Presiding Officer of the Bench.

6. If at any stage of the hearing of any such case or matter, it appears to the Presiding Officer that the case is ought to be heard of by a Bench consisting of 3 Members, the case may be referred by the Presiding Officer of such Bench to the Chairman for transfer to such Bench as the Chairman **may deem fit**.

7. The Chairman may, for the disposal of any particular case, constitute a Special Bench consisting of more than 3 Members.

The places at which the principal Bench and the additional Benches shall ordinarily sit shall be such as the Central Government may, by notification in the Official Gazette, specify and the Special Bench shall sit at a **place to be fixed** by the Chairman.

8. Transfer of cases: On the application of the assessee or the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner and after notice to them, and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the Chairman **may transfer** any case pending before one Bench, for disposal, to another Bench [Sec. 245BC]

9. Decision by majority: If the Members of a Bench **differ in opinion** on any point, the point shall be decided according to the opinion of the **majority**. But if the Members are equally divided, they shall **refer** the point to the Chairman who shall either hear the point **himself** or refer the case for hearing on such point by one or more of the other Members of the Settlement Commission and such point shall be decided according to the opinion of the **majority** of the Members of the Settlement Commission who have heard the case, including those who first heard it [Sec. 245BD].

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[SECTION 245C & RULE 44C]-APPLICATION FOR SETTLEMENT OF CASES:

Who can apply	Any assessee
When to apply	At any stage of a Case
Conditions to be satisfied for application	<p>a. The additional amount of income-tax2 payable on the income disclosed in the application exceeds specified amount3.</p> <p>b. such tax and the interest thereon, which would have been paid under the provisions of this Act had the income disclosed in the application been declared in the return of income before the Assessing Officer on the date of application, has been paid on or before the date of making the application and the proof of such payment is attached with the application</p>
Submission of application form	<p>A settlement application shall be presented in Form No. 34B (in quintuplicate) by the applicant in person or by his agent, to the Secretary at the headquarters of the Commission at New Delhi or of the Bench within whose jurisdiction his case falls or to any officer authorised in this behalf by the Secretary, or shall be sent by registered post addressed to the Secretary, or to such officer.</p> <p>A settlement application sent by post shall be deemed to have been presented on the day on which it is received in the office of the Commission.</p>
Information to be given in the form	<p>Following information are required to be given in application form –</p> <ul style="list-style-type: none"> • Full and true disclosure of his income which has not been disclosed before the AO; • The manner in which such income has been derived; • The additional amount of income-tax payable on such income; and • Such other particulars as may be prescribed.
Fees	The application should be accompanied by fee of ` 500.
Verification of the application	Every application and other document accompanied with such application must be verified by the person who is authorised to verify return of income u/s 140
Intimation to the AO	An assessee shall, on the date on which he makes an application, also intimate the AO in the prescribed manner of having made such application to the Commission.

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NOTE:

1. A proceeding for assessment or reassessment or recomputation u/s 147 shall be deemed to have commenced:
 - (a) **from the date** on which a notice u/s 148 is issued for any assessment year;
 - (b) from the date of issuance of the notice referred above, for **any other** assessment year or assessment years for which a notice u/s 148 has not been issued, but such notice could have been issued on such date, if the return of income for the other assessment year or assessment years has been furnished u/s 139 or in response to a notice u/s 142;
2. A proceeding for making fresh assessment in pursuance of an order u/s 254 or sec. 263 or sec. 264, setting aside **or** cancelling an assessment shall be deemed to have been **commenced** from the date on which such order, setting aside or cancelling an assessment was passed;
3. A proceeding for assessment or reassessment for any of the assessment years u/s 153A / 153C shall be deemed to have commenced on the date of issue of notice initiating such proceeding and concluded on the **date on which** the assessment is made;
4. A proceeding for assessment for any assessment year, other than aforesaid proceedings shall be deemed to have commenced from the date **on which the return of income** for that assessment year is furnished u/s 139 or in response to a notice served u/s 142 and concluded on the date on which the assessment is made; or on the expiry of the time specified for making assessment u/s 153(1), in case where no assessment is made.

2. Additional amount of Income Tax

The additional amount of income-tax payable shall be calculated in accordance with the following provisions –

(a) Where the income disclosed in the application relates to only one previous year –

Situation	Income for the purpose	Additional amount of tax	
Col. 1	Col. 2	Col. 3	
If return of such year has not been filed u/s 139 (whether or not assessment has been made)	Income disclosed in the application	Tax as calculated on income shown in col. 2	
If return of such income has been submitted (whether or not assessment has been made)	Income disclosed in the application as well as in the return	Tax as calculated on income shown in col. 2 Less: Tax calculated on the total income returned for that year.	RS.XXXX (RS.XXXX)

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(b) Where the income disclosed in the application relates **to more than one** previous year –

(i) Calculate additional amount of income tax payable (as mentioned above) in respect of each year for which the application has been made.

(ii) The aggregate amount of the additional income tax of each of the years shall be the additional amount of income-tax payable.

3 Specified Amount:

Particulars	Amount
Where an application before the Commission is filed in a case where proceedings for assessment or reassessment have been initiated as a result of search or as a result of requisition of books of account or assets, etc.	Additional amount of income tax payable on the income disclosed in application should exceeds RS.50 lakh.
Where the applicant is related to the aforesaid person and in whose case proceedings have been initiated as a result of search	Additional amount of income tax payable on the income disclosed in application should exceeds RS.10 lakh.
In any other case	Additional amount of income tax payable on the income disclosed in application should exceeds RS.10 lakh.

NOTE: An application made to the Commission shall **not be allowed** to be withdrawn by the assessee.

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[SECTION 254D]- PROCEDURE ON RECEIPT OF AN APPLICATION:

- 1. Admission or Rejection of Application:** On receipt of an application, the Settlement Commission shall **within 7 days** from the **date of** receipt of the application, issue a notice to the applicant requiring him to explain as to **why** the application made by him be allowed **to be proceeded** with, and on hearing the applicant, the Settlement Commission shall, within a period of **14 days** from the **date of** the application, by an order in writing, **reject** the application or allow the application to be proceeded with.

NOTE: Where no order has been passed within the aforesaid period by the Settlement Commission, the application shall be **deemed** to have been **allowed** to be proceeded with.

2. Report from the Commissioner:

The Commission shall (in respect of an application which is allowed to be proceeded) within 30 days from the date on which the application was made **call for a report** from the Principal Commissioner or Commissioner, and the Principal Commissioner or Commissioner shall furnish the report within a period of **30 days** of the receipt of communication from the Settlement Commission.

On the basis of the report and within a period of 15 days of the receipt of the report, by an order in writing (and after giving an opportunity **of being heard**), **declare** the application in question **as invalid** and shall send the copy of such order to the applicant and the Commissioner.

Where the Principal Commissioner or Commissioner has not furnished the report within the aforesaid period, the Settlement Commission shall proceed further in the matter **without** the report of the Commissioner.

3. EXAMINATION OF RECORDS AND PASSING OF ORDER:

The Commission in respect of an application which has not been declared invalid **may call** for the records from the Principal Commissioner or Commissioner.

After examination of such records, if the Settlement Commission is of the opinion that any further enquiry or investigation in the matter is necessary, **it may direct** the Principal Commissioner or Commissioner to make such further enquiry or investigation and furnish a report on the matters covered by the application and any other matter relating to the case.

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The Principal Commissioner or Commissioner shall furnish the report within a period of **90 days** of the receipt of communication from the Settlement Commission. Where the Principal Commissioner or Commissioner does not furnish the report within the aforesaid period, the Settlement Commission may proceed to pass an order **without** such report.

After -

- (a) examination of the records and the report of the Principal Commissioner or Commissioner, if any, received;
- (b) giving an opportunity to the applicant and to the Principal Commissioner or Commissioner to be heard (either in person or through a representative)
- (c) and after examining such further evidence as may be placed before it or obtained by it,

The settlement commission may, in accordance with the provisions of this Act, **pass** such order as it thinks fit on the matters covered by the application and any other matter relating to the case not covered by the application, but referred to in the report of the Principal Commissioner or Commissioner.

4. Every such order shall provide **for -**
 - (a) The terms of settlement **including** any demand by way of tax, penalty or interest;
 - (b) The manner in which any sum due under the settlement shall **be paid**;
 - (c) All **other** matters to make the settlement effective; and
 - (d) The settlement shall be void **if it is** subsequently found by the Settlement Commission that it has been obtained by fraud or misrepresentation of facts.
5. Such order shall be passed within **18 months** from the end of the month in which the application was made.
6. **Time Limit for Payment of Tax:** Any tax payable in pursuance of order of settlement commission must be paid within **35 days** of the receipt of a copy of the order.
7. **Interest on Late Payment of Tax due on Settlement:** Where tax, as settled by the Commission, is **not** paid within 35 days of the receipt of a copy of the order (whether or not the Commission has extended the time for payment), the assessee shall be liable to pay simple interest **@ 1.25% p.m.** on the amount remaining unpaid from the date of expiry of the period of 35 days.

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8. Settlement obtained by Fraud, etc.: The settlement shall be **void**, if it is subsequently found by the Settlement Commission, that it has been obtained by fraud or misrepresentation of facts.

9. CONSEQUENCES WHERE THE SETTLEMENT BECOMES VOID:

Where a settlement becomes void, the proceedings shall be deemed to have been **revived** from the stage at which the application was allowed **to be** proceeded with by the Settlement Commission.

The income-tax authority concerned may complete such proceedings **before** the expiry of two years from the end of the financial year in which the settlement became void.

10. Rectification of Order: The Settlement Commission may, with a view to rectifying any mistake apparent from the record, amend any order passed by it:

- (a) **at any time** within a period of 6 months from the end of the month in which the order was passed; or
- (b) **at any time** within the period of 6 months from the end of the month in which an application for rectification has been made by the Principal Commissioner or the Commissioner or the applicant, as the case may be.

However, **no application** for rectification shall be made by the Principal Commissioner or the Commissioner or the applicant **after** the expiry of 6 months from the end of the month in which an order for settlement is passed by the Settlement Commission.

An amendment which has the effect of **modifying the liability** of the applicant shall not be made **unless** the Settlement Commission has given notice to the applicant and the Principal Commissioner or Commissioner of its intention to do so and has allowed the applicant and the Principal Commissioner or Commissioner an opportunity **of being heard**.

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POWER OF SETTLEMENT COMMISSION:

1. To order Provisional Attachment to protect Revenue [Sec. 245DD]

Where, during the pendency of any proceeding, the Settlement Commission is of the opinion that for the purpose of **protecting** the interests of the revenue it is necessary to do so, it may, by order, **attach** provisionally (in the manner provided in the Second Schedule) any property belonging to the applicant.

Cessation of Attachment: Every provisional attachment shall **cease** to have effect **after** the expiry of a period of 6 months from the date of such order. However, the Commission may, for reasons to be recorded in writing, extend the period by such further period(s) as it thinks fit.

2. To provide Inspection, etc., of Reports [Sec. 245G]

No person shall be entitled to inspect or obtain copies of, any reports given by any income-tax authority to the Commission. However, on an application, the Commission may furnish copies thereof **to any such person on payment** of the prescribed fee.

For the purpose of **enabling** assessee to rebut [assesse want to proof the evidences wrong] any evidence brought on record against him in any such report, the Settlement Commission **shall** furnish him with a certified copy of any such report or part thereof relevant for the purpose. For this purpose, assessee needs to make an application and payment of the **prescribed fee**.

3. To grant Immunity from Prosecution and Penalty [Sec. 245H]

The Settlement Commission **may grant** immunity (subject to such conditions as it may think fit to impose for the reasons to be recorded in writing) from –

- (a) **Prosecution** for any offence under this Act or under the Wealth Tax Act; and
- (b) Imposition of any **penalty** (wholly or partly) under this Act,
– with respect to the case covered **by it**.

4. Such immunity can be granted by the Commission, if the assessee –

- (a) has **co-operated** with the Settlement Commission in the proceedings before it;
- (b) has made a full and true **disclosure** of his income; and
- (c) has made a full and true disclosure of the **manner** in which such income has been derived.

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5. Withdrawal of Immunity Granted

An immunity granted to a person shall stand **withdrawn** if –

- (1) Such person **fails to** -
 - (a) **Pay** any sum specified in the order of settlement within the time allowed by the Settlement Commission; or
 - (b) **Comply** with any other condition(s) subject to which the immunity was granted.
- (2) Such person had, in the course of the settlement proceedings, **concealed** any particulars material to the settlement or had given false evidence.

6. Consequences of Withdrawal of Immunity Granted

On withdrawal of immunity granted , the provisions of this Act shall apply as if such immunity had **not** been granted.

7. Other Power [Sec. 245F]

- (1) In addition to the powers conferred on the Settlement Commission under this Chapter, it shall have all the powers, which are vested **in an** income-tax authority under this Act.
- (2) The Commission shall have **exclusive** jurisdiction from the date on which the application was made. Where an application is rejected or not allowed to be further proceeded or declared invalid, the Commission shall have such exclusive jurisdiction upto the date on which application is rejected, etc.
- (3) The Commission shall have power to **regulate** its own procedure and the procedure of Benches thereof in all matters or of the discharge of its functions, including the places at which the Benches shall hold their sittings.
- (4) In the absence of **any express** direction to the contrary [against] by the Settlement Commission, nothing contained in this section shall **affect the** operation of any other provision of this Act -

-Requiring the applicant to pay tax on the basis of **self-assessment** in relation to the matters before the Settlement Commission; and

-Related to any matters other than **those before** the Settlement Commission.

NOTE: The Settlement Commission shall **not** have any **power to reopen** the proceedings.

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[SECTION 245H]- ABATEMENT OF PROCEEDING:

1. Where an application has been **rejected** or not been allowed to be proceeded or declared as invalid or has been allowed **but no order** has been passed within prescribed time or an order u/s 245D(4) has been passed not providing for the **terms of settlement**, the proceedings before the Settlement Commission shall **abate** on the specified date (i.e. the day on which application is rejected or declared invalid or time limit of 18 months expires).
2. Where a proceeding before the Commission abates, the AO before whom the proceeding at the time of making the application was pending, **shall dispose** of the case in accordance with the provisions of this Act as if no application u/s 245C had been made.
3. The AO shall be entitled **to use** all the material and other information produced by the assessee before the **Commission [s.c]** or the results of the inquiry held or evidence recorded by the Commission in the course of the proceedings before it, as if such material, information, inquiry and evidence had been produced **before the AO** or held or recorded by him in the course of the proceedings before him.
4. For the purposes of the time-limit u/s 149, 153, 153B, 154, 155, 158BE & 231 and for the purposes of payment of interest u/s 244A, for making the assessment or reassessment, the period commencing on and from the date of the application to the Settlement Commission and ending with specified date **shall be excluded**.
5. Where a proceeding before the Settlement Commission abates, the period of limitation available u/s 153 to the AO for making an order of assessment shall, after the exclusion of the said period, **be not less than 1 year**; and where such period of limitation is less than 1 year, it shall be deemed to have been extended **to 1 year**.

[SECTION 245HAA]- CREDIT FOR TAX PAID IN CASE OF ABATEMENT OF PROCEEDINGS:

Where an application made u/s 245C is rejected or not allowed to be proceeded or declared invalid or an order has not been passed within the time of 18 months, the Assessing Officer shall **allow the credit for the tax** and interest **paid** on or before the date of making the application or during the pendency of the case before the Settlement Commission.

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[SECTION 245I]- ORDER OF SETTLEMENT TO BE CONCLUSIVE:

Every order of settlement shall be conclusive [Final] as to the matter stated therein. Any matter covered by such order shall **not be reopened in any** proceeding under this Act or under any other law for the time being in force.

Note: An order, which have a mistake apparent from the record, **can be rectified by Commission** u/s 154.

[SECTION 245]- RECOVERY OF SUMS DUE UNDER ORDER OF SETTLEMENT:

Any sum specified in an order of settlement may, subject to such conditions, if any, as may be specified therein, **be recovered**, and any penalty for default in making payment of such sum **may be imposed** and recovered in accordance with the provisions of Chapter XVII **[salary income]**, by the Assessing Officer having **jurisdiction over** the person who made the application for settlement.

[SECTION 245K]- RESTRICTION ON SUBSEQUENT APPLICATION FOR SETTLEMENT IN CERTAIN CASES:

1. Where —
 - (a) an order of settlement provides for the **imposition** of a penalty on the person who made the application for settlement, on the ground of **concealment** of particulars of his income; or
 - (b) after the passing of an order of settlement, such person **is convicted** of any offence under Chapter XXII **[offences & prosecutions]** in relation to that case; or

then, he or any person related to such person shall **not be entitled to apply** for settlement in relation to any other matter.
2. Where a person has made an application and if such application has been allowed to be proceeded with, such person (or related person) shall **not be subsequently** entitled to make an application for settlement. That means, settlement can be made **once in life time**.
3. **RELATED PERSON WITH RESPECT TO A PERSON MEANS:**
 - (i) where such person is an individual, any company **in which** such person holds **more than 50%** of the shares or voting rights at any time, or any firm or association of persons or body of individuals in which such person is entitled to more than **50% of the profits** at any time, or any Hindu undivided family in which such person **is a karta**;

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- (ii) where **such person is a** company, any individual who held more than **50%** of the shares or voting rights in such company at any time before the date of application before the Settlement Commission by such person;
- (iii) where such person **is a firm** or association of persons or body of individuals, any individual who was entitled to more than **50% of the profits in such firm**, association of persons or body of individuals, at any time before the date of application before the Settlement Commission by such person;
- (iv) where such person **is a Hindu undivided family**, the karta of that Hindu undivided family.

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RAGHAVA ACADEMY

STUDY NOTE 9- ADVANCE RULING.

INTRODUCTION:

In the interest of avoiding needless litigation **[case]** and promoting better taxpayer relations, a scheme for giving advance rulings was introduced by the Finance Act, 1993. Chapter XIX-B of the Income-tax Act, which deals with advance rulings, came into force with effect from 1-6-1993. Under the scheme the power of giving advance rulings has been entrusted to an **independent adjudicatory body**.

Accordingly, a high level body headed by a retired judge of the Supreme Court has been set-up. This is empowered to issue rulings, which are binding both on the Income-tax Department and the applicant. The procedure prescribed is simple, inexpensive, expeditious and authoritative. Advance Ruling means **written opinion** or authoritative decision by an Authority empowered to render it with regard to the tax consequences of a transaction or proposed transaction or an assessment in regard thereto. It has been defined in section 245N(a) of the Income-tax Act, 1961 as amended from time-to-time.

[SECTION 245N(a)]-ADVANCE RULING:

ADVANCE RULING MEANS:

1. A determination by the Authority in relation to a transaction which has been undertaken or is proposed to be undertaken **by a non-resident applicant**; or
2. A determination by the Authority in relation to the tax liability of a non-resident arising out of a transaction which has been undertaken or is proposed to be undertaken **by a resident applicant** with such non-resident; or
3. A determination by the Authority in relation to the tax liability of a resident applicant, arising out of a transaction which has been undertaken or is proposed to be undertaken by such applicant.

In above cases, such determination shall include the determination of any question of law or of fact specified in the application.

NOTE:

- ✓ A determination or decision by the Authority in respect of an issue relating to computation of total income which is pending before any income-tax authority or the Appellate Tribunal **then** such determination or decision shall include the determination or decision of any question of law or of fact relating to such computation of total income specified in the application.
- ✓ A determination or decision by the Authority whether an arrangement, which is proposed to be undertaken by any person being a resident or a non-resident, **is an** impermissible avoidance arrangement as referred to in Chapter X-A **or not**.

STUDY NOTE 9- ADVANCE RULING.

[SECTION 245N(b)]-APPLICANT:

APPLICANT MEANS ANY PERSON WHO IS:

- (a)** a non-resident referred to in sub-clause (i) of clause (a) **above**; or
- (b)** a resident referred to in sub-clause (ii) of clause (a) **above**; or
- (c)** a resident who has undertaken or propose to undertake one or more transactions of value of RS.100 crore or more in total [Notification No. 73, dated 28-11-2014];
- (d)** a public sector company [Notification No. 725, dated 03-08-2000];
- (e)** a resident or a non-resident referred to in sub-clause (iv) of clause (a) above;
- (f)** an applicant as defined in sec. 28E(c) of the Customs Act, 1962;
- (g)** an applicant as defined in sec. 23A(c) of the Central Excise Act, 1944;
- (h)** an applicant as defined in sec. 96A(b) of the Finance Act, 1994.

- Makes An Application U/S 245Q(1).

[SECTION 245O] -AUTHORITY FOR ADVANCE RULING:

1. The Central Government shall constitute an Authority for giving advance rulings, to be known as "Authority for Advance Rulings".

2. The Authority shall consist of a Chairman and such number of Vice-chairmen, revenue Members and law Members as the Central Government may appoint by way of notification.

3. A person shall be qualified for appointment as—

(a) Chairman, who has been a Judge of the Supreme Court or the Chief Justice of a High Court or for at least

7 years a Judge of a High Court;

(b) Vice-chairman, who has been Judge of a High Court;

(c) A revenue Member.

(d) A law Member from the Indian Legal Service, who is (or is qualified to be), an Additional Secretary to the Government of India on the date of occurrence of vacancy.

STUDY NOTE 9- ADVANCE RULING.

NOTE TO SECTION 24O:

- ✓ The terms and conditions of service and the salaries and allowances payable to the Members shall be such as **may be** prescribed.
- ✓ The Central Government shall provide to the Authority with **such** officers and employees, as may be necessary, for the efficient discharge of the functions of the Authority under this Act.
- ✓ The powers and functions of the Authority may be discharged **by its** Benches as may **be constituted by** the Chairman from amongst the Members thereof.
- ✓ In the event of the occurrence of any vacancy in the office of the Chairman by reason of his death, resignation or otherwise, the senior-most Vice-chairman **shall act** as the Chairman **untill** the date on which a new Chairman, appointed to fill such vacancy, enters upon his office.
- ✓ In case the Chairman is unable to discharge his functions owing to absence, illness or any other cause, the senior-most Vice-Chairman **shall discharge** the functions of the Chairman until the date on which the Chairman resumes his duties.
- ✓ A Bench shall **consist** of the Chairman or the Vice-chairman and one revenue Member and one law Member.
- ✓ The Authority shall be located in the National Capital Territory of Delhi and its Benches shall be located at such places as the Central Government may **specify by way of notification**.
- ✓ “Member” means a Member of the Authority and includes the Chairman and Vice-chairman.
- ✓ “Vice-chairman” means the Vice-chairman of the Authority.

STUDY NOTE 9- ADVANCE RULING.

[SECTION 245Q]-APPLICATION FOR ADVANCE RULING:

- An applicant desirous of obtaining an advance ruling may make an application **stating the question** on which the advance ruling is sought **[DEMAND]** :
 - (a) in Form No. 34C in respect of a non-resident applicant;
 - (b) in Form No. 34D in respect of a resident applicant seeking advance ruling in relation to a transaction undertaken or proposed to be undertaken by him with a non-resident;
 - (c) in Form No. 34DA in respect of a resident applicant referred to in sec. 245N(b)(ii) falling within any such class or category of person as notified by the Central Government;
 - (d) in Form No. 34E in respect of a notified resident referred to in sec. 245N(b)(iii) and
 - (e) in Form No. 34EA in respect of a applicant referred to in sec. 245N(b)(iiia).

AND SHALL BE VERIFIED IN THE MANNER INDICATED THEREIN.

- The application shall be accompanied by a fee of:
 - (a) RS.10,000 or
 - (b) Such fees as may be prescribed, **WHICHEVER IS HIGHER.**
- An applicant **may** withdraw an application **within 30 days** from the date of the application.
- An application shall be presented by the applicant in person or by an authorised representative **to the** Secretary or any other officer **notified in writing by-** The Secretary or sent by registered post addressed to the Secretary along with a fee (in the form of a Demand Draft drawn in favour of "Authority for Advance Rulings" payable at New Delhi).
- An application sent by registered post shall be deemed to have been made on the date on which it is **received** in the office of the Authority.
- If the applicant is **not** hitherto **[TILL NOW]** assessed **in India**, he shall **indicate** **[DISCLOSE]** in Annexure I to the application:
 - (a) his head office in any **other** country,
 - (b) the place where his office and residence is located or is likely to be located **in India**, and
 - (c) the name and address of his **representative** in India, if any, **authorised to** receive notices and papers and act on his behalf.

STUDY NOTE 9- ADVANCE RULING.

- The Secretary may send the application back to the applicant if it is defective in any manner for removing the defects within such time as he may allow. Such application shall be deemed to have been made on the date when it is represented after correction.

[SECTION 245R]-PROCEDURE ON RECEIPT OF APPLICATION:

- On receipt of an application, the Authority shall cause a copy thereof to be forwarded **to the** Principal Commissioner or Commissioner and, if necessary, call upon him to **furnish the relevant records** [FROM PCIT OR CIT]. Where any records have been called for by the Authority, such records shall, as soon as possible, be **returned to** the Principal Commissioner or Commissioner.
- The Authority may, after examining the application and the records called for, by order, either allow or reject the application.
- However, where the question raised in the application: [CASES WHERE AUTHORITY CANNOT ALLOW THE APPLICATION FOR ADVANCE RULING].
 - (a) is already pending before any income-tax authority or Appellate Tribunal [except in the case of a resident applicant falling in sec. 245N(b)(iii)] or any court;
 - (b) involves determination of fair market value of any property;
 - (c) relates to a transaction or issue which is designed *prima facie* **[UNNECESSARY]** for the avoidance of income-tax [except in the case of a resident applicant falling in sec. 245N(b)(iii)].

-SHALL BE REJECTED BY THE AUTHORITY.

- The words 'already pending', should be interpreted to mean: 'already pending as on the date of the application' and not with reference to any future date.
- No application shall be rejected unless an opportunity has been given to the applicant of being heard. Further, where the application is rejected, reasons for such rejection shall be given in the order.
- A copy of every order (allowing or rejecting) shall be sent to the applicant and to the Principal Commissioner or Commissioner.
- Where an application is allowed, the Authority shall, after examining such further material as may be placed before it by the applicant or obtained by the Authority, pronounce **[DECLARE]** its advance ruling on the question specified in the application.
- On a request received from the applicant, the Authority shall, before pronouncing **[DECLARING]** its advance ruling, provide an opportunity to the applicant of being heard, either in person or through a duly authorised representative.
- **THE AUTHORITY SHALL PRONOUNCE ITS ADVANCE RULING IN WRITING WITHIN 6 MONTHS OF THE RECEIPT OF APPLICATION.**
- A copy of the advance ruling pronounced **[DECLARED]** by the authority, duly signed by the Members and certified in the prescribed manner shall be sent to the applicant and to the Principal Commissioner or Commissioner, as soon as may be, after such pronouncement.

STUDY NOTE 9- ADVANCE RULING.

[SECTION 245 RR]-APPELLATE AUTHORITY NOT TO PROCEED IN CERTAIN CASES:

No Income-tax Authority or the Appellate Tribunal shall proceed to decide any issue in respect to which an application has been made by an applicant, being a resident, u/s 245Q .

[SECTION 245S]-APPLICABILITY OF ADVANCE RULING:

- The advance ruling pronounced by the Authority u/s 245R shall be binding only:
 - (a) on the applicant who had sought [DEMAND] it;
 - (b) in respect of the transaction in relation to which the ruling had been sought; and
 - (c) on the Principal Commissioner or Commissioner, and the income-tax authorities subordinate to him, in respect of the applicant and the said transaction.
- The advance ruling shall be binding as aforesaid **unless** there is a change in law or facts on the basis of which the advance ruling has been pronounced.

[SECTION 245 T]-ADVANCE RULING TO BE VOID IN CERTAIN CIRCUMSTANCES:

- Where the Authority finds, on a representation made to it by the Principal Commissioner or Commissioner or otherwise, that an advance ruling pronounced by it has been obtained by the applicant **by fraud or misrepresentation** of facts, it may, by order, declare such ruling to be **void ab initio** and thereupon all the provisions of this Act shall apply to the applicant as if such advance ruling had **never been made**.
- A copy of such order shall be sent to the applicant and the Principal Commissioner or Commissioner.

[SECTION 245U]-POWER OF THE AUTHORITY:

The Authority shall, for the purpose of exercising its powers, **have all the powers** of a civil court under the Code of Civil Procedure, 1908 as are referred to in section 131 of this Act.

[SECTION 245V]-PROCEDURE OF AUTHORITY:

The Authority shall, subject to the provisions of this Chapter, **have power** to regulate its own procedure in all matters arising out of the exercise of its powers under this Act.

STUDY NOTE 9- ADVANCE RULING.

RAGHAV ACADEMY

STUDY NOTE 10-PENALTIES AND PROSECUTION.

PENALTIES:

Penalty is imposed on an assessee for violating the different provisions of the Act. The provisions of penalty are tabulated below:

Section	Nature of default	Penalty	Penalty	
		Minimum	Maximum	
221(1)	Failure in making the payment of tax, interest or any demand within the prescribed time limit.	Amount decided by the Assessing Officer	Tax or interest or both in arrears	
140A(3)	Failure to pay whole or any part of income tax and/or interest as per sec.140A(1). [assessed tax as advance tax]	Amount decided by the Assessing Officer	Tax or interest or both in arrears	
270A	Penalty for under-reporting and misreporting of income (Discussed later on in details)	50% of the tax on under-reported income	200% of the tax on misreported income	
271A	Failure to comply with sec. 44AA i.e. to keep or maintain books of account, documents, etc.	RS.25,000	N/A	
271AA(1)	Failure to keep and maintain, information and documents for international transactions or specified domestic transaction or fails to report such transaction	2% of the value of each international transaction or specified domestic transaction	N/A	
271AA(2)	Fails to furnish the information and the document as required u/s 92D(4) [Transfer pricing]	RS.5,00,000	N/A	
271AAB(1 A)	Undisclosed income in case of search initiated on or after 15-12-2016	60% of the undisclosed income of the specified previous year		
	However, if the assessee: a) in the course of the search, in a statement u/s 132(4)[statement on OATH], admits the undisclosed income and specifies the manner in which such income has been derived.	30% of the undisclosed income of the specified previous year		

STUDY NOTE 10-PENALTIES AND PROSECUTION.

	b) substantiates the manner in which the undisclosed income was derived; and c) on or before the specified date: A. pays the tax, together with interest in respect of the undisclosed income; and B. furnishes the return of income for the specified previous year declaring such undisclosed income therein	
271AAC	Where the income determined includes any income referred to in sec. 68, 69, 69A, 69B, 69C or 69D [i.e unexplained incomes] for any previous year.	10% of tax payable u/s 115BBE [60% rate of tax]. No penalty shall be levied if such income has been included by the assessee in the return of income furnished u/s 139 and the tax thereon (as per sec. 115BBE) has been paid on or before the end of the relevant previous year.
271B	Failure to comply with sec. 44AB i.e. to get accounts audited or to furnish such audit report.	½% of the total sales or turnover or gross receipts as minimum, RS.1,50,000 As maximum.
271BA	Failure to furnish report from an accountant as per sec.92E [transfer pricing]	RS.1,00,000 as minimum.
271C	Failure to deduct part or whole of tax u/s 192 to 196C	Amount of tax failed to deduct
	Failure to pay tax on dividends u/s 115-O [tds @ 15%] or under second proviso to sec. 194B [casual income].	Amount of tax failed to pay
271CA	Failure to collect tax at source	Amount of tax failed to collect
271D	Taking or accepting any loan or deposit or specified sum in contravention of the provisions of sec.269SS [accepting sum of RS.20,000 or more]	Amount of the loan or deposit or specified sum so taken/accepted
271DA	Receives any sum in contravention of sec. 269ST [transaction in cash of RS.2 lakhs or more]	Amount equal to such receipt

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271DB	Failure to provide facility for electronic mode of payment prescribed u/s 269SU	RS.5,000 per day
271E	Repayment of any loan or deposit or specified advance in contravention of the provisions of sec.269T [repay sum of RS.20,000]	Amount of loan or deposit or specified advance so repaid.
271FA	Failure to furnish a statement of financial transaction or reportable accountas required u/s 285BA(1) [special reporting to director or joint director] within the prescribed time limit	RS.500 for every day during which the failure continues
Proviso to sec. 271FA	Failure to furnish the statement of financial transaction or reportable accountas within the period specified in the notice issued u/s 285BA(5) [manner of such reporting]	RS.1,000 for every day during which the failure continues, beginning from the day immediately following the day on which the time specified in such notice expires.
271FAA	Person referred to in sec. 285BA(1) provides inaccurate information in the 'statement of financial transaction or reportable account'	RS.50,000
271FAB	Fails to furnish information or document as required u/s 9A(5) [foreign portfolio investors] within the prescribed time limit	RS.5,00,000
271G	Failure to furnish information or documents as required u/s 92D(3) [transfer pricing]	2% of the value of the international transaction or specified domestic transaction.
271GA	Failure to furnish information or documents as required u/s 285A [special reporting to director or joint director]	2% of the value of the transaction, if such transaction had the effect of directly or indirectly transferring the right of management or control in relation to the Indian concern; In other case: RS.5,00,000
271GB(1)	Failure by any reporting entity to	◆ Failure does not exceed one

STUDY NOTE 10-PENALTIES AND PROSECUTION.

	furnish the report referred to in sec. 286(2) [reporting of subsidiary company] in respect of a reporting accounting year	month: RS 5,000 per day ◆ Failure continues beyond the period of one month: RS. 15,000 per day ◆ Failure continues after an order of penalty has been served on the entity: RS. 50,000 per day from the date of service of such order	
271GB(2)	Failure by any reporting entity to produce the information and documents within the period specified u/s 286(6) [reporting of subsidiary company].	◆ RS. 5,000 per day ◆ Failure continues after an order of penalty has been served on the entity: RS. 50,000 per day from the date of service of such order	
271GB(4)	Reporting entity provides inaccurate information in the report referred to in sec. 286(2)	RS. 5,00,000 Penalty shall be levied if: a) the entity has knowledge of the inaccuracy at the time of furnishing the report but fails to inform the prescribed authority; or b) the entity discovers the inaccuracy after the report is furnished and fails to inform the prescribed authority and furnish correct report within a period of 15 days of such discovery; or c) the entity furnishes inaccurate information or document in response to the notice issued u/s 286(6), [notice for non-reporting]	
271H1	Failure to furnish TDS / TCS Return or furnishing inaccurate details in these Return	RS. 10,000 MINIMUM , RS. 1,00,000 MAXIMUM	
271-I	Fails to furnish information, or furnishes inaccurate information as required u/s 195(6) [tds on non-resident]	RS. 1,00,000	
271J	Furnishing incorrect information in reports or certificates by an accountant or merchant banker or registered valuer	RS. 10,000 for each report Penalty is leivable by the AO or the Commissioner (Appeals) who in the course of any proceedings finds that such report has incorrect information	
272A(1)(a)	Failure to answer any question	RS. 10,000 for each default	

STUDY NOTE 10-PENALTIES AND PROSECUTION.

	(related to assessment) of an income-tax authority	
272A(1)(b)	Refuse to sign any statement made by the assessee in course of income tax proceedings	RS. 10,000 for each default
272A(1)(c)	Failure to comply with summons u/s 131(1) [powers as a code of civil procedure] to attend office or to give evidence or to produce books of account or other documents, at certain place & time	RS. 10,000 for each default
272A(1)(d)	Fails to comply with a notice u/s 142(1) [inquiry before assessment] or 143(2) [notice of scrutiny] or fails to comply with a direction issued u/s 142(2A) [special audit] [Penalty shall be levied by such authority]	RS. 10,000 for each default
272A(2)(a)	Failure to comply with a notice issued u/s 94(6) [avoidance of tax by certain transaction].	A sum of RS. 100, for every day during which the failure continues: However, the amount of penalty for failures in relation to a declaration mentioned in sec. 197A [Certificate for deduction of tax at a lower rate] , a certificate as required by sec. 203 [form 16] and returns or statement u/s 200 [duty of TDS deductor] or 206 and 206C [duty of TCS collector] shall not exceed the amount of tax deductible or collectible.
272A(2)(b)	Failure to give notice of discontinuance of his business or profession as required u/s 176(3) [discontinued business]	SAME AS ABOVE.
272A(2)(c)	Failure to furnish in due time any of the returns, statements or particulars mentioned in section 133 [duty of	SAME AS ABOVE.

STUDY NOTE 10-PENALTIES AND PROSECUTION.

	bank], 206, 206C [duty of TCS collector], or 285B [duty of producers / cinematographer]	
272A(2)(d)	Failure to allow inspection of any register u/s 134 power for inspection]or of any entry in such register or to allow copies of such register or of any entry therein to be taken	SAME AS ABOVE.
272A(2)(e)	Failure to furnish the return of income which he is required to furnish u/s 139(4A) [ROI for trust] or (4C) [ROI for institution] within time allowed and in the manner required.	SAME AS ABOVE.
272A(2)(f)	Failure to deliver or cause to be delivered in due time a copy of the declaration mentioned in sec. 197A	SAME AS ABOVE.
272A(2)(g)	Failure to furnish a certificate u/s 203 [form 16] or 206C [duty of TCS collector]	SAME AS ABOVE.
272A(2)(h)	Failure to deduct and pay tax u/s 226(2)	SAME AS ABOVE.
272A(2)(i)	Failure to furnish a statement u/s 192(2C) [statement by employer for details of salary to employee]	SAME AS ABOVE.
272A(2)(j)	Failure to deliver a copy of declaration referred u/s 206C(1A) [duty of TCS collector] within due time	SAME AS ABOVE.
272A(2)(l)	Failure to deliver or cause to be delivered the quarterly return within the time prescribed u/s 206A(1) [TCS]	SAME AS ABOVE.
272A(2)(m)	Failure to deliver a statement within the time prescribed u/s 200(2A) [TDS] or 206C(3A) [TCS]	SAME AS ABOVE.

STUDY NOTE 10-PENALTIES AND PROSECUTION.

272AA	Failure to comply with the provisions of sec. 133B [Power to collect certain information]	Maximum up to RS. 1,000
272B	Failure to comply with the provisions of sec. 139A [GTI exceeds MEL]	RS. 10,000
272BB(1A)	Failure to quote Tax deduction or collection number	RS. 10,000
272BBB	Failure to comply with the provisions of sec. 206CA [TCS]	RS. 10,000

NOTES:

1) Specified previous year means previous year:

(i) which has ended **before** the date of search, but the date of filing the return of income u/s 139(1) for such year has not expired before the date of search **and** the assessee has not furnished the return of income for the previous year before the said date; or

(ii) in which search **was** conducted.

2) As per sec. 274(2), in the following cases, penalty can be imposed only with the prior approval of the Joint Commissioner:

Where penalty is imposed by the Income-tax Officer	Exceeds RS. 10,000
Where penalty is imposed by the Assistant Commissioner or Deputy Commissioner	Exceeds RS. 20,000

STUDY NOTE 10-PENALTIES AND PROSECUTION.

[SECTION 240A]- PENALTY FOR UNDER-REPORTING AND MIS-REPORTING OF INCOME:

The

- Assessing Officer; or
- Commissioner (Appeals); or
- Principal Commissioner or Commissioner

may, during the course of any proceedings under this Act, direct that any person who has under-reported his **income shall be liable to pay a penalty in addition to tax, if any, on the under-reported income.**

IMPORTANT POINTS:

1. Penalty proceedings must be initiated **before** completion of the assessment or appeal order or revision order, as the case may be.
2. Penalty order is **different from** assessment order. Aggrieved with the penalty order passed by the Assessing Officer, the assessee is required to file **separate appeal** to the Commissioner (Appeals) or separate revision petition u/s 264 or separate rectification petition u/s 154. Further, appeal can be filed with the Tribunal against the penalty order passed by the Commissioner (Appeals) or Principal Commissioner or Commissioner.
3. Tribunal **cannot** impose penalty.
4. Penalty shall be imposed by the **respective** income-tax authority on addition made by them. E.g., on addition being made by the Assessing Officer, Commissioner (Appeals) cannot levy penalty. Even the Assessing Officer fails to levy penalty on such addition, Commissioner (Appeals) **cannot** levy penalty on such addition made by the Assessing Officer.

In CIT -vs.- Shadiram Balmukund, the Apex court has held that the Assessing officer can levy penalty on the additions made by him and not on the additions made by Commissioner (Appeals).

Similarly, Commissioner (Appeals) can levy penalty on the additions made by him **and not** on the additions made by the Assessing.

Quantum of penalty [Sec. 270A(7) & (8)]:

- **50%** of the amount of tax payable on under-reported income [Sec. 270A(7)]
- **200%** of the amount of tax payable on under-reported income, where under-reported income is in consequence of **any misreporting** thereof by any person - [Sec. 270A(8)]

STUDY NOTE 10-PENALTIES AND PROSECUTION.

[SEC. 270A(2)]-CASES OF UNDER-REPORTING OF INCOME:

A person shall be considered to have under-reported his income, if:

1. the income assessed **is greater than** the income determined in the return processed u/s 143(1)(a);
2. the income assessed **is greater than** the maximum amount not chargeable to tax, where no return of income has been furnished or where return has been furnished for the first time u/s 148;
3. the income reassessed **is greater than** the income assessed or reassessed immediately before such reassessment;
4. the amount of deemed total income assessed or reassessed u/s 115JB or 115JC [MAT] **is greater than** the deemed total income determined in the return processed u/s 143(1)(a);
5. the amount of deemed total income assessed u/s 115JB or 115JC [MAT] **is greater than** the maximum amount not chargeable to tax, where no return of income has been filed or where return has been furnished for the first time u/s 148;
6. the amount of deemed total income reassessed u/s 115JB or 115JC [MAT] **is greater than** the deemed total income assessed or reassessed immediately before such reassessment;
7. the income assessed or reassessed **has the effect** of reducing the loss or converting such loss into income.

STUDY NOTE 10-PENALTIES AND PROSECUTION.

[SEC. 270A(3)]-COMPUTATION OF AMOUNT OF UNDER-REPORTED INCOME:

The amount of under-reported income shall be:

1. in a case where income has been assessed for the first time:

• If return has been furnished	Assessed Income minus Income determined u/s 143(1)(a)
• If return has not been furnished or where return has been furnished for the first time u/s 148	In case of company, firm or local authority: Assessed Income [as full]. Other persons: Assessed Income minus Basis Exemption Limit.

2. In a case where income has been not assessed for the first time:

AMOUNT OF UNDER-REPORTED INCOME EQUALS TO- INCOME REASSESSED OR RECOMPUTED **MINUS** INCOME ASSESSED, REASSESSED OR RECOMPUTED **IN A PRECEDING ORDER.**

And, Preceding order means an order immediately preceding the order during the course of which the penalty has been initiated.

3. In a case where under-reported income arises out of determination of deemed total income in accordance with sec. 115JB OR 115JC, the amount of total under-reported income shall be determined in accordance with the following formula:

$$\text{FORMULA OF UNDER-REPORTED INCOME} = (\mathbf{A} - \mathbf{B}) + (\mathbf{C} - \mathbf{D});$$

Where,

A	=	Total income assessed as per the provisions other than the provisions contained in sec. 115JB or 115JC (herein called general provisions)
B	=	Total income that would have been chargeable had the total income assessed as per the general provisions been reduced by the amount of under-reported income;
C	=	Total income assessed u/s 115JB or 115JC
D	=	Total income that would have been chargeable had the total income assessed u/s 115JB or 115JC been reduced by the amount of under-reported income. However, where the amount of under-reported income on any issue is considered both u/s 115JB / 115JC and under general provisions, such amount shall not be reduced from total income assessed while determining the amount under item D.

STUDY NOTE 10-PENALTIES AND PROSECUTION.

4. In a case where an assessment or reassessment has the effect of reducing the loss declared in the return or converting that loss into income:

AMOUNT OF UNDER-REPORTED INCOME EQUALS TO- THE INCOME OR LOSS ASSESSED OR REASSESSED MINUS LOSS CLAIMED. [I.E IF EXCESS LOSS CLAIM IN RETURN].

[SECTION 270A(4)]- MEANING OF UNDER-REPORTED INCOME IN A CASE WHERE SOURCE IS LINKED TO EARLIER YEAR:

Where:

- the source of any receipt, deposit **or** investment in any assessment year;
- is claimed to be an amount **added** to income or **deducted** while computing loss, as the case may be, in the assessment of such person;
- in any year **prior** to the assessment year in which such receipt, deposit or investment appears (hereinafter referred to as "preceding year")
- and **no** penalty **was** levied for such preceding year,
then, the under-reported income **shall** include **such** amount as is **sufficient to cover** such receipt, deposit or investment.

IMPORTANT NOTE:

- ✓ Such amount shall be deemed **to be** amount of income under-reported for the preceding year in the following order:
 - a. the **preceding** year immediately before the year in which the receipt, deposit or investment appears, being the first preceding year; and
 - b. where the amount added or deducted in the first preceding year is not sufficient to cover the receipt, deposit or investment, the year immediately preceding the first preceding year **and so on.**
- ✓ The assessee **can explain** that the investment or expenditure is made out of additions made during earlier years.

STUDY NOTE 10-PENALTIES AND PROSECUTION.

Example

- | | |
|--|--------------|
| - Addition made by the Assessing Officer on estimated basis in the preceding year(s) | RS. 1,00,000 |
| - Penalty levied on the said addition in the preceding year(s) | + Nil |
- [Due to provision of sec. 270A(6)(b) or (c) i.e estimate by authority or estimate by assessee]
- In subsequent assessment year, such addition is **explained as source of investment** made by the assessee, citing the decision of the Apex court in the case of Anantharam Veerasinghaiah & Co.
 - Despite this confession of concealment on the part of the assessee, **no penalty was leviable** in such cases as the time limit for initiating concealment penalty proceedings in respect of the earlier year in which addition was made would **have expired**.

Moreover, the penalty could also not be imposed in respect of the year in which the deposit was made as there was no concealment in that year, the deposit **having been explained** as out of an earlier year's income.

- In this type of case, sec. 270A(4) **comes into play** which **states** that under-reported income shall include such amount.

[SECTION 270(6)]- CASES NOT CONSIDERED AS UNDER-REPORTED INCOME:

The under-reported income shall not include the following:

a. Proper Explanation: The amount of income in respect of which the assessee offers an explanation and the Assessing Officer or the Commissioner (Appeals) or the Commissioner or the Principal Commissioner, as the case may be, **is satisfied** that the explanation is bona fide and the assessee has disclosed all the material facts to substantiate the explanation offered.

b. Estimate by the authority: The amount of under-reported income determined on the basis of an estimate, if the accounts **are correct** and complete to the satisfaction of the Assessing Officer or the Commissioner (Appeals) or the Commissioner or the Principal Commissioner, as the case may be, but **only the method employed** is wrong **then** it not be treated as under-reported income.

c. Estimate by the assessee: The amount of under-reported income determined on the basis of an estimate, if the assessee has, on his own, **estimated a lower amount** of addition **or** disallowance on the same issue, has included such amount in the computation of his income and has **disclosed all the facts** material to the addition or disallowance.

STUDY NOTE 10-PENALTIES AND PROSECUTION.

d. Arm's length price: The amount of under-reported income represented by any addition made in conformity with the **arm's length price** determined by the Transfer Pricing Officer, where the assessee had maintained information and documents **as prescribed u/s 92D**, declared the international transaction under Chapter X [INTERNATIONAL TRANSACTION SPECIFIC DOMESTIC TRANSACTION], and, disclosed **all the material facts** relating to the transaction; and

e. Undisclosed income in search operation: The amount of undisclosed income referred u/s 271AAB.[i.e under search].

[SECTION 270A(9)]- CASES OF MISREPORTING OF INCOME:

THE CASES OF MISREPORTING OF INCOME SHALL BE THE FOLLOWING:

- a. misrepresentation or suppression of facts;
- b. failure to record investments in the books of account;
- c. claim of expenditure not substantiated by any evidence;
- d. recording of any false entry in the books of account;
- e. failure to record any receipt in books of account having a bearing on total income; and
- f. failure to report any international transaction or any transaction deemed to be an international transaction or any specified domestic transaction.

Computation of tax payable on under-reported income [Sec. 270A(10)]

The tax payable in respect of the under-reported income shall be:

Where no return of income has been furnished or where return has been furnished for the first time u/s 148 [assessment or reassessment], and the income has been assessed for the first time.	Tax calculated on the under-reported income as increased by the maximum amount not chargeable to tax as if it were the total income	
Where the total income determined u/s 143(1) (a) or assessed, reassessed or recomputed in a preceding order is a loss	Tax calculated on the under-reported income as if it were the total income	
In any other case :	Tax on (Under-reported income + Income determined u/s 143(1)(a) or income assessed, reassessed or recomputed in a preceding order)	XXXX
	Less: Tax on Income determined u/s 143(1)(a) or income assessed, reassessed or recomputed in a preceding order	(XXXX)

STUDY NOTE 10-PENALTIES AND PROSECUTION.

NOTE:

- ✓ **No double penalty on same amount:** No addition or disallowance of an amount shall **form the basis** for imposition of penalty, if such addition or disallowance has formed the basis of imposition of penalty in the case of the person **for the same** or any other assessment year.
- ✓ **Written order:** The penalty shall be imposed, by an order **in writing**, by the Assessing Officer, the Commissioner (Appeals), the Commissioner or the Principal Commissioner, as the case may be.

STUDY NOTE 10-PENALTIES AND PROSECUTION.

ILLUSTRATION 1.

Computation of under-reported income assuming income has been assessed for the first time:

Assessee	Return Filed	Income u/s 143(1)(a)	Assessed Income	Under reported Income	Tax payable on (a)	Tax payable on (b)	Tax payable on (c)	Penalty
		a	b	c = (b - a)	d	e	f = (e - d)	f x 50%
Individual	Yes	6,00,000	10,00,000	4,00,000	33,800	1,17,000	83,200	41,600
Firm	Yes	17,00,000	20,00,000	3,00,000	5,30,400	6,24,000	93,600	46,800
Firm	Yes	(8,00,000)	20,00,000	28,00,000	-	8,73,600	8,73,600	4,36,800
Individual	Yes	(9,00,000)	(3,00,000)	6,00,000	-	33,800	33,800	16,900
Firm	No	N.A.	8,00,000	8,00,000	-	2,49,600	2,49,600	1,24,800
Individual	No	N.A.	7,50,000	5,00,000#	-	65,000	65,000	32,500

Assessed income as reduced by basic exemption provide to an INDIVIDUAL ONLY.

200% of (f) shall be levied as penalty if the case is misreporting of income.

ILLUSTRATION 2.

Computation of under-reported income assuming income has not been assessed for the first time:

Assessee	Income assessed in the preceding order	Reassessed Income	Under-reported Income
Individual	7,00,000	12,00,000	5,00,000
Company	20,00,000	22,00,000	2,00,000

STUDY NOTE 10-PENALTIES AND PROSECUTION.

ILLUSTRATION 3.

Compute penalty leviable u/s 270A in case of X Ltd from the following details:

Particulars	Total Income	Tax on Total Income	Book Profit	Tax on Book Profit
Return of income	80,00,000	24,96,000	2,00,00,000	33,38,400
Assessed income	1,20,00,000	40,06,080	2,10,00,000	35,05,320

Solution:

Computation of penalty:

Particulars		Amount IN RS.
<u>Under-reported income</u>		
Total income computed by the Assessing Officer	A	1,20,00,000
Total income as per return of income	B	80,00,000
Book profit computed by the Assessing Officer	C	2,10,00,000
Book profit as per return of income	D	2,00,00,000
Under-reported income $[(A - B) + (C - D)]$		50,00,000
Tax on under-reported income		
Tax on A	P	40,06,080
Tax on B	Q	24,96,000
Tax on C	R	35,05,320
Tax on D	S	33,38,400
Tax on Under-reported income $[(P - Q) + (R - S)]$	T	16,77,000
Penalty u/s 270A		
- Minimum (being 50% of T) FOR UNDER-REPORTING.		8,38,500
- Maximum (being 200% of T) FOR MIS-REPORTING.		33,54,000

STUDY NOTE 10-PENALTIES AND PROSECUTION.

ILLUSTRATION 4.

In the above example, out of addition of RS. 10 lakh made in the book profit and RS. 40 lakh made in the total income (under general provisions), RS. 3,00,000 was made on the same ground. Compute penalty u/s 270A.

Solution:

Computation of penalty;

Particulars		Amount
<u>Under-reported income</u>		
Total income computed by the Assessing Officer	A	1,20,00,000
Total income as per return of income	B	80,00,000
Book profit computed by the Assessing Officer	C	2,10,00,000
Book profit as per return of income	D	2,03,00,000
Under-reported income $[(A - B) + (C - D)]$		47,00,000
Tax on under-reported income		
Tax on A	P	40,06,080
Tax on B	Q	24,96,000
Tax on C	R	35,05,320
Tax on D	S	33,88,476
Tax on Under-reported income $[(P - Q) + (R - S)]$	T	16,26,924
<u>Penalty u/s 270A</u>		
- Minimum (being 50% of T) FOR UNDER REPORTING.		8,13,462
- Maximum (being 200% of T) FOR MIS-REPORTING.		32,53,848

STUDY NOTE 10-PENALTIES AND PROSECUTION.

[SECTION 270AA]- IMMUNITY FROM IMPOSITION OF PENALTY, ETC.:

1. An assessee may make **an application** to the Assessing Officer to grant immunity from imposition of penalty u/s 270A and initiation of proceedings u/s 276C or 276CC, if he fulfils the following **conditions**:
 - a. the tax and interest payable as per the order of assessment or reassessment u/s 143(3) or 147, as the case may be, has been **paid within** the period specified in such notice of demand; and
 - b. **no appeal** against aforesaid order has been filed.
2. An application **shall be made** within 1 month from the end of the month in which the said order has been received and shall be made in such form (**Form 68**) and verified in prescribed manner.
3. **The Assessing Officer** shall (on fulfilment of the aforesaid conditions) and after the expiry of the period of filing the appeal to the Commissioner (Appeals), **grant** immunity from imposition of penalty u/s 270A and initiation of proceedings u/s 276C or 276CC, **where** the proceedings for penalty u/s 270A has **not** been initiated **due to** misreporting of income.
4. The Assessing Officer shall, within a period of **1 month** from the end of the month in which the application is received, pass an order accepting **or** rejecting such application after giving an opportunity of being heard to the assessee.
5. The order made by the assessing officer in this regard is **final**.
6. Where immunity is granted to the assessee, then appeal to Commissioner (Appeals) or an application for revision u/s 264 shall **not be** admissible against the order of assessment or reassessment.

NOTE: The CBDT, vide Circular No. 05/2018 dated 16-08-2018, has clarified that an application made by an assessee u/s 270AA seeking immunity, will not bar the assessee from contesting the same issue in any earlier assessment year.

The circular also clarifies that the tax authority shall not take an adverse view in penalty proceedings for earlier assessment years under old penalty regime merely because the taxpayer has applied for immunity under the **new penalty regime (i.e., section 270AA)**.

STUDY NOTE 10-PENALTIES AND PROSECUTION.

[SECTION 273A]- POWER TO REDUCE OR WAIVE PENALTY, ETC., IN CERTAIN CASES:

POWER U/S 273A(1):

1. The Principal Commissioner or Commissioner may, in his discretion, whether on his **own motion** or otherwise reduce **or** waive the amount of penalty imposed or imposable on a person u/s 270A for concealment of income (not other penalty) if he is satisfied that such person:
 - (a) has, prior to the detection by the Assessing Officer, of the **concealment** of particulars of income or of the inaccuracy of particulars **furnished** in respect of such income, voluntarily and **in good faith**, made full and true disclosure of such particulars;

A person shall be deemed to have made full and true disclosure of his income or of the particulars relating thereto in any case where the excess of income assessed over the income returned is of such a nature **as not to** attract the provisions of sec. 270A. [Under-reporting & Mis-reporting of income].

(b) has, **co-operated** in any enquiry relating to the assessment of his income; and
(c) has either **paid** or made satisfactory arrangements for the payment of any tax or interest payable in consequence of an order passed under this Act in respect of the relevant assessment year.
2. However, where the amount of income in respect of which the penalty is imposed **or imposable** for the relevant assessment year, or, where such disclosure relates to **more than one** assessment year, the aggregate amount of such income for those years, exceeds a sum of RS.5,00,000, **no order** reducing or waiving the penalty shall be made by the Principal Commissioner or Commissioner except with the **previous approval** of the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General, as the case may be.
3. Where an order of waiver u/s 273A(1) has been made in favour of any person, whether such order relates to **one or more** assessment years, he shall not be entitled to any relief under this section in relation to any other assessment year at any time after the making of such order. That means such waiver can be **done once in life of assessee**.

POWER U/S 273A(4):

STUDY NOTE 10-PENALTIES AND PROSECUTION.

1. The Principal Commissioner or Commissioner may, on an application (**not suo motu**) made in this behalf by an assessee, and after recording his reasons for so doing, reduce or waive the amount of any penalty payable by the assessee under this Act, or **stay** or compound any proceeding for the recovery of any such amount, if he is satisfied that—
 - (i) to do otherwise would cause genuine **hardship** to the assessee, having regard to the circumstances of the case; and
 - (ii) the assessee has **co-operated** in any inquiry relating to the assessment or any proceeding for the recovery of any amount due from him.
2. Where the amount of any penalty payable under this Act or, where such application relates to more than one penalty, the aggregate amount of such penalties **exceeds RS.1,00,000**, no order reducing or waiving the amount or compounding any proceeding for its recovery shall be made by the Principal Commissioner or Commissioner except with the **previous approval** of the Principal Chief Commissioner or Chief Commissioner or Principal Director General or Director General, as the case may be.
3. The order, either accepting or rejecting the application in full or in part, shall be passed within a period of **12 months** from the end of the month in which the application is received by the Principal Commissioner or the Commissioner. Further, no order rejecting the application, either in full or in part, shall be passed unless the assessee has been given **an opportunity of being heard**.

NOTE:

- ✓ An assessee **can** claim relief u/s 273A(1) [by suo-moto] or 273A(4) [upon application] after claiming relief u/s 273A(4). However, if assessee already claimed relief u/s 273A(1), then **no** relief u/s 273A(4) or 273A(1) can be granted.
- ✓ Every order made under this section shall **be final** and shall not be called into question by any court or any other authority.
- ✓ The “genuine hardship” referred to in the provisions of section 273A(4) should exist at the time at which the application under section 273A(4) **is made** by the assessee before the Commissioner and should so exist even **at the time** of passing of **order** under section 273A(4) by the Commissioner. [Circular No. 784, dated 22nd November, 1999].

STUDY NOTE 10-PENALTIES AND PROSECUTION.

[SECTION 273AA]- POWER OF PRINCIPAL COMMISSIONER OR COMMISSIONER TO GRANT IMMUNITY FROM PENALTY:

1. A person may make an application to the Principal Commissioner or Commissioner for granting immunity from penalty, if —
 - (a) he has made an application **for settlement** u/s 245C and the proceedings for settlement have **abated** u/s 245HA; and
 - (b) the penalty proceedings have been initiated under **this Act**.
2. The application to the Principal Commissioner or Commissioner shall not be made **after** the imposition of penalty after abatement.
3. The Principal Commissioner or Commissioner may, subject to such conditions **as he may think** fit to impose, grant to the person immunity from the imposition of any penalty under this Act, if he is satisfied that the person has, after the abatement, **co-operated** with the income-tax authority in the proceedings before him and has made a full and true disclosure of his income and the manner in which such income has been derived.
4. The order, either accepting or rejecting the application in full or in part, shall be passed within a period of **12 months** from the end of the month in which the application is received by the Principal Commissioner or the Commissioner. Further, no order rejecting the application, either in full or in part, shall be passed unless the assessee has been given an **opportunity of being heard**.
5. The immunity granted to a person shall stand withdrawn, **if such person fails** to comply with any condition subject to which the immunity was granted and thereupon the provisions of this Act shall apply as if such immunity had not been granted.
6. The immunity granted to a person may, at any time, be withdrawn by the Principal Commissioner or Commissioner, **if he is satisfied that such person** had, in the course of any proceedings, after abatement, **concealed** any particulars material to the assessment from the income-tax authority or had given **false** evidence, and thereupon such person shall become liable to the imposition of any penalty under this Act to which such person would have been liable, had not such immunity been granted.

STUDY NOTE 10-PENALTIES AND PROSECUTION.

[SECTION 274]-PROCEDURE:

1. No order imposing a penalty under this Chapter shall be made **unless** the assessee has been heard, or has been given a reasonable **opportunity of being heard**.
2. No order imposing a penalty under this Chapter shall be made:
 - (a) by the Income-tax Officer, where the penalty exceeds RS. 10,000;
 - (b) by the Assistant Commissioner or Deputy Commissioner, where the penalty exceeds RS. 20,000, except with the **prior approval** of the Joint Commissioner.
3. An income-tax authority on making an order under this Chapter imposing a penalty (unless he is himself the Assessing Officer) shall **send a copy** of such order to the Assessing Officer.

[SECTION 245]- BAR OF LIMITATION FOR IMPOSING PENALTIES:

No order imposing a penalty under this Chapter shall be passed after following time limit:

Where the relevant assessment or other order is the subject-matter of an appeal to the Commissioner (Appeals) and the Commissioner (Appeals) passes the order on or after 01-06-2003 disposing of such appeal.	An order imposing penalty shall be passed: <ol style="list-style-type: none">a. before the expiry of the financial year in which the proceedings, in the course of which action for imposition of penalty has been initiated, are completed; orb. within 1 year from the end of the financial year in which the order of the Commissioner (Appeals) is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, whichever is later.
Where the relevant assessment or other order is the subject-matter of revision u/s 263 or 264	Penalty order shall not be passed after the expiry of 6 months from the end of the month in which such order of revision is passed
In any other case	Penalty order shall not be passed: <ol style="list-style-type: none">a. after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed; orb. six months from the end of the month in which action for imposition of penalty is initiated, whichever period expires later.

STUDY NOTE 10-PENALTIES AND PROSECUTION.

REVISION OF PENALTY ORDER [SEC. 275(1A)]:

CASE:

- Where the relevant assessment or other order is the subject-matter of an appeal to the Commissioner (Appeals) or to the Appellate Tribunal or to the High Court or to the Supreme Court [here-in-after referred to as 'appeal'] or revision u/s 263 or 264.
- An order imposing or enhancing or reducing or cancelling penalty or dropping the proceedings for the imposition of penalty is passed before appeal order is received by the Principal Chief Commissioner or Chief Commissioner or the Principal Commissioner or Commissioner or the order of revision is passed,

THEN:

- An order imposing or enhancing or reducing or cancelling penalty or dropping the proceedings for the imposition of penalty **may be passed** on the basis of assessment **as revised** by giving effect to such appeal and revision
- However, no order of imposing or enhancing or reducing or cancelling penalty or dropping the proceedings for the imposition of penalty shall be passed **after the expiry of 6 months** from the end of the month in which the appeal order is received by the Principal Chief Commissioner or Chief Commissioner or the Principal Commissioner or Commissioner or the order of revision is passed.
- Further, no penalty order is passed unless the assessee has been heard, or has been given a reasonable **opportunity of being heard**.

STUDY NOTE 10-PENALTIES AND PROSECUTION.

PROSECUTION:

WHEN ASSESSEE BECOMES LIABLE FOR PROSECUTION:

The Department is empowered to put on prosecution proceedings for offences committed by taxpayers. Prosecution details are tabulated below:

Section	Nature of offence	Rigorous Imprisonment and Fine	Rigorous Imprisonment and Fine
		Minimum	Maximum
275A	Contravention of any order referred to in the second proviso to sec. 132(1) or (3)	Any period up to 2 years (and fine also)	N/A.
275B	Failure to comply with provision of sec. 132(1)(iib)	Any period up to 2 years (and fine also)	N/A.
276	Removal, concealment, transfer or delivery of property or any interest therein to prevent tax recovery.	Any period up to 2 years (and fine also)	N/A.
276A	Failure to comply with provision of sec. 178(1)/(3) by liquidator of a company.	Any period up to 2 years	Any period up to 2 years
276B	Failure to pay to the credit of Central Government - tax deducted at source or tax on dividend u/s 115-O or tax payable under second proviso to sec.194B	3 months (with fine)	7 years (with fine)
276BB	Failure to pay to the credit of Central Government tax collected at source u/s 206C	3 months (with fine)	7 years (with fine)
276C(1)	Attempt to evade tax, penalty or interest chargeable/ imposable, or under-reports income Case I: If amount sought to be evaded exceeds RS. 25,00,000 Case II: If such amount involved does not exceed RS.25,00,000	6 months (with fine) . 3 months (with fine)	7 years (with fine) 2 years (with fine)
276C(2)	Attempt to evade the payment of any tax, penalty or	3 months (with fine)	3 years (with fine)

STUDY NOTE 10-PENALTIES AND PROSECUTION.

	interest.		
276CC	Willful failure to file return of income in time u/s 139(1), or in response to notice u/s 142(1) or u/s 148 or u/s 153A provided tax payable by such person (other than company), on the total income determined on regular assessment (as reduced by the advance tax, self assessment tax, TDS and TCS), exceeds RS.10,000		
Case I: If amount of tax sought to be evaded exceeds RS.25,00,000	6 months (with fine)	7 years (with fine)	
Case II: If amount of tax sought to be evaded does not exceed RS.25,00,000	3 months (with fine)	2 years (with fine)	
276D	Wilful failure to produce books of account and documents as required u/s 142(1) or wilful failure to comply with direction u/s 142(2A) to get the accounts audited	Any period up to one year (and with fine)	
277	Makes false statement in any verification or delivers a false account or statement under this Act or rules there under.		
Case I: If amount of tax sought to be evaded exceeds RS.25,00,000	6 months (with fine)	7 years (with fine)	
Case II: If amount of tax sought to be evaded does not exceed RS. 25,00,000	3 months (with fine)	2 years (with fine)	
277A	Where any person (hereafter referred to as the first person) wilfully and with intent to enable any other person (hereafter referred to as the second person) to evade any tax or interest or penalty chargeable and imposable under this Act, makes any entry or statement which is false and which the first person either knows to be false or does not believe to be true, in any books of account or other document being useful in any proceedings against the first	The first person shall be punishable with rigorous imprisonment for 3 months and with fine. [as minimum] The first person shall be punishable with rigorous imprisonment for 2	

STUDY NOTE 10-PENALTIES AND PROSECUTION.

	person or the second person. For establishing the charge, it shall not be necessary to prove that the second person has actually evaded any tax, penalty or interest chargeable or imposable under this Act.	years with fine.[as maximum]
278	Abetment or inducement in any manner to another person to make false statement or declaration relating to any income or any fringe benefits chargeable to tax. Case I: Where the amount of tax, penalty or interest which would have been evaded due to such false presentation, exceeds RS. 25,00,000	6 months (with fine) [as minimum]. 7 years (with fine) [as maximum].
	Case II: In any other case	3 months (with fine) [as minimum]. 2 years (with fine) [as maximum].
278A	Punishment for second and subsequent offences u/s 276B, 276C(1), 276CC, 277 or 278	6 months for every offence (with fine) [as minimum]. 7 years for every offence (with fine) [as maximum].
278B	Where an offence under this Act has been committed by a company - • The company itself; and • Every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, - shall be deemed to be guilty of the offence Note: Company includes firm, AOP/BOI.	Liable to be proceeded against and punished accordingly. Note: Where the punishment for an offence is imprisonment and fine, then such company shall be punished with fine only.
278C	Where an offence under this Act has been committed by an HUF, the Karta thereof shall be deemed to be guilty of the offence	Liable to be proceeded against and punished accordingly. Note: Where the punishment for an offence is imprisonment and fine, then such company shall be punished with fine only.
280	Disclosure of any information by public servants in contravention of sec. 138(2)	Upto 6 months (with fine) (With previous sanction of the Central Government)

STUDY NOTE 10-PENALTIES AND PROSECUTION.

NOTES:

- (a) No court inferior to that of a Presidency Magistrate of the first class shall try any offence under this Act [Sec. 292].
- (b) Punishment shall not be imposed u/s 276A, 276AB and 276B if the assessee proves that there was reasonable cause for failure [Sec.278AA].
- (c) Prosecution proceeding shall not be instituted u/s 275A, 275B, 276, 276A, 276B, 276BB, 276C, 276CC, 276D, 277, 277A and 278 without previous sanction of the Principal Commissioner or Commissioner or Commissioner (Appeals) or the appropriate authority [Sec. 279].
- (d) A person shall not be proceeded against for an offence u/s 276C or 277 in relation to the assessment for an assessment year in respect of which the penalty imposed or imposable on him u/s 270A has been reduced or waived u/s 273A. [Sec. 279(1A)].

[SECTION 273AB]- POWER OF COMMISSIONER TO GRANT IMMUNITY FROM PROSECUTION:

1. A person may make an application to the Principal Commissioner or Commissioner for granting immunity from prosecution, if he has made an application for settlement u/s 245C and the proceedings for settlement have abated u/s 245HA.
2. The application to the Principal Commissioner or Commissioner shall not be made after institution of the prosecution proceedings after abatement.
3. The Principal Commissioner or Commissioner may, subject to such conditions as he may think fit to impose, grant to the person immunity from prosecution for any offence under this Act, if he is satisfied that the person has, after the abatement, co-operated with the income-tax authority in the proceedings before him and has made a full and true disclosure of his income and the manner in which such income has been derived.
4. The immunity granted to a person shall stand withdrawn, if such person fails to comply with any condition subject to which the immunity was granted and thereupon the provisions of this Act shall apply as if such immunity had not been granted.
5. The immunity granted to a person may, at any time, be withdrawn by the Principal Commissioner or Commissioner, if he is satisfied that such person had, in the course of any proceedings, after abatement, concealed any particulars material to the assessment from the income-tax authority or had given false evidence, and thereupon such person may be tried for the offence with respect to which the immunity was granted or for any other offence of which he appears to have been guilty in connection with the proceedings.

STUDY NOTE 10-PENALTIES AND PROSECUTION.

RAGHAVA ACADEMY

MUTUAL CONCERN.

INTRODUCTION OF MUTUAL CONCERN:

- (1)** The first principle of mutuality is that no person can trade with himself or make income out of himself. A mutual association arise when a group of persons associate together with a common object and contribute monies for achieving that object and divide the surplus amongst themselves. The objective should not be profit. The objective should be social security, entertainment , professional development, etc.
- (2)** The principle of mutual association is that all the contributors to the common fund are entitled to participate in the surplus and all the participants to the surplus must be the contributors to the common fund.
- (3)** It is not necessary for the mutual concern to distribute the surplus immediately. The participation in the surplus may be by way of reduction in future contributions or division of surplus on dissolution.
- (4)** The fact that the mutual concern is incorporated as a company does not make any difference because incorporation does not destroy the identity of the contributors and participants.
- (5)** The income of a mutual concern is exempt from tax as far as it is derived from activities of mutual nature, i.e, income received from members is exempt. The income from trading so far as it is confined to own members is also exempt. Where a mutual concern derives income from an activity with an outsider, then tax exemption will not apply to such income, i.e, income received from non-members is **taxable**.
- (6)** Income of a mutual concern is taxable in the following circumstances:
 - (a)** Where the mutual concern is a trade, professional or similar association, then the income derived from specific services performed for its members is taxable as **Profits & Gains of Business or Profession** under section 28. However , if mutual concern is a resident welfare association, sports club, etc. then income derived from specific services performed for its members is not taxable.
 - (b)** Income received from non-members.

EXAMPLES OF MUTUAL CONCERN: Resident welfare Association (RWA), Social clubs, Sports clubs, Bar Association, Shop Owners Association, Bombay Chartered Accountants Society, etc.

MUTUAL CONCERN.

[SECTION 44A] TRADE AND PROFESSIONAL ASSOCIATION:

- (1) Trade and professional association means an association of traders or professionals for the protection or advancement of their common interest.
- (2) Any surplus arising to the trade of professional association from general activities like entrance fees, will not be taxable. Therefore, the concerned general expenditure shall also be not allowed as deduction from taxable income [**because expenditure regarding exempt income will not allowed as deduction**]. Only the income arising from performing **specific services** to members is **taxable** and the expenditure to earn such income is **deductible**.
- (3) **Special Provision contained in section 44A for Trade & Professional Association:**

- (a) Application only to that trade, professional or similar association, the income of which is not distributed to its member.
- (b) Amount received by the Association from its members by way of contribution or otherwise (other than the amount received from performing specific services). **i.e. General receipt from members.**
LESS: Expenditure incurred for the purposes of protection or advancement of interest of members (other than expenditure which is otherwise deductible under the Act and other than capital expenditure) i.e. , **General expenditure on member.**

IF the difference between the **RECEIPT & EXPENDITURE** is:

- **NEGATIVE** – it is known as deficiency.
- **POSITIVE** –it is known as surplus [**which is exempt from tax because it is a general receipt**]

- (c) Such deficiency will be allowed as a deduction [FIRST] in computing the income under the head **PGBP**.
- (d) If the deficiency is greater than income under the head **PGBP** , then the balance deficiency will be allowed as deduction in computing the income under **Other Remaining** heads of income.
- (e) Before setting off the deficiency effect shall be first given to the deductions under this Act and brought forward losses and allowances.
- (f) The total deficiency which can be set off shall not exceed 50% of the total income computed **before** giving deduction of such deficiency. [**means upto 50% of remaining income, deficiency can be setoff**].

IMPORTANT NOTE:

The tax rate applicable to a mutual concern shall be the same as applicable to an individual except where the mutual concern is **incorporated as a company**.

MUTUAL CONCERN.

[SECTION 10(23A)] INCOME OF PROFESSIONAL INSTITUTION:

Any income (other than income chargeable under the head "Income from house property" or any income received for rendering any specific services or income by way of interest or dividends derived from its investments) of professional association shall be exempt provided -

- a. Such association or institution is established in India having as its object the control, supervision, regulation or encouragement of the profession of law, medicine, accountancy, engineering or architecture or other specified profession;
- b. Such association or institution applies its income, or accumulates it for application, solely to the objects for which it is established; and
- c. The association or institution is approved by the Central Government.

CLUBS:

Social clubs are not trade association hence sec. 28(iii) is not applicable on it. It would be governed by general principle of mutuality. Excess over expenditure received by club from the facilities extended to members as part of advantages attached to such membership shall not be chargeable to tax on the principle of mutuality. [CIT-vs.- Bankipur Club Ltd. (SC)] However, it is to be noted that income derived from non-mutual activity is taxable.

INSURANCE BUSINESS:

The profits and gains of any business of insurance, including any such business carried on by a mutual insurance company or by a co-operative society, shall be computed in accordance with the rules contained in the First Schedule of the Income Tax Act, 1961 [Sec. 44]

LIFE INSURANCE BUSINESS:

- ♦ In the case of a person who carries on or at any time in the previous year carried on life insurance business, the profits and gains of such person from that business shall be computed separately from his profits and gains from any other business.
- ♦ The profits and gains of life insurance business shall be taken to be the annual average of the surplus arrived at by adjusting the surplus or deficit disclosed by the actuarial valuation made in accordance with the Insurance Act, 1938.
- ♦ *Tax on profits and gains of life insurance business [Sec. 115B]*

Where the total income of an assessee includes any profits and gains from life insurance business, the income-tax payable shall be the aggregate of:

- (i). the amount of income-tax calculated on the amount of profits and gains of the life insurance business included in the total income @ 12.5%; and
- (ii). the amount of income-tax with which the assessee would have been chargeable had the total income of

MUTUAL CONCERN.

the assessee been reduced by the amount of profits and gains of the life insurance business.

- ◆ The provision of sec. 115JB (i.e., MAT provisions) shall not apply to any income accruing or arising to a company from life insurance business.

OTHER INSURANCE BUSINESS:

The profits and gains of any business of insurance other than life insurance shall be taken to be the balance of the profits disclosed by the annual accounts, copies of which are required under the Insurance Act, 1938, to be furnished to the Controller of Insurance, subject to the following adjustments:

- ◆ Any expenditure or allowance disallowed u/s 30 to 43B;
- ◆ Any gain or loss on realisation of investments shall be added or deducted, as the case may be, if such gain or loss is not credited or debited to the profit and loss account;
- ◆ Any provision for diminution in the value of investment debited to the profit and loss account, shall be added back
- ◆ Amount carried over to a reserve for unexpired risks shall be allowed as a deduction. As per rule 6E, any business of insurance other than life insurance, the amount carried over to a reserve for unexpired risks (including any amount carried over to any additional reserve) shall not exceed:

Nature of insurance	Ceiling
Fire insurance or engineering insurance and which provides insurance for terrorism risks	100% of the net premium income of such business of the previous year
Fire insurance or miscellaneous insurance other than above	50% of the net premium income of such business of the previous year
Marine insurance	100% of the net premium income of such business of the previous year.

- Net premium income means the amount of premium received as reduced by the amount of reinsurance premium paid during the relevant previous year.
- Marine insurance includes the Export Credit Insurance.

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NON-RESIDENT PERSON CARRYING OF INSURANCE BUSINESS:

The profits and gains of the branches in India of a person not resident in India and carrying on any business of insurance shall be calculated on the basis of reliable data available in respect of such activity. However, in the absence of reliable data, profit may be deemed to be that proportion of the world income of such person, which corresponds to the proportion, which his premium income derived from India bears to his total premium income.

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ILLUSTRATION 1:

A is an association governed by the provisions of sec. 44A of the Income-tax Act. The subscription receipts for the year ended 31st March, 2020 were RS.60,000. The expenditure in the normal course of its activities was RS.85,000. Its other income taxable under the Act works out to RS. 75,000. On these facts, you are consulted as to:-

- a. How A's taxable income will be determined for assessment year 2020-21.
- b. In case the association did not have the other income taxable will there be any difference in the computation of its income?

ILLUSTRATION 2:

A social club furnishes you the following data:

(a) Receipts by way of entrance fees and annual membership fees from members.	RS.8,00,000.
(b) Expenditure on members.	RS.1,00,000.
(c) Bank interest.	RS.80,000.
(d) Receipts from members for specific services.	RS.2,00,000.
(e) Expenditure incurred on (d) above.	RS.1,50,000.

COMPUTE THE INCOME OF THE CLUB?

ILLUSTRATION 3:

A social club furnishes you the following data:

(a) Receipts from members by way of entrances fees etc.	RS. 40,00,000.
(b) Expenditure on members.	RS.30,50,000.
(c) Collections from non-members.	RS.6,00,000.
(d) Expenditure on non-members.	RS.2,50,000.
(e) Interest on investments.	RS. 2,75,000.

COMPUTE THE TAXABLE INCOME OF CLUB.

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ILLUSTRATION 4:

A trade Association furnishes you the following data:

- | | |
|--|--------------|
| (a) General receipts from members. | RS.4,00,000. |
| (b) General expenditure on members. | RS.6,50,000. |
| (c) Receipts from specific services performed. | RS.5,00,000. |
| (d) Expenditure on specific services. | RS.3,60,000. |
| (e) Bank interest. | RS.5,00,000. |
| (f) Brought forwarded depreciation. | RS.80,000. |

RETURN OF INCOME

INTRODUCTION:

ASSESSOR WHO ARE REQUIRED TO FILE RETURN OF INCOME:

1. being a company or a firm; or
2. Assessee other than company and firm whose GROSS TOTAL INCOME [GTI] exceeds the MAXIMUM EXEMPTION LIMIT [MEL];

-have to required to file return of income on or before the due date specified u/s 139(1).

COMPULSORY FILING OF RETURN

Any person, being resident other than not ordinarily resident, shall furnish, a return, within due date, in respect of his income or loss for the previous year irrespective of the fact that his total income does not exceed basic exemption limit or does not have any taxable income, if he:

(i) holds, as a beneficial owner or otherwise, any asset (including any financial interest in any entity) located outside India or has signing authority in any account located outside India; or

(ii) is a beneficiary of any asset (including any financial interest in any entity) located outside India.

Exception: An individual, being a beneficiary of any asset (including any financial interest in any entity) located outside India where, income, if any, arising from such asset is includable in the income of the person referred above in accordance with the provisions of this Act.

“Beneficial owner” in respect of an asset means an individual who has provided, directly or indirectly, consideration for the asset for the immediate or future benefit, direct or indirect, of himself or any other person.

“Beneficiary” in respect of an asset means an individual who derives benefit from the asset during the previous year and the consideration for such asset has been provided by any person other than such beneficiary.

Mandatory furnishing of return in case of high value transactions [7th proviso to sec. 139(1)]

A person (other than firm and company), who is not required to furnish a return as per aforesaid provision, and who during the previous year:

- a) has deposited an aggregate amount exceeding Rs.1 crore in one or more current accounts maintained with a banking company or a co-operative bank; or
- b) has incurred expenditure of an aggregate amounts exceeding Rs. 2 lakh for himself or any other person for travel to a foreign country; or
- c) has incurred expenditure of an aggregate amount exceeding Rs.1 lakh towards consumption of electricity; or
- d) fulfils such other conditions as may be prescribed, shall furnish a return of his income on or before the due date in such form and verified in such manner and setting forth such other particulars, as may be prescribed.

RETURN OF INCOME

FORMS OF RETURN OF INCOME:

ITR - 1 (Sahaj)	For Individuals having Income from Salaries, two house property (does not have any brought forward loss), other sources [Interest (does not have any loss under the head) etc. but except winnings from lottery or income from race horses] and having total income upto Rs. 50 lakh. However, the form is not to be used for an individual who is either Director in a company or has invested in unlisted equity shares or has any brought forward / carry forward loss under the head 'Income from House Property' or has to furnish return under seventh proviso to section 139(1) of the Income Tax Act
ITR - 2	For Individuals and HUFs not carrying out business or profession under any proprietorship
ITR - 3	For individuals and HUFs having income from a proprietary business or profession
ITR - 4 (Sugam)	For presumptive income from Business & Profession. However, the form is not to be used for an individual who is either Director in a company or has invested in unlisted equity shares or has any brought forward / carry forward loss under the head 'Income from House Property'
ITR - 5	For person other than (i) Individual; (ii) HUF; (iii) Company; & (iv) Person filing Form ITR-7

ITR - 6	For Companies other than companies claiming exemption u/s 11
ITR - 7	For persons including companies required to furnish return u/s 139(4A) or 139(4B) or 139(4C) or 139(4D) or 139(4F)
ITR - V	Income Tax Return Verification Form [Where the data of the aforesaid Return of Income has transmitted electronically without digital signature]

NOTE:

Form ITR 1 **or** ITR 4 cannot be used by a person who:

- (a) is an ordinarily resident and has,—
 - (i) assets (including financial interest in any entity) located outside India; or
 - (ii) signing authority in any account located outside India; or
 - (iii) income from any source outside India
- (b) has claimed any relief of tax u/s 90 or 90A or deduction of tax u/s 91
- (c) has agricultural income, exceeding Rs. 5,000;
- (d) has income taxable u/s 115BBDA; or
- (e) has income of the nature referred to in sec. 115BBE.
- (f) is either Director in a company or has invested in unlisted equity shares or has any brought forward / carry forward loss under the head 'Income from House Property' or

RETURN OF INCOME

[SECTION 139(1)] TIME LIMIT FOR FILING RETURN OF INCOME:

A return should be filed on or before the following due date (of respective assessment year):

Assessee	Due date
• Where the assessee is required to furnish a report in Form 3CEB u/s 92E pertaining to\ international transaction(s)	30 th November of A.Y
• Where the assessee is a company not having international transaction(s)	31 st October of A.Y
• <i>Any other</i> assessee	
- Where accounts of the assessee are required to be audited under any law	31 st October of A.Y
- Where the assessee is a <i>working partner</i> in a firm and the accounts of the firm are required to be audited under any law	31 st October of A.Y
- In any other case	31 st July of A.Y

[SECTION 234F] FEE FOR DEFAULT IN FURNISHING RETURN OF INCOME:

Where a person required to furnish a return of income u/s 139, fails to do so within the due date, he shall pay fee of:

Case	Fee
Total income does not exceed Rs. 5 lakh	Rs. 1,000
Total income exceeds Rs. 5 laks	
- If the return is furnished on or before 31st December of the assessment year	Rs. 5,000
- In any other case	Rs. 10,000

When a return of loss should be filed [Sec. 139(3)]

An assessee, other than few, is not compulsorily required to furnish return of loss. However, the following losses cannot be carried forward if the return of loss is not submitted within the time allowed u/s 139(1) -

- a. Business loss (speculative or otherwise);
- b. Capital loss;
- c. Loss from the activity of owning and maintaining race horses
- d. Loss from business specified u/s 35AD.

RETURN OF INCOME

NOTES:

- a. Loss declared in belated return cannot be carried forward. However, set-off of losses of current year is not prohibited while computing the total income, even if the return of loss is filed after the due date.
- b. Delay in filing the return of loss may be condoned in certain cases
- c. Unabsorbed depreciation u/s 32 and loss under the head "Income from house property" can be carried forward even if the loss return is filed after the due date u/s 139(1).
- d. Although the loss of the current year cannot be carried forward unless the return of loss is submitted before the due date but the loss of earlier years can be carried forward if the return of loss of that year was submitted within the due date.

[SECTION 139(4)] BELATED RETURN:

If an assessee fails to file return within the time limit allowed u/s 139(1) or within the time allowed under a notice issued u/s 142(1), he can file a belated return.

Time limit: Assessee may file such return -

- before the end of the relevant assessment year; or
- before the completion of assessment (u/s 144),
- whichever is earlier.

However, if an assessee files a belated return, he would be liable to fee u/s 234F and interest u/s 234A.

[SECTION 139(4A)] RETURN OF INCOME OF CHARITABLE TRUST:

Every person who is in receipt of –

- income from property held under the trust or other legal obligation wholly or partly for charitable or religious purpose; or
- income by way of voluntary contribution on behalf of such trust or institution, and if such income before allowing exemption u/s 11 or 12 exceeds the maximum amount which is not chargeable to tax, must file a return before the due date as per sec.139(1).

Penalty: Where an assessee fails to file return of income under this section, within the time limit, it shall be liable to pay a penalty of Rs. 100 per day during which such failure continues [Sec. 272A(2)].

[SECTION 139(4B)] RETURN OF INCOME OF POLITICAL PARTY:

The chief executive officer (whether such chief executive officer is known as Secretary or by any other designation) of any political party is required to furnish a return in respect of income of such political party, if the amount of gross total income before allowing exemption u/s 13A exceeds the maximum amount not chargeable to tax.

RETURN OF INCOME

[SECTION 139(4C)] RETURN OF INCOME OF SCIENTIFIC RESEARCH ASSOCIATION, ETC.:

Every -

- Research Association referred to in sec. 10(21);
- News agency referred to in sec. 10(22B);
- Association or institution referred to in sec. 10(23A) or sec. 10(23B);
- Specified Employee Welfare Fund referred to in sec. 10(23AAA);
- Any university or other educational institution referred to in sec. 10(23C)(iiiad) or (iiib);
- Any hospital or other medical institution referred to in sec. 10(23C)(iiiae) or (iiiac);
- Fund or institution referred to in sec. 10(23C)(iv);
- Trust or institution referred to in sec. 10(23C)(v);
- Any university or other educational institution referred to in sec. 10(23C)(vi);
- Any hospital or other medical institution referred to in sec. 10(23C)(via);
- Mutual Fund referred to in sec. 10(23D);
- Securitisation trust referred to in sec. 10(23DA);
- Investor Protection Fund referred to in sec. 10(23EC) or sec. 10(23ED);
- Core Settlement Guarantee Fund referred to in sec. 10(23EE);
- Venture Capital Company or Venture Capital Fund referred to in sec. 10(23FB);
- Trade union or an association of such union referred to in sec. 10(24);
- Body or authority or Board or Trust or Commission referred to in sec. 10(46) or 10(29A);
- Infrastructure debt fund referred to in sec. 10(47),

must file a return, if the total income without giving effect to the provisions of sec. 10, exceeds the maximum amount which is not chargeable to income-tax.

Penalty: Where an assessee fails to file return of income under this section, within the time limit, it shall be liable to pay a penalty of Rs. 100 per day during which such failure continues [Sec. 272A(2)].

[SECTION 139(4D)] RETURN OF INCOME BY A UNIVERSITY / COLLEGE, ETC.

Every University, college or other institutions referred to in sec. 35(1)(ii) or (iii) is required to furnish a return in respect of income or loss irrespective of size of income or loss.

[SECTION 139 (4E)] RETURN OF INCOME OF A BUSINESS TRUST:

Every business trust, which is not required to furnish return of income or loss under any other provisions of this section, shall furnish the return of its income in respect of its income or loss in every previous year and all the provisions of this Act shall, so far as may be, apply if it were a return required to be furnished u/s 139(1).

RETURN OF INCOME

[SECTION 139(4F)] RETURN OF INCOME OF INVESTMENT FUND:

Every investment fund referred to in sec. 115UB, which is not required to furnish return of income or loss under any other provisions of this section, shall furnish the return of income in respect of its income or loss in every previous year and all the provisions of this Act shall, so far as may be, apply as if it were a return required to be furnished u/s 139(1).

[SECTION 139(5)] REVISED RETURN:

If an assessee discovers any omission or wrong statement (bonafide in nature) in the return filed, he can revise his return u/s 139(5).

Time limit: Assessee may file the revised return -

- before the end of the relevant assessment year; or
 - before completion of regular assessment,
- whichever is earlier.

NOTE:

(a) **Replacement of original return:** Once a revised return is filed, it replaces the earlier return. This signifies that the revised return should be complete in itself and not merely an accessory to the original return.

(b) **Revision of revised return:** A revised return can again be revised i.e. a second revised return can be filed u/s 139(5) for correcting any omission or wrong statement made in the first revised return within specified time.

(c) **Revision of belated return:** A belated return u/s 139(4) can be revised.

(d) **Revision of loss return:** A loss return can be revised

(e) Return filed pursuant to notice u/s 142(1) cannot be revised.

[SECTION 139(9)] DEFECTIVE RETURN:

When a return is termed defective - A return of income is said to be defective where all the following conditions are not fulfilled:

- The return is furnished without paying self-assessment tax along with interest, if any.
- The annexure, statements and columns in the return of income have been duly filled in.
- The return is accompanied by the following documents -
 - a statement showing the computation of tax liability;
 - the audit report u/s 44AB (where the report has been submitted prior to the furnishing of return, a copy of audit report together with proof of furnishing the report);
 - the proof of tax deducted or collected at source, advance tax paid and tax paid on self-assessment;
 - where regular books of account are maintained by the assessee:
 - copies of Manufacturing A/c, Trading A/c, Profit and Loss A/c or Income and Expenditure A/c or any other similar account and Balance Sheet;

RETURN OF INCOME

(ii) in the case of –

- A proprietary business or profession - the personal account of the proprietor;
- A firm, AOP or BOI - personal account of the partners or members; or
- A partner or member of the firm, AOP or BOI - his personal account in the firm, association of persons or body of individuals;

where regular books of account are not maintained by the assessee –

e. where regular books of account are not maintained by the assessee:

- (i) a statement indicating the amount of turnover or gross receipts, gross profit, expenses and net profit of the business or profession and the basis on which such amount have been computed; and
- (ii) the amount of sundry debtors, sundry creditors, stock and cash balance as at the end of the previous year.

f. where the accounts of the assessee have been audited, copies of the audited Profit and Loss A/c, Balance Sheet and a copy of the Auditor's report;

g. Cost audit report u/s 233B of the Companies Act, 1956 (if any).

Effect: Where the Assessing Officer considers that the return of income furnished by the taxpayer is defective, he may intimate the defect to the taxpayer and give him an opportunity to rectify the defect(s).

Time limit for rectification: The assessee must rectify the error within a period of 15 days from the date of intimation(served on the assessee) or within such extended time as allowed by the Assessing Officer. Where the taxpayer rectifies the defect after the expiry of the period of 15 days or such extended period but before the assessment is completed, the Assessing Officer can condone such delay.

Consequence when defect is not rectified: If defect is not rectified within the time limit, the Assessing Officer will treat the return as an invalid return and provisions of the Act will apply as if the taxpayer had failed to furnish the return at all.

RETURN OF INCOME

[SECTION 140] VERIFICATION OF RETURN:

The return of income is required to be verified:

Assessee	Case	Verified by
Individual	In general	Individual himself
Where the individual concerned is absent from India	Individual himself or by the duly authorized person of such individual	
Where the individual is mentally incapacitated	Guardian of such individual or any other person competent to act on his behalf	
Where by any other reason it is not possible for the individual to verify the return.	Any person duly authorised by him	
Note: When return is verified by any authorised person in that case the return should be accompanied with power of attorney.		
HUF	In general	Karta
Where the 'karta' is absent from India or is mentally incapacitated	Any adult member of the family.	
Firm	In general	Managing partner
If due to any reason it is not possible for managing partner to verify or where there is no managing partner	Any adult partner	
Limited liability partnership	In general	Designated partner
If due to any unavoidable reason such designated partner is not able to verify the return, or where there is no designated partner as such	Any partner	
Local authority	Principal Officer	
Political party	Chief Executive Officer	
Company	In general	Managing Director (MD)
If due to any reason it is not possible for MD to verify or where there is no MD	Any director	

RETURN OF INCOME

Where an application for corporate insolvency resolution process has been admitted by the Adjudicating Authority under Insolvency and Bankruptcy Code, 2016	Insolvency professional appointed by such Adjudicating Authority
Non-resident company	A person holding a valid power of attorney. Copy of such power of attorney must be attached with the return.
Company in process of winding up	Liquidator of the company
Where the management of the company has been taken over by the Central or State Government.	Principal officer
Any other association	Any member or principal officer
Any other person	Such person or any other person competent to act on its behalf.

[SECTION 139AA] QUOTING OF ADHAAR NUMBER:

Every person who is eligible to obtain Aadhaar number shall quote Aadhaar number:

- a. in the application form for allotment of permanent account number;
- b. in the return of income:

Note:

1. Where the person does not possess the Aadhaar Number, the Enrolment ID of Aadhaar application form issued to him at the time of enrolment shall be quoted.
2. Every person who has been allotted PAN before 01-07-2017 and who is eligible to obtain Aadhaar number, shall intimate his Aadhaar number to such authority on or before specified date (31-03-2020). In case of failure to intimate the Aadhaar number, the PAN allotted to the person shall be made inoperative after the notified date in such manner as may be prescribed.
3. The provisions of this section shall not apply to notified persons or State.

IMPORTANT NOTE: NOW PAN AND ADHAAR NUMBER ARE TREATED AS PART MEANS THEY WORK AS SAME IN FILING RETURN OF INCOME.

RETURN OF INCOME

RAGHAV ACADEMY

STUDY NOTE-13 [INCOME TAX AUTHORITIES]

[SECTION 116]-INCOME TAX AUTHORITIES.

- a) The Central Board of Direct Taxes (CBDT) constituted under the Central Boards of Revenue Act, 1963 .
- b) Principal Directors General of Income-tax or Principal Chief Commissioners of Income-tax.
- c) Directors-General of Income-tax or Chief Commissioners of Income-tax.
- d) Principal Directors of Income-tax or Principal Commissioners of Income-tax.
- e) Directors of Income-tax or Commissioners of Income-tax or Commissioners of Income-tax (Appeals).
- f) Additional Directors of Income-tax or Additional Commissioners of Income-tax or Additional Commissioners of Income-tax (Appeals).
- g) Joint Directors of Income-tax or Joint Commissioners of Income-tax.
- h) Deputy Directors of Income-tax or Deputy Commissioners of Income-tax or Deputy Commissioners of Income tax (Appeals).
- i) Assistant Directors of Income-tax or Assistant Commissioners of Income-tax.
- j) Income-tax Officers.
- k) Tax Recovery Officers.
- l) Inspectors of Income-tax.

EXPLANATIONS:

- (a) As per sec. 2(7A), Assessing Officer means the Assistant Commissioner or Deputy Commissioner or Assistant Director or Deputy Director or the Income-tax Officer who is vested [**stationed**] with the relevant jurisdiction by virtue of directions or orders, and the Additional Commissioner or Additional Director or Joint Commissioner or Joint Director who is directed to exercise or perform all or any of the powers and functions conferred on, or assigned to, an Assessing Officer under this Act.
- (b) As per sec. 2(9A), Assistant Commissioner means a person appointed to be an Assistant Commissioner of Income-tax or a Deputy Commissioner of Income-tax u/s 117(1).
- (c) As per sec. 2(15A), Chief Commissioner means a person appointed to be a Chief Commissioner of Income-tax or a Principal Chief Commissioner of Income-tax u/s 117(1).
- (d) As per sec. 2(16), Commissioner means a person appointed to be a Commissioner of Income-tax or a Director of Income-tax or a Principal Commissioner of Income-tax or a Principal Director of Income-tax u/s 117(1).

STUDY NOTE-13 [INCOME TAX AUTHORITIES]

- (e) As per sec. 2(21), Director General or Director means a person appointed to be a Director General of Incometax or a Principal Director General of Income-tax or, as the case may be, a Director of Income tax or a Principal Director of Income-tax, u/s 117(1), and includes a person appointed to be an Additional Director of Income-tax or a Joint Director of Income-tax or an Assistant Director or Deputy Director of Income-tax.
- (f) As per sec. 2(28C), Joint Commissioner means a person appointed to be a Joint Commissioner of Income-tax or an Additional Commissioner of Income-tax u/s 117(1).
- (g) As per sec. 2(28D), Joint Director means a person appointed to be a Joint Director of Income-tax or an Additional Director of Income-tax u/s 117(1).

[SECTION 117]- APPOINTMENT OF INCOME TAX AUTHORITIES:

- The Central Government may appoint such persons **as it thinks fit** to be income-tax authorities.
- The Central Government may authorise the Board, or a Principal Director General or Director-General, a Principal Chief Commissioner or Chief Commissioner or a Principal Director or Director or a Principal Commissioner or Commissioner **to appoint** income-tax authorities below the rank of an Assistant Commissioner or Deputy Commissioner.
- An income-tax authority authorised in this behalf by the Board may appoint such executive or ministerial staff as may be necessary to assist it in the execution **of its functions**.

ALL THESE APPOINTMENTS CAN BE MADE SUBJECT TO THE RULES AND ORDERS OF THE CENTRAL GOVERNMENT.

CENTRAL BOARD OF DIRECT TAX [CBDT]:

The Central Board of Direct Taxes is a statutory authority functioning under the Central Board of Revenue Act, 1963. The officials of the Board in their ex-officio capacity also **function** as a Division of the Ministry dealing with **matters** relating to levy and collection of direct taxes.

The Central Board of Revenue as the **apex** body of the Department, charged with the administration of taxes, came into existence as a result of the Central Board of Revenue Act, 1924. Initially the Board was in charge of both direct and indirect taxes. However, when the administration of taxes became too unwieldy for one Board to handle, the Board was split up into two, namely the Central Board of Direct Taxes and Central Board of Excise and Customs with effect from 1.1.1964. This bifurcation was brought about by constitution of two Boards u/s 3 of the Central Board of Revenue Act, 1963.

STUDY NOTE-13 [INCOME TAX AUTHORITIES]

THE CENTRAL BOARD OF DIRECT TAXES CONSISTS OF A CHAIRMAN AND FOLLOWING **SIX** MEMBERS:-

1. Chairman.
2. Member (Income-tax).
3. Member (Legislation & Computerisation).
4. Member (Personnel & Vigilance).
5. Member (Investigation).
6. Member (Revenue).
7. Member (Audit & Judicial).

POWER OF CBDT:

THERE ARE 5 POWERS WHICH HOLD BY THE BOARD I.E CBDT , WHICH ARE AS FOLLOWS:

1. [SECTION 119(1)]-INSTRUCTION TO SUBORDINATE AUTHORITIES:

The Board may, from time to time, issue such orders, instructions and directions to other income-tax authorities **as it may deem fit** for the proper administration of this Act. Such authorities and all other persons employed in the execution of this Act shall observe and **follow** such orders, instructions and directions of the Board.

EXCEPTION TO SECTION 119(1) :

NO SUCH ORDERS, INSTRUCTIONS OR DIRECTIONS SHALL BE ISSUED—

- ✓ So as to require **any** income-tax authority to make a particular assessment **or** to dispose of a particular case in a particular manner; or [**THEY ARE SMALL MATTERS**].
- ✓ So as to interfere with the discretion [**JUDGEMENT**] of the Commissioner (Appeals) **in the** exercise of his appellate functions.

HOWEVER, THE BOARD CAN ISSUE ADMINISTRATIVE INSTRUCTIONS.

STUDY NOTE-13 [INCOME TAX AUTHORITIES]

2. [SECTION 119(2)(a)]-ISSUE GENERAL OR SPECIAL ORDER TO SUBORDINATES:

THE BOARD MAY ISSUE FROM TIME TO TIME GENERAL OR SPECIAL ORDERS TO ITS SUBORDINATE SUBJECT TO FOLLOWING FEATURES:

- (a) If it considers it necessary or expedient to do so, for the purpose of proper and efficient management of the work of assessment and collection of revenue.
- (b) Such order may be issued whether by way of relaxation of any of the provisions of sec. 115P, 115S, 139, 143, 144, 147, 148, 154, 155, 158BFA, 201(1A), 210, 211, 234A, 234B, 234C, 234E, 270A, 271, 271C, 271CA and 273 or otherwise.
- (c) Such orders may be in respect of any class of incomes or class of cases.
- (d) Such order must not be prejudicial **[harmful]** to the assessee.
- (e) Such order acts as guidelines, principles or procedures to be followed by other income-tax authorities in the work relating to assessment or collection of revenue or the initiation of proceedings for the imposition of penalties;
- (f) Any such order may, if the Board is of the opinion that it is necessary in the public interest so to do, be published and circulated in the prescribed manner for general information.

3. [SECTION 119(2)(b)]-ADMIT APPLICATION OR CLAIM AFTER EXPIRY OF TIME LIMIT:

- (a) The Board may, by general or special order, admit an application or claim for any exemption, deduction, refund or any other relief under this Act **after the expiry** of the period specified under this Act **for making** such application or claim.
- (b) Such order can be issued by the Board, if it considers it desirable or expedient to do so, **for avoiding** genuine hardship in any case or class of cases.
- (c) Such order can be issued to any income-tax authority **except** Commissioner (Appeals).

4. [SECTION 119(2)(c)]-RELAXATION IN REQUIREMENT OF THE PROVISION OF CHAPTER VI OR CHAPTER VIA:

- The Board **may**, by general or special order, **relax any requirement** contained in any of the provisions of Chapter IV (Sec.14 to 59) or Chapter VIA (Sec.80A to 80U), where the assessee has failed to comply with any requirement specified in such provision for claiming deduction thereunder.

STUDY NOTE-13 [INCOME TAX AUTHORITIES]

- Reasons for issuing such order are to be specified therein;
- The Board can issue such order if it considers it desirable or expedient to do so for avoiding genuine hardship in any case or class of cases;\
- Such order can be issued subject to the following conditions:
 - (a) the default in complying with such requirement **was due to** circumstances beyond the control of the assessee; and
 - (b) the assessee has **complied** with such requirement before the completion of assessment in relation to the previous year in which such deduction is claimed.

NOTE: The Central Government shall cause every order issued under this clause to be laid before each House of Parliament.

5. **[SECTION 118]-CONTROL OVER INCOME-TAX AUTHORITIES:**

The Board may, by notification in the Official Gazette, **direct** that any income-tax authority or authorities specified in the notification shall be **subordinate to such other** income-tax authority or authorities as may be specified in such notification.

NOTE: An order, circular, instruction or direction issued u/s 119 cannot override the provisions of the Act.

STUDY NOTE-13 [INCOME TAX AUTHORITIES]

[SECTION 120]-JURISDICTION OF INCOME-TAX AUTHORITIES:{RIGHTS OF ITA}

- Income-tax authorities shall exercise all or any of the powers and perform all or any of the functions assigned to such authorities in accordance with directions of the Board.
- The directions of the Board **may** authorise **any** other income-tax authority **to issue** orders in writing for the exercise of the powers and performance of the functions by any **of its** subordinate.
- The Board or other authorised income-tax authority may have regard to any one or more of the following criteria:
 - (a) territorial area;
 - (b) persons or classes of persons;
 - (c) incomes or classes of income; and
 - (d) cases or classes of cases.
- The Board may, by general or special order, and subject to such conditions, restrictions or limitations as may be specified therein:
 - (a) May authorise any Principal Director General or Director General or Principal Director or Director to perform such functions of any other income-tax authority as may be assigned to him by the Board;
 - (b) May empower the Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner to issue orders in writing that the powers and functions assigned to, the Assessing Officer in respect of any specified area or persons or classes of persons or incomes or classes of income or cases or classes of cases, shall be exercised or performed **by an** Additional Commissioner or an Additional Director or a Joint Commissioner or a Joint Director; and
- Where it is considered **necessary or appropriate** for the proper management of the work, jurisdiction with more than one income tax authority in relation to any case may be conferred **or assigned**.
- The Board may direct that for the purpose of furnishing of the return of income or the doing of any other act or thing under this Act or any rule **made thereunder** by any person or class of persons, the income-tax authority exercising and performing the powers and functions in relation **to the said person** or class of persons shall be such authority as may be specified in the notification.

STUDY NOTE-13 [INCOME TAX AUTHORITIES]

[SECTION 124]-JURISDICTION OF ASSESSING OFFICER:

- Where the Assessing Officer has been vested **[stationed]** with jurisdiction over any area, within the limits of such area, he shall have jurisdiction:
 - (a) In respect of any person carrying on a business or profession, if the place at which such person carries on business or profession is situate within the area , or where his business or profession is carried on in more places then one of the principal place of his business or profession situate within the area.
 - (b) In respect of any other person, person residing within the area.
- Where a question arises as to whether an Assessing Officer has jurisdiction **[right]** to assess any person, the question shall be determined by the Principal Director General or Director General or the Principal Chief Commissioner or Chief Commissioner or the Principal Commissioner or Commissioner.
- In case, where the question is one relating to areas within the jurisdiction of different Principal Directors General or Directors General or Principal Chief Commissioners or Chief Commissioners or Principal Commissioners or Commissioners, by the Principal Directors General or Directors General or Principal Chief Commissioners or Chief Commissioners or Principal Commissioners or Commissioners **concerned** or, if they are not in agreement, by the Board or by such Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner as the Board **may notify**.
- No person shall be entitled to call in question the jurisdiction of an Assessing Officer:
 - a. where he has made a return u/s 139(1), after the expiry of 1 month from the date on which he was served with a notice u/s 142(2) or 143(2) or after the completion of the assessment, whichever is earlier.
 - b. where he has made no such return, after the expiry of the time allowed by the notice u/s 142(1) or 148 for the making of the return or by the notice under the first proviso to sec. 144 to show cause why the assessment should not be completed to the best of the judgment of the Assessing Officer, whichever is earlier.
 - c. where an action has been taken u/s 132 or 132A, after the expiry of 1 month from the date on which he was served with a notice u/s 153A or 153C or after the completion of the assessment, whichever is earlier.
- Where an assessee calls in question the jurisdiction of an Assessing Officer, then the Assessing Officer shall, if not satisfied with the correctness of the claim, refer the matter for determination (as given in point 2 and 3) before the assessment is made.

STUDY NOTE-13 [INCOME TAX AUTHORITIES]

- Every Assessing Officer shall have all the powers conferred by or under this Act on an Assessing Officer in respect of the income accruing or arising or received within the area, if any, over which he has been vested with jurisdiction.

[SECTION 127]-POWER TO TRANSFER CASES:

- The Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner **may transfer** any case from one or more Assessing Officers subordinate to him (whether with or without concurrent jurisdiction) **to any other** Assessing Officer or Assessing Officers (whether with or without concurrent jurisdiction) also subordinate to him.
- Such power shall be exercised after:
 - (a) Giving the assessee a reasonable opportunity of being heard in the matter wherever it is possible to do so.
 - (b) Recording his reasons for doing so.
- Where the Assessing Officer or Assessing Officers **from whom the case is to be transferred** and the Assessing Officer or Assessing Officers **to whom the case is to be transferred** are **not** subordinate to **the same** Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner.
- Where the Principal Directors General or Directors General or Principal Chief Commissioners or Chief Commissioners or Principal Commissioners or Commissioners **to whom** such Assessing Officers are subordinate are in agreement, then the Principal Director General or Director General or Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner from whose jurisdiction the case is to be transferred may pass the order.
- Such power shall be exercised after:
 - (a) Giving the assessee a reasonable opportunity of being heard in the matter wherever it is possible to do so.
 - (b) Recording his reasons for doing so.
 - (c) Where such authorities are not in agreement, the order transferring the case may be passed by the Board or any other notified higher authority.
- No opportunity of being heard to be given to the assessee where the transfer is from any Assessing Officer (whether with or without concurrent jurisdiction) to any other Assessing Officer (whether with

STUDY NOTE-13 [INCOME TAX AUTHORITIES]

or without concurrent jurisdiction) and the offices of all such officers are situated in the **same** city, locality or place.

- The transfer of a case may be made at any stage of the proceedings, and shall not render necessary the reissue of any notice already issued by the Assessing Officer from whom the case is transferred. [**not require new notice**].

[SECTION 129]-SUCCESION OF INCOME-TAX AUTHORITY :

- Whenever in respect of any proceeding under this Act an income-tax authority **ceases** to exercise jurisdiction and another income tax authority exercises jurisdiction.
- The income-tax authority so succeeding may continue the proceeding from the **stage at which** the proceeding was left by his predecessor.

OPPORTUNITY OF BEING RE-HEARD:

THE ASSESSEE MAY DEMAND THAT BEFORE –

- ✓ Such succeeding authority **reopens** previous proceeding or any part thereof; or
- ✓ Any order of assessment is **passed** against him.

- He Must Be Given An **Opportunity Of Being Re-Heard.**

CHAPTER 14 A : EQUALISATION LEVY.

[SEC. 165]-CHARGEABILITY:

Equalisation levy shall be payable @ 6% of the consideration for any specified service received or receivable by a person, being a non-resident from:

- (i). A person resident in India and carrying on business or profession; or
- (ii). A non-resident having a permanent establishment in India.

Specified service means:

- a) online advertisement,
- b) any provision for digital advertising space or any other facility or service for the purpose of online advertisement and
- c) any other notified service – Sec. 164 (i)

Online means a facility or service or right or benefit or access that is obtained through the internet or any other form of digital or telecommunication network – Sec. 164 (f).

NOTE: These provisions extend to the whole of India except the State of Jammu and Kashmir.

EXCEPTION OF EQUALISATION LEVY:

The equalisation levy shall not be charged, where:

- (a) The non-resident providing the specified service has a permanent establishment in India and the specified service is effectively connected with such permanent establishment;
- (b) The aggregate amount of consideration for specified service received or receivable in a previous year from resident in India or from a non-resident having a permanent establishment in India, does **not exceed RS.1,00,000** ; or
- (c) The payment for the specified service by the person resident in India, or the permanent establishment in India is not for the purposes of carrying out business or profession.

CHAPTER 14 A : EQUALISATION LEVY.

[SECTION 166]-COLLECTION & RECOVERY OF EQUALISATION LEVY:

WHO IS LIABLE TO DEDUCT EQUALISATION LEVY:

Every person, being a resident and carrying on business or profession or a non-resident having a permanent establishment in India (hereafter in this Chapter referred to as assessee) shall deduct the equalisation levy from the amount paid or payable to a non-resident in respect of the specified service.

Rate of levy: 6%.

Threshold limit: Such deduction shall be made if the aggregate amount of consideration for specified service in a previous year exceeds RS. 1,00,000.

Time limit for depositing the levy to the credit of the Central Government: The Equalisation levy so deducted during any calendar month shall be paid by every assessee to the credit of the Central Government by the 7th day of the month immediately following the said calendar month.

Consequences of failure to deduct equalisation levy: Any assessee who fails to deduct the levy shall be (even though not deducted) liable to pay the levy to the credit of the Central Government in accordance with the aforesaid provisions. [**by his own pocket**].

[SECTION 167]-FURNISHING OF STATEMENT:

- (a)** Every assessee shall, within 30th June immediately following the financial year [i.e 30 June of A.Y], prepare and deliver to the Assessing Officer (or to any other authority or agency authorised by the Board), a statement in Form 1, verified in such manner and setting forth such particulars as may be prescribed, in respect of all specified services during such financial year.
- (b) Revised Statement:** An assessee who has not furnished the statement within aforesaid time or having furnished such statement, notices any omission or wrong particular therein, may furnish a statement or a revised statement, as the case may be, at any time before the expiry of 2 years from the end of the financial year in which the specified service was provided.
- (c) Notice by the Assessing Officer:** Where any assessee fails to furnish the statement within 30th June immediately following the financial year, the Assessing Officer may serve a notice upon such assessee requiring him to furnish the statement in the prescribed form, verified in the prescribed manner and setting forth such particulars, within 30 days from the date of service of the notice.

CHAPTER 14 A : EQUALISATION LEVY.

[SECTION 168]- PROCESSING OF STATEMENT:

Statement furnished u/s 167 shall be processed in the following manner:

- a. the equalisation levy shall be computed after making the adjustment for any arithmetical error in the statement;
- b. the interest, if any, shall be computed **on the basis** of sum deductible as computed in the statement;
- c. the sum payable by, or the amount of refund due to, the assessee shall be determined **after adjustment** of the interest against any amount paid u/s 166 [**LEVY**] or 170 [**INTEREST**] and any amount paid otherwise by way of tax or interest;
- d. an intimation shall be prepared or generated and sent to the assessee specifying the sum determined to be payable by, or the amount of refund due to, him; and
- e. the amount of refund due to the assessee shall be granted to him.

IMPORTANT NOTE:

- ✓ No intimation shall be **sent** after the expiry of 1 year from the end of the financial year in which the statement is furnished.
- ✓ For the purposes of processing of statements, the Board may make a scheme for centralised processing of such statements to expeditiously determine the tax payable by, or the refund due to, the assessee.

[SECTION 169]- RECTIFICATION OF MISTAKE:

- (1) With a view to rectifying any mistake apparent from the record, the Assessing Officer may amend any intimation issued u/s 168, within **1 year** from the end of the financial year **in which** the intimation sought to be amended **was issued**.[**i.e end of the year in which intimation u/s 168 was issued**].
- (2) The Assessing Officer may make an amendment to any intimation either *suo motu* or on any mistake brought to his notice by the assessee.
- (3) An amendment to any intimation, which has the effect of increasing the liability of the assessee or reducing a refund, shall not be made unless the Assessing Officer has given notice to the assessee of his intention so to do and has given the assessee a reasonable **opportunity of being heard**.
- (4) Where any such amendment to any intimation has the effect of enhancing the sum payable or reducing the refund already made, the Assessing Officer shall make an order specifying the sum payable by the assessee and the provisions of this Chapter shall apply accordingly.

CHAPTER 14 A : EQUALISATION LEVY.

[SECTION 170]-INTEREST ON DELAYED PAYMENT OF EQUALISATION LEVY:

Every assessee, who fails to credit adequate equalisation levy to the account of the Central Government within specified period, shall pay simple interest @ 1% of such levy for every month or part of a month by which such crediting of the tax is delayed.

PENALTY:

Penalties provisions are as under:

SECTION:	Nature of default	Amount of Penalty
171(a)	Fails to deduct the equalisation levy	Equal to the amount of equalisation levy
171(b)	Fails to pay levy, after deduction, to the credit of the Central Government	RS.100 for every day during which the failure continues subject to maximum of amount failed to pay
172	Failure to furnish statement as required u/s 172	RS.100 for every day during which the failure continues

IMPORTANT NOTE: No penalty shall be impossible:

- (1) If the assessee proves to the satisfaction of the Assessing Officer that there was reasonable cause for the said failure.
- (2) Without giving reasonable opportunity of being heard to the assessee [Sec. 173].
- (3) An assessee aggrieved by an order imposing penalty may appeal to the Commissioner of Income-tax (Appeals) within 30 days from the date of receipt of the order in Form 3. It shall be accompanied with fees of RS.1,000/-. The provisions relating to appeals are in line with that of the Income-tax Act, 1961. [Sec. 174].
- (4) Similarly, appeals can be filed before the ITAT against the order of the Commissioner (Appeals) in Form 4 within 60 days from the date on which the order sought to be appealed against is received by the assessee or by the Commissioner. In case appeal before the ITAT is filed by the assessee, it should be accompanied with fees of RS.1,000/- [Sec. 175].

CHAPTER 14 A : EQUALISATION LEVY.

[SECTION 176] – PUNISHMENT FOR FALSE STATEMENT:

If a person makes a false statement in any verification or delivers an account or statement, which is false, and which he either knows or believes to be false, or does not believe to be true, he shall be punishable with imprisonment for a term which may extend to 3 years and with fine.

NOTE:

- (1) An offence punishable above shall be deemed to be non-cognizable.
- (2) No prosecution shall be instituted against any person for any offence except with the previous sanction of the Chief Commissioner of Income-tax [Sec. 177].

CHARGE OF EQUALISATION LEVY ON E-COMMERCE SUPPLY OF SERVICES [SECTION: 165A]

Equalisation levy shall be charged @ 2% of the amount of consideration received or receivable by an e-commerce operator from e-commerce supply or services made or provided or facilitated by it—

- (a) to a person resident in India; or
- (b) to a non-resident in the specified circumstances; or
- (c) to a person who buys such goods or services or both using internet protocol address located in India.

- “Specified circumstances” mean—

- (i) sale of advertisement, which targets a customer, who is resident in India or a customer who accesses the advertisement through internet protocol address located in India; and
- (ii) sale of data, collected from a person who is resident in India or from a person who uses internet protocol address located in India

Exception:

The equalisation levy shall not be charged:

- (a) where the e-commerce operator making or providing or facilitating e-commerce supply or services has a permanent establishment in India and such e-commerce supply or services is effectively connected with such permanent establishment; (
- b) where the equalisation levy is leviable u/s 165 or

CHAPTER 14 A : EQUALISATION LEVY.

(c) sales, turnover or gross receipts, as the case may be, of the e-commerce operator from the e-commerce supply or services made or provided or facilitated is less than Rs. 2 crore during the previous year.

COLLECTION AND RECOVERY OF EQUALISATION LEVY ON E-COMMERCE SUPPLY OR SERVICES [SECTION. 166A]

The equalisation levy u/s 165A shall be paid by every e-commerce operator to the credit of the Central Government quarterly as per following time schedule:

Date of ending of the quarter of financial	Due date of payment
30th June	7th July
30th September	7th October
31st December	7th January
31st March	31st March

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CHAPTER 14 B: TONNAGE TAX SCHEME.

INTRODUCTION:

To make the Indian shipping industry more competitive, a tonnage tax scheme for taxation of shipping profits was introduced. Some of the basic **FEATURES** of the tonnage tax scheme are as follows:-

- It is a scheme of presumptive taxation whereby the notional income arising from the operation of a ship is determined based on the tonnage of the ship.
- The notional income is taxed at the normal corporate rate applicable for the year.
- Tax is payable even if there is a loss in a year.
- A company may opt for the scheme and once such option is exercised, there is a lock in period of 10 years. If a company opts out, it is debarred from re-entry for 10 years.
- Since this is a preferential regime of taxation, certain conditions like creation of reserves, training etc. are required to be met.
- A company may be expelled in certain circumstances.

[SEC. 115VA]-COMPUTATION OF PROFITS AND GAINS FROM THE BUSINESS OF OPERATING QUALIFYING SHIPS:

In the case of a company, the income from the business of operating qualifying ships, may, at its option, be computed in accordance with the provisions of this Chapter and such income shall be deemed to be the profits and gains of such business chargeable to tax under the head "Profits and gains of business or profession".

[SEC. 115VB]-OPERATING SHIPS:

A company shall be regarded as operating a ship if it operates any ship whether owned or chartered by it and includes a case where even a part of the ship has been chartered in by it in an arrangement such as slot charter, space charter or joint charter.

However, a company shall not be regarded as the operator of a ship, which has been chartered out by it on bareboat charter-cum-demise¹ terms or on bareboat charter² terms for a period exceeding 3 years.

NOTE:

- ✓ Bareboat charter means hiring of a ship for a stipulated period on terms which give the charterer possession and control of the ship, including the right to appoint the master and crew;
- ✓ Bareboat charter-cum-demise means a bareboat charter where the ownership of the ship is intended to be transferred after a specified period to the company to whom it has been chartered;

CHAPTER 14 B: TONNAGE TAX SCHEME.

[SEC. 115VD]-QUALIFYING SHIP:

A ship is a qualifying ship if:

- It is a sea going ship or vessel of 15 net tonnage or more, Seagoing ship means a ship if it is certified as such by the competent authority of any country.
- It is a ship registered under the Merchant Shipping Act, 1958 or a ship registered outside India in respect of which a license has been issued by the Director-General of Shipping u/s 406 or section 407 of the Merchant Shipping Act, 1958; and
- A valid certificate in respect of such ship indicating its net tonnage is in force.

QUALIFYING SHIP DOES NOT INCLUDE:

- Factory ships, it includes a vessel providing processing services in respect of processing of the fishing produce;
- Pleasure craft, means a ship of a kind whose primary use is for the purposes of sport or recreation;
- Harbour and river ferries;
- A seagoing ship or vessel if the main purpose for which it is used is the provision of goods or services of a kind normally provided on land;
- Off-shore installations;
- Fishing vessels;
- A qualifying ship, which is used as a fishing vessel for a period of more than 30 days during a previous year.

[SEC. 115VC]-QUALIFYING COMPANY:

A company is a qualifying company if:

- (a) It is an Indian company;
- (b) The place of effective management of the company is in India;

PLACE OF EFFECTIVE MANAGEMENT MEANS:

- (i) The place where the board of directors of the company or its executive directors, as the case may be, make their decisions; or
 - (ii) In a case where the board of directors routinely approve the commercial and strategic decisions made by the executive directors or officers of the company, the place where such executive directors or officers of the company perform their functions.
- (c) It owns at least one qualifying ship; **and**
 - (d) The main object of the company is to carry on the business of operating ships.

CHAPTER 14 B: TONNAGE TAX SCHEME.

[SEC. 115VE]-MANNER OF COMPUTATION OF INCOME UNDER TONNAGE TAX SCHEME:

- (1) A tonnage tax company (means a qualifying company in relation to which tonnage tax option is in force) engaged in the business of operating qualifying ships shall compute the profits from such business under the tonnage tax scheme.
- (2) The business of operating qualifying ships giving rise to income [referred to in sec. 115V-I (1)] shall be considered **as a separate business** (hereafter referred to as the tonnage tax business) distinct from all other activities or business carried on by the company.
- (3) The profits shall be computed separately from the profits and gains from any other business.
- (4) The tonnage tax scheme shall apply only if an option to that effect is made in accordance with the provisions of section 115VP.
- (5) Where a company engaged in the business of operating qualifying ships is not covered under the tonnage tax scheme or, has not made an option to that effect, as the case may be, the profits and gains of such company from such business shall be computed in accordance with the other provisions of this Act.

[SEC. 115VF]-TONNAGE INCOME:

The tonnage income shall be computed in accordance with sec. 115VG and the income so computed shall be deemed to be the profits chargeable under the head "Profits and gains of business or profession" and the relevant shipping income referred to in sec. 115V-I(1) shall not be chargeable to tax.

[SEC. 115VG]-COMPUTATION OF TONNAGE INCOME:

The tonnage income of a tonnage tax company for a previous year shall be the aggregate of the tonnage income of each qualifying ship computed in accordance with the following provisions:

- The tonnage income of each qualifying ship shall be the daily tonnage income of each such ship multiplied by:
 - (a) The number of days in the previous year; or
 - (b) The number of days in part of the previous year in case the ship is operated by the company as a qualifying ship for only part of the previous year.
 - (c) Daily tonnage income of a qualifying ship shall be:

Qualifying ship having net tonnage	Amount of daily tonnage income
Upto 1,000	RS.70 for each 100 tons
Exceeding 1,000 but not	RS.700 plus RS. 53 for each

CHAPTER 14 B: TONNAGE TAX SCHEME.

more than 10,000	100 tons exceeding 1,000 tons
Exceeding 10,000 but not more than 25,000	RS.5,470 plus RS.42 for each 100 tons exceeding 10,000 tons
Exceeding 25,000	RS.11,770 plus RS.29 for each 100 tons exceeding 25,000 tons

- The tonnage shall be rounded off to the nearest multiple of 100 tons and for this purpose, any tonnage consisting of kilograms shall be ignored and thereafter if such tonnage is not a multiple of 100, then:-
 - (a) if the last figure in that amount is 50 tons or more, the tonnage shall be increased to the next higher tonnage which is a multiple of 100; or
 - (b) if the last figure is less than 50 tons the tonnage shall be reduced to the next lower tonnage which is a multiple of 100.
- **No deduction or set off shall be allowed in computing the tonnage income under this Chapter.**

[SEC. 115V-I]-RELEVANT SHIPPING INCOME:

- (1) The relevant shipping income of a tonnage tax company means:
 - (a) its profits from core activities;
 - (b) its profits from incidental activities.
- (2) Where the aggregate of incomes from incidental activities exceeds **1/4%** of the turnover from **core activities**, such excess shall not form part of the relevant shipping income for the purposes of this Chapter and shall be taxable under the other provisions of this Act.
- (3) The **incidental activities** shall be the activities which are incidental to the core activities and which may be prescribed for the purpose.
- (4) Where a tonnage tax company operates any ship, which is not a qualifying ship, the income attributable to operating such non-qualifying ship shall be computed in accordance with the other provisions of this Act.
- (5) Where any goods or services held for the purposes of tonnage tax business are transferred to any other business carried on by a tonnage tax company or vice versa and the consideration for such transfer as recorded in the accounts of the tonnage tax business does not correspond to the market value of such goods or services as on the date of the transfer, then, the relevant shipping income under this section shall be computed as if the transfer, in either case, had been made at the market value of such goods or services as on that date.

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- (6) Where it appears to the Assessing Officer that, owing to the close connection between the tonnage tax company and any other person, or for any other reason, the course of business between them is so arranged that the business transacted between them produces to the tonnage tax company more than the ordinary profits which might be expected to arise in the tonnage tax business, the Assessing Officer shall, in computing the relevant shipping income of the tonnage tax company for the purposes of this Chapter, take the amount of income as may be reasonably deemed to have been derived therefrom.
- (7) In case the relevant shipping income of a tonnage tax company is a loss, then, such loss shall be ignored for the purposes of computing tonnage income.

[SEC. 115VL]-GENERAL EXCLUSION OF DEDUCTION AND SET OFF, ETC.:

In computing the tonnage income of a tonnage tax company for any previous year (hereafter in this section referred to as the “relevant previous year”) in which it is chargeable to tax in accordance with this Chapter:

- Every loss, allowance or deduction referred to sec. 30 to 43B **had been** given full effect to for that previous year;
- **No loss** referred to in sec. 70(1) or 70(3) [long term capital loss] or 71(1) or 71(2) or 72(1) or 72A(1), in so far as such loss relates to the business of operating qualifying ships of the company, shall be carried forward or set off where such loss relates to any of the previous years when the company is under the tonnage tax scheme;
- No deduction shall be allowed under **Chapter VI-A** in relation to the profits and gains from the business of operating qualifying ships; and
- In computing the depreciation allowance u/s 32, the written down value of any asset used for the purposes of the tonnage tax business shall be computed as if the company has claimed and has been **actually allowed** the deduction in respect of depreciation for the relevant previous year.

[SEC. 115VM]-EXCLUSION OF LOSS:

- Section 72 shall apply in respect of any losses that **have** accrued to a company **before** its option for tonnage tax scheme and which are attributable to its tonnage tax business, as if such losses had been set off against the relevant shipping income in any of the previous years when the company is under the tonnage tax scheme.
- The losses shall not be available for set off against any income other than relevant shipping income in any previous year beginning on or after the company exercises its option u/s 115VP.

CHAPTER 14 B: TONNAGE TAX SCHEME.

[SEC. 115VO]-EXCLUSION FROM SECTION 115JB:

The book profit or loss derived from the activities of a tonnage tax company, referred to in sec. 115VI(1), shall be excluded from the book profit of the company for the purposes of sec. 115JB. In other words, MAT provisions are not applicable.

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STUDY NOTE-14[LIABILITY IN SPECIAL CASES]

[SECTION 159]-LEGAL REPRESENTATIVES:

- Where a person dies, his legal representatives shall be liable to pay any sum which the deceased would have been liable to pay if he had not died [**MEANS THE LEGAL REPRESENTATIVES**], in the like manner and to the same extent as the deceased.
- The liability of a legal representative is **limited** to the extent to which the estate is **capable** of meeting the liability.
- However, every legal representative shall be personally liable for any tax payable by him in his capacity as legal representative if, while his liability for tax remains undischarged, he creates a charge on or disposes of or parts with any assets of the estate [**BELONGINGS**] of the deceased, which are in his possession or may come into his possession, but such liability shall be **limited** to the value of the asset so charged, disposed of or parted with.
- For the purpose of making an assessment (including an assessment, reassessment or recomputation u/s 147) of the income of the deceased and for the purpose of levying any sum in the hands of the legal representative in accordance with the above provisions:
 - (i) Any proceeding taken against the deceased before his death shall be deemed to have been taken against the legal representative and may be continued against the legal representative from the stage at which it stood on the date of the death of the deceased;
 - (ii) Any proceeding which could have been taken against the deceased if he had survived, may be taken against the legal representative; and
 - (iii) All the provisions of this Act shall apply accordingly.
- The legal representative of the deceased shall be deemed to be an assessee.

IMPORTANT NOTE:

- ✓ In the year of death of the assessee, there are two assessment
 - (i) Up to date of death, sec. 159 is applicable;
 - (ii) after the date of death, sec. 168 or other sections are applicable.
- ✓ Representative u/s 159 and Executors u/s 168 may be same person.
- ✓ In case of death of the karta of HUF, HUF continues with to exist with changed composition and karta, hence section 159 is not applicable in case of death of karta. However, sec. 159 is applicable on the individual income of the karta.

STUDY NOTE-14[LIABILITY IN SPECIAL CASES]

[SECTION 168]- EXECUTORS:

- Executor includes an administrator or other person administering the estate of a deceased person.
- The income of the estate [BELONGING] of deceased person shall be chargeable to tax in the hands of the executor:
 - (a) If there is only one executor, then, as if the executor were an individual; or
 - (b) If there are more than one executors, then, as if the executors were an association of persons;

And for the purposes of this Act, the executor shall be **deemed** to be resident or non-resident according as the deceased person was a resident or non-resident during the previous year in which his death took place.

- The assessment of an executor shall be made separately from any assessment that may be made on him in respect of his **own income**.
- Separate assessments shall be made on the total income of each completed previous year (or part thereof) as is included in the period from the date of the death to the date of complete distribution to the beneficiaries of the estate according to their several interests.
- In computing the total income of any previous year, any income of the estate of that previous year distributed to (or applied to the benefit of) any **specific legatee** of the estate during that previous year shall be excluded; but the income so excluded shall be included in the total income of the previous year of such specific legatee.
- An executor in respect of tax paid or payable by him shall be recovered by him from the estate or from the beneficiaries [Sec. 169].

STUDY NOTE-14[LIABILITY IN SPECIAL CASES]

[SECTION 160] REPRESENTATIVE ASSESSEE:

REPRESENTATIVE ASSESSEE MEANS:

IN RESPECT OF THE INCOME:	REPRESENTATIVE:
(i)- of a non-resident specified in Sec. 9(1) .	Agent of the non-resident, including a person who is treated as an agent u/s 163.
(ii)- of a minor, lunatic or idiot .	A guardian or manager who is entitled to receive or is in receipt of such income on behalf of such minor, lunatic or idiot.
(iii)-which is received by <ul style="list-style-type: none">• the Court of Wards;• the Administrator-General;• the Official Trustee; or• any receiver or manager, appointed by or under any order of a court on behalf of or for the benefit of any person.	Such – <ul style="list-style-type: none">• Court of Wards;• Administrator-General;• Official Trustee; or• Receiver or Manager.
(iv)-which is received by trustee [appointed under a trust declared by a duly executed instrument in writing whether testamentary or otherwise (including any valid deed)] on behalf of or for the benefit of any person.	Such trustee or trustees.
(v)-which is received receives or entitled to receive by trustee (appointed under an oral trust) on behalf of or for the benefit of any person.	Such trustee or trustees.

NOTE: Every representative assessee shall be **deemed** to be an assessee.

STUDY NOTE-14[LIABILITY IN SPECIAL CASES]

[SECTION 161]-LIABILITY OF REPRESENTATIVE ASSESSSEE:

- Every representative assessee shall be subject to the same duties, responsibilities and liabilities as if the income were income received by or accruing to or in favour of **him** beneficially. Any assessment shall be deemed to be made upon him in his representative capacity only, and the tax shall be levied upon and recovered from him in like manner and to the same extent as it would be leviable upon & recoverable from the person represented by him.
- Where any person is, in respect of any income, assessable in the capacity of a representative assessee, he shall not, in respect of **that** income, be assessed under any **other** provision of this Act.

[SEC. 162]-RIGHT OF REPRESENTATIVE ASSESSSEE TO RECOVER TAX PAID :

- Every representative assessee who, as such, pays any sum under this Act, shall be entitled to recover the sum so paid from the person on whose behalf it is paid, or to retain out of any moneys that may be in his possession or may come to him in his representative capacity, an amount equal to the sum so paid.
- Any representative assessee who apprehends **[EXPECT]** **that** **he may** be assessed as a representative assessee, may retain out of any money payable by him to the person on whose behalf he is liable to pay tax (hereinafter in this section referred to as the principal), a sum equal to his estimated liability.
- In the event of any disagreement between the principal and such representative assessee, such representative assessee may secure from the Assessing Officer a certificate stating the amount to be so retained pending final settlement of the liability, and the certificate so obtained shall be his warrant for retaining that amount.
- The amount recoverable from such representative assessee at the time of final settlement shall not exceed the amount specified in such certificate, except to the extent to which such representative assessee may, at such time, **have in his hands** additional assets of the principal.

[SEC. 166]-DIRECT ASSESSMENT OR RECOVERY NOT BARRED:

Nothing shall **Prevent** either the direct assessment of the person on whose behalf **or** for whose benefit income therein referred to is receivable or the recovery from such person of the tax payable in respect of such income.

STUDY NOTE-14[LIABILITY IN SPECIAL CASES]

[SEC. 167]-REMEDIES AGAINST PROPERTY IN CASES OF REPRESENTATIVE ASSESSEE :

The Assessing Officer shall have the same remedies against all property of any kind vested in or under the control or management **of any representative assessee** as he would have against the property of any person liable to pay any tax, and in as full and ample a manner, whether the demand is raised against the representative assessee **or** against the beneficiary **direct**.

EXCEPTIONS TO THE GENERAL RULE THAT INCOME OF A PREVIOUS YEAR IS TAXED IN ITS ASSESSMENT YEAR:

[SEC. 174]-ASSESSMENT OF PERSONS LEAVING INDIA :

- When it appears to the Assessing Officer that any individual may leave India during the current assessment year or shortly after its expiry and that he has no present intention of returning to India, the total income of such individual for the period from the expiry of the previous year for that assessment year up to the probable date of his departure from India shall be chargeable to tax in that assessment year.
- The total income of each completed previous year or part of any previous year included in such period shall be chargeable to tax at the **rate or rates** in force in that assessment year, and separate assessments shall be made in respect of each such completed previous year or part of any previous year.
- The Assessing Officer may estimate the income of such individual for such period or any part thereof, where it cannot be readily determined in the manner provided in this Act.
- For the purpose of making an assessment, the Assessing Officer may serve a notice upon such individual requiring him to furnish, within such time, not being less than 7 days, as may be specified in the notice, a return in the same form and verified in the same manner as a return u/s 142(1)(i), setting forth his total income for each previous year and his estimated total income for any part of the previous year and the provisions of this Act shall, so far as may be, and subject to the provisions of this section, apply as if the notice were a notice issued u/s 142(1)(i).

STUDY NOTE-14[LIABILITY IN SPECIAL CASES]

[SEC. 174A]-ASSESSMENT OF AOP OR BOI OR ARTIFICIAL JURIDICAL PERSON FORMED FOR SHORTER PERIOD:

- Where it appears to the Assessing Officer that any AOP or BOI or an artificial juridical person, formed for a particular purpose is likely to be dissolved in the assessment year in which such AOP, etc. was formed or immediately after such assessment year, the total income of such association, etc. for the period from the expiry of the previous year for that assessment year up to the date of its dissolution shall be chargeable to tax in that assessment year.
- Proceedings (as given in sec. 174 in the case of persons leaving India) shall be applicable.

[SEC. 175]-ASSESSMENT OF PERSONS LIKELY TO TRANSFER PROPERTY TO AVOID TAX :

- If it appears to the Assessing Officer during any current assessment year that any person is likely to charge, sell, transfer, dispose of or otherwise part with any of his assets with a view to avoiding payment of any liability under the provisions of this Act, the total income of such person for the period from the expiry of the previous year for that assessment year to the date when the Assessing Officer commences proceedings under this section shall be chargeable to tax in that assessment year.
- Proceedings (as given in sec. 174 in the case of persons leaving India) shall be applicable.

[SEC. 176]-DISCONTINUED BUSINESS :

- Where any business or profession is discontinued in any assessment year, the income of the period from the expiry of the previous year for that assessment year up to the date of such discontinuance may, at the **discretion** of the Assessing Officer, be charged to tax in that assessment year.
- The total income of each completed previous year or part of any previous year included in such period shall be chargeable to tax at the rate or rates in force in that assessment year, and separate assessments shall be made in respect of each such completed previous year or part of any previous year.
- Any person discontinuing any business or profession shall give to the Assessing Officer notice of such discontinuance within 15 days thereof.
- Where any business is discontinued in any year, any sum received after the discontinuance shall be deemed to be the income of the recipient and charged to tax accordingly in the year of receipt, **if** such sum would have been included in the total income of the person who carried on the business had such sum been received before such discontinuance. [Sec. 176(3A)].

STUDY NOTE-14[LIABILITY IN SPECIAL CASES]

- Where any profession is discontinued in any year on account of the cessation of the profession by, or the retirement or death of, the person carrying on the profession, any sum received after the discontinuance shall be deemed to be the income of the recipient and charged to tax accordingly in the year of receipt, **if** such sum would have been included in the total income of the aforesaid person had it been received before such discontinuance. [Sec. 176(4)]
- Where an assessment is to be made under the provisions of this section, the Assessing Officer may serve on the person whose income is to be assessed or, in the case of a firm, on any person who was a partner of such firm at the time of its discontinuance or, in the case of a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice u/s 142(1)(i) and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued u/s 142(1)(i).

[SEC. 177]-ASSOCIATION DISSOLVED OR BUSINESS DISCONTINUED:

- Where any business or profession carried on by an association of persons has been discontinued or where an association of persons is dissolved, the Assessing Officer shall make an assessment of the total income of the association of persons as if **no such discontinuance or dissolution had taken place**, and all the provisions of this Act, including the provisions relating to the levy of a penalty or any other sum chargeable under any provision of this Act shall apply, so far as may be, to such assessment.
- If the Assessing Officer or the Commissioner (Appeals) in the course of any proceeding under this Act in respect of any such association of persons is satisfied that the association of persons was guilty of any of the acts specified in Chapter XXI (i.e., penalties), he may impose or direct the imposition of a penalty in accordance with the provisions of that Chapter.
- Every person who was at the time of such discontinuance or dissolution a member of the association of persons, and the legal representative of any such person who is deceased, shall be jointly and **severally liable** for the amount of tax, penalty or other sum payable, and all the provisions of this Act, so far as may be, shall apply to any such assessment or imposition of penalty or other sum.
- Where such discontinuance or dissolution takes place after any proceedings in respect of an assessment year have commenced, the proceedings may be continued against above persons from the stage at which the proceedings stood at the time of such discontinuance or dissolution, and all the provisions of this Act shall, so far as may be, apply **accordingly**.

STUDY NOTE-14[LIABILITY IN SPECIAL CASES]

[SECTION 178]-COMPANY IN LIQUIDATION:

➤ **EVERY PERSON:**

- (a) who is the liquidator of any company which is being wound-up, whether under the orders of a court or otherwise; or
- (b) who has been appointed as a receiver of any assets of a company,

(hereinafter referred to as the liquidator) shall, within 30 days after he has become such liquidator, give notice of his appointment as such to the Assessing Officer who is entitled to assess the income of the company.

➤ The Assessing Officer shall, after making such inquiries or calling for such information as he may deem fit, notify to the liquidator within 3 months from the date on which he receives notice of the appointment of the liquidator the amount which, in the opinion of the Assessing Officer, would be sufficient to provide for any tax which is then, or is likely thereafter to become, payable by the company.

➤ **THE LIQUIDATOR:**

- (a) shall not, without the leave of the Chief Commissioner or Commissioner, part with any of the assets of the company or the properties in his hands until he has been notified by the Assessing Officer (as above); and
- (b) on being so notified, shall set aside an amount equal to the amount notified and, until he so sets aside such amount, shall not part with any of the assets of the company or the properties in his hands.

NOTE: THE LIQUIDATOR CAN PART WITH FOR:

- ✓ The purpose of the payment of the tax payable by the company or
- ✓ The purpose of making any payment to secured creditors whose debts are entitled under law to priority of payment over debts due to Government on the date of liquidation or
- ✓ The purpose of meeting such costs and expenses of the winding-up of the company as are in the opinion of the Chief Commissioner or Commissioner reasonable.

- If the liquidator fails to give the notice or fails to set aside such amount or parts with any of the assets of the company or the properties in his hands in contravention of above provisions, he shall be **personally liable** for the payment of the tax which the company would be liable to pay. **However**, the personal liability of the liquidator shall be restricted to the notified amount.
- Where there are more liquidators than one, the obligations and liabilities attached to the liquidator under this section shall attach to all the liquidators jointly and severally.

STUDY NOTE-14[LIABILITY IN SPECIAL CASES]

- The provisions of this section shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force except the provisions of the Insolvency and Bankruptcy Code, 2016.

[SEC. 179]-LIABILITY OF DIRECTORS OF PRIVATE COMPANY IN LIQUIDATION :

WHERE ANY TAX DUE FROM A PRIVATE COMPANY –

- (a) in respect of any income of any previous year; or
- (b) from any other company in respect of any income of any previous year during which such other company was a private company;

cannot be recovered, then, every person who was a director of the private company at any time during the relevant previous year shall be jointly and severally liable for the payment of such tax. However, no such director shall be liable if he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

NOTE: Tax Due includes penalty, interest or any other sum payable under the Act.

STUDY NOTE 14[LIABILITY IN SPECIAL CASES]

MISCELLANEOUS PROVISIONS:

[SECTION 269SS]- MODE OF TAKING OR ACCEPTING CERTAIN LOANS, DEPOSITS AND SPECIFIED SUM:

No person shall **take or accept** from any other person (herein referred to as the depositor), any loan or deposit or any specified sum, otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account or through other prescribed electronic modes, **if:**

- a) The amount of such loan or deposit or specified sum or the aggregate amount of such loan, deposit and specified sum; or
- b) On the date of taking or accepting such loan or deposit or specified sum, any loan or deposit or specified sum taken or accepted **earlier** by such person from the depositor is remaining unpaid (whether repayment has fallen due or not), the amount or the aggregate amount remaining unpaid; or
- c) The amount or the aggregate amount referred to in (a) together with the amount or the aggregate amount referred to in (b),

IS RS. 20,000 OR MORE, THE AMOUNT INCLUDING RS.20,000 WILL BE TAXABLE.

NOTE:

- ✓ Loan or deposit means loan or deposit of money.
- ✓ Specified sum means any sum of money receivable, whether as advance or otherwise, in relation to transfer of an immovable property, whether or not the transfer takes place.

EXCEPTION TO SECTION 269SS:

The provisions shall not apply to any loan or deposit or specified sum taken or accepted from, or any loan or deposit or specified sum taken or accepted by:

- The Government;
- Any banking company, post office savings bank or co-operative bank;
- Any corporation established by a Central, State or Provincial Act;
- Any Government company as defined in sec. 2(45) of the Companies Act, 2013;
- Such other notified institution, association or body or class of institutions, associations or bodies.

STUDY NOTE 14[LIABILITY IN SPECIAL CASES]

- The provisions shall not apply to any loan or deposit or specified sum, where both, receiver and giver, are having agricultural income and neither of them has **any** income chargeable to tax.

[SEC. 271D]-PENALTY :

If a person takes or accepts any loan or deposit or specified sum in contravention of the provisions of sec. 269SS, he shall be liable to pay, by way of penalty, **A Sum Equal** to the amount of the loan or deposit or specified sum so taken or accepted. Such penalty shall be imposed by the Joint Commissioner.

NOTE: PENALTY U/S 271D WILL NOT APPLICABLE ON CASH LOAN / DEPOSITS TAKEN FROM PARTNERS BY A FIRM.

[SECTION 269ST]-MODE OF UNDERTAKING TRANSACTIONS:

No person shall receive an amount of **RS. 2,00,000** or more:

- In aggregate from a person in a day; or
- In respect of a single transaction; or
- In respect of transactions relating to one event or occasion from a person,

OTHERWISE THAN BY AN ACCOUNT PAYEE CHEQUE OR AN ACCOUNT PAYEE BANK DRAFT OR USE OF ELECTRONIC CLEARING SYSTEM THROUGH A BANK ACCOUNT OR THROUGH OTHER PRESCRIBED ELECTRONIC MODES.

EXCEPTION:

The provisions shall not apply to:

- Any receipt by:
 - Government;
 - Any banking company, post office savings bank or co-operative bank;
- Transactions of the nature referred to in sec. 269SS.
- Such other persons or class of persons or receipts, which the Central Government may notify.

STUDY NOTE 14[LIABILITY IN SPECIAL CASES]

EXCEPTION TO SECTION 269ST:

- (1) Receipt by a business correspondent **on behalf** of a banking company or co-operative bank, in accordance with the guidelines issued by the Reserve Bank of India;
- (2) Receipt by a white label **automated teller machine [ATM]** operator from retail outlet sources on behalf of a banking company or co-operative bank, in accordance with the authorisation issued by the Reserve Bank of India under the Payment and Settlement Systems Act, 2007.
- (3) Receipt from an **agent** by an issuer of pre-paid payment instruments, in accordance with the authorisation issued by the Reserve Bank of India under the Payment and Settlement Systems Act, 2007.
- (4) Receipt by a company or institution issuing credit cards **against bills** raised in respect of one or more credit cards;
- (5) Receipt which is not includable in the total income u/s 10(17A). **[Any award instituted in the public interest by the Central or State Government or by any other body approved by the Central Government in this behalf].**
- (6) Receipt by any person from **any** banking company, post office savings bank or co-operative bank;

VERY VERY IMPORTANT NOTE:

CLARIFICATION VIDE CIRCULAR NO. 22/2017 DATED 03-07-2017:

In respect of receipt in the nature of repayment of loan by Non-Banking Financial Companies (NBFCs) and Housing Finance Companies (HFCs), the receipt of **one installment** of loan repayment in respect of a loan shall constitute a 'single transaction' as specified in sec. 269ST(b) and all the installments paid for a loan shall **not be aggregated** for the purposes of determining applicability of the provisions sec. 269ST.

Means for NBFCs and HFCs an amount of a single installment from a single person will not exceed or equal to, RS.2,00,000 in cash.

[SEC. 271DA]-PENALTY :

If a person receives any sum in contravention of the provisions of sec. 269ST, he shall be liable to pay, by way of penalty, a **sum equal** to the amount of such receipt. **However**, no penalty shall be imposable if such person proves that there were good and sufficient reasons for the contravention. And Such penalty shall be imposed **by** the Joint Commissioner.

STUDY NOTE 14[LIABILITY IN SPECIAL CASES]

[SEC. 269T]-MODE OF REPAYMENT OF CERTAIN LOANS OR DEPOSITS :

No branch of a banking company or a co-operative bank [**i.e no person including banks**] and no other company or co-operative society and no firm or other person shall **repay** any loan or deposit made with it or any specified advance received by it, **otherwise than** by an account payee cheque or account payee bank draft drawn in the name of the person who has made the loan or deposit or paid the specified advance, or by use of electronic clearing system through a bank account if:

- The amount of the loan or deposit or specified advance together with the interest, if any, payable thereon, **or**
- The aggregate amount of the loans or deposits held by such person with the branch of the banking company or co-operative bank or, as the case may be, the other company or co-operative society or the firm, or other person either in his own name **or jointly** with any other person on the date of such repayment together with the interest, if any, payable on such loans or deposits, **or**
- The aggregate amount of the specified advances received by such person either in his own name or jointly with any other person on the date of such repayment together with the interest, if any, payable on such specified advances,

IS RS. 20,000 OR MORE, THE AMOUNT INCLUDING RS.20,000 WILL BE TAXABLE.

NOTE:

- ✓ Loan or deposit means any loan or deposit of money which is repayable after notice or repayable after a period and, in the case of a person other than a company, includes loan or deposit of any nature.
- ✓ Specified advance means any sum of money in the nature of advance, by whatever name called, in relation to transfer of an immovable property, whether or not the transfer takes place.
- ✓ Where the repayment is by a branch of a banking company or co-operative bank, such repayment may also be made by crediting the amount of such loan or deposit **to the savings bank account** or the **current account** (if any) with such branch of the person to whom such loan or deposit has to be repaid.

STUDY NOTE 14[LIABILITY IN SPECIAL CASES]

EXCEPTION TO SECTION 269T:

The provision of this section shall not apply to repayment of any loan or deposit or specified advance taken or accepted from:

- Government;
- Any banking company, post office savings bank or co-operative bank;
- Any corporation established by a Central, State or Provincial Act;
- Any Government company;
- Such other notified institution, association or body or class of institutions, associations or bodies. And the reasons for notifying such institution, etc. should be recorded in writing.

[SEC. 271E]-PENALTY :

If a person repays any loan or deposit or specified advance referred to in sec. 269T otherwise than in accordance with the provisions of that section, he shall be liable to pay, by way of penalty, a sum equal to the amount of the loan or deposit or specified advance so repaid. And such penalty shall be imposed by the Joint Commissioner.

CAN PENALTY U/S 271D AND 271E IMPOSE SIMULTANEOUSLY:

YES, PENALTY U/S 271D AND 271E SHALL BE IMPOSED , IF AN ASSESSEE MAKES DEFAULT UNDER THE SECTION 269SS AND 269T SIMULTANEOUSLY.

[SECTION 269SU]- ACCEPTANCE OF PAYMENT THROUGH PRESCRIBED ELECTRONIC MODES:

Applicable to: Person carrying on business having total sales / turnover / gross receipts **in excess** of RS.50 Crores during the immediately preceding previous year.

Compliance: Such person is required **to provide facility** for accepting payment through prescribed electronic modes, in addition to the facility for other electronic modes, of payment, if any, being provided by such person.

Penalty: If such person fails to provide such facility then he is liable to pay penalty **of RS.5,000** for every day during which such failure continues – [Sec. 271DB].

NOTE:

- ✓ No such penalty shall be imposable if such person proves that there were good and sufficient reasons for such failure.
- ✓ Such penalty shall be imposed by the Joint Commissioner of Income-tax.

STUDY NOTE 14[LIABILITY IN SPECIAL CASES]

[SECTION 283]- SERVICE OF NOTICE WHEN FAMILY IS DISRUPTED OR FIRM, ETC., IS DISSOLVED:

- After a finding of total partition has been recorded by the Assessing Officer u/s 171 in respect of any Hindu family, notices under this Act in respect of the income of the Hindu family shall be served on the person who was the last manager of the Hindu family, or, if such person is dead, then on all adults who were members of the Hindu family immediately before the partition.
- Where a firm or other association of persons is dissolved, notices under this Act in respect of the income of the firm or association may be served on any person who was a partner (not being a minor) or member of the association, as the case may be, immediately before its dissolution.

[SECTION 284]- SERVICE OF NOTICE IN THE CASE OF DISCONTINUED BUSINESS:

Where an assessment is to be made u/s 176 **[DISCONTINUED BUSINESS DISCUSSED EARLIER]**, the Assessing Officer may serve on the person whose income is to be assessed, or, in the case of a firm or an association of persons, on any person who was a member of such firm or association at the time of its discontinuance or, in the case of a company, on the principal officer thereof, a notice containing all or any of the requirements which may be included in a notice u/s 139(2) **[CONTAINS VARIOUS PROVISION RELATED TO LATE FILING OF VARIOUS ITRs]** , and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that section.

[SEC. 285]-SUBMISSION OF STATEMENT BY A NON-RESIDENT HAVING LIAISON OFFICE :

Every person, being a non-resident having a liaison office **[inquiry office]** in India set up in accordance with the guidelines issued by the Reserve Bank of India under the Foreign Exchange Management Act, 1999, shall, in respect of its activities in a financial year, prepare and deliver to the Assessing Officer having jurisdiction, within 60 days from the end of such financial year, a statement in Form – 49C and containing such particulars as may be prescribed.

[SEC. 285A] FURNISHING OF INFORMATION OR DOCUMENTS BY AN INDIAN CONCERN IN CERTAIN CASES:

Where any share of, or interest in, a company or an entity registered or incorporated outside India derives, directly or indirectly, its value substantially from the assets located in India, as referred to in Explanation 5 to sec. 9(1)(i) and such company or, as the case may be, entity, holds, directly or indirectly, such assets in India through, or in, an Indian concern, then, such Indian concern shall, for the purposes of determination of any income accruing or arising in India u/s 9(1)(i), furnish within the prescribed period to the prescribed income-tax authority the information or documents, in such manner (Form – 49D), as may be prescribed.

STUDY NOTE 14[LIABILITY IN SPECIAL CASES]

[SEC. 285B]-SUBMISSION OF STATEMENTS BY PRODUCERS OF CINEMATOGRAPH FILMS :

Any person carrying on the production of a **cinematograph film** during the whole or any part of any financial year shall, in respect of the period during which such production is carried on by him in such financial year, prepare and deliver to the Assessing Officer, within 30 days from the end of such financial year or within 30 days from the date of the completion of the production of the film, **Whichever Is Earlier**, a statement in the prescribed form (Form 52A) containing particulars of all payments of over **RS.50,000** in the aggregate made by him or due from him to **each such person** as is engaged by him in such production.

[SECTION 287]- PUBLICATION OF INFORMATION RESPECTING ASSEESSEES IN CERTAIN CASES:

- If the Central Government is of opinion that it is necessary or expedient in the public interest to publish the names of any assessees and any other particulars **relating to** any proceedings or prosecutions under this Act in respect of such assessees, it may cause **[REASON]** to be published such names and particulars in such manner as it thinks fit.
- No publication under this section shall be made in relation to any penalty imposed under this Act until the time for presenting an appeal to the Commissioner (Appeals) has expired without an appeal having been presented or the appeal, if presented, has been disposed of.
- In the case of a firm, company or other association of persons, the names of the partners of the firm, directors, managing agents, secretaries and treasurers, or managers of the company, or the members of the association, as the case may be, may also be published if, in the opinion of the Central Government, the circumstances of the case justify it.

STUDY NOTE 14[LIABILITY IN SPECIAL CASES]

[SEC. 287A]-APPEARANCE BY REGISTERED VALUER IN CERTAIN MATTERS :

Any assessee who is entitled or required to attend before any income-tax authority or the Appellate Tribunal in connection with any matter relating to the valuation of any asset, otherwise than when required u/s 131 [**POWER REGARDING DISCOVERY, PRODUCTION, OF EVIDENCE ETC.**] to attend personally for examination on oath or affirmation, may attend by a registered valuer.

[SECTION 288]-APPEARANCE BY AUTHORISED REPRESENTATIVE:

Any assessee who is entitled or required to attend before any income-tax authority or the Appellate Tribunal in connection with **any proceeding** under this Act otherwise than when required u/s 131 to attend personally for examination on oath or affirmation, may, subject to the other provisions of this section, attend **by an authorized representative**.

AUTHORISED REPRESENTATIVE MEANS A PERSON AUTHORISED BY THE ASSESSEE IN WRITING TO APPEAR ON HIS BEHALF, BEING:

- A person related to the assessee in any manner, or a person regularly employed by the assessee; or
- Any officer of a Scheduled Bank with which the assessee maintains a current account or has other regular dealings; or
- Any legal practitioner who is entitled to practise in any civil court in India; or
- An accountant; or
- Any person who has passed any accountancy examination recognised in this behalf by the Board.
- Any person who has acquired such educational qualifications as the Board may prescribe for this purpose; or
- Any person who, before the coming into force of this Act in the Union territory of Dadra and Nagar Haveli, Goa, Daman and Diu, or Pondicherry, attended before an income-tax authority in the said territory on behalf of any assessee otherwise than in the capacity of an employee or relative of that assessee.

Income Computation & Disclosure Standards

APPLICABILITY OF INCOME COMPUTATION AND DISCLOSURE STANDARDS (ICDS):

The standards are required to be followed:

- ✓ by all assessee (other than an individual or a Hindu undivided family who **is not** required to get his accounts of the previous year audited u/s 44AB)
- ✓ who follows the mercantile system of accounting,
- ✓ for the purposes of computation of income chargeable to income-tax under the head “Profits and gains of business or profession” **or** “Income from other sources”.

NOTE:

- The standards **are not** for the purpose of maintenance of books of account. The standards are for computation of income under aforesaid heads of income **only**.
- In case of conflict between the provision of the Income-tax Act and ICDS, the provision of the Act **shall prevail** to that extent.

ICDS I ACCOUNTING POLICIES:

1. Accounting policies adopted by a person shall be such so as to represent a true and fair view of the state of affairs and income of the business, profession or vocation.

NOTE: Accounting policies should be such that discloses ‘true and fairview’ and not —‘true and correct’.

2. The treatment and presentation of transactions and events shall be governed by their substance and not only by the legal form.
3. Marked to market loss or an expected loss shall not be recognised **unless** the recognition of such loss is in accordance with the provisions of any other Income Computation and Disclosure Standard.

4. Fundamental Accounting Assumptions:

The fundamental accounting assumptions i.e., Going Concern, Consistency and Accrual are assumed as followed. No specific disclosure is required, if these assumptions are followed, however, if such assumption are not followed, the fact shall be **disclosed**.

5. **Change in Accounting Policies:** An accounting policy shall not be changed without reasonable cause.

6. Disclosure of Accounting Policies:

- ✓ All significant accounting policies adopted by a person shall be disclosed.
- ✓ Any change in an accounting policy which has a material effect shall be disclosed (with quantum of the effect, if ascertainable). Where such amount is not ascertainable, the fact shall be indicated.

Income Computation & Disclosure Standards

ICDS II VALUATION OF INVENTORIES:

1. This Standard shall be applied for valuation of inventories, except
 - i. Work-in-progress arising under 'construction contract'
 - ii. Work-in-progress which is dealt with by **other** Standard
 - iii. Shares, debentures and other financial instruments held as stock-in-trade
 - iv. Producers' inventories of livestock, agriculture and forest products, mineral oils, ores and gases to the extent that they are measured at net realisable value.
 - v. Machinery spares, which can be used only in connection with a tangible fixed asset and their use is expected to be irregular.

2. Measurement:

- ✓ Inventories shall be valued at cost, or net realisable value, whichever is lower.
- ✓ Net realisable value is the estimated selling price in the ordinary course of business less the estimated costs of completion and the estimated costs necessary to make the sale.
- ✓ In case of dissolution of a partnership firm or association of person or body of individuals, notwithstanding whether business is discontinued or not, the inventory on the date of dissolution shall be valued at the net realisable value.

3. Cost of inventories: Cost of inventories shall comprise of all costs of purchase, costs of services, costs of conversion and other costs incurred in bringing the inventories to their present location and condition.

4. Cost Formulae: The standard recognizes 3 cost formulae viz. (i) Specific Identification Method; (ii) First-in-First-Out Method (FIFO); (iii) Weighted Average Method.

5. Change of Method of Valuation of Inventory: The method of valuation of inventories once adopted by a person in any previous year shall not be changed without reasonable cause.

6. Disclosure: Following shall be disclosed:

- a. the accounting policies adopted in measuring inventories including the cost formulae used; and
- b. the total carrying amount of inventories and its classification appropriate to a person.

Income Computation & Disclosure Standards

ICDS III CONSTRUCTION CONTACTS:

1. The Standard should be applied in determination of income for a construction contract of a contractor.
2. Construction contracts are formulated in a number of ways which are classified as fixed price contracts and cost plus contracts.
3. Contract revenue shall be recognised when there is reasonable certainty of its ultimate collection.
4. Contract revenue shall comprise of:
 - a) the initial amount of revenue agreed in the contract, including retentions; and
 - b) variations in contract work, claims and **incentive** payments.
5. Contract costs shall comprise of:
 - a) costs that relate directly to the specific contract;
 - b) costs that are attributable to contract activity in general and can be allocated to the contract;
 - c) such other costs as are specifically chargeable to the customer under the terms of the contract; and
 - d) allocated borrowing costs in accordance with the ICDS on Borrowing Costs.
6. These costs shall be reduced by any incidental income, not being in the nature of interest, dividends or capital gains, that is not included in contract revenue.
7. Costs that cannot be attributed to any contract activity or cannot be allocated to a contract shall be excluded from the costs of a construction contract.
8. Contract revenue and contract costs associated with the construction contract should be recognised as revenue and expenses respectively by reference to the **stage of completion** of the contract activity at the reporting date.
9. The recognition of revenue and expenses by reference to the stage of completion of a contract is referred to as the percentage of completion method. Under this method, contract revenue is matched with the contract costs incurred in reaching the stage of completion, resulting in the reporting of revenue, expenses and profit which can be attributed to the proportion of work completed.

Income Computation & Disclosure Standards

ICDS IV REVENUE RECOGNITION:

1. Revenue from sales transactions should be recognized when the following conditions are fulfilled –
 - a) The seller of goods has transferred to the buyer the property in the goods for a price or all significant **risks and rewards** of ownership have been transferred to the buyer;
 - b) The seller retains no effective control of the goods transferred to a degree usually associated with ownership;
 - c) There is reasonable certainty of its ultimate collection.
2. Revenue from service transactions shall be recognised by the percentage completion method.
3. Under this method, revenue from service transactions is matched with the service transaction costs incurred in reaching the stage of completion, resulting in the determination of revenue, expenses and profit which can be attributed to the proportion of work completed.
4. However, when services are provided by an indeterminate number of acts over a specific period of time, revenue may be recognised on a straight line basis over the specific period.
5. Revenue from service contracts with duration of not more than 90 days may be recognised when the rendering of services under that contract is completed or substantially completed.
6. Interest shall accrue on the time basis determined by the amount outstanding and the rate applicable.
7. Interest on refund of any tax, duty or cess shall be deemed to be the income of the previous year in which such interest is received.
8. Discount or premium on debt securities held is treated as though it were accruing over the period to maturity.
9. Following disclosures shall be made in respect of revenue recognition:
 - a) in a transaction involving sale of goods, total amount not recognised as revenue during the previous year due to lack of reasonably certainty of its ultimate collection along with nature of uncertainty;
 - b) the amount of revenue from service transactions recognised as revenue during the previous year;
 - c) the method used to determine the stage of completion of service transactions in progress; and
 - d) for service transactions in progress at the end of previous year:
 - i. amount of costs incurred and recognised profits (less recognised losses) upto end of previous year;
 - ii. the amount of advances received; and
 - iii. the amount of retentions.

Income Computation & Disclosure Standards

ICDS V TANGIBLE FIXED ASSETS:

1. This Income Computation and Disclosure Standard deals with the treatment of tangible fixed assets.
2. The actual cost of an acquired tangible fixed asset shall comprise its purchase price, import duties and other taxes, excluding those subsequently recoverable, and any directly attributable expenditure on making the asset ready for its intended use. Any trade discounts and rebates shall be deducted in arriving at the actual cost.
3. Administration and other general overhead expenses are to be excluded from the cost of tangible fixed assets if they do not relate to a specific tangible fixed asset.
4. The expenditure incurred on start-up and commissioning of the project, including the expenditure incurred on test runs and experimental production, **shall be capitalised**.
5. When a tangible fixed asset is acquired in exchange for another asset, the fair value of the tangible fixed asset so acquired shall be its actual cost.
6. When a tangible fixed asset is acquired in exchange for shares or other securities, the fair value of the tangible fixed asset so acquired shall be its actual cost.
7. An Expenditure that increases the future benefits from the existing asset beyond its previously assessed standard of performance **is added** to the actual cost.
8. The cost of an addition or extension to an existing tangible fixed asset which is of a capital nature and which becomes an integral part of the existing tangible fixed asset is to be added to its actual cost. Any addition or extension, which has a separate identity and is capable of being used after the existing tangible fixed asset is disposed of, shall be treated **as separate asset**.
9. Where a person owns tangible fixed assets jointly with others, **the proportion** in the actual cost, accumulated depreciation and written down value **is grouped** together with similar fully owned tangible fixed assets.
10. Where several assets are purchased for a consolidated price, the consideration shall be **apportioned** to the various assets on a fair basis.

Income Computation & Disclosure Standards

ICDS VI EFFECTS OF CHANGES IN FOREIGN EXCHANGE RATES :

1. The Standard deals with:
 - a. treatment of transactions in foreign currencies;
 - b. translating the financial statements of foreign operations;
 - c. treatment of foreign currency transactions in the nature of forward exchange contracts.
2. Foreign currency transaction is a transaction which is denominated in or requires settlement in a foreign currency, including transactions arising when a person:
 - a) buys or sells goods or services whose price is denominated in a foreign currency; or
 - b) borrows or lends funds when the amounts payable or receivable are denominated in a foreign currency; or
 - c) becomes a party to an unperformed forward exchange contract; or
 - d) otherwise acquires or disposes of assets, or incurs or settles liabilities, denominated in a foreign currency.
3. A foreign currency transaction shall be recorded, on initial recognition in the reporting currency.
4. An average rate for a week or a month that approximates the actual rate at the date of the transaction may be used for all transaction in each foreign currency occurring during that period. If the exchange rate fluctuates significantly, the actual rate at the date of the transaction shall be used.
5. At last day of each previous year:
 - a. foreign currency monetary items shall be converted into reporting currency by applying the closing rate;
 - b. non-monetary items in a foreign currency shall be converted into reporting currency by using the exchange rate at the date of the transaction.
 - c. non-monetary item being inventory which is carried at net realisable value denominated in a foreign currency shall be reported using the exchange rate that existed when such value was determined.
6. Any premium or discount arising at the inception of a forward exchange contract shall be amortised as expense or income over the life of the contract. Exchange differences on such a contract shall be recognised as income or as expense in the previous year **in which the exchange rates change**. Any profit or loss arising on cancellation or renewal shall be **recognised** as income **or** as expense for the previous year.

Income Computation & Disclosure Standards

7. Premium, discount or exchange difference on contracts that are intended for trading or speculation purposes, or that are entered into to hedge the foreign currency risk of a firm commitment or a highly probable forecast transaction shall be recognised **at the time of settlement**.

ICDS VII GOVERNMENT GRANTS:

1. The Standard deals with the treatment of Government grants. The Government grants are sometimes called by other names such as subsidies, cash incentives, duty drawbacks, waiver, concessions, reimbursements, etc. but does not include Government participation in the ownership of the enterprise
2. **Government** refers to the Central Government, State Governments, agencies and similar bodies, whether local, national or international.
3. **Government grants** are assistance by Government in cash or kind to a person for past or future compliance with certain conditions. They exclude those forms of Government assistance which cannot have a value placed upon them and the transactions with Government which cannot be distinguished from the normal trading transactions of the person.
4. Government grants should not be recognised until there is reasonable assurance that (i) the person shall comply with the conditions attached to them, and (ii) the grants shall be received.
5. Recognition of Government grant shall not be postponed beyond the date of actual receipt.

6. Treatment of Government Grants

Grant Relates to	Treatment
Depreciable fixed asset	The grant shall be deducted from the actual cost of the asset or from the written down value of block of assets
Non-depreciable asset requiring fulfillment of certain obligations	The grant shall be recognised as income over the same period over which the cost of meeting such obligations is charged to income
Not directly relatable to the asset acquired	Proportionate amount shall be deducted from the actual cost of the assets or shall be reduced from the written down value of block of assets to which the assets belonged to.
Receivable as compensation for expenses or losses incurred in a previous financial year or for the purpose of giving immediate financial support to the person with no further related costs	The grant shall be recognised as income of the period in which it is receivable
In other case	Grants shall be recognised as income over the periods necessary to match them with the related costs which they are intended to compensate

7. The Government grants in the form of non-monetary assets, given at a concessional rate, shall be accounted for on the basis of their acquisition cost.

Income Computation & Disclosure Standards

8. The amount refundable in respect of a Government grant shall be applied first against any unamortised deferred credit remaining in respect of the Government grant. To the extent that the amount refundable exceeds any such deferred credit, or where no deferred credit exists, the amount shall be charged to profit and loss statement.

9. The amount refundable in respect of a Government grant related to a depreciable fixed asset shall be recorded by increasing the actual cost or written down value of block of assets by the amount refundable. Where the actual cost of the asset is increased, depreciation on the revised actual cost or written down value shall be provided prospectively at the prescribed rate.

10. Following disclosure shall be made in respect of Government grants:
 - (a) nature and extent of Government grants recognised during the previous year by way of deduction from the actual cost of the asset or assets or from the written down value of block of assets during the previous year;
 - (b) nature and extent of Government grants recognised during the previous year as income;
 - (c) nature and extent of Government grants not recognised during the previous year by way of deduction from the actual cost of the asset or assets or from the written down value of block of assets and reasons thereof; and
 - (d) nature and extent of Government grants not recognised during the previous year as income and reasons thereof.

ICDS VIII SECUTITIES:

1. This part of the Standard deals with securities held as stock-in-trade. However, this part of the Standard does not deal with:
 - (a) the bases for recognition of interest and dividends on securities;
 - (b) securities held by a person engaged in the business of insurance;
 - (c) securities held by mutual funds, venture capital funds, banks and public financial institutions formed under a Central or a State Act or so declared under the Companies Act, 1956 or the Companies Act, 2013

2. A security on acquisition shall be recognised at actual cost i.e., its purchase price + acquisition charges such as brokerage, fees, tax, duty or cess.

3. Where a security is acquired in exchange for other securities or other asset, the fair value of the security so acquired shall be its actual cost.

4. **Fair value** is the amount for which an asset could be exchanged between a knowledgeable, willing buyer and a knowledgeable, willing seller in an arm's length transaction.

Income Computation & Disclosure Standards

5. Where unpaid interest has accrued before the acquisition of an interest-bearing security and is included in the price paid for the security, the subsequent receipt of interest is allocated between pre-acquisition and post-acquisition periods; the pre-acquisition portion of the interest is deducted from the actual cost.
6. At the end of any previous year, securities held as stock-in-trade shall be valued at actual cost initially recognised or net realisable value at the end of that previous year, whichever is lower.
7. The comparison of actual cost initially recognised and net realisable value shall be done categorywise (viz., shares; debt securities; convertible securities; and any other securities) and not for each individual security.
8. Securities not listed on a recognised stock exchange or listed but not quoted on a recognised stock exchange shall be valued at actual cost initially recognised.

ICDS IX BORROWING COST:

1. The Standard deals with treatment of borrowing costs. However, the Standard does not deal with the actual or imputed cost of owners' equity and preference share capital.
2. **Borrowing costs** are interest and other costs incurred by a person in connection with the borrowing of funds and include:
 - (a) commitment charges on borrowings;
 - (b) amortised amount of discounts or premiums relating to borrowings;
 - (c) amortised amount of ancillary costs incurred in connection with the arrangement of borrowings;
 - (d) finance charges in respect of assets acquired under finance leases or under other similar arrangements.
3. Borrowing costs that are directly attributable to the acquisition, construction or production of a qualifying asset shall be capitalised as part of the cost of that asset.
4. **Qualifying asset** means:
 - (a) land, building, machinery, plant or furniture, being tangible assets;
 - (b) know-how, patents, copyrights, trade marks, licences, franchises or any other business or commercial rights of similar nature, being intangible assets;
 - (c) know-how, patents, copyrights, trade marks, licences, franchises or any other business or commercial rights of similar nature, being intangible assets;

Income Computation & Disclosure Standards

5. **Specific Borrowing:** The extent to which funds are borrowed specifically for the purposes of acquisition, construction or production of a qualifying asset, the amount of borrowing costs to be capitalised on that asset shall be the actual borrowing costs incurred during the period on the funds so borrowed.
6. **Other than specific borrowing:** The amount of borrowing costs to be capitalised shall be computed in accordance with this formula: $A \times B / C$
7. The following disclosure shall be made in respect of borrowing costs, namely:—
 - (a) the accounting policy adopted for borrowing costs; and
 - (b) the amount of borrowing costs capitalised during the previous year.

ICDS X PROVISIONS, CONTINGENT LIABILITIES AND CONTINGENT ASSETS:

1. The Standard deals with provisions, contingent liabilities and contingent assets, except those:
 - (a) resulting from financial instruments;
 - (b) resulting from executory (refer below) contracts;
 - (c) arising in insurance business from contracts with policyholders; and
 - (d) covered by another ICDS.
2. Provision is a liability which can be measured only by using a substantial degree of estimation.
3. Liability is a present obligation of the person arising from past events, the settlement of which is expected to result in an outflow from the person of resources embodying economic benefits.
4. Obligating event is an event that creates an obligation that results in a person having no realistic alternative to settling that obligation.
5. Contingent liability is:
 - (a) a possible obligation that arises from past events and the existence of which will be confirmed only by the occurrence or non-occurrence of one or more uncertain future events not wholly within the control of the person;
6. Contingent asset is a possible asset that arises from past events the existence of which will be confirmed only by the occurrence or non-occurrence of one or more uncertain future events not wholly within the control of the person.
7. Executory contracts are contracts under which neither party has performed any of its obligations or both parties have partially performed their obligations to an equal extent.
8. Present obligation is an obligation if, based on the evidence available, its existence at the end of the previous year is considered reasonably certain.

Income Computation & Disclosure Standards

9. **Recognition:** A provision shall be recognised when:

- (a) a person has a present obligation as a result of a past event;
- (b) it is reasonably certain that an outflow of resources embodying economic benefits will be required to settle the obligation; and
- (c) a reliable estimate can be made of the amount of the obligation.

10. No provision shall be recognised for costs that need to be incurred to operate in the future. It is only those obligations arising from past events existing independently of a person's future actions, that is the future conduct of its business, that are recognised as provisions.

11. Following disclosure shall be made in respect of each class of provision:

- a) a brief description of the nature of the obligation;
- b) the carrying amount at the beginning and end of the previous year;
- c) additional provisions made during the previous year, including increases to existing provisions;
- d) amounts used, that is incurred and charged against the provision, during the previous year;
- e) unused amounts reversed during the previous year.



STUDY NOTE 16-BLACK MONEY ACT & IMPOSITION OF TAX ACT.

BLACK MONEY & IMPOSITION OF TAX ACT:

An Act to make provisions **to deal** with the problem of the Black money that is **undisclosed foreign income and assets**, the procedure for dealing with such income and assets and to provide for imposition of tax on any undisclosed foreign income and asset held outside India and for matters connected therewith or incidental thereto.

Chargeability:

The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 had been introduced in the Parliament on **20-03-2015** which thereafter received President's **assent** on 26th May 2015 and notified in the month of **July 2015**.

The Act extends to the whole of India and provides that tax **@ 30% shall be charged** on every assessee for every assessment year **in respect** of total undisclosed foreign income and asset of the previous year – [Sec. 3]

TAXPOINT:

- **Assessee means** a person, being a resident other than not ordinarily resident in India within the meaning of sec. 6(6) of the Income-tax Act, by whom tax in respect of undisclosed foreign income and assets, or any other sum of money, **is payable** under this Act and includes every person who is deemed to be an assessee in default under this Act – [Sec. 2(2)]
- **Previous year means:**
 - (a) the period beginning with the date of setting up of a business and ending with the date of the closure of the business **or** the 31st day of March following the date of setting up of such business, whichever is earlier;
 - (b) the period beginning with the date on which a new source of income comes into existence and ending with the date of closure of the business **or** the 31st day of March following the date on which such new source comes into existence, whichever is earlier;
 - (c) the period beginning with the 1st day of the financial year and ending with the date of **discontinuance** of the business other than business referred to in (b) **or dissolution** of an unincorporated body or liquidation of a company, as the case may be; or
 - (d) the period of 12 months commencing on the 1st day of April of the relevant year **in any other case**,

- AND WHICH IMMEDIATELY PRECEDES THE ASSESSMENT YEAR [SEC. 2(9)]

STUDY NOTE 16-BLACK MONEY ACT & IMPOSITION OF TAX ACT.

- Undisclosed asset located outside India means an asset (including financial interest in any entity) located outside India, held by the assessee **in his name** or in respect of which he is a beneficial owner, and **he has no** explanation about the source of investment in such asset or the explanation given by him is in the opinion of the Assessing Officer **unsatisfactory** [Sec. 2(11)].
- Undisclosed foreign income and asset means the total amount of undisclosed income of an assessee from a source located outside India and the value of an **undisclosed** asset located outside India, referred to in section 4, and computed in the manner laid down in section 5 [Sec. 2(12)].
- An undisclosed asset located outside India shall be charged to tax on its value in the previous year in which such asset **comes to the notice** of the Assessing Officer.
- Value of an undisclosed asset means the **fair market value** of an asset (including financial interest in any entity) determined in such manner as may be prescribed.

[SECTION 4]- SCOPE OF TOTAL UNDISCLOSED FOREIGN INCOME AND ASSET:

THE TOTAL UNDISCLOSED FOREIGN INCOME AND ASSET OF ANY PREVIOUS YEAR OF AN ASSESSEE SHALL BE:

- The income from a source located outside India, which has **not** been disclosed in the return of income furnished u/s 139 of the Income-tax Act;
- The income, from a source located outside India, in respect of which a return is required to be furnished u/s 139 of the Income-tax Act **but no** return of income has been furnished u/s 139 of the Income-tax Act; and
- The value of an undisclosed asset located outside India.
- Any variation made in the income from a source outside India in the assessment or reassessment of the total income of any previous year, of the assessee under the Income-tax Act in accordance with the provisions of section 29 to section 43C (Profits and gains of business or profession) or section 57 to section 59 (Income from other sources) or section 92C (Transfer pricing) of the said Act, **shall not** be included in the total undisclosed foreign income.

- To avoid double taxation, the income included in the total undisclosed foreign income and asset under this Act shall **not** form part of the total income **under the Income-tax Act.**

STUDY NOTE 16-BLACK MONEY ACT & IMPOSITION OF TAX ACT.

[SECTION 5]- COMPUTATION OF TOTAL UNDISCLOSED FOREIGN INCOME AND ASSET:

IN COMPUTING THE TOTAL UNDISCLOSED FOREIGN INCOME AND ASSET OF ANY PREVIOUS YEAR OF AN ASSESSEE:

- **No deduction** in respect of any expenditure or allowance or set off of any loss shall be allowed to the assessee, whether or not it is allowable in accordance with the provisions of the Income-tax Act.
- Any income,—
 - (a) which **has been** assessed to tax for any assessment year under the **Income-tax Act** prior to the assessment year to which **this [BLACK MONEY ACT]** Act applies; or
 - (b) which is assessable or has been assessed to tax for any assessment year under this Act **[BLACK MONEY ACT]**,

shall be **reduced from** the value of the undisclosed asset located outside India, if, the assessee furnishes evidence to the **satisfaction** of the Assessing Officer that the asset has been acquired **from** the income **which has been already** assessed or is assessable, as the case may be, **to tax.**

- The amount of deduction **in case of an immovable property** shall be the amount which bears to the value of the asset as on the **first day** of the financial year in which it comes to the **notice** of the Assessing Officer, the same proportion as the assessable **or** assessed foreign income bears to the total cost of the asset.

ILLUSTRATION:

A house property located outside India was acquired by an assessee in the previous year 2009-10 for RS. 50 lakh. Out of the investment of RS. 50 lakh, RS. 20 lakh was assessed to tax in the total income of the previous year 2009-10 and earlier years. Such undisclosed asset comes to the notice of the Assessing Officer in the year 2018-19. If the value of the asset in the year 2018-19 is RS. 1 crore, the amount chargeable to tax shall be RS. 60,00,000

i.e.: RS. 1,00,00,000 – (RS. 20,00,000 / RS. 50,00,000) = RS. 60,00,000 , **[Means RS.1,00,00,000-40%.]**

AND,

40% = RS.20,00,000/RS.50,00,000*100 MEANS WE ALREADY DISCLOSED 40% INCOME.

STUDY NOTE 16-BLACK MONEY ACT & IMPOSITION OF TAX ACT.

TAX MANGEMENT

[SECTION 6]-TAX AUTHORITIES OF BLACK MONEY ACT:

- The income-tax authorities **shall be** the tax authorities for the purposes of this Act.
- Every such authority **shall exercise** the powers and perform the functions of a tax authority under this Act in respect of any person within his jurisdiction.
- The jurisdiction of a tax authority under this Act shall be the **same** as he has under the Income-tax Act.
- The tax authority having jurisdiction in relation to an assessee who has no income assessable to income-tax under the Income-tax Act shall be the tax authority having jurisdiction in respect of the area in which the assessee **resides** or carries on its business or has its **principal place** of business.

[SECTION 7]-CHANGE OF INCUMBENT:

The tax authority who succeeds another authority as a result of change in jurisdiction or for any other reason, shall continue the proceedings from the **stage** at which it was left by his predecessor. The assessee in such a case may be given an opportunity of being heard, if he so requests in writing, before passing any order in his case.

[SECTION 10]-ASSESSMENT:

- The Assessing Officer may, on receipt of an information from an income-tax authority or any other authority under any law for the time being in force or on coming of any information to his notice, serve on any person, a **notice requiring him**, on the specified date, to produce such accounts or documents or evidence as the Assessing Officer may require for the purposes of this Act.
- **No** separate return is required to be filed under this Act.
- There is no time limit **for issuance** of the aforesaid **notice**. The Assessing Officer may issue such notice **any time** on the basis of information.

STUDY NOTE 16-BLACK MONEY ACT & IMPOSITION OF TAX ACT.

- The Assessing Officer may, from time to time, serve further notices **requiring the production** of such other accounts or documents or evidence as he may require.
- The Assessing Officer may make such **inquiry**, as he considers necessary, for the purpose of obtaining full information in respect of undisclosed foreign income and asset of any person for the relevant financial year or years.
- The Assessing Officer, after considering such accounts, documents or evidence, as he has obtained, and after taking into account any relevant material which he has gathered and any other evidence produced by the assessee, shall by **an order in writing**, assess the undisclosed foreign income and asset and determine the sum payable by the assessee.
- Such order shall be made **within 2 years** from the end of the financial year in which the notice was issued by the Assessing Officer.
- **Best Judgment Assessment:** If any person fails to **comply** with all the terms of the notice, the Assessing Officer shall, after taking into account all the relevant material which he has gathered, make the assessment of undisclosed foreign income and asset **to the best of his judgment** and determine the sum payable by the assessee.
- Before making such an assessment, **an opportunity** of being heard is required to be given to the assessee.

STUDY NOTE 16-BLACK MONEY ACT & IMPOSITION OF TAX ACT.

[SECTION 35]-LIABILITY OF MANAGER OF COMPANY:

Every person being a manager at any time during the financial year shall be **jointly and severally** liable for the payment of any amount due under this Act in respect of the company for the financial year, **if the amount cannot** be recovered from the company.

However, if the manager proves that non-recovery cannot be attributed to any neglect, misfeasance or breach of duty on his part in relation to the affairs of the company, then aforesaid provision **shall not be applied**.

[SECTION 36]- JOINT AND SEVERAL LIABILITY OF PARTICIPANTS:

Every person, being a participant **in an unincorporated** body at any time during the financial year, or the representative assessee of the deceased participant, shall be jointly and severally liable, along with the unincorporated body, for payment of any amount payable by the unincorporated body under this Act and all the provisions of this Act shall apply accordingly.

However, if the partner of LLP proves that non-recovery cannot be attributed to any neglect, misfeasance or breach of duty on his part in relation to the affairs of the partnership, then aforesaid provision **shall not be applied**.

PARTICIPANT MEANS:

- a. A partner in relation to a firm; or
- b. A member in relation to an association of persons or body of individuals.

STUDY NOTE 16-BLACK MONEY ACT & IMPOSITION OF TAX ACT.

PENALTIES & PROSECUTIONS:

PROVISION RELATING TO PENALTIES AND PROSECUTIONS ARE ENUMERATED HERE IN BELOW:

Nature of default	Sec.	Penalty	Sec.	Prosecution
Fails to disclose foreign income and asset	41	300% of tax u/s 10	51(1)	3 years to 10 years ¹
Fails to furnish return of income before expiry of the relevant assessment year ²	42	RS. 10 lakh		
Fails to disclose foreign asset or income in the return of income ²	43	RS. 10 lakh	50	6 months to 10 years ¹
Attempt to evade payment of tax, interest and penalty	44	Tax in arrear	51(2)	3 years to 10 years
Failure to: a) answer any question put to him by a tax authority b) sign any statement made by him in the course of any proceedings which a tax authority may legally require him to sign; c) attend or produce books of account or documents at the place or time, at certain place and time in response to summons issued u/s 8	45	RS. 50,000 to RS. 2,00,000		
Makes a statement or delivers an account or statement which is false			52	6 months to 10 years ¹
Abets or induces another person to make and deliver an account or a statement or declaration which is false			53	6 months to 10 years ¹
Second and subsequent offences			58	3 years to 10 years ³

NOTES:

STUDY NOTE 16-BLACK MONEY ACT & IMPOSITION OF TAX ACT.

1. **With Fine.**
2. **However, no penalty shall be levied, if assessee fails to report bank accounts with maximum balance upto RS. 5,00,000 at any time during the previous year.**
3. **Fine of RS. 5 lakh to RS. 1 crore.**

TAX POINTS:

- No penalty order shall be passed after the expiry of 1 year from the end of the financial year in which the notice for imposition of penalty is issued u/s 46.
- A person shall not be prosecuted against for an offence except with the **sanction** of the Principal Commissioner or Commissioner or the Commissioner (Appeals), as the case may be.
- An order imposing a penalty shall be made **with the** approval of the Joint Commissioner, if:
 - (a) the penalty exceeds RS. 1,00,000 and the tax authority levying the penalty is in the rank of Income-tax Officer; or
 - (b) the penalty exceeds RS. 5,00,000 and the tax authority levying the penalty is in the rank of Assistant Commissioner or Deputy Commissioner.
- Congnizance of offence: **No court inferior** to that of a metropolitan magistrate or a magistrate of the First Class shall try any offence under this Act.
- No suit shall be brought **in any civil court** to set aside or modify any proceeding taken or order made under this Act.
- No prosecution, suit or other proceeding shall lie against the Government or any officer of the Government, for anything in good faith done or intended to be done, under this Act.

STUDY NOTE 16-BLACK MONEY ACT & IMPOSITION OF TAX ACT.

OTHER PROVISIONS:

- Rounding off-
 - a. The amount of undisclosed foreign income and asset computed shall be rounded off to the nearest multiple of RS. 100.
 - b. Any amount payable or receivable **[of tax]** by the assessee shall be rounded off to the nearest multiple of RS. 10.
- **Agreement with foreign countries or specified territories [Sec. 73]:**

The Central Government may enter into an agreement with the Government of any other country:

 - a. for exchange of information for the **prevention** of evasion or avoidance of tax on undisclosed foreign income chargeable under this Act or under the corresponding law in force in that country, or investigation of cases of such evasion or avoidance;
 - b. for **recovery of tax** under this Act and under the corresponding law in force in that country.

TAX POINTS:

- The Central Government **may** enter into an agreement with the Government of any specified territory outside India.
- The Central Government may, **by notification**, make such provisions as may be necessary for implementing the agreements.
- Any specified association in India may enter into an agreement with any specified association in the specified territory outside India and the Central Government **may by notification** make such provisions as may be necessary for adopting and implementing such agreement.

CHAPTER 17-LOCAL AUTHORITY.

LOCAL AUTHORITY MEANS:

- (A) Panchayat ; or
- (B) Municipality ; or
- (C) Municipal Committee and District Board ; or
- (D) Cantonment Board.

EXEMPTION UNDER SECTION 10(20):

Following income of a local authority is exempt u/s 10(20):

- a. Income chargeable under the head 'Income from house property';
- b. Income chargeable under the head 'Capital gains';
- c. Income chargeable under the head 'Income from other sources';
- d. Income from the supply of commodities (other than water or electricity) or services, **within** its own jurisdiction (territorial area);
- e. Income from the supply of water services or electricity **within or outside** its jurisdiction.

Income derived from the supply of commodity or service other than water and electricity outside its own jurisdiction is only taxable income. Tax rate is 30% + Surcharge @ 12% (if total income exceeds Rs. 1 crore and subject to marginal relief) + Cess.

ASSESSMENT PROCEDURE

[SECTION 140A] SELF-ASSESSMENT:

In self-assessment, assessee itself is responsible to determine its taxable income, tax liability and to pay tax accordingly. Provision of sec. 140A is as follows -

(a) Where any tax is payable (after deducting relief, rebate, advance payment of tax or tax deducted or collected at source or MAT or AMT credit, relief u/s 89, if any) on the basis of return furnished the assessee is required to pay such tax before filing the return.

NOTE: A return furnished without paying self-assessment tax & interest, if any, shall be treated as defective return.

(b) If any interest is payable for delayed filing of return (u/s 234A) or default in payment of advance tax (u/s 234B)

or for deferment of advance tax (u/s 234C) or fee (u/s 234F) is payable for filing return after due date, then such interest or fee should be paid along with self-assessment tax.

NOTE: While calculating above interest for the purpose of self-assessment, tax on the total income declared in the return shall be considered.

(c) Where the amount paid by the assessee falls short of the aggregate of tax, interest and fee, the amount so paid shall first be adjusted towards fee and thereafter towards interest payable and the balance, if any, shall be adjusted towards tax payable.

(d) After assessment, any amount paid under this section shall be deemed to have been paid towards such assessment.

(e) If an assessee fails to pay whole or any part of such tax or interest or both in accordance with the provisions of sec. 140A, he shall be deemed to be an assessee in default.

ASSESSMENT PROCEDURE

INQUIRY BEFORE ASSESSMENT: In this assessment we have to read out the three sections namely:

- **SECTION 142 (1)(i).**
- **SECTION 142 (1)(ii).**
- **SECTION 142 (1)(iii).**

1. Notice to submit a return [Sec. 142(1)(i)]: If the assessee has not submitted a return of income within specified time, the Assessing Officer may require him to submit a return in the prescribed form on or before the date specified in the notice.

NOTE: In case assessee has not furnished the return of income, it is not mandatory for the Assessing Officer to issue notice u/s 142(1)(i) if he wishes to make best judgment assessment.

2. Notice to produce accounts, documents etc. [Sec. 142(1)(ii)]: The Assessing Officer may ask the assessee to produce such documents or accounts as he may require.

Exception: Assessing Officer shall **not** require the production of any accounts pertaining to a period **more than 3 years** prior to the previous year.

3. Notice to furnish information [Sec. 142(1)(iii)]: Assessing Officer may require the assessee to furnish in writing information in such form and on such points or matters as he may require (including a statement of all personal assets and liabilities of the assessee, whether included in the accounts or not).

However, prior approval of the Joint Commissioner shall be obtained before requiring the assessee to furnish a statement of all assets and liabilities not included in the accounts.

IMPORTANT NOTE : Notice u/s 142(1)(i) can be served only if return has not been submitted whereas notice u/s 142(1)(ii) & (iii) can be served whether return has been furnished or not.

ASSESSMENT PROCEDURE

[SECTION 142A] SPECIAL AUDIT:

The Assessing Officer (after giving reasonable opportunity to the assessee) may direct the assessee to get his accounts audited if he is of the opinion that it is necessary to do so having regard to the -

- a)** nature and complexity of the accounts, volume of the accounts, **doubts** about the correctness of the accounts, multiplicity of transactions in the accounts or specialised nature of business activity of the assessee; **and**
- b)** interest of revenue.

Such direction can be issued **even if** the accounts of the assessee have already been audited u/s 44AB or any other law for the time being in force.

IMPORTANT POINTS:

- 1.** Such direction can be issued only with the prior approval of the Principle Chief Commissioner / Principle Commissioner / Chief Commissioner / Commissioner.
- 2.** The Principle Chief Commissioner / Principle Commissioner / Chief Commissioner / Commissioner nominates such auditor.
- 3.** Such order can be issued at any stage of the proceedings before the Assessing Officer. However, no such order shall be issued after the completion of assessment/reassessment.
- 4.** Such Audit report shall be furnished by Assessee **within 180 days** from the date on which direction related to special audit was received, to the Assessing officer in form no. 6B by such nominated Auditor.
- 5.** Audit fees of such nominated auditor shall be determined by the Principle Chief Commissioner / Principle Commissioner / Chief Commissioner / Commissioner and paid by the Central Government.
- 6. Consequences of failure to get books of account audited:** In case assessee fails to get books of account audited, it -
 - will be liable to Best Judgment Assessment u/s 144; and
 - attracts penalty and prosecution.**However** Penalty etc. are attracted only if there is a default by the assessee. If accountant nominated by the Commissioner refuses to audit the accounts, the assessee **cannot be held responsible**.

ASSESSMENT PROCEDURE

[SECTION 142A] ESTIMATION BY VALUATION OFFICER IN CERTAIN CASES:

1. **The Assessing Officer may**, for the purposes of assessment or reassessment, make a reference to a Valuation Officer to estimate the value, including fair market value, of any asset, property or investment and submit a copy of report to him.
2. "Valuation Officer" has the same meaning as in clause (r) of section 2 of the Wealth-tax Act, 1957
3. The Assessing Officer may make a reference to the Valuation Officer **whether or not** he is satisfied about the correctness or completeness of the accounts of the assessee.
4. The Valuation Officer, on a reference made, shall, for the purpose of estimating the value of the asset, property or investment, **have all the powers** that he has under section 38A of the Wealth-tax Act, 1957.
5. The Valuation Officer shall, estimate the value of the asset, property or investment after taking into account **such evidence** as the assessee may produce and any other evidence in his possession gathered, after giving an opportunity of being heard to the assessee.
6. The Valuation Officer may estimate the value of the asset, property or investment **to the best of his judgment**, if the assessee does not co-operate or comply with his directions.
7. The Valuation Officer shall send a copy of the report of the estimate made to the Assessing Officer and the assessee, within a period of **6 months** from the end of the month in which a reference is made.
8. **The Assessing Officer may**, on receipt of the report from the Valuation Officer, and after giving the assessee an opportunity of being heard, take into account such report in making the assessment or reassessment.

ASSESSMENT PROCEDURE

[SECTION 143(1) INTIMATION:]

1. Where **a return** has been made u/s 139 or in response to a notice u/s 142(1), such return shall be processed and the total income or loss shall be computed **after making the following adjustment:**
 - a) any arithmetical error in the return;
 - b) an incorrect claim, if such incorrect claim is apparent from any information in the return;
 - c) disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished after the due date;
 - d) disallowance of expenditure indicated in the audit report but not taken into account in computing the total income in the return;
 - e) disallowance of deduction claimed u/s 10AA, 80-IA, 80-IAB, 80-IB, 80-IC, 80-ID or 80-IE, if the return is furnished after the due date.
2. Such adjustments shall be made **only after expiry of 30 days** from issuance of intimation, means assessee have 30 days to response of such intimation and give explanation about such deviation.
3. However the time limit for issuing intimation **is 1 year** from the end of financial year in which return of income was filed.
4. Such intimation **should be** in writing or in an electronic form.
5. **After** taking into all explanation and evidence produced by the assessee then Assessing officer complete the assessment and pass such intimation order.
6. An intimation shall be prepared or generated and sent to the assessee **specifying** the sum determined to be payable by, or the amount of refund due to, the assessee.
7. An intimation **shall also** be sent to the assessee in a case where the loss declared in the return by the assessee is adjusted **but no tax** or interest or fee is payable by, or no refund is due to, him.

ASSESSMENT PROCEDURE

[SECTION 143(3)] SCRUTINY ASSESSMENT:

1. Where an assessee already filed return of income under section 139 or 142(1) but Assessing officer considers it necessary to ensure that the assessee has not -
 - a) understated his income; or
 - b) declared excessive loss; or
 - c) under paid the tax,

- **then** the assessing officer shall conduct Scrutiny Assessment of the assessee.
2. Assessing Officer shall serve on the assessee a **notice u/s 143(2)** requiring the assessee, on a date specified in the notice, to produce, or cause to be produced, any evidence on which assessee which is in support of the return of income.
3. No notice shall be served on the assessee **after the expiry of 6 months** from the end of the financial year in which the return is furnished.
4. **After collecting** such information and hearing such evidence and after taking into account all relevant materials, the Assessing Officer shall, **by an order in writing**, make an assessment of the total income or loss of the assessee and **determine the sum** payable by him or refund of any amount due to him on the basis of such assessment.
5. Assessment u/s143(3) should be completed **within 12 months** from the end of the relevant assessment year.

In case assessee is not satisfied with the said assessment then he may appeal to:

- a) Commissioner (appeals) to complete such assessment.
- b) Revise appeal to Chief commissioner to provide guidelines to A.O and to direct A.O to do re-assessment.

ASSESSMENT PROCEDURE

[SECTION 144] BEST JUDGEMENT ASSESSMENT:

1. Where the assessee not doing co-operation with the Assessing officer then the A.O complete the assessment of the assessee to the best of his judgement.
2. **Situation in which it is applicable:** In the following situations best judgement assessment shall be made :
 - a. If the person fails to file the return u/s 139(1), 139(4) or 139(5); or
 - b. If the person fails to comply with the terms of notice u/s 142(1); or
 - c. If the person fails to comply with the directions u/s 142(2A) requiring him to get his accounts audited; or
 - d. If the person fails to comply with the terms of notice u/s 143(2) [scrutiny assessment], requiring his presence or production of evidence and documents.
3. Assessing Officer **cannot reduce** the tax liability of the assessee by assessment under this section and **no refund** shall be granted under section 144.
4. No opportunity of being heard shall be given under this section, only a show cause notice for asking to "**why not the best judgement assessment should take place**", will be asked by Assessing officer.
5. Such show cause notice need not be given, where notice u/s 142(1) **has already been issued**.
6. **Time limit for completion of best judgement assessment** is 12 months from the end of relevant assessment year.
7. In case assessee is not satisfied with the said assessment then he may appeal to:
 - c) Commissioner (appeals) to complete such assessment.
 - d) Revise appeal to Chief Commissioner to provide guidelines to A.O and to direct A.O to do re-assessment.

ASSESSMENT PROCEDURE

[SECTION 144A] POWER OF JOINT COMMISSIONER TO ISSUE DIRECTION IN CERTAIN CASES:

Joint Commissioner may (on his **own** motion or on a reference being made to him **by the Assessing Officer** or on the application of an **assessee**) -

- (a) Call for and examine the record of any proceeding in which an assessment is pending; and
- (b) Having regard to the nature of the case or the amount involved or for any other reason, - **issue such directions** as he thinks fit for the guidance of the Assessing Officer to enable him to complete the assessment and such directions shall be binding on the Assessing Officer.

NOTE: Directions, which are prejudicial to the assessee, **shall not be** issued without giving the assessee an opportunity of being heard. **However**, direction of investigation shall not be deemed to be a direction prejudicial to the assessee.

ASSESSMENT PROCEDURE

[SECTION 147] INCOME ESCAPING ASSESSMENT:

1. The Assessing Officer may assess or reassess an income, if he has **reason to believe** that such income though chargeable to tax **has escaped** assessment for any assessment year.
2. Following shall **deemed to be the cases** where income chargeable to tax has escaped assessment -
 - A) Where no return of income has been furnished by the assessee although his total income (or the total income of any other person in respect of which he is assessable under this Act) exceeded the maximum amount which is not chargeable to tax;
 - B) Where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return;
 - C) Where the assessee has failed to furnish a report in respect of any international transaction which he was so required u/s 92E;
 - D) Where an assessment has been made, but—
 - income chargeable to tax has been under-assessed; or
 - such income has been assessed at too low a rate; or
 - such income has been subject to excessive relief under this Act; or
 - excessive loss or depreciation allowance or any other allowance under this Act has been computed.
 - E) Where a person is found to have any asset (including financial interest in any entity) located outside India.
 - F) Where assessee was not filed return of income as he thought that his income is not chargeable to tax but later on it is found that the income of such assessee is liable to be taxable under this act.

ASSESSMENT PROCEDURE

Treatment of new information subsequently found during income escaping assessment proceedings:

Once an assessment has been reopened, any income -

- which has escaped assessment; and
- which comes to the notice of the Assessing Officer subsequently,

may also be included in the assessment in the course of the proceedings of this section.

NOTE : The Assessing Officer may include other income irrespective of the fact that such issues have not been included in the reasons recorded u/s 148.

Rate of taxation on escaped income:

If an assessment/reassessment is made u/s 147, then tax shall be chargeable at the rates at which **it would** have been charged had the income not escaped assessment.

Issue of notice [Sec. 148]

Before making the assessment u/s 147, the Assessing Officer shall serve on the assessee a notice requiring him to furnish a return within such period, as may be specified in the notice.

Time limit for notice [Sec. 149]

- Upto 4 years from the end of relevant A.Y: For the assessee whose income escaping amount is upto **Rs. 99,999.**
- Upto 6 years from the end of relevant A.Y: For the assessee whose income escaping amount is **Rs. 1,00,000 or more.**
- Upto 16 years from the end of relevant A.Y: For the notice is issued in relation to income from any asset (including financial interest in any entity) located outside India chargeable to tax, **has been escaped.**

Time limit for completion of assessment u/s 147.

- No order of assessment, reassessment shall be made u/s 147 after the expiry of **9 months** from the **end of the financial year** in which notice u/s 148 was **served.**
- And **12 months** instead of 9 months for notice issued **on or after 1/04/2019.**

ASSESSMENT PROCEDURE

PERIOD EXCLUDED FROM TIME LIMIT FOR COMPLETION OF ASSESSMENT:

In computing the time limitation for completion of assessment, following period shall be excluded —

1. Time taken in reopening the whole or any part of the proceeding or in giving an opportunity to the assessee **to be re-heard.**
2. Period during which the assessment proceeding is stayed by an order or injunction of a court; or
3. Period commencing from the date on which the Assessing Officer intimates under proviso to **sec. 143(3)** to the Central Government or the prescribed authority.
4. Period commencing from the date on which the Assessing Officer directs the assessee to get his accounts **audited u/s 142(2A)** and ending with the last date on which the assessee is required to furnish a report of such audit (where such direction is challenged before a court, ending with the date on which the order setting aside such direction is received by the Commissioner); or
5. Period commencing from the date on which the Assessing Officer makes a reference to the **Valuation Officer** u/s 142A and ending with the date on which the report of the Valuation Officer is received by the Assessing Officer; or
6. In a case, where an application made before the Settlement Commission u/s 245C is **rejected**, the period commencing from the date on which such application is made and ending with the date on which the rejection order is received by the Principal Commissioner or Commissioner; or
7. Period commencing from the date on which an application is made before the Authority for Advance Rulings u/s 245Q and ending with the date on which the order **rejecting** the application is received by the Principal Commissioner or Commissioner; or
8. Period commencing from the date on which an application is made before the Authority for Advance Rulings u/s 245Q and ending with the date on which the order of the advance ruling **pronounced** by the authority is received by the Principal Commissioner or Commissioner; or

ASSESSMENT PROCEDURE

9. Period (maximum period of 1 year) commencing from the date on which a reference (or first reference, if many references are made) **for exchange of information** is made by an authority competent under an agreement referred to in sec. 90 / 90A and **ending with the date** on which the information so requested is last **received** by the Principal Commissioner or Commissioner; or

[SECTION 154] RECTIFICATION OF MISTAKE:

1. An income-tax authority, is empowered (suo moto or on application by assessee) to -
 - (a) rectify any mistake apparent in an order passed by him; or
 - (b) amend any intimation issued u/s 143(1) or deemed intimation
 - (c) amend any intimation issued for non-decution of TDS or non-collection of TCS.
2. Such order of rectification must be passed in writing.
3. **Time limit for Rectification [Sec. 154(7)]**
Within 4 years from the end of the financial year in which the order sought to be amended was passed.
4. However, in respect of an application made by the assessee or deductor or collector, the authority shall, **within a period of 6 months** from the end of the month in which the application is received by it, pass an order -
 - a. making the amendment; or
 - b. refusing to allow the claim.
5. **Opportunity of being heard [Sec. 154(3)]:** If such rectification order is prejudicial to the assessee or deductor or collector, **an opportunity of being heard** must be given to the assessee, before passing such order.
6. Where any such amendment has the effect of reducing the assessment or otherwise reducing the liability of the assessee or the deductor or collector, the Assessing Officer shall make any refund which may be due to such assessee or the deductor or collector.
7. Where any such amendment has the effect of enhancing the assessment or reducing a refund already made or otherwise increasing the liability of the assessee or the deductor or collector, the Assessing Officer **shall serve on** the assessee or the deductor or collector, as the case may be a notice of demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be issued u/s 156.

ASSESSMENT PROCEDURE

[SECTION 156] DEMAND NOTICE:

1. On completion of assessment, a **demand notice** is served for additional demand raised in the assessment.
2. **Time limit for payment of tax:** The assessee should make the payment of amount demanded **within 30 days** of service of notice. Where the Assessing Officer has any reason to believe that it will be detrimental to revenue **if the** full period of 30 days is allowed, then he may with the previous approval of the Joint Commissioner direct that the sum specified in the notice of demand shall be paid within **such extended time** as may be specified by him in the notice.
3. **Interest on delay in payment:** If the payment is not made within 30 days (or time allowed in the notice), interest shall be payable **@ 1%** for every month (or part thereof) of the delay. An assessee in default shall be liable to a penalty of an amount not exceeding the amount **of tax in arrears.**